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## Support to Good Governance: Project against Corruption in Ukraine (UPAC)

### TECHNICAL PAPER – CONCEPT OF CHANGES TO LAWS OF UKRAINE CONCERNING IMPROVEMENT OF TRANSPARENCY OF FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN UKRAINE

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The views expressed in this document are authors' own and do not necessarily reflect official positions of the Council of Europe

## TABLE OF CONTENTS

1 PREFACE.....	3
2 FUNDING OF POLITICAL PARTIES BY THE STATE.....	4
2.1 Implementation of state funding of political parties.....	4
2.2 Definition of forms, amounts and criteria of direct state funding of parties and areas of spending of budget funds .....	5
3 REGULATION OF PRIVATE FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS.....	10
3.1 Definition of donation .....	10
3.2 Restrictions on sources of private funding of the party.....	12
3.3 Maximum value of private donations to parties .....	13
3.4 Taxation of donations to parties .....	14
4 LIMITS ON EXPENDITURE OF POLITICAL PARTIES INCLUDING EXPENDITURES ON ELECTORAL CAMPAIGNS .....	14
5 TRANSPARENCY OF FUNDING PARTIES AND ELECTORAL CAMPAIGNS.....	15
5.1 Establishment of requirements to the content of consolidated financial accounts of parties .....	15
5.2 Requirements to the content of accounts of donations to entities in electoral process and areas of their use .....	16
5.3 Procedure for publication of financial accounts .....	17
5.4 Responsibility of persons donating to parties to ensure appropriate records of such donations .....	19
6 MONITORING OF FUNDING OF PARTIES AND ELECTORAL CAMPAIGNS.....	19
6.1 Internal monitoring of funding of parties and electoral campaigns.....	19
6.2 Independent external monitoring of funding of parties and electoral campaigns.....	20
6.3 Scope of authority of independent external unit for the monitoring of funding of parties.....	20
7 EFFECTIVE, ADEQUATE AND EFFICIENT SANCTIONS FOR VIOLATIONS IN THE SPHERE OF FUNDING OF PARTIES AND ELECTORAL CAMPAIGN.....	21

# 1 PREFACE

Political Party is a tool to summarize and to express civic interests, which performs its functions thanks to its ability to influence decision-making centers of power in a State. Parties play a role or policy makers and, at the same time, of agents of political fight, which is a necessary condition of access to resources of power.

Constitution of Ukraine establishes for the Parties the leading role in shaping out and expressing of the political will of the public. Such role can not be performed without proper financial resources, which enable Political Parties not only to make clear their goals and ideas for the public, but also to compete with one another, to develop their political programs, to take part in elections to the representative bodies of the State power and local self-governments and to influence the foreign and internal policies of the State.

The Parties' need to fund their activities generates two major problems: increase of risks of corruption in the politics (rendering of certain services in exchange for the financial support) and growth of inequality in the Parties' ability to fight for political power, because amounts of available financial resources determine to a big extent their capabilities to compete.

That is why the question of who, in what amounts, in what manner, at which expense and with which purpose funds the Parties' activities becomes really important. Essential detailed elaboration of the rules of funding of the Parties and electoral campaigns in the national legislation of majority of the democratic countries is a convincing proof of it. Such level of detail is aimed at accomplishment of several tasks:

first, to diversify sources of funding of the Parties, so that non of sponsors has a decisive influence of the Parties' activities (the influence of the State is compensated with private funding of the Parties and vice-versa: influence of private donors is reduced to a big extent due to funding of the Parties by the State; in order to prevent influence of just one donor of the Parties' activities, the legislation establishes limitation of amounts of contributions to the Parties, etc.);

secondly, to create conditions for development of the partisan system, rise of new Parties, support of competition between the existing Parties (for instance, by means of State funding of nonparliamentary Parties, establishment of tax exemptions for the Parties and donors, limitations on expenditures of the Parties for electoral campaigns, etc);

Thirdly, to ensure transparency of funding of the Parties and electoral campaigns and to create proper conditions for governmental and civic control in the area of funding of the Parties and elections.

During the last decades the problem of funding of Political Parties and electoral campaigns gained an international significance. There were several attempts to systemize positive foreign experience in this area, which were depicted, in particular, in Recommendation of Parliamentary Assembly of Council of Europe 1516(2001), Guidelines And Report On The Financing Of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting, (Venice, 9-10 March 2001), Recommendations Rec (2003)4 Of Committee of Ministers of Council of Europe to the Member States concerning single rules against corruption in the area of funding of political parties and electoral campaigns as of 8 April 2003.

The latter document has a special significance. First, it establishes main directions of improvement of regulations of funding of Parties and elections at the national level in order to prevent political corruption. Secondly, in 2006 Ukraine joined the Group of States against Corruption (GRECO), which monitors compliance with the Recommendation Rec (2003)4. Within the framework of its third round of evaluation, GRECO will review issues of funding of Political Parties and assess correspondence of the legislation of the Member States, including Ukraine, to standards of the Council of Europe in this domain.

The suggested concept of amendments to Laws of Ukraine with regard to increase of transparency of funding of the Political Parties and electoral campaigns in Ukraine will take into full account provisions of the aforementioned Recommendation and envision proper legal prerequisites for reduction of corruption in the politics, approximation of the national legislation concerning funding of Parties and electoral campaigns to the best foreign, first of all, European practices in order for Ukraine to comply with its undertaken obligations with regard to fight against corruption.

The concept establishes the main problems of regulations of the funding of the Parties and electoral campaigns in Ukraine and recommendations concerning their resolution with consideration of the documents of Council of Europe and GRECO monitoring reports within the third evaluation round.

## 2 FUNDING OF POLITICAL PARTIES BY THE STATE

### 2.1 IMPLEMENTATION OF STATE FUNDING OF POLITICAL PARTIES

Before the 60-ies the Parties in foreign countries were funded through membership fees, proceeds from business activities and funds from private donors. The support of the partisan activities by the State was mostly reduced to different forms of indirect funding. But the Parties' expenses were continuously growing and, respectively, the Parties' need to increase amounts of their funding was growing. Growth of dependence of the Parties from private funding was increasing the risk of transforming the Parties into a tool to form and to express the will not of the voters, but rather of those who extend the financial support. This is the reason why, starting from the 60-ies, the European countries started implementing direct funding of the Parties by the State: Denmark and Sweden in 1966, FRG in 1967, Finland in 1969, Italy and USA in 1974, Austria in 1975, Portugal in 1976, Greece and France in 1984 and 1988 respectively. As of today, most of the countries of the world provide for direct financial support of the Parties by the State.

In Ukraine, the direct State funding of the Political Parties was implemented by the Law "On Amendments to Some Legislative Acts of Ukraine in Connection with Implementation of State Funding of Political Parties in Ukraine" as of 27 November 2003.

According to this Law, the Parties were supposed to be funded by the States in two ways: 1) funding of statutory activities of the Parties, which are not related with their participation in elections to the governmental and local self-government authorities; 2) reimbursement of the Parties' expenses related to funding of their electoral campaigns during ordinary and extraordinary elections of the People's Deputies of Ukraine. The Parties eligible for receipt of the State funds were those, which overcame the electoral threshold at their own or within an electoral block.

According to the aforementioned Law, the annual amount of the State funding of statutory activities of the Parties from the National Budget was supposed to be 0.01 of the amount of the minimal wages defined as of 1 January of the year preceding to the year of funding multiplied by the number of citizens included in the voters' lists during the last ordinary elections of the People's Deputies of Ukraine.

Parties' expenses related to financing of the electoral campaigns during elections of the People's Deputies of Ukraine, were supposed to be reimbursed according to the Law "On Elections of People's Deputies of Ukraine". Its latest version as of 18 October 2001 envisaged reimbursement of the Parties' expenses related to financing of their electoral campaigns during elections of the People's Deputies in amounts corresponding to the actual cost, but not more than the threshold amount of expenses from electoral fund of a Party (Block) established by Law (i.e., within the limits of 150,000 non-taxable minimal incomes of citizens). On 7 July 2005, Law "On Elections of People's Deputies of Ukraine" was presented in a new version, where the amount of the State reimbursement of expenses of the Parties (Blocks), related with financing of their electoral campaigns, was supposed to correspond to the actual cost, but not more than 1000,000 minimal wages for every Party (Block).

