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**Theme II**

## **Third Evaluation Round**

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

(Theme II)

Adopted by GRECO  
at its 45<sup>th</sup> Plenary Meeting  
(Strasbourg, 30 November - 4 December 2009)

## I. INTRODUCTION

1. Germany joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 12E Final) in respect of Germany at its 8<sup>th</sup> Plenary Meeting (8 March 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 10E) at its 24<sup>th</sup> Plenary Meeting (1 July 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption<sup>1</sup>, Articles 1-6 of its Additional Protocol<sup>2</sup> (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team (hereafter referred to as the "GET") carried out an on-site visit to Germany from 8 to 12 June 2009. The GET for Theme II was composed of Mr Yves-Marie Doublet, Deputy Director of the Legal Department of the National Assembly (France) and Mrs Viera Kotulicova, Department of Internal Affairs of Public Administration Section, Ministry of Interior (Slovakia). The GET was supported by Mr Christophe Speckbacher from GRECO's Secretariat. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval III (2008) 8E, Theme II), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: Federal Ministry of the Interior, the Administration of the Bundestag (section PM3 responsible for party finance supervision), the Federal Ministry of Finance, the Federal Court of Accounts, public prosecutors, the Federal Administrative Court and the administrative court of Berlin. The GET also met with members of the profession of certified auditors, journalists, the German Chapter of Transparency International, university professors, as well as a selection of party treasurers: *Südschleswigscher Wählerverband - SSW*, Christian Social Union (CSU), Free Democratic Party (FDP), Christian Democratic Union (CDU), Social Democratic Party (SPD), Alliance '90/The Greens *Ökologisch-Demokratische Partei – ÖDP*, the Left (*Die Linke*).
5. The present report on Theme II of GRECO's Third 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 German authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Germany 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 (2009) 3E-Theme I.

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<sup>1</sup> Germany signed this Convention on 27 January 1999, but it has not ratified it as yet.

<sup>2</sup> Germany signed this Protocol on 15 May 2003 but it has not ratified it as yet.

## II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

### Definition of political party

7. In its Article 21, the Basic Law [Constitution] of the Federal Republic of Germany contains the essential provisions on the task of political parties, on certain requirements to be met by parties as regards their internal organisation and the development of informed political opinion, and on public controllability of their finances.

#### **Article 21 (Political Parties)**

- (1) *The political parties shall participate in the forming of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.*
- (2) *Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.*
- (3) *Details shall be regulated by federal laws.*

8. The Political Parties Act (PPA) of 1967, Section 2, provides for the following definition of “political parties”:

#### **Section 2**

- (1) *Political parties are associations of citizens which, on a continuing basis or for a prolonged period of time, wish to influence the development of informed political opinion at the federal level or in any of the Länder and to participate in the representation of the people in the German Bundestag or a Land parliament (Landtag), provided that they offer a sufficient guarantee of their sincerity in pursuing that aim, as evidenced by their actual overall situation and standing, especially as regards the size and strength of their organizational structure, their membership numbers, and their visibility in public. Only natural persons may be members of a political party.*
- (2) *Such an association shall lose its legal status as a political party if it has not participated, with its own nominations of candidates, in either an election to the German Bundestag or a Landtag election for six years.*
- (3) *Political associations shall not be deemed political parties if*
- 1. the majority of their members or of the members of their Executive Committee are foreigners, or*
  - 2. their registered seat or their executive office is located outside the area of applicability of the present Act.*

9. Political parties are civil-law associations. Under civil law, they acquire legal capacity only at the time of their entry in the Register of Associations. Traditionally, most of the German political parties are organised as unregistered associations. However, for quite some time already, and on the basis of the rulings by the Federal Court of Justice, the legal provisions governing registered associations, especially their legal capacity and their capacity to sue and be sued, are also applied, *mutatis mutandis*, to associations not having legal capacity so that, in the last analysis, it nowadays makes no difference whether or not a political party is entered in the Register of Associations. In addition, the PPA contains special provisions applying to political parties. Parties may, on their own behalf, take legal action and be sued, i.e. they have capacity of the proper party for a claim or defence in civil or administrative court proceedings (Section 3, PPA). They may acquire property and be a party to insolvency and enforcement proceedings (cf. Section 37 of the PPA, in conjunction with Section 54, 2<sup>nd</sup> sentence, of the Civil Code).
10. In Germany, political work is carried out by, and public funding is provided to, political parties as well as to the parliamentary parties/groups in the parliaments/assemblies at the federal, *Land* and local levels and to the so-called political foundations. Parliamentary groups are not divisions of parties, but of the respective parliament/ assembly. As a complement to each of the political

