



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

**DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS**  
**DIRECTORATE OF MONITORING**



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**Greco Eval III Rep (2010) 7E**  
**Theme II**

## **Third Evaluation Round**

### **Evaluation Report on Montenegro Transparency of Party Funding**

(Theme II)

Adopted by GRECO  
at its 49<sup>th</sup> Plenary Meeting  
(Strasbourg, 29 November – 3 December 2010)

## I. INTRODUCTION

1. The State Union of Serbia and Montenegro joined GRECO on 1 April 2003. Following the referendum organised in Montenegro on 21 May 2006 and the declaration of independence adopted by the National Assembly of Montenegro on 3 June 2006, and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the State Union of Serbia and Montenegro ceased to exist. Subsequently, the Republic of Montenegro became an independent and sovereign State<sup>1</sup>. GRECO adopted the Joint First and Second Round Evaluation Report on Montenegro (Greco Eval I-II Rep (2005) 4E) at its 30<sup>th</sup> Plenary Meeting (9-13 October 2006). The afore-mentioned Evaluation Report, as well as its corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current 3<sup>rd</sup> Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption, Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO evaluation team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Montenegro from 14 to 18 June 2010, was composed of Ms Jane LEY, Deputy Director, US Office of Government Ethics (United States of America) and Mr Fernando JIMENEZ SANCHEZ, Department of Political Science and Public Administration, University of Murcia (Spain). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 7E, Theme II), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: Ministry of Finance, Parliamentary Committee for Political System, Judiciary and Public Administration, State Audit Institution, State Election Commission, Misdemeanour Court and Directorate for Anticorruption Initiative (DACI). In addition, the GET met with members of political parties represented in Parliament. Moreover, the GET met with members of the following non-governmental organisations: MANS, Monitoring Centre (CEMI) and Centre for Democratic Transition (CDT). The GET also met with representatives of the media and academia.
5. The present report on Theme II of GRECO's 3<sup>rd</sup> Evaluation Round on Transparency of Party Funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the authorities of Montenegro in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations

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<sup>1</sup> The Committee of Ministers of the Council of Europe agreed in its 967<sup>th</sup> meeting (14 June 2006) that the Republic of Montenegro's declaration of succession to the Criminal Law Convention on Corruption (ETS No. 173) made it *ipso facto* a member of GRECO.

adopted by GRECO and addressed to Montenegro in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2010) 7E, Theme I.

## **II. TRANSPARENCY OF PARTY FUNDING - GENERAL PART**

### Legal framework

7. Political parties are governed by the Law on Political Parties (2004) and several specific laws, such as the Law on Financing of Political Parties adopted in 2008 (hereinafter LFPP), which contains provisions on funding sources (including during electoral campaigns), transparency and sanctions. The Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities (2009) contains rules on campaign finances of presidential and municipal elections (hereinafter LFPM). The Law on the Election of Councillors and Representatives (1998, as amended), the Law on the Election of the President (2007) and the Law on the Election of Mayors (2003) regulate technical aspects of the different election processes. Furthermore, the Constitution (2007) includes several provisions guaranteeing political rights and freedoms, including the freedom of opinion and expression, the right to vote and to be elected, and the freedom of assembly and association (Articles 45, 47, 52 and 53 of the Constitution).

### Definition of political parties

8. The Law on Political Parties, in its Article 2, defines political parties as organisations of freely and voluntarily associated citizens for the exercise of political objectives through democratic and peaceful means. Political parties have legal personality (Article 6, Law on Political Parties).

### Founding and registration of political parties

9. The founding and registration of political parties are regulated by the Law on Political Parties. According to Articles 7 and 14, a political party can be established by at least 200 support signatures of Montenegrin citizens who are at least 18 years of age with at least a two-year residence in Montenegro.
10. The register of political parties is kept by the Ministry of Interior Affairs and Public Administration. The application for registration of a political party is to include the decision on its establishment, its founding statutes and programme. At the time of parliamentary elections in March 2009, a total of 38 parties were registered in Montenegro, 24 of them ran for election (8 of which independently and 16 as members of seven pre-election coalitions) as follows:
  - Democratic Party of Socialists
  - Social-democratic Party
  - Bosniac Party
  - Croatian Civic Initiative
  - Socialist People's Party
  - New Serbian Democracy
  - Movement for Changes
  - People's Party
  - Democratic Serbian Party
  - Liberal Party
  - Democratic Centre

- The Party of Pensioners and People with Disabilities of Montenegro
- Democratic Union of Albanians
- Serb National List
- Bosniacs and Muslims Together
- FORCA
- Democratic League of Montenegro
- Albanian Alternative
- Albanian Coalition
- Fatherland Serbian Party
- Montenegrin Communists
- Party of Democratic Prosperity

### Participation in elections

11. Montenegro has a unicameral Parliament (*Skupstina*) of 81 members serving 4-year terms. The allocation of seats/mandates is done on the basis of a proportional list system (d'Hondt method) within a single nationwide constituency with a 3% threshold. Five of the aforementioned seats/mandates are allocated to a special constituency comprising 7 polling stations in areas mainly populated by Montenegrin ethnic Albanians.
12. The right to elect and to be elected is granted to every Montenegrin citizen of 18 years or older, with at least two years of residence in Montenegro.
13. The Law on the Election of Councillors and Representatives provides for the applicable rules concerning participation in elections (Articles 38 to 48a). Electoral lists can be presented by political parties and groups of citizens who intend to contest elections, whether individually or in coalition. Electoral lists must be supported by the signatures of one per cent of the electorate. Exceptionally, for the political parties or groups of citizens representing Albanians in Montenegro, electoral lists can provide a lower number of supporting signatures, i.e. 1,000 supporting signatures for parliamentary elections and 200 for municipal elections, respectively.
14. Elections are administered by the State Election Commission, Municipal Election Commissions (21) and Polling Boards (1,155).

### Party representation in Parliament

15. In the latest parliamentary elections held in March 2009, seats were obtained by the following parties<sup>2</sup>:
  - Coalition European Montenegro - Milo Đukanović, representing the joint candidate list of the Democratic Party of Socialists, Social-democratic Party, Bosniac Party and Croatian Civic Initiative: 48 seats
  - SNP - the Socialist People's Party: 16 seats
  - New Serbian Democracy: 8 seats
  - Movement for Changes: 5 seats
  - Democratic Union of Albanians: 1 seat
  - FORCA: 1 seat
  - Albanian List, Democratic League of Montenegro and Albanian Alternative: 1 seat
  - Albanian Coalition: 1 seat.

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<sup>2</sup> The State Commission published the results on the number of seats won by individual election lists on 10 April 2009.