According to the Law as of 27 November 2003, the State funding of the Parties' statutory activities was expected to start from 1 January 2007, while the reimbursement of the Parties' expenses related to financing of their electoral campaigns, after Parliamentary elections of 2006. On 4 May 2006 the CEC passed a decision on reimbursement to Political Parties of their expenses related to financing of their electoral campaigns (CEC resolution No. 1215 as of 5 May 2006). The total amount of the reimbursement was 126,853, 243 hryvnias; the maximal amount of the reimbursement to a Party (Block), which overcame the electoral threshold, was 35,000,000 UAH. The expenses related to financing of political campaigns were also reimbursed based on the outcome of the extraordinary Parliamentary elections of 2007 (CEC Resolution No.554 as of 6 November 2007). The total amount of the reimbursement in 2007 was 185,984,255 UAH; the maximal amount of the reimbursement for a Party (Block), which overcame the electoral threshold, was 44,000,000 UAH

As far as the direct State funding of the Parties' statutory activities, it ended up not being provided within the terms established by the Law. Even more than that: Point 91 Part II of Law of Ukraine "On State Budget of Ukraine for 2008 and On Amendments to Some Legislative Acts of Ukraine" as of 28 December 2007, the provision of the Legislation of Ukraine concerning State funding of the Political Parties (with regard to both their statutory activities and reimbursement of electoral campaigns cost) was cancelled.

By Decision of the Constitutional Court of Ukraine as of 22 May 2008, Point 91 Part II of Law of Ukraine “On State Budget of Ukraine for 2008 and On Amendments to Some Legislative Acts of Ukraine” was declared non-constitutional.

However, since decision of the Constitutional Court can not be applied retroactively while the legislative provision concerning State funding of the Political Parties was cancelled and not suspended, the aforementioned decision did not entail the reconstitution of the effect of provisions concerning funding of the Parties. So, the current Legislation of Ukraine does not provide for State funding of the Political Parties and provisions implemented by the Law as of 27 November 2003, lost their effect.

The need to implement State funding of Political Parties in Ukraine is implied by a number of reasons. First of all, State funding of the Parties prevents, to a significant extent, the corruption in politics, because the Parties’ dependence on private funding increases the probability that the access to power will be used to support those who fund the partisan activities. Secondly, the State funding guarantees a certain minimal level of financial support to the Parties, which does not depend on availability of private funding sources. Hence, the State funding promotes equal opportunities for competition between the Parties. Thirdly, availability of the State funding allows the Parties to reorient their efforts from search of additional funding sources to development of the Parties’ ideology, their local cells, consolidation of their human and organizational resources.

Among the European countries, the direct State funding of the Parties is implemented, in particular, in Albania, Austria, Andorra, Belgium, Bulgaria, Bosnia and Herzegovina, Great Britain, Denmark, Estonia, Ireland, Iceland, Spain, Italy, Lithuania, Netherlands, Germany, Norway, Poland, Portugal, Russia, Romania, Slovak Republic, Hungary, Finland, France, Check republic, Switzerland and Sweden<sup>1</sup>. Only several European States do not have the direct State funding of the Parties, in particular, Latvia. GRECO has a negative opinion concerning absence of the direct State support to the Parties: in Point 85 of its evaluation of transparency of funding of Parties in Latvia, GRECO recommends to Latvia to implement direct funding of the partisan activities<sup>2</sup>.

### **Recommendations:**

The effective laws of Ukraine should be amended in such a manner that the direct State funding of the Political Parties is implemented.

## **2.2 DEFINITION OF FORMS, AMOUNTS AND CRITERIA OF DIRECT STATE FUNDING OF PARTIES AND AREAS OF SPENDING OF BUDGET FUNDS**

Implementation of the direct State funding of the Political Parties implies rise of the four issues that need to be responded:

- Which should be forms of State funding of the Political Parties?
- Which should be the amount of the State support?
- Which specific Parties should be eligible for the State funding and which should be the principles to distribute the budget funds among the Parties?
- For which specific purposes may the Parties spend the funds received from the State budget?

Analysis of foreign practices demonstrates that many foreign States grant the direct budget funding to the Parties in two forms: 1) in form of annual State funding; 2) in form of funding of the Parties’ participation in parliamentary elections (in some specific cases, even in elections to the European Parliament). Many countries of the world use these forms in parallel (Australia, Austria, Albania, Argentina, Belgium, Bulgaria, Bosnia, Israel, Italy, Mexico, Germany, Norway, Poland, Romania, Slovak Republic,

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<sup>1</sup> Funding of Political Parties and Election Campaigns /R.Austin, M. Tjernstrom . – International Institute for Democracy and Electoral Assistance, 2003. - p. 209 – 213. - [http://www.idea.int/publications/funding\\_parties/upload/full.pdf](http://www.idea.int/publications/funding_parties/upload/full.pdf)

<sup>2</sup> Evaluation Report on Latvia on Transparency of Party Funding (Theme II), adopted by GRECO at its 39<sup>th</sup> Plenary Meeting (Strasbourg, 6-10 October 2008). – p. 23. - [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)1\\_Latvia\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)1_Latvia_Two_EN.pdf)

Hungary, Finland, France, Japan, etc.)<sup>3</sup>. Moreover, some of the state use also other forms of the budget funding: through granting a one-time financial assistance upon the Party's State registration (Albania); by means of funding Party Parliamentary activities: payment for labor of an established number of employees, ensuring of operation of Parliamentary opposition (Great Britain, Iceland, Netherlands) funding of Party's scientific research institutions, youth, women's organizations, mass media (Netherlands, Norway, Finland).

The Parties in Ukraine should be funded by the State **in the forms of annual funding of Party's activities and (at the same time) in form of funding of participation of the Parties in elections of People's Deputies of Ukraine**. There are the following reasons for that: 1) funding of just current Party activities will lead to the situation when the Parties would accumulate the budget funds in order to spend them with electoral campaigns or would actively engage contributions from private donors during electoral periods, when expenses of the Parties grow up significantly; 2) the funding of exclusively participation of the Parties in the elections would imply dependence of the Parties from private funding in the periods between elections.

the State may fund participation of the Parties in the elections both before the day of voting at elections of People's Deputies and based on the outcome of the elections to the Parliaments (in the form of reimbursement of the cost of electoral campaign). Still, under the conditions when a significant number of contenders participate in elections, granting of funds from the State budget to all Parties, which proposed their candidates for the Parliamentary elections, does not make sense. Hence, **participation of the Parties in the elections should be funded by means of reimbursement of the expenses of the Parties (Blocks), related with their participation in elections of People's Deputies of Ukraine**.

The next issue that need to be regulated in the one of amounts of the State funding of the Parties. Within this context, interesting experience is available in the countries, which are similar to Ukraine by the size of their populations. In Poland the annual amount of the State funding of the Parties in 2006-2008 was from 27 to 31 millions Euros<sup>4</sup>, in France it was 75 millions Euros<sup>5</sup> and in Spain, 82 millions Euros<sup>6</sup>. According to the Law as of 27 November 2003, in 2009 the amount of funding of the Parties' statutory activities should have been 191,538,429.2 UAH<sup>7</sup>, i.e., 17,984,829 Euros<sup>8</sup>, which is almost twice as little as in Poland. So, there is need to revise the formula to calculate the amounts of the State funding of the Parties' statutory activities established by Law (in order to decrease such amounts). Respectively, **the amount of annual State funding of the Parties' activities should be defined by means of multiplication of 0.01 of the minimal wages (as of 1 January of the year preceding to allocation of fund to finance the Parties) by the number of voters included in the Voters' Lists during the last ordinary elections of the People's Deputies of Ukraine**.

The amount of expenses of the Parties (Blocks) related to their participation in elections of People's Deputies to be reimbursed by the State can be defined on the basis of the Law "On Elections of People's Deputies of Ukraine". According to Article 98 of this Law, the limit amount of reimbursement of the electoral cost for a Party (Block) was 100,000 amounts of the minimal wages (as of 1 July of 2007, 44,000,000 UAH). So, **the amount of reimbursement from the State budget of expenses related to the Party participation in elections of People's Deputies should be defined for every Party (Block) as the amount of actual expenses from their electoral funds but should not be bigger than 100,000 amounts of minimal wages as of the day of opening of accumulation accounts of a Party (electoral Block)**.