parties represented in the German *Bundestag*, a so-called “political foundation“ has been established. These foundations are private-law corporations and, while they are close to the respective party in terms of their political aims and convictions, they are, as an institution, strictly separated from that party. Political parties are not allowed to accept donations by parliamentary parties/groups or political foundations (Section 25, paragraph 2, nos. 1 and 2, PPA). Therefore, funding provided to these institutions does not constitute indirect party funding. At the same time, parties may freely engage in economic and business activities. The Social Democratic Party, for instance, thus controls an important press and editing group and, directly or indirectly, a number of businesses, including travel, communication and consulting agencies. After criticism about the lack of structural transparency, measures had to be taken by the party to improve the situation, as the GET was told on site.

### Founding and registration

11. Under Article 21 paragraph 1, 1<sup>st</sup> sentence, of the Basic Law, political parties may be freely established. For the establishment of a party, natural persons must lay down a foundation charter with the will to found a political party. At the foundation assembly, a party will adopt its statutes and programme and elect its Executive Committee. Political parties are required to notify the Federal Returning Officer of their statutes and party programme and of the names and functions of the members of the Executive Committees of the party and its *Land* branches (Section 6 paragraph 3, PPA). The Federal Returning Officer maintains a compilation of the records submitted to his/her office, which may be inspected publicly. Since a political party is created by virtue of its foundation act, deposit of the related records with the Federal Returning Officer neither has a constitutive effect for a party nor does it create any rights for the party. Also, inclusion in the documentation held by the Federal Returning Officer does not automatically confer party status. Parties do not require recognition or confirmation of their establishment by public authorities.
12. The PPA does not provide for any formal and generally binding affirmation by any specific institution that a party holds party status. It is only for elections to the *Bundestag* that, for parties which have not been represented, without interruption, by at least five representatives elected on the basis of the party’s own nominations in the German *Bundestag* or in a *Landtag* since the last elections to these parliaments, affirmation of the party status by the Federal Electoral Committee is required for participation in the election. In all other cases, the authorities and courts having jurisdiction in the respective matter must decide, on a case-by-case basis, on the party status, e.g. as regards a decision by the competent fiscal authority on tax deductibility of membership fees and donations.
13. At the time of the on-site visit, 115 parties were entered in the register maintained by the Federal Returning Officer.<sup>3</sup>

### Participation in elections

14. Elections to the German *Bundestag* are based on the principles of the Mixed Member Proportional system. Each voter may cast two votes: with the first vote, a candidate is elected in the respective constituency on the basis of the principles of the relative majority voting system, and the second vote is for the voter's choice of one of the *Land* lists. Allocation of seats in the German *Bundestag* is based exclusively on a party’s share of second votes. Thus, political

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<sup>3</sup> This compilation can be accessed on the Website of the Federal Returning Officer ([www.bundeswahlleiter.de/de/parteien/anschriften\\_parteien.html](http://www.bundeswahlleiter.de/de/parteien/anschriften_parteien.html)).

parties may participate in *Bundestag* elections: a) with their own constituency nominations in the constituencies; and b) with their own *Land* nominations (*Land* party lists) in the *Länder*. A party may submit only one nomination per constituency and only one *Land* party list in each *Land* (Section 18 paragraph 5 of the Federal Electoral Act (*Bundeswahlgesetz* - BWG)).