## Overview of the party funding system

### Public funding

#### *Direct public funding*

16. Funds from public sources may be used for covering the expenditures of regular activities of political parties, as well as costs incurred during election campaigns (Article 1, LFPP). Parties qualify for the funding of regular activities if they have elected representatives in Parliament/local assembly. In this context, political parties must win, individually or in coalition, at least one seat in Parliament or in a local/city assembly in order to qualify for public funding (Article 5, LFPP)
17. Funds from public sources, appropriated for regular activities of parliamentary parties within the Parliament are set at 0.5% of the State budget ; while funds for regular activities of parliamentary parties in the local assemblies are set at 1% of the State budget<sup>3</sup>. Of these funds, 15% is allocated in equal amounts to political parties whose candidates have been elected MPs or councillors, whilst the remaining 85% is distributed in proportion to the number of seats won by each party (Article 8, LFPP). In the 2010 budget, a total of 1,951,409.53 EUR was appropriated from the central budget for these purposes.
18. Budget appropriations for election campaign costs are set at 0.25% of the State budget<sup>4</sup>. Of these funds, 20% is allocated in equal portions to submitters of electoral lists, whilst the remaining 80% is distributed to electoral list submitters whose candidates have won seats in the election, proportionately to the number of seats won (Article 11, LFPP). The Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities introduces some specific features as regards the allocation of public funds in this type of election, i.e. costs range from 0.05 to 0.1% of the State budget; 10% is allocated in equal portions to all candidates, 40% is shared in equal amounts by all candidates winning over 10% of votes, and 50% goes to the winning candidate. In the 2009 budget year, the total central budget appropriations for election campaigns amounted to 1,360,000 EUR (Articles 5 and 6, LFPM).

#### *Indirect public funding*

19. The provisions of the Law on the Election of Councillors and Representatives, the Media Law, the Broadcasting Law and the Law on Public Broadcasters are applicable in this respect. In particular, public media provides free air time which is allocated on an equal basis to all submitters of electoral lists so that they can inform the public on their programme and activities (Articles 50, 51, 53 and 59, Law on the Election of Councillors and Representatives; Article 95 (7), Broadcasting Law). Likewise, the State-owned publishing company "Pobjeda" is obliged during the election campaign to announce, free of charge and on equal terms, all rallies organised by submitters of electoral lists (Article 53, Law on the Election of Councillors and Representatives).
20. Campaign hoarding (billboards) is provided free of charge by municipalities during election campaigns (Article 60, Law on the Election of Councillors and Representatives). In addition, State and local administration bodies shall make their premises, equipment, means and other facilities for conducting election campaigns available and provide equal conditions for their use to

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<sup>3</sup> As amended by Article 1 of the Law Amending the Financing of Political Parties, 27 July 2010.

<sup>4</sup> As amended by Article 2 of the Law Amending the Financing of Political Parties, 27 July 2010.

all submitters of electoral lists (Article 114, Law on the Election of Councillors and Representatives).

21. Finally, the Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities, prohibits the use of State funds or local self-government funds (unless otherwise provided by special regulation) in connection with the aforementioned types of campaign (Article 11, LFPM). The Law on the Election of the President of Montenegro (Article 22) and the Law on the Election of Mayors (Article 40) also ban the use of the facilities, financial resources, vehicles, technical means and other State property for the purpose of electoral campaigns.

### Private funding

22. Financing from private sources comprises (Article 3, LFPP):
- Membership fees: amounts regularly paid by a party member in a way and under the conditions prescribed by the party's constitutive/statutory acts. There is no statutory ceiling on the funds collected from membership fees; however, as per individual membership quotas, a membership fee exceeding the amount fixed by the party statute, is considered as a donation;
  - contributions: payments that physical or legal persons give voluntarily to a political party in an amount exceeding a membership fee;
  - income from party activities: income from publishing activities, sale of promotion materials, as well as organisation of party events;
  - income from party property: income received from the sale or rent of the party's property;
  - legacies: gift, which may consist of money or portable property of artistic, cultural or historical value, or real estate that is given at the disposal of a political party;
  - non-lucrative activities: activity aimed at satisfying public interests;
  - gifts: securities or any other item exceeding the value of 50 EUR.
23. A number of restrictions apply to the sources of private funding (Article 19, LFPP; Article 12, LFPM). In particular, political parties are not permitted to accept the following types of contributions:
- donations from anonymous sources;
  - donations from foreign States, foreign legal entities or physical persons;
  - public institutions and public companies;
  - institutions and companies with State capital share;
  - trade unions;
  - non-governmental organisations;
  - religious communities;
  - organisers of games of chance;
  - cash donations.

In addition, parliamentary parties and submitters of electoral lists are not allowed to accept donations from business companies and entrepreneurs, who have entered into public contracts with the Government and performed public services within the previous period of two years for the duration of that business relation as well as two years after its expiry.

24. Caps also apply to private donations depending on whether these are given by a physical or a legal person. In particular, a donation by a physical person must not exceed 2,000 EUR in a given year; this cap is set at 10,000 EUR if the donor is a legal person (Articles 9 and 16, LFPP; Article 7, LFPM).

25. Moreover, private donations for the financing of regular party activities, with the exception of membership fees), and irrespective of whether these donations are obtained from a physical or legal person, cannot exceed the total amount that a party has received from the State budget. In the case of political parties which do not have a seat in Parliament, and hence do not receive public funding, the ceiling on private donations, in a single calendar year, is set at 5% of the total amount of the funds designated by the State for the financing of parliamentary parties (Article 9, LFPP). Likewise, funds obtained from private sources for the financing of an electoral campaign cannot exceed 20% of the total amount that a party has received from the State budget for the same purpose (Article 16, LFPP). If the funds collected from private sources exceed the aforementioned prescribed limits, the party is obliged to return the excess amounts to the State budget (Article 17, LFPP). Similar restrictions apply to candidates for the post of President of Montenegro, mayor and president of municipality.

#### Expenditure limits

##### *Qualitative*

26. Expenditures at elections are related to the activities performed during the campaign period (from the calling of the elections until election day) and can only relate to the following items: pre-election rallies, posters, advertising commercials and advertising materials, advertisements, publications, TV and radio shows, public opinion polls, overheads, general administration and transport expenses (Article 10, LFPP).

##### *Quantitative*

27. The ceilings on maximum allowable income that a party may receive from public and private sources (the maximum permissible amount of private donations is directly tied to the public funding received during election campaigns or in connection with regular activities, see paragraphs 17, 18 and 25 for details) constitute the applicable limits on expenditure.