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<sup>3</sup> Funding of Political Parties and Election Campaigns /R.Austin, M. Tjernstrom . – International Institute for Democracy and Electoral Assistance, 2003. - p. 209 – 213. -

[http://www.idea.int/publications/funding\\_parties/upload/full.pdf](http://www.idea.int/publications/funding_parties/upload/full.pdf)

<sup>4</sup> Evaluation Report on Poland on Transparency of Party Funding (Theme II), adopted by GRECO at its 40<sup>th</sup> Plenary Meeting (Strasbourg, 1-5 December 2008). – p. 8. -

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)2\\_Poland\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)2_Poland_Two_EN.pdf)

<sup>5</sup> Evaluation Report on France on Transparency of Party Funding (Theme II), adopted by GRECO at its 41<sup>th</sup> Plenary Meeting (Strasbourg, 16-19 February 2009). – p. 6. -

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)5\\_France\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)5_France_Two_EN.pdf)

<sup>6</sup> Evaluation Report on Spain on Transparency of Party Funding (Theme II), adopted by GRECO at its 41<sup>th</sup> Plenary Meeting (Strasbourg, 16-19 February 2009). – p. 6. -

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)3\\_Spain\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)3_Spain_Two_EN.pdf)

<sup>7</sup> Amount of funding of statutory activities of the Parties, according to the Law, was supposed to be 0.01 of the minimal wages as of 1 January 2008 (5.15 UAH) multiplied by the number of voters included in the Voters' Lists during the last elections to Verkhovna Rada of Ukraine (37,191,928 voters according to CEC -

<http://www.cvk.gov.ua/pls/vnd2006/W6P001>).

<sup>8</sup> At.65 UAH per 1 Euro.

One of the problems related to implementation of State funding of Parties in Ukraine is the issue of criteria for eligibility of the Parties for funding from the State Budget. According to the Law as of 27 November 2003, only those Parties, which overcame the electoral threshold, were eligible for State funding of their statutory activities and reimbursement of expenses related to their participation in Parliamentary elections. The respective provision of the law was not consistent with the Recommendation of PACE 1516 (2001). According to this recommendation, the State funding should give to the new Parties an opportunity to appear on political arena and to compete under fair conditions with more stable Parties. This implies that the State Funding should be granted not only to the “parliamentary” Parties, but also to those, which are not represented in the Legislative Body. The latter may be identified on the basis of several criteria, namely:

- 1) on the basis of number of votes obtained by the local Party (Block) organizations during ordinary local elections to the representative self-government bodies, where the elections were based on the proportional system;
- 2) on the basis of the number of the candidates proposed by the Party (Block) during the last Parliamentary elections;
- 3) on the basis of the number of votes casted for the candidates from the Party (Block) during the last Parliamentary elections.

The first approach is difficult to be implemented in practice from the technical point of view: partisan composition of the Blocks at National and local elections may be different; also, there are differences between numbers of members of Oblast, District and City councils and between the numbers of participants in the local elections; in order to implement this approach in practice, exchange of information between all territorial electoral commission and CEC would need to be well organized (data concerning composition of Councils, outcome of local elections, parties proposing their candidates, etc.).

Implementation of the second approach may lead to the situation when all of the registered Parties will become eligible for the State funding.

Hence, the eligibility of the Parties for the State funding should be defined on the basis of the votes casted for the candidates from the Party (Block) during the last Parliamentary elections. This is exactly the approach used in many European countries: in Norway all Parties, which participated in elections, are eligible for the State funding (at 8 Euros per each vote), in Albania, Estonia, Slovenia and France the eligible Parties are those, which obtained 1% of votes (in France 1% in 50 electoral districts), in Iceland and Sweden those, which obtained 2.5% of votes; in Poland, 3% of votes (for Parties) and 6% of votes (for Blocks); in Slovak republic, 3% of votes.

The Norwegian experience of Party funding can not be applied under Ukrainian conditions: if in 2006 all participants of elections had been eligible for the State funding, 45 Parties and Blocks would have received it<sup>9</sup>. In 2006 11 Parties and Blocks would have received the State funding provided that to be eligible they had to obtain 1% of votes; 7 Parties and Blocks for 2% of votes (while only 5 Parties and Blocks overcame the electoral threshold). In 2007 these numbers would be respectively: 1%, 7 Parties and Blocks; 2%, 6 Parties and Blocks (5 Parties and Blocks overcame the electoral threshold). So the number of participants, which were supported by more than 2% of voters did not almost change during 2 years while the number of those, which were supported by 1% of voters, decreased significantly. **Hence, the Parties and Blocks eligible for the State Funding should be those, whose candidates received 2% of votes during the last elections of People’s Deputies.**

Another issue, which needs to be regulated refers to principles of distribution of the budget funds among the Parties, which became eligible for the State funding. In this context, it should be noted that **only those Parties, which overcame the electoral threshold, should be eligible for reimbursement of the election-related cost**, because the maxima amount of such reimbursement for a Party will be significant: 100,000 minimal wages.

The annual State funding may be distributed among the Parties on the basis of one of the two approaches: a) equally among all Parties (Blocks) eligible for the State funding; b) in proportion to the number of votes casted for the Party (Block) during the last elections of People’s Deputies of Ukraine. The shortcoming of the former is that it will not attract interests of a Party (Block) to active fight for the voters’ support: no matter what the outcome of the election is, the Party (Block) will receive the same amount of funding that all other Parties (Blocks). This is the reason why **the annual amount of direct State funding of activities of the Parties (Blocks) should be distributed among the Parties and Blocks proportionally to the number of votes casted for their candidates during the last elections of People’s Deputies of Ukraine.**

<sup>9</sup> <http://www.cvk.gov.ua/pls/vnd2006/w6p400?PT001F01=600>

The last important issue, which need to be resolved in connection with implementation of direct State funding of Political Parties is the one concerning areas of spending of the funds received from the National Budget of Ukraine.

it is quite evident that the budget funds used to reimburse expenses of Parties and Blocks related to their participation in elections of People's Deputies of Ukraine, may be used by the Parties and Blocks at their own discretion.

More complicated problem is the one of use of funds received by the Parties to finance their activities. First, such funding is aimed at ensuring the internal Party development and should be used by the Parties in full during a year instead of being accumulated on the Parties' accounts and directed to the electoral funds during the electoral campaigns (after that the State would return these funds to the Parties in the form of reimbursement of expenses for electoral campaign). Secondly, the State needs to be able to monitor use of the budget funds. Thirdly, the annual State funding may be a tool to stimulate certain types of the Party activities (for instance, scientific research, support to mass media, development of youth organizations, etc.) in the event that the areas where the Parties may spend the funds are established by law. It should be emphasized that in many European countries the budget funds are directed to funding of types of activities specified by law. Such countries, in particular, include Great Britain (the United Kingdom allocated to the Parties 2,000,000 pounds for development of political components of their programs), Spain (about 4,000,000 Euros are allocated every year to ensure protection of the Parties against terrorist attempts)<sup>4</sup> Netherlands (every year 176,580 Euros are allocated, which may be used only to fund certain types of activities: trainings, awareness campaigns, spread of information, support of connections with foreign Parties, attraction of new members, etc.), Poland (financing of Expertise and Electoral Funds of the Parties).

Accumulation of the budget funds on accounts of the Parties and their further transfer to electoral funds may be prevented through a number of mechanisms: a) **legislative provisions obliging the Parties to return the balance of the funds, which have not been used during a year, back to the State budget of Ukraine;** b) **establishment of prohibition for the Parties to transfer the budget funds to their own electoral funds, electoral funds of Blocks or of separate candidates at the elections.**

Efficient State monitoring of use of the budget funds may be ensured by means of implementation of **separate accounting of such funds at separate banking accounts.** Specifically, such approach is used in Poland.

Incentives for certain areas of the Party activities may be established by means of determination **in the Law "On Political Parties in Ukraine" of an exhaustive list of activities, with which the Parties are allowed to spend the budget funds.** Such types of activities may include: support to youth, women's and other associations of citizens; support to the Party's own local organizations and Party's mass media; organizations and conducting of public events (manifestations, meetings, round tables, conferences, etc.); spreading of information concerning Party's ideas, goals and activities to include use of mass media; research on matters of politics, law, economy, sociology; professional development of the Party's employees.