15. Participation of political parties in elections to the *Bundestag* is governed by the provisions of Part IV of the Federal Electoral Act (*Bundeswahlgesetz* - BWG) and by Sections 32 *seqq.* of the Federal Electoral Code (*Bundeswahlordnung* - BWO).
16. Political parties which, since the last elections to the German *Bundestag* or to a *Landtag*, have not been represented without interruption in the *Bundestag* or that *Landtag* by at least five representatives elected on the basis of the parties' own nominations, can only participate in *Bundestag* elections with their own nominations if, by the 90<sup>th</sup> day before the given election at the latest, they informed the Federal Returning Officer of their participation in the election in writing and if the Federal Electoral Committee has recognized their political party status for the given election (Section 18 paragraph 2 of the Federal Electoral Act). The status of a political party derives from the definition laid down in Section 2 paragraph 1 of the PPA.
17. If the Federal Electoral Committee denies that an association has political party status, the grouping may - as a so-called "association of voters" (*Wählergruppe* or *Wählervereinigung*) as provided in Section 18 paragraph 1, in conjunction with Section 20 paragraph 3 of the Federal Electoral Act - participate in the elections at constituency level with its own constituency nominations, while the submission of *Land* lists is reserved, under electoral law, for political parties. Constituency nominations submitted by parties which have not been represented, in the German *Bundestag* or a *Landtag*, without interruption since the last elections to these parliaments by at least five representatives elected on the basis of the parties' own nominations must be signed personally by at least 200 eligible voters in the given constituency (Section 20 paragraph 2, 2<sup>nd</sup> sentence, of the Federal Electoral Act). *Land* lists of such parties must be personally signed by 1 per thousand of registered voters in the given *Land*, but at most by 2,000 registered voters (Section 27 paragraph 1, 2<sup>nd</sup> sentence, of the Federal Electoral Act). Constituency nominations may as well be submitted by independent candidates. They must be signed by 200 eligible voters of the given constituency as well.
18. For elections to the German *Bundestag*, a 5% proportional representation threshold and a clause on the minimum number of constituency mandates are applied. In distributing the seats among the *Land* lists, only such parties will be taken into consideration as have obtained at least five per cent of the valid second votes cast throughout the electoral area (Federal Republic) or have won a seat in at least three constituencies. These requirements do not apply to political parties of national minorities, i.e. these will in any case participate in the allocation of seats, provided that they have won the number of second votes required for a seat.

#### Party representation in Parliament

19. Following the elections to the German *Bundestag* in September 2005, in which 25 political parties participated, the following ones were represented in the German *Bundestag*, for a total of 612 seats: 1) Christian Democratic Union of Germany (CDU): 177 seats; 2) Christian Social Union (in Bavaria) (CSU): 46 seats (these two parties form the CDU/CSU parliamentary party with 223 seats); 3) Social Democratic Party of Germany (SPD): 222 seats; 4) Free Democratic Party (FDP): 61 seats; 5) The Left (*Die Linke*): 53 seats; 6) Alliance '90/The Greens (*Grüne*): 51 seats; 7) Non-attached: 2 seats. Following the September 2009 elections (i.e. after the visit), the situation is as follows (for a total of 622 seats): 1) CDU / CSU parliamentary party: 239 seats; 2)

SPD: 146 seats; 3) FDP: 93 seats; 4) Die Linke: 76 seats; 5) Grüne: 68 seats; 6) Non-attached: 0 seats.