#### Taxation regime

28. Income acquired by a political party from membership fees and non-lucrative activities is tax exempt (Article 27, LFPP).
29. Income acquired by a political party from its property and from the performance of a business activity is subject to the general taxation regime (Article 27, LFPP).

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

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

##### Books and accounts

##### *Routine activities*

30. The Law on the Financing of Political Parties (Article 28) sets out specific rules for keeping financial records and financial statements of political parties. In addition, the general rules on bookkeeping and accounting for legal entities apply, as contained in the Law on Accounting and Auditing. In particular, pursuant to Article 4 of the Law on Accounting and Auditing, a legal person

is obliged to keep business books and to record all business transactions. Accounting records must be based on credible accounting documents, in line with sound bookkeeping rules and must be able to show, at any point in time, the true financial situation and business results of a legal person.

31. Various time-limits are prescribed for the storage of accounting data depending on the type of accounting document, e.g. 10 years for final annual bills, main business book and follow-up diary, and 5 years for auxiliary books and semi-annual reports, etc. (Article 10, Law on Accounting and Auditing).

### *Election campaigns*

32. The law does not provide for specific rules concerning financial records on election campaigns. That said, election campaign financing is to be reported on a form specifically designed for this purpose (see paragraph 38). Submitters of electoral lists must open a dedicated campaign account for the purpose of income collection and expenditure disbursement (Article 17, LFPP; Article 8, LFPM). All funds allocated for election campaigns have to be paid into this account and all payments are to be made from the same account. There is also an obligation for submitters of electoral lists to appoint a "responsible person" for the lawful raising and spending of election campaign funds and the submission of reports on the financing of election campaigns (Article 18, LFPP; Article 9, LFPM).

### Reporting obligations

#### *(1) Annual financial statements*

33. Article 6 of the Law on Accounting and Auditing requires legal persons to submit their annual financial statements to the Central Register of the Commercial Court no later than 28 February for the previous year. Financial statements are published on the website of the Commercial Court.

#### *(2) Campaign reports*

##### (a) Early report

34. An early report is only required for presidential and local campaigns. In particular, candidates must, between 7 and 10 days before the elections, furnish the competent Election Commission with a financial report on the amount and sources of all funds raised for campaign purposes. Municipal Election Commissions are to submit the aforementioned campaign reports to the State Election Commission within 3 days (Article 14, LFPM).

##### (b) Interim reports

35. Submitters of electoral lists/candidates must, within 45 days from the termination of the election campaign, furnish the competent Election Commission with a financial report on the origin, amount and structure of the public funds spent during the campaign. Municipal Election Commissions are to submit the aforementioned campaign reports to the State Election Commission within 3 days (Article 21, LFPP; Article 15, LFPM).
36. Submitters of electoral lists/candidates, must, within 45 days from the termination of the election campaign, furnish the competent Election Commission with a financial report (and its auditing



report, if applicable. See paragraph 47 for details), in electronic form, on the origin, amount and structure of the private funds raised and spent during the campaign. Municipal Election Commissions are to submit the aforementioned campaign reports to the State Election Commission within 3 days (Article 22, LFPP; Article 16, LFPM).

#### (c) Final report

37. Parliamentary parties/candidates are to submit, in electronic form, a final complete report on the origin, amount and structure of all funds (whether from public or private sources) raised and spent during the campaign. Municipal Election Commissions are to submit the aforementioned campaign reports to the State Election Commission within 3 days (Article 23, LFPP; Article 17, LFPM).
38. The Directions on the Contents or Form of the Statements on Public and Private Funds Raised and Spent on Election Campaigns, which were adopted in November 2008, lay out the format and content of campaign reports.

#### *(3) Property statements*

39. Parliamentary parties are required to submit their annual property statements, including details on the type, amount and origin of party property, to the State Election Commission by 31 March (Article 25, LFPP).
40. Candidates for election of the President of Montenegro, mayor and president of municipality must deliver to the competent Election Commission a report on income and property, for himself/herself, spouse or partner and children if they live in the same household, within 15 days following the submission of the candidature. Municipal Election Commissions are to submit the aforementioned campaign reports to the State Election Commission within 3 days (Article 18, LFPM).

#### Access to accounting records and publication requirements

41. The State Election Commission is to publish campaign and annual reports, as well as statements of property in its website and in the Official Gazette of Montenegro within 10 days of their receipt (Article 24, LFPP; Article 20 LFPM).
42. Likewise, the State Election Commission is obliged to disclose the identity of private donors – whether physical or legal persons (Article 26, LFPP; Article 19, LFPM).
43. As private entities, political parties are not obliged to make their financial records public. However, all documents received by a public body fall under the Law on Free Access to Information; therefore, it would be possible for the public to have access to the relevant reports obtained by the State Election Commission (i.e. campaign reports, property statements, audit report of final accounts of political parties).
44. Law enforcement authorities, in case of suspicion of a criminal offence, have access to accounting records of political parties, as do tax authorities for tax inspection purposes.

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

### Internal control

45. Political parties are to regulate in their statutes the internal audit of financial operations, the organ responsible for financial operations and the right of party members to be informed of income and expenditures of the party (Article 29, LFPP).

### External control

#### *Audit (certified auditors, auditor of the Ministry of Finance, State Audit Institution)*

46. Campaign reports including details on public funds spent during election campaigns are to be delivered by submitters of electoral lists to the auditor of the Ministry of Finance, who is then to undertake a performance audit within 30 days (Article 21, LFPP). Likewise, the State Audit Institution has authority, pursuant to Article 4 of the Law on State Audit Institution (and Article 144 of the Constitution), to perform audits (legality, effectiveness and efficiency checks) of those organisations benefiting from public funds.
47. Campaign reports including details on private funds raised and spent during election campaigns are to be audited by a certified auditor if private contributions exceed the amount of 50,000 EUR (Article 22, LFPP). The auditors must also hold a licence issued by the Ministry of Finance, pursuant to the Law on Accounting and Auditing.

#### *State Election Commission*

48. Political parties are to submit to the State Election Commission, by 30 June, an audit report of their annual financial statement (Article 28, LFPP).

#### *Ministry of Finance*

49. The Ministry of Finance has overall responsibility for implementation of the Law on Financing of Political Parties (Article 7, LFPP); a separate Department of the Ministry is entrusted with supervisory tasks.