### **Recommendations:**

1) direct State funding of the Political Parties should be implemented in two forms: a) in form of annual State funding of the statutory activities of the Parties; b) in form of reimbursement from the State budget of expenses related to the Parties' participation in elections of People's Deputies of Ukraine;

2) Parties eligible for the annual State funding of the statutory activities should be those, which proposed, at their own or within composition of electoral blocks, proposed their candidates, which were supported by at least 2% of the voters, which participated in the last elections;

3) Parties eligible for reimbursement from the State Budget of Ukraine of expenses related to their participation in elections of People's Deputies of Ukraine should be those, which participated at their own or within a composition of an electoral block in distribution of Deputy's mandates based on the outcome of the latest elections;

4) amounts of the annual State funding of the statutory activities of the Parties should be determined by means of multiplication of 0.01 of the minimal wages established as of 1 January of the year preceding to the year of allocation of funds in support of Parties' activities, by the number of voters included in the Voters' lists in the National electoral district during the last ordinary elections of People's Deputies of Ukraine;



**5)** expenses related to participation of a Party in elections of People's Deputies of Ukraine should be reimbursed to a Party (Block) in accordance with the actually spent money, but within the limits of 100,00 minimal wages established as of the day of opening of the accumulation account by the Party (Block);

**6)** the amount of the annual State funding of the statutory activities of the Parties established by Law on State Budget of Ukraine should be distributed among the Parties (Blocks) proportionally to the number of votes casted for the candidates from such Parties (Blocks) during the last elections of People's Deputies of Ukraine;

**7)** Procedure of distribution of the funds from the State budget of Ukraine among the Parties, which, during the last elections to Verkhovna Rada of Ukraine were part of an electoral block, should be regulated by an agreement on establishment of the respective block and, if such agreement did not provide for procedure of distribution of the budget funds, such fund should be distributed equally among all Parties, which were parts of the electoral block;

**8)** In the event that a Party becomes eligible for the annual funding of its statutory activities, it must open a separate current account to receive funds from the State budget of Ukraine, which will be used to fund the types of activities established by law;

**9)** Decision to grant the State funding in support of the Party statutory activities should be made by a competent authority only under the condition that the Party's authorized person submits a certificate from the Bank confirming the fact of opening of a separate account to place the budget funds (if such Party becomes eligible for the funding for the first time);

**10)** The current account of the Party used for placement of the State Budget of Ukraine in order to fund its statutory activities should not be used to receive funds from other sources; funds from this account may not be used for any purposes, which are not envisioned by the Law "On Political Parties of Ukraine", and may not be transferred to accounts of electoral funds of the Parties, Blocks and their candidates in the elections;

**11)** Funds from the State Budget of Ukraine may be transferred by a Party to accounts of its local organization only provided that such organizations have opened separate current accounts, which are expected to be used for transfer of the funds from the State Budget of Ukraine;

**12)** The funds from the State Budget of Ukraine allocated to fund statutory activities of a Party, may be used by such Party only with the following types of its statutory activities:

- a) support to youth, women's and other associations of citizens;
- b) support to the local organizations and mass media of the Party;
- c) organization and conducting of public events (manifestations, meetings, round tables, conferences, etc.);
- d) spreading of information concerning the Party's ideas, goals and activities including through mass media;
- e) conducting of research in the matters of politics, law, economy and sociology;
- e) professional development of the Party's employees;

**13)** The legislation should envision that the Party's local organizations may use funds from the State Budget of Ukraine (transferred to their current accounts by the Party) only for purposes to organize and to conduct public events (manifestations, meetings, round tables, conferences, etc.); spreading of information concerning the Party's ideas, goals and activities and those of the respective local organization of the Party including through mass media; research in the matters of politics, law, economy and sociology; professional development of the Party's employees;

**14)** Use of the Budget Funds by the Parties is not subject to provisions of the Ukrainian legislation concerning acquisition of works, goods and services at the expense of the State Budget of Ukraine;

15) In the event that by the end of the year the Party or its local organization failed to spend funds allocated to fund the types of activities established by law, such funds are subject to return to the State Budget of Ukraine within 30 days from the moment when grounds for such return have appeared.

### 3 REGULATION OF PRIVATE FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS

#### 3.1 DEFINITION OF DONATION

According to Article 2 of Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (hereinafter – Common Rules) donation means “any deliberate act to bestow advantage, economic or otherwise, on a political party”. Article 8 of Common Rules provides for the application of rules of funding of political parties should apply *mutatis mutandis*, in particular to the funding of electoral campaigns.

Pursuant to the analysis of the Laws “On taxation of profits of enterprises”, “On political parties in Ukraine”, laws on elections, donations to the party (entity in electoral process) refer solely to the monetary donations and assets. Such definition contravenes the Common rules, considering that it does not include donations granted to the party (entity in electoral process) in the form of works, services and other advantages of monetary value (e.g., fulfillment of contractual obligations, etc.). As a result, a certain portion of party funds is not reflected in financial statements of the party, is not subject to accounting and public monitoring, which does not facilitate transparency of funding of the parties and electoral campaigns.

Article 6 of Common Rules provides that rules concerning donations to parties (except for the ones concerning tax deductibility) should apply, as appropriate, to all entities, which are related directly or indirectly, to a political party or are otherwise under control of the party. The Law “On political parties of Ukraine” contains no definition of entity connected with the party and therefore, provides no rules of donations to such entities. Unlike many other countries, in Ukraine parties have no right to establish enterprises, or obtain the right of ownership of securities. Thus, the entities connected with the parties are only their local organizations, mass media, organizations and institutions founded by parties, and also, candidates for appropriate elections nominated by parties or their local organizations. **These are the very entities to which the requirements concerning donations set forth by legislation should apply.**

The course of improvement of legal regulations applicable to donations to parties, entities in electoral process, and entities connected with the parties should focus on European practices associated with regulation of the subject issues.

Firstly, donations to party include, in particular, credit debt relief (when the indebtedness is written off, the donation is deemed to have been made to the party). This debt release funding practice is particularly common in Spain, for example where credit debt relief is used to avoid limitations on the amount of donation.

Secondly, donations to party also include guaranteeing its financial obligations by third parties, where such entities out of their own funds fulfill financial obligations to bestow on the party, such support is also deemed to be a donation.

Thirdly, the notion of donation usually applies to membership fees of members of the party. Where membership fees and donations of “external donors” are regulated in different ways (Estonia<sup>10</sup>), GRECO emphasizes on the need to unify regulations to prevent circumvention of established limitations on the funding of parties. In Ukraine the issue of whether legal requirements concerning donations apply to membership dues remains unregulated by legislation.

Fourthly, the value of non-pecuniary donations is usually set by entities making such donations considering that according to revenue laws the taxable donor’s income is often discounted by the amount of donation, and therefore, the entity should determine the value of donation and the revenue amount itself, while the revenue authority should verify the accuracy of settlement. Since national legislations provides tax

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<sup>10</sup> Evaluation Report on Estonia on Transparency of Party Funding (Theme II), adopted by GRECO at its 37<sup>th</sup> Plenary Meeting (Strasbourg, 31 March - 4 April 2009). – p. 15. - [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2007\)5\\_Estonia\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2007)5_Estonia_Two_EN.pdf)

exemptions to donors of parties (both natural and legal entities), the above approach can be used in Ukraine as well.

Fifthly, legislation in a number of European countries directly sets forth the regulation that the value of donation is valued at the market value of similar goods, work and services effective at the time of donation. If supply, work or service is provided at the value lower than the market value (and moreover – solely to specific entity), the value of donation shall be the difference between appropriate market value and the amount paid for supply, work or service.

And finally, to prevent uncontrollable funding of parties and electoral campaigns by “third parties” legislation in a number of countries sets forth mandatory registration of individuals making donations to parties and candidates in excess of the maximum amount established by legislation at the external agencies monitoring the funding of parties and electoral campaigns. One of such countries is Great Britain, in particular: in England an individual donating over £10000 to the funding of candidate election must register at the Election Commission, maintain accounting and submit financial accounts to the Election Commission in accordance with the procedure established for parties and candidates for elections. An alternative to such registration might be prohibition (restriction) of funding of parties and electoral campaigns by “third parties”.