## Overview of the political funding system

### *Legal framework*

20. The main piece of legislation regulating the financing of political activities is the federal Political Parties Act of 1967. The *Länder* are not authorised to lay down rules concerning political parties and party funding. But they may legislate on matters not covered by federal law, e.g. with regard to the funding of voters' associations or independent candidates in *Landtag* or local elections.
21. As regards the federal level, the Constitution (Basic Law, Art. 21 paragraph 1) and the PPA (Section 1 paragraph 2) assign to parties a key role in the "bottom-top" forming of the political will. Political parties are intermediaries between the citizens and state institutions; they are thus given an institutional guarantee. The Federal Constitutional Court refers to political parties as "factors of integration" within the state. Their funding is based, above all, on membership fees and donations. Besides that, however, political parties are generally free to make use of all legal means of realising various forms of income. In view of the fact, however, that political parties additionally contribute, at great expense, to the functioning of the political system by performing the tasks assigned to them under the Basic Law and the PPA, the state, while not being under an obligation in this respect, is not hindered, either, from granting funds to political parties. Accordingly, political parties in Germany are financed with public funds as well (please see under point 22 below).
22. The Constitution regulates party funding in the sense that Art. 21 paragraph 1, 4<sup>th</sup> sentence, of the Basic Law explicitly stipulates the duty of political parties to account publicly for the sources and use of their funds and on the assets owned by them. These constitutional requirements are specified in the provisions of Sections 23 et seqq. of the PPA on a) the obligation to submit a public statement of accounts; b) an examination of the parties' statements of accounts by the President of the German *Bundestag* to verify their due form and accuracy; c) the obligation to report incorrect data in a statement of accounts; d) the various items to be covered by the statement of accounts, including income/ expenditure accounting and a statement on the parties' assets and liabilities; e) the right to accept donations; and f) financial sanctions and penalties provided under criminal law in case of inaccurate statements of accounts or unlawfully obtained or unpublished donations.
23. In view of the importance of public accountability, the parties' statements of accounts which are examined by the President of the German *Bundestag* to verify their due form and accuracy (Section 23a paragraph 1, 1<sup>st</sup> sentence, of the PPA), are published as parliamentary printed papers (Section 23 paragraph 2, 3<sup>rd</sup> sentence, of the PPA) and on the Internet (<http://www.bundestag.de/parlament/funktion/finanz/index.html>). At the same time, the President of the German *Bundestag* must determine whether or not the submitted statements of accounts meet the accountability requirements as laid down in the PPA (Section 23a paragraph 1, 2<sup>nd</sup> sentence, of that Act).
24. Under Section 24 paragraph 4 of the PPA, parties must, in their statements of accounts, list all important receipts<sup>4</sup>, irrespective of whether such funds were provided directly or indirectly, by public authorities or by the private sector. The statement of accounts submitted by the party as a

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<sup>4</sup> Those corresponding to donations above the threshold for the mandatory identification of donors, i.e. 500 Euro

whole must, under Section 24 paragraph. 3, 1<sup>st</sup> sentence, of the PPA, separately include the statements of accounts for the party's national ("federal") branch and for its *Land* branch/es as well as the statements of accounts for the lower-level regional/local branches of each *Land* branch. The receipts must be listed separately by category of sources, i.e.: a) membership fees; b) contributions paid by elected representatives/officials; c) donations; d) income from business activities and participating interests; e) income from other assets; f) receipts from organised events, distribution of printed material and publications and from other income-yielding activities; g) public funds; h) any other receipts; and i) grants received from party branches.

25. Membership fees, contributions by elected representatives/officials, donations and public funding are the most important sources of party financing. According to the most recent overview of 27 February 2008, prepared by the President of the German *Bundestag* with regard to the parties' income and expenditure and their assets for the accounting years 1996 to 2005, the income of the parties represented in the German *Bundestag* resulted from membership fees and contributions by elected representatives/ officials (around 40 per cent), from donations (10 - 30 per cent), from public funding (30 – 40 per cent), and the remainder originated from other financing sources.
26. The various funding sources are in detail: a) Membership dues: as defined in Section 27 paragraph 1, 1<sup>st</sup> sentence, of the PPA, these are those regular financial contributions made by a party member on the basis of the provisions of the party's statutes; b) contributions paid by elected representatives/officials: under Section 27 paragraph 1, 2<sup>nd</sup> sentence, of the PPA, these are regular payments made by the holder of a public elective office in addition to his/her membership fees. These are all party members who have a seat in Parliament, are members of a local assembly or hold another public elective office (e.g. elected mayors of a town); c) donations are defined in Section 27 paragraph 1, 3<sup>rd</sup> sentence, of the PPA as any other payments in addition to membership fees and contributions paid by elected representatives/officials. They must have been made voluntarily and gratuitously. Both natural and legal persons may make donations to an unlimited amount; d) Public funding (Section 18 of the PPA: political parties are every year allotted public funds); e) Miscellaneous: this mainly refers to receipts from business activities and participations; income from other assets; and receipts from organised events and distribution of printed material.
27. Under the Directive on the Federal Children and Youth Plan, the youth organisations of the political parties represented in the *Bundestag* are subsidised. The eligibility criterion consists in recognition as a youth organisation of a political party represented in the *Bundestag*. In addition, the organisation must offer a guarantee of pursuing sustained democratic youth work on the basis of the Basic Law. In accordance with these requirements, funding amounting to a total of 1,079,464.- euros was allocated in 2008 to the *Junge Union Deutschland* (CDU and CSU), die *Jungsozialisten* (SPD), die *Junge Liberale* (FDP), die *Grüne Jugend* (Bündnis 90/Die Grünen). Pursuant to Section 24 paragraph 12 of the PPA, this amount is not included in the absolute upper limit established under Section 18 paragraph 2 of the PPA.
28. The general funding and accountability rules apply to enterprises owned by political parties and to participations in companies.
29. The general party funding rules also apply to election campaigns; there are no special regulations for times of election campaigning. There are no general rules either applying to the financing of candidates for election. Since candidates are, as a general rule, nominated by political parties, the financing of these candidates is primarily a responsibility of the respective parties.