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

### Sanctions

#### *Law on the financing of political parties*

50. Sanctions for failure to comply with the provisions of the law may be imposed on:
- political parties and “responsible persons” in political parties: a total of 13 types of infringements are covered by Article 30, LFPP (including illegal raising of funds, failure to open a dedicated bank account, failure to appoint responsible person, coercion of natural/legal persons for fundraising purposes, quid-pro-quo agreements, failure to engage a certified auditor, failure to submit reports, failure to keep accounting records). The applicable fines range from 100 to 200 times the minimum monthly wage<sup>5</sup> (5,500 EUR to 11,000 EUR). For the same infringements, the “responsible person” within the political

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<sup>5</sup> The minimum monthly wage in Montenegro is set at 55 EUR.

party may be fined between 15 to 20 times the minimum monthly wage (800 EUR and 1,100 EUR). Sanctions are cumulatively imposed against the political party which has infringed the rules, as well as the responsible person in that political party.

- Donors: for violating the donation thresholds laid out in the LFPP fines range from 100 to 200 times the minimum monthly wage (5,500 to 11,000 EUR).
- Election Commissions: for failing to publicise party reports submitted by political parties (campaign reports, annual reports, list of donors or statements of property), fines range from 100 to 200 times the minimum monthly wage (5,500 to 11,000 EUR).

51. In case of a suspicion of non-compliance with the requirements stemming from the Law on Financing of Political Parties, any authority or individual may inform the Ministry of Finance thereof. The latter is then to file a request to initiate a misdemeanour proceeding with the competent (territorial) Misdemeanour Court.

52. Misdemeanours are imposed by the Misdemeanour Courts. Decisions of these Courts may be appealed (Article 66, Law on Misdemeanours); the appellate procedure may confirm, alter or quash the first instance ruling (Article 157, Law on Misdemeanours). Since the adoption of the Law on Political Party Financing on 15 August 2008, the Ministry of Finance has filed 8 misdemeanour reports for failure to submit campaign reports on the use of public funds; the proceedings are pending before the Misdemeanour Court in Podgorica. No sanctions have been imposed to date for failure to comply with party funding rules.

#### *Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities*

53. Sanctions for failure to comply with the provisions of the law may be imposed on:

- Candidates: a total of 9 types of infringements are covered by Article 21, LFPM (including illegal raising of funds, failure to open a dedicated bank account, failure to appoint responsible person, coercion of natural/legal persons for fundraising purposes, quid-pro-quo agreements, failure to engage a certified auditor, failure to submit reports, failure to keep accounting records). The applicable fines range from 15 to 20 times the minimum monthly wage (i.e. 800 EUR to 1,100 EUR). They are also applicable to “responsible persons”, as appropriate (Article 22, LFPM).
- Donors: for violating the donation thresholds laid out in the LFPP fines range from 15 to 20 times the minimum monthly wage (800 EUR to 1,100 EUR) – if a physical person, or from 100 to 200 times the minimum monthly wage (5,500 EUR to 11,000 EUR) – if a legal person (Articles 23 and 24 LFPM).
- State bodies or local self-government authorities: for providing for the use of State or local self-government funds, fines range from 100 to 200 times the minimum monthly wage, i.e. 5,500 EUR to 11,000 EUR (Article 25, LFPM).
- Election Commissions: for failing to publicise party reports submitted by political parties (campaign reports, annual reports, list of donors or statements of property), fines range from 100 to 200 times the minimum monthly wage, i.e. 5,500 EUR to 11,000 EUR (Articles 26 and 27, LFPM).

#### *Law on Accounting and Auditing*

54. Administrative responsibility and criminal liability are provided for negligent accounting. Failure by a legal person to submit the annual bill and reports to the Central Registry within the time-frame prescribed by law, as well as failure to keep business books in one of the ways specified in the aforementioned Law on Accounting and Audit, can be sanctioned with fines ranging from 10 to

300 times the minimum monthly wage (550 to 16,500 EUR). In addition, for the same offence, the responsible person in a legal person can be punished with a fine ranging from 6 to 20 times the minimum monthly average (330 to 1,100 EUR). Submission of false accounting statements or other means of deceit in order to make unlawful payments are criminalised as “fraud in service”.

### Immunities

55. The following categories of persons enjoy immunities in the Republic of Montenegro:
- The President of the Republic
  - Members of the Government
  - Members of the Assembly (Parliament)
  - Judges
  - Constitutional Court Judges
  - State Prosecutors
  - The Protector of human rights and freedoms (ombudsperson) and his/her deputy.
56. In addition to immunity for opinions expressed or votes cast in the exercise of their functions (“non-liability immunities”), Members of Parliament also enjoy “inviolability”, which means that “(...) criminal proceeding can not be initiated, nor detention ordered without previous approval of the Parliament” (Article 79, paragraph 3 of the Constitution). Pursuant to paragraph 4 of the same article, a Member of Parliament can be detained without approval of the Parliament, if apprehended in the act of committing a criminal offence sanctioned by imprisonment of no less than five years. According to paragraph 5, “The immunity enjoyed by the Members of the Parliament is also enjoyed by the President of the Republic, members of the Government, judges, justices of the Constitutional Court and the public prosecutor”. The same applies to the ombudsperson and his/her deputy.
57. Article 220 of the Criminal Procedure Code contains provisions related to “approval for criminal prosecution”. According to paragraph 1, in order to open an investigation into one of the abovementioned persons who enjoy immunity, prosecutors have to make a specific request to the competent state authority, i.e. the Commission for immunities of the Parliament of the Republic of Montenegro, asking for the immunity to be lifted. When a prosecution is based upon a private complaint, the prosecutor has to transmit the case to the court with a request for the immunity to be lifted. The court has to turn to the Commission for immunities which decides on whether immunity can be lifted or not. The Commission submits the case to the Parliament for a final decision. The Parliament takes its decision by a simple majority vote.
58. Immunity cannot be invoked with respect to misdemeanour proceedings.

### Statute of limitations

59. The Law on Misdemeanours provides for the statute of limitations on the institution and conduct of misdemeanour proceedings (Articles 55 and 56, Law on Misdemeanours). In particular, prosecution of misdemeanours cannot be initiated if a year has elapsed from the day on which a misdemeanour was committed (relative statute of limitation), and in any case the limitation of prosecution comes into force two years after the commitment (absolute statute of limitation).