### **Recommendations:**

1) donation should mean any deliberate act to bestow advantage, economic or otherwise, on a political party in the pecuniary or non-pecuniary form, including by supply of work, goods and services at no cost, granting exemptions, discounts on goods, work and services on such terms that are not granted to other parties in terms of advantages;

2) the Law ‘On political parties in Ukraine’ should include regulation concerning the application of restrictions related to the funding of parties by natural persons to members of the party (to prevent artificial increase of numbers of party members avoiding restrictions related to the funding of parties by natural persons);

3) the definition of donations to the party (including appropriate limitations) in the Law ‘On political parties in Ukraine’ should also apply to the credit debt of the party written off by the creditor, and the amount of liabilities paid off by third party in the interests of the party;

4) the definition of donations to the entity in electoral process in appropriate elections (national or local) to be aligned with the definition provided in Article 2 of Common rules should also be included in sections of laws on elections specifying the procedure of funding of appropriate elections (parliamentary, presidential and local);

5) the Law ‘On political parties in Ukraine’ should include regulation pursuant to which the party donating to the party (local party organization) in a non-pecuniary form must submit written information to the party specifying the date of donation, identity (full name, name of legal entity, identity code of natural person or the ERDPOU code of legal entity), nature of donation and its market value within five days;

6) the laws on elections should include an option for the person to make non-pecuniary donations to the party, block, local party organization, candidate in elections at the prior written consent from the entity in electoral process;

7) the Law ‘On political parties in Ukraine’ should include the list of entities directly or indirectly connected with the party, to which restrictions concerning the sources and limits of funding of the parties, accounting and financial reporting of the party apply. The subject list should include the following: a) local party organizations whether or not they have the status of legal entities; b) mass media, institutions or organizations established by the party; c) candidates for elections nominated by the parties and local party organizations.

### 3.2 RESTRICTIONS ON SOURCES OF PRIVATE FUNDING OF THE PARTY

Article 15 of the Law of Ukraine ‘On political parties in Ukraine’ and Article 22 of Law of Ukraine ‘On public associations’ prohibit funding of political parties by the following: 1) public authorities and local-self-government bodies (except public funding of political parties); 2) public and communal enterprises, agencies and organizations, and also by enterprises, agencies and organizations with public or communal share of capital, or non-resident owned enterprises, agencies and organizations; 3) enterprises with foreign share of capital exceeding 20%; 4) foreign states and their nationals, foreign enterprises, agencies and organizations; 5) anonymous persons or under the aliased name; 6) charity and religious associations and organizations; 7) political parties outside the electoral block of political parties; 8) public associations that are not legalized. In addition, Article 22 of Law of Ukraine ‘On public associations’ prohibits parties to profit from shares and other stocks.

Article 3 of the Common rules recommends that the states introduce regulations focused on prevention of anonymous donations to parties. Article 5 of the Common rules recommends prohibiting donations to political parties from legal entities under the control of the state or of other public authorities or limiting, prohibiting or otherwise strictly regulating donations from legal entities which provide goods or services for any public administration. Besides the states are recommended to specifically limit or otherwise regulate donations to parties from foreign donors (Article 7 of the Common rules).

The limitation of the sources of funding of the parties existing in current legislation of Ukraine is generally in line with the requirements of the Common rules.

The key inconsistency is that the Law of Ukraine ‘On political parties in Ukraine’ contains no direct prohibition on the funding of parties by legal entities supplying work, goods and services to public authorities and local self-government.

Considering that ultimately prohibition of funding of the parties by such entities would be unjustified (even in view of the fact that supplies of goods, work and services to public administration can constitute a minor portion in the structure of aggregate income of supplier) it should be expedient to restrict it. Such restriction can be based on the portion of income of legal entity received from the State or local budgets in the gross income of such entity. Dependence from the budget funding is reached when the share of work, goods or services supplied to public authorities or local self-government bodies exceeds one half of income of business entity. This is why the **parties should not be funded by such legal entities which received over 50% of gross income from supplies of work, goods and services to public authorities or local self-government bodies in the preceding year.**

Another problem related to the sources of funding of parties and elections is that although funding of parties by anonymous persons is prohibited by legislation, in practice an individual can make a donation to the party without any documents identifying his/her nationality whatsoever. Resolution of this problem requires adjustment of the procedure of making donations to parties and entities in electoral process.

Article 8 of Common rules provides recommendation to apply the rules regarding funding of political parties mutatis mutandis to the funding of electoral campaigns of candidates for elections.

Instead, the sources of funding of parties and elections in Ukraine are not streamlined: According to the Law ‘On political parties in Ukraine’ legal entities may provide funding to political parties; however, the laws on elections prohibit funding of national and local elections by legal entities.

This prohibition has a declarative nature: in the environment where contributions of parties to electoral funds are not limited in the number and amount of payments elections can be indirectly funded by legal entities, considering that budgets of parties can consist of donations of legal entities in their entirety. It is expedient to retain the prohibition on donations to electoral funds of entities in electoral process solely if legal entities will be prohibited to fund parties, or otherwise, legal entities should be given the right to make donations to parties and entities in electoral process. Although in recent years the tendency to prohibit funding of parties and elections by legal entities is observed in European countries, introduction of such prohibition in Ukraine is unjustified considering weak financial base of Ukrainian parties. Taking into account Article 8 of Common rules and the necessity to create equal conditions for access to private funding for parties and ‘independent’ candidates, it is expedient to grant the **right to donate to parties and entities in electoral process, including candidates for appropriate elections** to legal entities.

### **Recommendations:**

1) The Law „On political parties in Ukraine” needs to be amended to prohibit donations to parties by such legal entities which received over 50% of gross income from supplies of work, goods and services to public authorities or local self-government bodies in the preceding year;

2) The Law „On political parties in Ukraine” and appropriate laws on elections should stipulate for Ukrainian nationals to make donations to parties (entities of electoral process) solely under condition that they present identity documents certifying their nationality, and also, the original STA identification code reference;

3) the laws on elections should stipulate for legal entities to make donations to entities in electoral process in the national and local elections;

4) prohibit donations to electoral funds of entities in electoral process by the entities having no right to make donations to parties according to legislation.

### **3.3 MAXIMUM VALUE OF PRIVATE DONATIONS TO PARTIES**

According to Item b, Article 5 of the Common rules, the states are recommended to consider introduction of limitation of maximum value of donations to parties. The Law „On political parties in Ukraine” is inconsistent with this recommendation, considering that it provides no limitation of the value of donation to the party by one person for a set period of time.

However, in European countries the value of donations to parties is usually limited: Great Britain – £5,000 per year, Iceland – €2,488 per year, Spain – €100,000 per year, Latvia – €22,800 per year, Netherlands (according to draft law on funding of political parties) – €25,000 per year, Poland – €4,95, Slovenia – €12,128 per year, France – €7 500 per year.

Therefore, in Ukraine an optimal amount of donation to party, its local organizations candidates nominated by parties and their local organizations made by one person **may constitute 100 minimum wages (as of the date of donation) per year.**

### **Recommendations:**

1) to prevent excessive dependence of parties on funding by a limited number of persons the Law „On political parties in Ukraine” should stipulate for the maximum value of donations to party from one entity (legal and natural) of 100 minimum wages per year;

2) the value of donations of the party to its own electoral fund or to the electoral fund of the block is not limited in terms of the number and amount of payments;

3) the value of donation from one person to electoral fund of the party, local party organization, “party” candidates for all elections should be determined within the limits of maximum value of donation to the party set forth by legislation. In case of donations to party prior to the electoral process, the allowable value of donation to the electoral fund of such party should constitute the difference between the maximum value of donation to the party and the prior donations thereto;

4) to ensure operational sharing of information between the party, candidates and local organizations of the party; prevention of excessive funding of the party by one person, the parties should be obliged to maintain electronic records of donations specifying information concerning the identity of donor, nature, value and the date of donation in appropriate data bases (similar practice already exists in Great Britain and Latvia).

### 3.4 TAXATION OF DONATIONS TO PARTIES

Article 4 of the Common rules provides that fiscal legislation may allow tax deductibility of donations to parties. However, such tax deductibility should be limited. The laws of Ukraine set forth exemptions for natural and legal entities providing financial support to parties.

In particular, according to Item 5.3.2 of the Law „On income tax for natural entities” natural entity may include the total sum of money or value of non-pecuniary donations or charity contributions to not-for-profit organizations (and to parties) in the tax credit for the reporting year for the amount over 2%, but not-to-exceed 5% of the amount of aggregate taxable income for the reporting year. According to Item 5.2.2 Article 5 of the Law „On enterprise profit taxation” the total cost of enterprise profit tax payer includes the total sum of money or value of goods (work, services) voluntarily paid (transferred) during the reporting year to not-for-profit organizations (and to parties) in the tax credit for the reporting year for the amount over 2%, but not-to-exceed 5% of the amount of aggregate taxable income for the reporting year.

Therefore, the subject tax exemptions (in the form of income tax deductibility) have limited character and are consistent with Article 4 of the Common rules, and thus, these exemptions may be retained in the course of further improvement of legal regulation of funding of parties.