30. Public funds are only granted to independent candidates who have been designated by other registered voters or associations of voters for a constituency nomination and have won 10 per cent of the votes in their constituency. The rate of funding is 2.80 euro per valid vote cast for the respective candidate.
31. It is, in principle, allowed to make donations to candidates for election. In this respect, the following specific provisions apply: If candidates receive donations which must be considered donations to their party, these payments must be immediately passed on to an Executive Committee member who, under the party statutes, is responsible for the party's finances (Section 25 paragraph 1, 3<sup>rd</sup> sentence, of the PPA).
32. If the candidate already is a Member of the German *Bundestag*, he/she must comply with the Code of Conduct of the *Bundestag*. Under Section 4 of the Code of Conduct, a Member of the *Bundestag* must separately account for payments of money and all kinds of non-cash contributions (donations) received by him/her for his/her political work (paragraph 1). Any donation exceeding the amount of 5,000 euro per calendar year must be notified, together with the donor's name and address and the total amount, to the *Bundestag* President (paragraph 2). Donations which, either as a single donation or as amalgamated donations by the same donor, exceed a total amount of 10,000 euro per calendar year, must be published, together with an indication of the amount and the source, by the *Bundestag* President (paragraph 3). The prohibitions laid down in the PPA as regards acceptance of donations apply *mutatis mutandis* to money donated to a Member of the *Bundestag* (paragraph 4 only refers to the applicability of requirements of Section 25(2) and 25(4) of the PPA but further prohibitions are to be found in sections 44a (2) and (3) of the Members of the *Bundestag* Act). If these rules are violated, the President of the German *Bundestag* will institute proceedings. Depending on the seriousness of the violation and the degree of culpability, infringement of the Code of Conduct may be punished with a fine of up to half of the MP.'s annual (parliamentary) remuneration.
33. If a candidate for election holds an office, e.g. that of mayor, Parliamentary State Secretary or Minister, acceptance of a donation which has been made with the aim of influencing the performance of official functions by the office holder may entail criminal liability on a charge of bribability or acceptance of an advantage under the general regulations of the Criminal Code (Sections 331 *seqq.*, Criminal Code).
34. In some instances, however, political parties stipulate in their statutes that donations made to candidates must be passed on to the party (e.g. Section 3 paragraph 7 of the Financial Rules of the *SPD*).
35. There are no legal restrictions on the fixing and acceptance of membership fees by political parties. The parties include pertinent provisions in their statutes. Precise limits have been legally defined for state-provided party funding (see hereinafter). There are no restrictions as regards funding from subsidiary or supporting organisations. As indicated earlier, it is forbidden to accept donations from parliamentary parties and so-called "political foundations", which under German law must be strictly differentiated from political parties. There are no specific regulations as regards acceptance of donations made by elected representatives or office holders to political parties (the general rules on donations apply). Contributions paid by elected representatives/officials – i.e. regular cash contributions made by a holder of a public elective office in addition to his/her membership subscription are admissible as implied by the PPA. Special provisions apply to donations made to holders of an office or a mandate (please see under point 20 above). Parties may accept cash only to the amount of 1,000 euro (Section 25



paragraph 1, 2<sup>nd</sup> sentence, of the PPA). Higher amounts may only be accepted in the form of cashless bank transfers. Donations to a total amount of more than 10,000 euro per donor and calendar year must be listed, together with the donor's name and address and the total amount of the donation, in the statement of accounts. Donations exceeding 50,000 Euro must be notified to the President of the German *Bundestag* immediately and will be published shortly afterwards as a *Bundestag* printed paper. It also becomes available on line, on the website of the *Bundestag*.