### III. ANALYSIS

60. The legal framework on financing of political parties and electoral campaigns has been subject to significant reform over the last few years. Two key instruments have been adopted in this domain, notably, the 2008 Law on Financing of Political Parties (hereinafter: LFPP) and the 2009 Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities (hereinafter: LFPM). They both comprise positive elements to strengthen transparency, oversight and accountability of political finances: cash, anonymous and foreign donations are forbidden, private contributions are capped (between 2,000 EUR and 10,000 EUR for individuals and legal entities, respectively), the source and amount of private contributions (whether from physical or legal persons) are to be disclosed, companies with public contracts are not allowed to make donations, there is an explicit prohibition of “quid pro quo” arrangements, measures are in place to enhance the financial discipline of parties and candidates (e.g. appointment of responsible persons in charge of financial and reporting tasks, opening of dedicated accounts), financial reporting obligations and sanctions for non-compliance are laid down in legislation. For a country which achieved independence in 2006, the efforts undertaken to approximate national legislation to the Council of Europe standards in this field are commendable. However, there are critical flaws in the system which risk compromising its effectiveness in practice and leave significant room for circumvention of the rules; the weakest area undoubtedly being the largely inefficient control of political finances.
61. As the relevant party funding rules were tested for the first time in the 29 March 2009 parliamentary elections, some additional time may be needed to obtain a complete picture on how the new requirements function in practice. At the time of the on-site visit, it was already obvious that the system needed to be significantly strengthened in order to address the various gaps in legislation, and more importantly, to ensure actual enforcement of the applicable rules through genuine monitoring of party/candidate accounts coupled with adequate (effective, proportionate and dissuasive) sanctions when infringements occur. In the course of the interviews held during the on-site visit, it was clear to the GET that many of the entities responsible for implementation of the LFPP and the LFPM, as well as those subject to the laws, were aware of most of the challenges ahead in this area and that there was already some discussion of how best to proceed, including in the context of the new Strategy for the Fight against Corruption and Organised Crime (2010-2014). The GET is hopeful that the issues raised and the recommendations made in this report come as a timely contribution to the improvement process already launched by the authorities.

#### Books and accounts

62. The LFPP lays down a clear obligation for political parties to keep proper books and accounts; the general rules of the Law on Accounting and Auditing apply. Pursuant to the latter rules, political parties are required, as is any other legal person, to keep accounting records and business books following the closure of the business year. In addition, at the crucial time of elections, both political parties and candidates are required to open dedicated campaign accounts. Moreover, the LFPP and the LFPM establish the obligation to designate a person responsible for financial operations. Additionally, parties are required to set in place an internal audit system and to ensure that its members have adequate insight into the party’s revenue and expenditure. In the GET’s opinion, these are all valuable features that should assist in strengthening the financial discipline of political parties and candidates.

63. While the relevant book-keeping rules provide for consolidation of the accounts of local branches of political parties, and also establish the requirement to create sub-accounts under the main account of the political party for this type of organisation, nothing is stated in the law regarding the consolidation of the accounts of entities connected to political parties. Such entities would be subject to the ordinary accounting obligations of the Law on Accounting and Auditing which are applicable to all legal persons; however, they would not be subject to the same restrictions (e.g. concerning the receipt of anonymous donations, donation/expenditure limits, etc.) or disclosure rules as parties themselves. It is recalled that Article 11 of Recommendation Rec(2003)4 requires party accounts to be consolidated so as to include the accounts of entities related, directly or indirectly, to political parties, or otherwise under their control. In line with the reasoning underlying Recommendation Rec(2003)4, the GET wishes to stress that party accounts need to comprise such information in order to include the support provided by entities such as interest groups, political education foundations, youth organisations, research institutions which are closely related to – or come under the influence of – a party and in order to give a complete and realistic picture of party funding as well as to prevent circumvention of transparency rules, notably by providing a “back door” for hidden party financing. The GET recommends **to seek ways to consolidate the books and accounts of political parties to include, as appropriate, the accounts of entities which are related directly or indirectly to a political party or otherwise under its control.**
64. A simple reading of the LFPP and the LFPM indicates a large practical problem for any party in anticipating how much public money it will receive and, consequently, the value of the contributions it can accept without violating the law. In Montenegro, the possibility to collect private funding is tied to the amount of public funds that a party receives; for campaign purposes, the bulk of public funds (80%) is distributed after the election and only for those parties which won seats in Parliament. If a party does not know how much public funding it will receive, it cannot know how much it can safely spend on a campaign until after the election is over. The reality, confirmed at the time of the GET’s visit, was that for the purpose of keeping proper books and records under this funding scheme, parties had to make decisions on running proper campaigns and then after the election, when they finally learned how much public funding they would receive and how much in donations they could have accepted, they adjusted the books accordingly. While the GET can understand that there has to be some formula for use of public funds, the tying of private donations to the total amount of public funds received after the election in this manner undermines the credibility of the books and accounts and certainly shows the lack of real transparency in actual practice. Furthermore, the current financing scheme is particularly hard on parties with no representation in Parliament, which receive considerably lower sums of public money and are required to cap private funding at the same level (non-parliamentary parties are permitted to finance their activities from private sources up to 5% of the total amount of State funding available to parliamentary parties). For purposes of ensuring that parties are able to keep proper books and accounts and still engage competitively in a campaign, the GET recommends **to revise collection/expenditure ceilings, including by considering that the existing formula for private funding be disconnected from the total amount of public funding for election campaigns.**
65. In the same vein, the GET heard that a number of municipalities had failed to disburse the required funding among the different electoral contestants. Obviously, if a local government does not pay, it is impossible to determine the amount that a party/candidate is allowed to raise in private funds. This is another issue that challenges the credibility of the system and thus the transparency involved. The GET is hopeful that steps will be taken in order to find a fair and effective method of responding to the failure of public authorities (at central and local levels) to dispatch public funds to electoral contestants in a timely manner.