## 4 LIMITS ON EXPENDITURE OF POLITICAL PARTIES INCLUDING EXPENDITURES ON ELECTORAL CAMPAIGNS

According to Article 9 of the Common rules, states should consider adopting measures to prevent excessive funding of needs of political parties, such as establishing limits on expenditures on electoral campaigns.

The Law „On political parties in Ukraine” sets forth few mechanisms to prevent excessive funding of political parties, including in particular, establishing restrictions concerning the sources of funding and prohibition of certain types of activities to be carried out by parties. Thus, according to Article 24 of the Law of Ukraine „On public associations” political parties, organizations and institutions established thereby are not allowed to found enterprises, except mass media, engage in business or other commercial activity, except trade of social and political literature and other promotion materials, items with party symbolic, festivals, festivities, exhibitions, lectures and other social and political events.

In part of the above mentioned limitations the Law of Ukraine „On public associations” is consistent with Article 9 of the Common rules, and therefore the current limitations require no revision.

Herewith, the legal regulation of funding of elections of people’s deputies of Ukraine at the cost of electoral funds of parties (blocks) is inconsistent with Article 9 of the Common rules, considering that legislation establishes no limitation on expenditure from electoral funds at parliamentary election. In practice the absence of such limitations results in impetuous increase of electoral campaign expenditure<sup>11</sup>, and consequently to the search for additional sources of funding for such needs by parties.

On the other hand, the ungrounded establishment of the maximum amount of electoral funds for the election of President of Ukraine and local elections (often at such level, which allows for no effective election campaign) results in funding of such elections by direct funding of elections by “third parties” rather than from electoral funds. Lack of clear definition of the areas in which electoral funds of candidates for elections can be spent also fosters shadow funding of elections.

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<sup>11</sup> It is sufficient to mention just the very fact that the amount of reimbursement of expenditure from electoral funds from the State Budget of Ukraine based on the results of election of people’s deputies of Ukraine in **2006** constituted **UAH 126 mln.** (inter alia: Party of Regions – UAH 35 mln., Block of Yuliya Tymoshenko – UAH13,500,855., Block “Our Ukraine” – UAH35 mln., Socialist party of Ukraine – UAH35 mln., Communist Party of Ukraine – UAH8,352,358), while for a much shorter electoral campaign for early elections of people’s deputies of Ukraine in **2007** – almost UAH60 mln. more, i.e. – **almost UAH 186 mln.** (inter alia: Party of Regions – UAH44 mln., Block of Yuliya Tymoshenko – UAH44 mln., Block “Our Ukraine – People’s Self-Defense” – UAH44 mln., Communist Party of Ukraine – UAH14,836,862., Block of Lytvyn” – UAH39,147,393)

## **Recommendations:**

1) the existing mechanisms of prevention of excessive funding of the needs of parties (restrictions concerning the sources of funding, activities in which parties are allowed to engage according to Article 24 of the Law „On public associations” are consistent with the Common rules and may be retained in the course of further improvement of legal regulation of the funding of parties;

2) it would be expedient to introduce a common approach to the establishment of maximum value of funding of presidential and parliamentary electoral campaigns and local elections in the laws on elections. The maximum amount of expenditure from electoral funds of parties and blocks on parliamentary elections should constitute 100,000 minimum wages on the date of opening the account of electoral fund (equivalent to the amount of reimbursement of the expenditure of parties on elections by the);

For presidential elections – 50,000 minimum wages on the date of opening the account of electoral fund for the candidate for presidency;

For local elections of representative local self-government bodies – 100,000 minimum wages, divided by the number of voters included in the lists of voters within Ukraine and multiplied by the number of voters in appropriate administrative territorial unit;

For election of village, settlement and town mayors – half of the amount of expenditure from electoral funds established for elections to representative local self-government bodies;

3) the laws on election should directly establish the areas of spending for electoral funds. Such areas might include production of electoral campaign materials, use of mass media, rent of facilities, transportation expenses, communications services, payment for advisory and other services etc. (such areas can be established based on the format of financial statements concerning the receipt and use of moneys from electoral funds approved by CEC). These areas should be funded exclusively from electoral funds and in no other way.

## **5 TRANSPARENCY OF FUNDING PARTIES AND ELECTORAL CAMPAIGNS**

### **5.1 ESTABLISHMENT OF REQUIREMENTS TO THE CONTENT OF CONSOLIDATED FINANCIAL ACCOUNTS OF PARTIES**

According to Article 11 of the Common rules accounts of political parties should include, *as appropriate*, the accounts of entities connected with the parties. As it was noted before, the current law provides no definition of the entity connected with the party and consequently, financial accounts of parties include no information concerning the income and expenditures of such entities.

This Concept proposes to define connected entities as local party organizations, mass media founded by parties, organizations and institutions and candidates for national and local elections.

It certainly hardly makes sense to include accounts of candidates for village mayors and accounts of primary cells established at small administrative territorial units, particularly that GRECO recommends introduction of such form of accounting that would ensure that the requirements of Article 11 of the Common rule are met on one hand, and on the other hand, would not create excessive administrative burden for parties. In view of the above, **financial accounts should include accounts of the parties, mass media founded by parties, organizations and institutions and local organizations of parties (republican, oblast, town and district levels).**

According to Article 12 of the Common rules accounts of parties should include information concerning donations received by the party to include information concerning the nature and value of each donation. Where the value of donation exceeds the appropriate amount personal information of donor should be specified in accounts of the party i.

The current legislation of Ukraine obliges the parties to generate four different reports - 1) financial account of receipts and spending; 2) property report; 3) account of the size and areas of spending of the funds provided from the State Budget for statutory activities of parties; 4) quarterly report of the use of funds of not-for-profit organization (to be submitted to the tax authority at the venue of registration of the party).

Herewith, the legislation establishes requirements to the content of only one report of all, and that is the report of the use of funds by not-for-profit organization.

**Recommendations:**

1) the parties should be obliged to regularly submit consolidated report of donations to the party during the year and areas of their spending for the same period to the authorized monitoring authority in the sphere of funding of parties;

2) consolidated report should include information concerning the funding of party (including funding of the party organizations having no status of legal entities) and its local organizations (republican, oblast, town and district levels), mass media founded by parties, organizations and institutions;

3) parties should generate and submit consolidated reports on donations and areas of their spending no later than on the 45<sup>th</sup> day upon expiration of the reporting period, both in hard copy and electronic format (for prompt processing of the data included in the report);

4) considering that monitoring of funding of parties is carried out by tax inspection and appropriate social insurance field offices, in addition to consolidated reports the parties should prepare and submit the reports stipulated for by taxation and social insurance legislation to such agencies;

5) consolidated reports on donations to parties and areas of their spending should include few sections:

a) general section to specify general assets of the party, total value of pecuniary and non-pecuniary donations to the party and connected entities including breakdown to the sources of donations (natural persons and legal entities, public funding);

б) general section to specify total amount of liabilities of the party to creditors, areas of spending of pecuniary and non-pecuniary donations by the party and connected entities, and also, the size of spending in such areas;

в) special section to include the following information: structure of party assets, donations (pecuniary and non-pecuniary) from natural persons and legal entities, from the state to the party, donations (pecuniary and non-pecuniary) from natural persons and legal entities to each entity connected with the party, and where the size of donation exceeds specific amount, it should include information about the person making such donation (full name of person, name of legal entity, identification tax number of natural person (if any); identification number of legal entity according to EDRPOU);

г) special section to include the following information: structure of financial obligations of the party (including guarantees of execution of such obligations provided to the party, received credits: execution date and number of credit agreements indicating the date of receipt of credit and scheduled payment date, terms of credits, name (full name) and identification codes of creditors), and also areas of spending of donations by the party and each connected entity;

6) the report of independent auditor concerning the accuracy of the subject report shall be attached to the reports of the parties which received public funding for their statutory activities.

**5.2 REQUIREMENTS TO THE CONTENT OF ACCOUNTS OF DONATIONS TO ENTITIES IN ELECTORAL PROCESS AND AREAS OF THEIR USE**

**Problem:** all laws on elections set forth mandatory submission of financial accounts of the receipt and spending of electoral funds to the Central Election Commission (for national election) or territorial election commission (for local elections) by custodians of electoral funds.

The format of accounts of the receipt and spending of electoral funds are to be approved by the CEC. The subject accounts include: 1) report on the composition of electoral fund (consisting of two sections: receipts to the accumulating account, payments from the accumulating account), 2) consolidated account of the receipts to the current account of the fund and their spending, 3) account of uncommitted balance of the electoral fund. The breakdown of transactions to include the breakdown of each transaction on electoral fund accounts shall be attached to the report. An explanatory note shall also be attached to the report.