66. There are a number of private resources that go into supporting political parties and candidates: membership fees, private donations, income from activities (publishing, promotion materials, organisation of party events), property income (sale or rental of party property), legacies (money, portable property of artistic, cultural or historic value, or real estate), all kinds of non-lucrative actions and gifts (securities or any other items exceeding the value of 50 EUR). The GET has doubts about the particular coverage of in-kind donations in Montenegrin legislation. In this context, Recommendation Rec (2003)4 is clear as to the concept of in-kind donations, which also comprises reduced rate or free services or use of equipment and facilities for which a fee is normally charged, cancellation of loans or loans granted on less than commercial terms. The GET could not see any specific reference in legislation, nor any practical guidance, with respect to the use and reporting of in-kind donations. The GET did, however, hear that most irregularities occur in this area during election campaigns, in particular, with respect to the use of public resources (use of vehicles, municipality services, communication equipment, etc.), advertising of political parties in private media, etc. Using for example one of the typically more expensive items for a campaign, i.e. use of media time, the reporting form requires for it to be reported as an expense without regard to the terms in which it is granted. If the costs were in fact substantially below the commercial rate, for the amount of time purchased or if the rates were widely disparate between the parties, a part of this time would, for those who benefited from the non-commercial or artificially low rate, constitute a partial in-kind contribution that should be reported. Likewise, in so far as loans are concerned, annual reports of political parties are to include records on their total liabilities; this will not show whether a loan that is a part of the total liability has been secured on standard commercial terms or has been secured on terms so favourable that a part of the loan is or should be considered an in-kind donation to the party. The immediately preceding discussion regarding the guessing a party is required to engage in to determine how much to spend for an election may also have the practical effect of parties using unreportable individual loans as a way to tide them over from the campaign to the ultimate funding decisions. The GET wishes to stress that goods or services (other than voluntary work from non-professionals) below market prices need to be accounted for as donations; non-observance of this principle constitutes a *de facto* breach of donation ceilings and affects the fairness of electoral competition. The GET, therefore, recommends **to establish precise rules for the identification, accounting and reporting of in-kind donations, including the cancellation of loans, as well as the provision of goods and services (other than voluntary work from non-professionals) below market value.**
67. With particular reference to the use of public resources, including both State-owned and property owned by local authorities (human, financial and technical means), virtually all interlocutors met concurred that this was an important area of concern, in particular during election campaigns. The GET was told that in practice candidates, who are already elected officials, do use the administrative resources at their disposal (official cars, communication equipment, secretariat services, etc.). These irregularities occur even though the LFPM, the Law on the Election of the President of Montenegro and the Law on the Election of Mayors explicitly ban (unless otherwise provided by special regulation) the use of the facilities, financial resources, vehicles, technical means and other State property for the purpose of electoral campaigns. The LFPP is less specific in this respect, but it does ban donations from public institutions and public companies, as well as from institutions and companies with State capital share. In the GET's opinion, further measures need to be introduced to better prevent irregularities from occurring in practice; this calls for better regulation and guidance in an area that appears to be particularly prone to abuse. The authorities have anticipated, in the framework of the new Strategy for the Fight against Corruption and Organised Crime (2010-2014), the need to establish an adequate legal framework for the prevention of misuse of State powers and capacities during election processes. In line with the declared intention of the Montenegrin authorities, the GET

recommends **to introduce clear rules and guidance concerning the use of public resources for party activity and election campaigns.**

68. With respect to membership fees, the statutory thresholds for private donations do not apply to such fees (see paragraph 22). Since there is no upper limit to membership fees set by law (this limit can be set at a different level by each political party), there is a theoretical risk that the legal limits on donations could easily be circumvented. Party dues could therefore, in principle, be a source of excessive contributions from a single source. However, there is no evidence that this has ever occurred in practice. The GET further understands that the determination of membership fees falls under the freedom of political parties enshrined in Article 53 of the Montenegrin Constitution. Because of the potential for abuse, this issue bears watching.

#### Financial reporting and publication of accounts

69. Annual accounts of political parties are to be submitted to the responsible Commercial Court. Financial records of election campaigns are to be provided in a specific format developed to this effect (detailing the sources, amounts and structure of collected and spent funds, together with supporting documentation) to two bodies: (1) the competent electoral commission which in turn submits reports to the State Election Commission; and (2) the Ministry of Finance. In addition, parliamentary parties are to submit property statements to the State Election Commission on an annual basis. In addition, the LFPM requires candidates for the positions of president, mayor and president of a municipality to file an initial early report on collected funds for election campaign expenses no earlier than 10 days nor later than 7 days before the election. This early reporting is meant to provide the public with insight into the candidate's financial base of support prior to the election. Early reporting is not required under the LFPP for parliamentary elections. In the GET's view, while this system seems suitable, on paper, for the purposes of giving the public important information before an election, there are practical issues in collecting and getting that information to the public in a timely fashion. The authorities may wish to determine, during the next presidential election cycle, the implementation strengths and weaknesses of the aforementioned system with an eye to considering what alterations to the reporting requirements for parliamentary elections might be feasible in order to provide the public with the same intended level of transparency in those elections.
70. While Article 13 of Rec(2003)4 is directed at the parties making information public, the current laws allow the parties and the candidates to do so through the reports published by the State Election Commission (SEC) on its website and in the Official Gazette. At the time of the on-site visit, the GET learned that very few parties make their own books and records as well as the donor reports available on their own websites. While having a central government entity responsible for publishing can meet this requirement, the GET was told that even at the time of the laws' enactment, the SEC did not have the technical capacity to meet the website publishing requirement. The GET was informed that the SEC also did not have the funds to pay for publication of reports in the Official Gazette<sup>6</sup>. Therefore, from the outset, these laws could not be practically implemented in a way that would meet the transparency requirements of Article 13 of Rec(2003)4. The SEC did indicate that it had recently redesigned its website; the GET is hopeful that this may make a near term positive difference. Whether the Official Gazette has sufficient public readership to require this publication or the SEC can be given sufficient resources to publish this information, access to this information via the internet is critical. The inability to access the required information from the SEC's website nor from any other public source leaves

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<sup>6</sup> The GET was informed after the on-site visit that a proposal has been made to increase the funding for the State Election Commission for 2011.



the public without any ability to judge the veracity of the reported information as well as the possibility that some information has gone unreported.

71. Further, the GET understood that the information required to be reported by the SEC was given by the parties/candidates to the municipal election commissions and then transferred from those commissions to the SEC, and not necessarily in an electronic format that could be easily used by the SEC. Consequently, at the time of the on-site visit, there was no way to know if information had been properly reported to the SEC, but had not been properly posted, whether some error had occurred in the transfer of the information from the party to the local election commissions to the SEC, or whether the information had not been properly reported from the beginning. For example, the GET learned that one report referenced an attachment which was to contain the information with regard to the individual donors, but that the attachment was not posted. This state of affairs results in a serious lack of transparency. Finally, the SEC considers its role as only a posting board with no authority or responsibility to provide any information concerning reporting irregularities to an oversight body unless specifically asked. The GET therefore recommends that **(i) any government entity responsible for posting required campaign/party finance records be provided with sufficient financial and personnel capacity to carry out this responsibility in a timely and accurate fashion; and (ii) any such entity also be required to notify the responsible enforcement authority when reports have not been received, when reports are incomplete (after a request for the missing documents has gone unheeded) and for clear violations of any other law or regulations of which they become aware.**

#### Supervision of political finances

72. The most striking practical aspect of the party funding system in Montenegro, as established by the LFPP and the LFPM, is the lack of clear responsibility of any entity or combination of entities for competent monitoring and compliance with the laws. Monitoring tasks are split among different institutions. The Ministry of Finance controls the use of public funds (this responsibility is shared with the State Audit Institution), while private auditors monitor private funds (only if the party collects more than 50,000 EUR).
73. The Ministry of Finance (MoF) was viewed by many of the GET's interlocutors as the entity responsible for oversight and control. However, it viewed its role as serving as the auditor of the use of public money during election campaigns, providing non-binding advice along with the development of reporting forms, and when necessary, making referrals to the Misdemeanour Court when information was provided to it regarding indications of violations of the law. However, whether because of a concern for their authority and/or a lack of capacity, they do not engage in proactive oversight of the filing and publication of the reports to be required by the laws, nor play a zealous role in reviewing the financial reports submitted for purposes of determining if the reported information indicates any violation of substantive restrictions in the law. The GET heard criticism pointing at a mere pro-forma type of supervision being performed by the MoF. While the authorities also point to the fact that as a part of the supervision of political finances, parties are required to file an annual report with the Commercial Court, the GET has doubts as to the level of review of those reports (if any). Moreover, since the aforementioned annual reports are consolidated financial statements, they would not necessarily show violations of contribution levels, the acceptance of contributions from prohibited sources or violations of audit standards.
74. The State Audit Institution (SAI) has, in principle, the authority to audit political parties as beneficiaries of public funds, but there is nothing in the LFPP or the LFPM that requires them to do so and certainly not in a recurring or systematic manner. The SAI has not yet performed any

audit of the use of public funds by political parties; as would be expected, they have so far focused their capacities on the larger users of public funds. As to the control role to be performed by the public at large when irregularities of party or campaign funding occur, the GET found during the interviews on-site that it was not clear to many interlocutors which channels were provided by law to lodge complaints.

75. While a practical answer to this lack of systemic oversight and transparency is to make one independent entity responsible for administering the law, the GET understands that this is also a step with financial costs and that those costs may or may not be affordable at this time. What is of critical importance, however, is that true transparency needs to be infused into this system in order to make it work properly and to enhance its credibility.
76. In light of the foregoing considerations, the GET recommends, as a matter of priority, **that (i) an institution, whether new or existing, be given appropriate independent authority and resources to monitor the funding of political parties and electoral campaigns (both from private and public sources), and (ii) until that occurs, for the existing institutions with current responsibilities to (a) develop a practical working arrangement ensuring effective implementation of party/campaign funding rules; (b) describe that arrangement publicly on the websites of the Ministry of Finance and the State Election Commission (and the local commissions where appropriate), and (c) include clear information to the public regarding how and where to lodge complaints.**
77. Political parties are required to submit their annual accounts, together with an audit report, to the Commercial Court; the aforementioned audit report is also to be sent to the State Election Commission for publication purposes (Article 28, LFPP). External audits of a party's or candidate's collection and expenditure of private funds during election campaigns are required only if they exceed 50,000 EUR (Article 22, LFPP). The GET was told that for the most recent elections (local elections in 2009), no political party had subjected its campaign accounts to audit since their expenses were less than 50,000 EUR. On the one hand, the GET heard concerns as to certain underreporting practices of political parties so that auditing thresholds would not be reached. On the other hand, the GET was told that electoral contestants in Montenegro do not usually engage in costly campaigns. The GET acknowledges that audit requirements need to be combined with flexibility in relation to the different means and needs of the various electoral contestants in order to avoid overly cumbersome procedures. That said, the authorities need to assess whether the 50,000 EUR auditing threshold is giving rise to irregular underreporting practices (and thereby the avoidance of an independent audit) and take remedial action accordingly. Moreover, the GET could not gather a satisfactory answer as to the required level of independence of auditors (e.g. potential restrictions on using an auditor who is also an active member of the party). It is essential that auditors are independent – and are seen to be independent – from the parties they audit so that they are not faced with a conflict of interest due to a direct or indirect relationship with the party. It was evident to the GET that the control performed over private funds needs to be significantly strengthened. The recommendation made in paragraph 76 concerning the establishment of a genuine monitoring mechanism of the State to supervise both private and public funding of parties and candidates aims at helping to meet this goal, but, additionally, the control performed by external auditors needs to be properly secured. The GET believes that external audits, if independently and effectively performed, would serve to facilitate the monitoring task of public bodies further down the line. Consequently, the GET recommends **to considerably strengthen the auditing of political parties, in particular, by (i) assessing the need to adjust the current rules in order to establish consistent and clear auditing obligations for political parties, including a review of the current auditing threshold for campaign accounts (i.e. total amount of funds raised and spent from private**

**sources in an election campaign exceeds 50,000 EUR); (ii) introducing provisions to ensure the independence of auditors who are to audit political finances.**

### Sanctions

78. The LFPP and the LFPM provide for financial sanctions in case of breach of the rules by election candidates, political parties, their “responsible persons”, and donors. The relevant provisions are clear and directly linked to the possible infringements of the relevant rules. Having said that, the sanctions are low – they range from 5,500 to 11,000 EUR for political parties and 800 to 1,100 EUR for individual candidates, responsible persons, and donors – and the sanctions are only financial in nature. The GET has reservations concerning the proportional nature of the available fines, e.g. the non-filing of a report is punished with the same fine as the acceptance of illegal funds. Moreover, the maximum fine available (11,000 EUR if the infringer is a political party; 1,100 if the infringer is a candidate) may be of little effect in penalising a significant benefit, for example an unlawful donation of a large amount. It could be more advantageous for a party to pay the fine and take the benefit of the illegal donation than to not take the benefit. The GET is not convinced that the current level of sanctions provides for deterrents which adequately dissuade political parties and election candidates from breaching the rules regarding political funding. The experience of other countries in this area, i.e. through the application of a broader range of sanctions – e.g. loss of public funds, ineligibility, incremental fines and even imprisonment when severe breaches of the law occur – could be of relevance for Montenegro from both a preventive and repressive point of view.
79. The GET furthermore learned that the existing sanctions have never been applied in practice. Since the enactment of the relevant party/campaign funding rules, the Ministry of Finance (MoF) found no major violation indicating possible misuse of public funds. The MoF did, however, make a number of referrals to the Misdemeanour Court for parties failing to file the required reports. Those referrals were based on information brought to them and then confirmed with the SEC. On that basis, 7 misdemeanour proceedings have been initiated against 8 political parties for failure to submit their financial reports; at the time of the on-site visit, the relevant proceedings were ongoing<sup>7</sup>. While the MoF officials indicated that they had not come across any major irregularity (other than minor “technical” ones) in the course of their audits, the GET heard repeated criticism underlining the fact that the system has difficulty in detecting unauthorised campaign fund-raising or spending incurred outside the dedicated campaign accounts. Leaving aside suspicions in this area, it is a confirmed fact that political parties do not always file their respective financial reports: the GET was told that of the 24 total number of political parties and candidate lists that participated in the 2009 elections, only 9 of them had submitted complete reports on the origin, amount and structure of the money collected and spent for campaign purposes. The GET considers that the absence of any sanctioning action, when there is strong suspicion (and even evidence in so far as the filing of reports is concerned) that irregularities have occurred, is a crucial flaw in the system, which is an immediate consequence of the lack of supervision. The effective use of sanctions is important in building up public trust and maintaining the integrity of the political process. Against this background, the current penalties cannot be regarded as proportionate, dissuasive and effective in the meaning of Article 16 of Recommendation Rec(2003)4. Furthermore, the GET notes that the current sanctions for donors only refer to infringements of donation caps, but not other possible irregularities under the law (e.g. cash or anonymous donations; in-kind donations over the statutory thresholds, etc.); likewise, the LFPP and the LFPM remain silent as to penalties for companies with public contracts which donate to a