At the same time, financial accounts of entities in corresponding electoral processes include only the receipts and spending of electoral funds rather than all costs (indirect donations, in particular) to fund participation of entity in electoral process in the appropriate election.



Also (contrary to a number of other European nations) the electoral legislation of Ukraine sets forth no submission of reports to appropriate monitoring authorities in the sphere of funding of electoral campaigns some time prior to the date of election, which actually makes efficient monitoring of funding of elections and application of effective, adequate and efficient sanctions for violations in the sphere of funding of electoral campaigns impossible.

### **Recommendations:**

1) it is expedient to establish mandatory submission of reports on donations to entities of electoral process and areas of spending of such donations by custodians of electoral funds (or financial administrators, to be more accurate) to election commissions;

2) the reports of donations to entities of electoral process and areas of spending of such donations some time prior to voting date, e.g., no later than fifteen days prior to the date of voting (to allow sufficient time for publication of the reports, appeals against identified violations in the sphere of funding of elections, review of complaints, decision making, challenging of decisions issued based on the results of review of complaints prior to the date of voting);

3) the reporting period for the reports submitted by entities of electoral process prior to the date of voting should be established with the consideration of the deadline of submission of subject reports to appropriate election commissions and the time required for generation of reports by custodians of electoral funds (financial administrators). Such period, for example, can start on the date of registration of appropriate entity in electoral process by the election commission and end two to three days prior to the deadline for submission of the report to election commission established by law;

4) the laws on election should include mandatory submission by financial administrators of reports of donations to entities in electoral process and areas of spending of donations for the period beginning at the end of preceding reporting period to the date of voting (progressive total to the date of voting (final report) or just for the appropriate reporting period (report for the latest reporting period) to election commissions;

5) it would be expedient to incorporate regulations according to which the reports of donations to entities in electoral process and areas of spending of donations should include information both concerning the donations to the account of electoral fund of appropriate entity in electoral process and information concerning the non-pecuniary donations to such entity, and this entity in electoral process is aware of such donations and has given its consent to such donations in the laws on election;

6) requirements to the format of reports of donations to entities in electoral process and areas of spending of such donations to be incorporated in appropriate laws on election should be aligned with the requirements to consolidated reports of donations to entities in electoral process and areas of spending of such donations.

## **5.3 PROCEDURE FOR PUBLICATION OF FINANCIAL ACCOUNTS**

Article 13 of the Common rules recommends that the states should require parties to present accounts regularly, and at least annually, to independent authority monitoring funding of parties, as well as publication of consolidated accounts of parties, including information concerning the source and size of each donation, as well as the individuals donating the amounts exceeding the maximum value established by the law.

The Law „On political parties in Ukraine” provides for no mandatory requirement to submit accounts to party funding monitoring agencies, party reports publication deadlines (except for the report of the size and areas of spending of resources from the State Budget of Ukraine allocated for the funding of statutory activities of parties).

Procedure for publication of financial reports of the receipt and spending of electoral funds for various types of elections is not streamlined. Thus, according to Part Fourteen of Article 43 of the Law „On election of President of Ukraine” information concerning the size of electoral funds of presidential candidates and financial accounts of spending of these funds are published by the Central Election Commission in Voice of Ukraine and the Government Courier newspapers no later than on the 18<sup>th</sup> day upon the date of election. The

Law „On election of people’s deputies of Ukraine” imposes no duty on the CEC to publish accounts of their receipt and spending of electoral funds of parties and blocks. According to Part Sixteen of Article 86 of the Law „ On election of people’s deputies of Verkhovna Rada of Autonomous Republic of Crimea, local councils and village, settlement and town mayors”, accounts of the receipt and spending of electoral funds of local party organizations (blocks) are published by corresponding territorial election commissions in local printed media within five days upon their receipt by appropriate territorial election commission.

The Ukrainian laws on election include no publication of accounts of the receipt and spending of electoral funds within a certain period prior to the date of election, despite recommendation in a number of GRECO reports issued under the Third Round of Evaluation concerning the requirement to publish financial electoral reporting within a certain period prior to the date of voting.

### **Recommendations:**

1) the regulations concerning publication of financial accounts of parties and entities in electoral process, accordingly, in printed media no later than on the fifth day upon submission of report to a monitoring agency, and for elections (reports to be submitted by the date of voting), no later than on the second day upon the date of submission of reports, should be incorporated in the Law „On political parties in Ukraine” and the Laws on elections;

2 consolidated accounts of the party or accounts of the entity to electoral process should be published in printed media upon their initial review by monitoring agency (the purpose of such review is to prevent publication of report with mistakes in numbers, typos and other errors). However, in some specific cases (e.g., reports to be submitted to election commission by the date of voting or reports to be submitted to appropriate monitoring authority along with the audit report) such review might be optional;

3) mistakes or errors found in the report require the following: a) the appropriate authority will require correction of mistakes and errors and re-submit the report; b) sanctions against the individuals who generated and signed the report; the first approach, which is common practice in a number of European countries is more expedient;

4) The Law „On political parties in Ukraine” and the laws on election should include regulations requiring that only a portion of report (for example, the general one) should be subject to publication in printed media. The establishment of restrictions concerning the scope of publication of reports in mass media at local elections where the number of entities in electoral process can be significant, seems to be particularly important. Herewith, in case only a portion of report is published in mass media, an appropriate publication should advise on how to get access to the full version of such report;

5) the responsibility for publication of reports in mass media might be assigned to the either of two persons: either the one submitting the report to monitoring agency (in which case this person should notify the monitoring agency of the fact of publication of the report; untimely publication of the report, failure to provide information to monitoring agency concerning the fact of publication should be the ground for legal liability of such person that failed to perform the duty assigned thereto by the law), or directly to the monitoring agency in the sphere of funding of parties (elections). It seems expedient to assign this responsibility to the monitoring agency to ensure the initial review of reports for the appropriate format, and the timely and centralized publication of the report;

6) the reports may be published both in the printed mass media listed in appropriate laws and mass media directly determined by monitoring agencies at their discretion; however, taking into account the experience of electoral campaigns and the practice of publishing official information in printed media the reports of entities of electoral process from national elections and consolidated accounts of parties it would be expedient to publish reports in the official printed media determined by law (the ‘Holos Ukrainy’ (Voice of Ukraine) and Uriadovyi Courier (The Government Courier) newspapers);

7) publication of financial accounts can be supported either by entities submitting such accounts, or by the media publishing such account (in case this media is in the state or communal ownership), or by the monitoring agency receiving such account. Considering that the third funding option supports centralized publication of accounts by one entity, this option seems to be well substantiated;

8) besides publication of financial accounts in printed media, they should also be posted on web-pages of appropriate monitoring agencies (except territorial election commissions (for local elections) having no web-pages of their own. The TEC can be made responsible for providing financial accounts for publication on web-pages of local self-government bodies or CEC and web-pages of parties (including all parties within a block, and the parties that have nominated their candidates for national elections);

9) the Laws on elections and the Law „On political parties in Ukraine” should include the right of each person to obtain access to the full version from the entity which issued the report (or the one for which the report was issued), and also, from the monitoring agency to which the report was submitted. The term of review of requests and responses thereto should be restricted by law and should ensure timely response of any person to the violations found in the sphere of funding of parties and electoral campaigns.

#### **5.4 RESPONSIBILITY OF PERSONS DONATING TO PARTIES TO ENSURE APPROPRIATE RECORDS OF SUCH DONATIONS**

According to Article 5 of the Common rules the states should ensure that donations from legal entities are registered in books and accounts of appropriate legal entities, and also, that any individual member of legal entity (shareholders) should be informed of the facts of donation to parties. Appropriate recommendations have not been reflected in current legislation of Ukraine.

##### **Recommendations:**

Article 11 of the Law „On accounting and financial reporting in Ukraine” should stipulate for inclusion of information concerning the donations to parties and their size in financial accounts of natural persons and legal entities, and amend Article 11 of this Law by incorporating the regulation to take into account the requirements of the Law „On political parties in Ukraine” during approval by the Ministry of Finance of forms of reporting of enterprises and their format.