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<sup>7</sup> The authorities reported, after the on-site visit, that out of the 7 misdemeanour proceedings initiated, 4 had been completed (one discontinued; 3 convictions ending with a “warning” and an order to pay court costs), 3 are still ongoing. No fines have been imposed so far.

political party in contravention of the applicable ban. In light of the foregoing considerations, the GET recommends **(i) to better adjust the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive, including by broadening the scale and range of penalties available; (ii) to cover all possible infringements of the law, as appropriate.**

80. Sanctions for misdemeanours are imposed by the Misdemeanour Courts at the request of the Ministry of Finance; appeal channels are provided by law. Pursuant to Article 55 of the Law on Misdemeanours, prosecution of such offences cannot take place if one year has elapsed from the day on which the offence was committed (relative statute of limitation), and in any case the limitation of prosecution comes into force two years after the commission (absolute statute of limitation). The GET fears that this is a short lapse of time, considering in particular the complexity of some of these offences and the difficulties in investigating them. Moreover, sometimes information about financing irregularities does not come to light until the next election which is, generally, held four years later. Infringements of legislation can thus go unpunished because of the expiry of the relevant time limit specified in the statute of limitations. Therefore, the GET recommends **to increase the limitation period for violations of the Law on the Financing of Political Parties and the Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities.**

#### **IV. CONCLUSIONS**

81. Montenegro has recently passed legislation on the financing of political parties and campaigns containing valuable features to increase the transparency and financial discipline of political parties and candidates (e.g. bookkeeping and financial reporting obligations, establishment of dedicated campaign accounts, bans on cash and anonymous donations, disclosure of private donations, etc.), and thereby decrease possibilities of corruption in this area. However, the fundamental weakness of the system is a largely deficient monitoring machinery which undermines the effectiveness in practice of the relevant rules. There is a clear lack of responsibility of any public entity, or combination of entities, for competent monitoring and compliance with the laws. A direct consequence of this deficient supervision, is the absence of any sanction having been imposed to date for breaches of political financing regulations, even though there are concerns that irregularities may be occurring in practice with respect, for example, to failure to submit financial reports, misuse of public resources (facilities, financial resources, vehicles, technical means and other State property for the purpose of electoral campaigns) and acceptance of other in-kind types of contributions, including media discounts. As a matter of priority, GRECO calls for a thorough overhaul of the oversight system of political finances in Montenegro; until that happens, the current institutions with key responsibilities in this area, notably, the Ministry of Finance, the State Election Commission and the State Audit Office, are to develop more coordinated and effective action. Likewise, it is essential that external independent auditors are engaged in the verification process of party accounts. As for the control role of civil society, this is severely hampered by the current irregular publication practices: information on party and candidate accounts, as well as donors' identity, comes either too late or never, thereby preventing a genuine oversight by the general public. While the transparency measures have been increased on paper, it remains critical that they be effectively implemented and the information conveyed in a timely and accurate fashion to the public; disclosure of information is paramount in assuring transparency of political funds. Finally, as experience with implementation of the law evolves, the authorities should remain alert on possible circumventions of its provisions, for example, in relation to entities closely related to – or coming under – the influence of a party (e.g. interest groups, political education foundations, research institutions, youth organisations) which may be used as a “back door” for hidden party financing.

82. In view of the above, GRECO addresses the following recommendations to the Montenegro:
- i. **to seek ways to consolidate the books and accounts of political parties to include, as appropriate, the accounts of entities which are related directly or indirectly to a political party or otherwise under its control (paragraph 63);**
  - ii. **to revise collection/expenditure ceilings, including by considering that the existing formula for private funding be disconnected from the total amount of public funding for election campaigns (paragraph 64);**
  - iii. **to establish precise rules for the identification, accounting and reporting of in-kind donations, including the cancellation of loans, as well as the provision of goods and services (other than voluntary work from non-professionals) below market value (paragraph 66);**
  - iv. **to introduce clear rules and guidance concerning the use of public resources for party activity and election campaigns (paragraph 67);**
  - v. **that (i) any government entity responsible for posting required campaign/party finance records be provided with sufficient financial and personnel capacity to carry out this responsibility in a timely and accurate fashion; and (ii) any such entity also be required to notify the responsible enforcement authority when reports have not been received, when reports are incomplete (after a request for the missing documents has gone unheeded) and for clear violations of any other law or regulations of which they become aware (paragraph 71);**
  - vi. **that (i) an institution, whether new or existing, be given appropriate independent authority and resources to monitor the funding of political parties and electoral campaigns (both from private and public sources), and (ii) until that occurs, for the existing institutions with current responsibilities to (a) develop a practical working arrangement ensuring effective implementation of party/campaign funding rules; (b) describe that arrangement publicly on the websites of the Ministry of Finance and the State Election Commission (and the local commissions where appropriate), and (c) include clear information to the public regarding how and where to lodge complaints (paragraph 76);**
  - vii. **to considerably strengthen the auditing of political parties, in particular, by (i) assessing the need to adjust the current rules in order to establish consistent and clear auditing obligations for political parties, including a review of the current auditing threshold for campaign accounts (i.e. total amount of funds raised and spent from private sources in an election campaign exceeds 50,000 EUR); (ii) introducing provisions to ensure the independence of auditors who are to audit political finances (paragraph 77);**
  - viii. **(i) to better adjust the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive, including by broadening the scale and range of penalties available; (ii) to cover all possible infringements of the law, as appropriate (paragraph 79);**

**ix. to increase the limitation period for violations of the Law on the Financing of Political Parties and the Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities (paragraph 80).**

83. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Montenegro to present a report on the implementation of the above-mentioned recommendations by 30 June 2012.
84. Finally, GRECO invites the authorities of Montenegro to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.