### **6 MONITORING OF FUNDING OF PARTIES AND ELECTORAL CAMPAIGNS**

#### **6.1 INTERNAL MONITORING OF FUNDING OF PARTIES AND ELECTORAL CAMPAIGNS**

One of important factors for improving effectiveness of external monitoring of funding of parties and electoral campaigns is introduction of such mechanisms that would ensure the legitimacy of management of financial resources inside the parties (entities of electoral process).

This is why in a number of European countries (in particular, Latvia, Slovenia, France and a number of other countries) the legislator pays a lot of attention to regulation of internal monitoring of funding of parties: often the status of internal financial monitoring unit and main requirements to members of such unit are established at the legislative level.

The Ukrainian legislation on political parties and elections does not pay significant attention to regulation of corresponding issues. Thus the party internal financial monitoring is outside the legislative regulation, and legislative regulation, of internal monitoring of funding of election campaign just comes to introduction of the institute of custodians of electoral funds, whose qualification requirements, roles and responsibilities are not clearly determined in the laws on elections. Such conditions increase significantly the risk of violation in the sphere of funding of parties and electoral campaign.

##### **Recommendations:**

1) The Law „On political parties in Ukraine” should include regulation according to which the rules of the party should provide for the procedure of establishing and the powers of party internal monitoring unit,

requirements to individuals elected to this unit (appropriate requirements should ensure independence of members of the unit from unlawful influence from members of the party and other components of the party);

2) the laws on elections should be amended to include regulations requiring mandatory financial management training of all by custodians of electoral funds of entities in appropriate electoral processes (prior to their appointment), and the training program should be approved by the Central Election Commission;

3) the public monitoring agency in the sphere of funding of parties should have the responsibility of ensuring training events for persons responsible for management of financial resources of parties (members of party internal financial monitoring unit, accountants, etc.), at the cost of appropriate parties.

## **6.2 INDEPENDENT EXTERNAL MONITORING OF FUNDING OF PARTIES AND ELECTORAL CAMPAIGNS**

According to Article 14 of the Common rules, member states of the European Union are recommended to introduce *independent* monitoring of funding of parties and electoral campaigns. Presently this recommendation has been implemented only in part of independent monitoring of funding of electoral campaigns by CEC and appropriate territorial electoral commissions (depending on type of elections). Instead the agencies monitoring funding of parties (Ministry of Justice and Control and Audit Department), are not independent considering that they belong to the central system of executive branch.

### **Recommendations:**

1) the functions of monitoring of funding of political parties and national elections can be assigned to existing units which does not belong to the central system of executive branch and is independent in its operations. Presently the only unit having necessary organizational and human resources and also, which is relatively independent from political influence is Central Election Commission. Assignment of the function of monitoring of funding of parties to CEC has its benefits, including removal of the requirement of coordination of monitoring, sharing of information with another public authority (presently with Ministry of Justice of Ukraine);

2) the functions of monitoring of funding of electoral campaign from local elections should be assigned to appropriate territorial election commissions;

3) The authority to monitor activities of parties within their powers should also be granted to tax service units (compliance of parties with the Law „ On taxation of profits of enterprises ”), a and also Accountability Office (legitimacy of use of funds from the State Budget allocated to fund statutory activities parties).

## **6.3 SCOPE OF AUTHORITY OF INDEPENDENT EXTERNAL UNIT FOR THE MONITORING OF FUNDING OF PARTIES**

The scope of controlling authority of the unit to monitor funding of parties should be established at legislative level taking into account changes in the rules of funding of parties stipulated for in this Concept. According to recommendations of GRECO in a number of reports issued within the framework of the Third Round of evaluation, the powers of monitoring unit should not just focus on formal review of financial reports of entities subject to monitoring, but the monitoring unit should have the authority to request and obtain the required documents supporting the information included in financial reports of entities subject to monitoring; hear explanation from representatives of subject entities; look into violations; take administrative action.

GRECO also emphasizes that legislation should establish the principles of liaison between independent external monitoring unit and law enforcement agencies, in particular in terms of obtaining by this agency of information required for such agencies to effectively exercise their powers, referral to other public authorities (tax service, interior agencies, prosecutor offices) of the findings requiring legal action. Liaison of external

financial monitoring unit with the Accountability Office responsible for the legitimate and efficient use of budget funds also requires specific regulation.

Besides the authority to review submitted documents, GRECO emphasizes on the necessity to assign to the external financial monitoring units the powers related to the prevention of offences, trainings, consolidation of the statistics of violations in the sphere of funding of parties and elections, advice on of legislation, improvement of public awareness of problems of corruption in policy, importance of funding of parties, etc.

### **Recommendations:**

1) agencies of independent external monitoring of funding of parties and elections should be granted sufficient authority to review the reports submitted by accountable entities both in form and in substance, and also to impose administrative as applicable;

2) the mechanisms of liaison (including sharing of information) between agencies of independent external monitoring of funding of parties and elections and law enforcement agencies should be established at legislative level;

3) the unit of independent external monitoring of funding of parties should, jointly with Accountability Office, monitor the legitimacy of use of State budget by parties, herewith, no agency should audit the effectiveness of the use of budgetary funds by parties;

4) in the course of auditing the legitimacy of use of budgetary funds by parties the appropriate monitoring units should only review the monetary flow on accounts of parties and their local organizations, the documents supporting payments and proving the fact of receiving work, goods and services for the funds of the State budget provided to fund the statutory activities of the party pursuant to the law;

5) the unit of independent external monitoring of funding of parties should ensure, according to its authority: a) alignment of all forms of reports submitted by reporting entities; b) advice and consultations with regard to financial reports to be submitted for review; c) periodic training of officers responsible for ensuring legitimacy of funding of parties and generation of financial reports; d) that records violations in the sphere of funding of parties and elections are maintained, corrective action taken; e) public awareness concerning countering political corruption and funding of political parties.

## **7 EFFECTIVE, ADEQUATE AND EFFICIENT SANCTIONS FOR VIOLATIONS IN THE SPHERE OF FUNDING OF PARTIES AND ELECTORAL CAMPAIGN**

Article 16 of the Common rules recommends that the states should establish effective, adequate (proportionate) and efficient sanctions for violation of rules of funding of parties and electoral campaigns.

The sanctions set forth by Law „On political parties in Ukraine”, laws on elections, Code of administrative offences of Ukraine and the Criminal Code in many cases do not meet these criteria: a number of violations are subject to no liability, sanctions for some other violations are not efficient (like caution, for example) or proportionate to the gravity of offence (e.g., sanctions like revocation of registration for minor violations). The limitation period for administrative action is too short (6 months) for the established administrative sanctions to be deemed effective.

The implementation of public funding of political parties also requires introduction of liability of parties and officers responsible for violation of legislation in part of public funding of political parties.

### **Recommendations:**

1) since the Code of administrative offences of Ukraine and the Criminal Code set forth no liability of legal entities for violations in the sphere of funding of parties and electoral campaigns, it is expedient to amend the Law „On political parties in Ukraine” and laws on elections by incorporating specific sections concerning the liability of legal entities (and liability of natural persons, if necessary; and deleting corresponding existing clauses from the Code of administrative offences of Ukraine);

2) any violations should be subject to legal responsibility, or otherwise introduction of restraints and constraints would be unjustified;

3) The limitation periods for administrative and criminal action for violations in the sphere of funding of parties and electoral campaigns should extend to at least one electoral cycle, i.e., five years (this is the very approach proposed by GRECO based on the evaluation of funding of parties and electoral campaigns within the Third Round of evaluation);

4) it would be expedient to assign administrative investigation into the cases related to violation of existing requirements to the funding of parties and electoral campaigns to monitoring agencies in this sphere, and these agencies should be granted the authority required for effective investigation;

5) the policy that would enable forfeiture of any receipts from forbidden sources (excessive donations, donations from anonymous sources, etc.) to be transferred to the state (which does not exclude applications of other sanctions, should be incorporated in the Law „On political parties in Ukraine” and laws on elections; for electoral blocks the appropriate responsibility should apply to the parties in the block in equal proportion;

6) in all cases the unauthorized use of the funds received from the funding of its statutory activities by parties should be subject to liability stipulated for by the law, such as termination of public funding, return of the amount of unauthorized spending to the State budget, application of penalties;

7) considering that the funds from the State budget credited on current accounts of local party organizations are administered by leaders of appropriate local organizations rather than leaders of parties, in case of unauthorized use of budgetary funds by local party organizations the applicable sanctions should apply to such organizations rather than to the parties;

8) the sanctions for violations in the sphere of funding of parties and electoral campaign should meet the requirements of effectiveness, proportionality and efficiency.