36. No restrictions are provided under German law as regards income from other sources (income from property, loans, income from party business or activities, fundraising activities, private business, individuals). Political parties are entitled to take part in economic life and thereby earn income. Commercial activities by political parties are guaranteed by the fundamental right of free ownership.
37. At the level of the various Länder, the legislation provides for a system of reimbursement of expenditures to the benefit of associations of voters and independent candidates, depending on the number of votes obtained (10% of the valid votes expressed in the constituency). The amount of the aid varies between 1 Euro in Thuringia and 3,50 Euro in North Rhine-Westphalia.

#### Public funding

38. Following a leading decision by the Federal Constitutional Court (*BVerfG*) in 1992 (Decisions - *BVerfGE* 85, 264), the previous system of compensation for election campaign expenses was replaced by permanent partial public funding of political parties. The details are laid down in Part IV of the Political Parties Act (Sections 18 *seqq.*). Two allocation criteria apply: the success of the respective political party in the most recent elections to the European Parliament or to the *Bundestag* or to a *Landtag* and the amount of contributions and donations received by this party. This system is based on the idea of mirroring the rootedness of the particular political party in society as expressed by the two aforementioned criteria. There is a precise ceiling in absolute numbers applying to the overall amount of direct public funding to all political parties eligible and a ceiling applying to each party eligible stipulating that the amount to be paid may not exceed the equivalent of the total of the respective party's income as established following the criteria set by the PPA.
39. Eligible for public funding are political parties which, according to the final result of the most recent elections to the European Parliament or to the *Bundestag*, polled at least 0.5 per cent or, in an election to a *Landtag*, won 1 per cent of the valid votes cast for party lists. Political parties will generally receive the following amounts per year: 1) 0.70 euro for each valid vote cast for the respective party list or, if a list for that party was not admitted at the *Land* level, each valid vote cast for a party in a constituency or polling district; and 2) 0.38 euro for each euro received by a party as a contribution (membership fees or legally obtained donations); only donated amounts of up to 3,300 euro per natural person are eligible for such matching funding.
40. In order to compensate for the advantage enjoyed by parties that are already established and represented in a parliament/assembly over newly established smaller parties, a party shall receive 0.85 euro (instead of 0.70 euro) for the first four million votes won by a party. However, the amount of public funding must not exceed the income generated from the party's own sources (relative upper limit). Thus, parties must provide for at least half of their finances.
41. The upper limit fixed for the overall amount of public funds to be allotted to all eligible parties at present amounts to 133 million euro (absolute upper limit). This upper limit is based on a

Decision of the Federal Constitutional Court of 9 April 1992, according to which public funding for political parties during the period 1989 – 1992 is to be considered sufficient and, unless the existing conditions drastically change, the upper limit may only be adjusted to offset any currency devaluation. If, as regularly happens, the amount of public funds calculated in accordance with the aforementioned principles exceeds the absolute upper limit, each party's amount must be reduced proportionally. Thus, parties do not really receive the above amounts per vote and euro received, but amounts that have been reduced as just described.

42. No specific uses are prescribed for public funds allocated to political parties. However, according to Section 1 paragraph 4 of the PPA, parties shall use their funds exclusively for performing the functions incumbent on them under the Basic Law (Art. 21 paragraph 1, 1<sup>st</sup> sentence) and the PPA (Section 1 paragraph 2).
43. Political parties must apply in writing for setting the amount and for disbursement of the funds by 30 September of the year for which they wish to obtain funds (Section 19 paragraph 1, 1<sup>st</sup> sentence, of the PPA). If public funds for a political party were already assessed for the preceding year, no written application will be required (Section 19 paragraph 1, 5<sup>th</sup> sentence, of the PPA).
44. Indirect support is also available. The statutory rules of public service broadcasting corporations provide for the parties' entitlement to free airtime before elections to the *Bundestag* and to the European Parliament and, in the case of the regional broadcasting stations, also before *Landtag* elections (the production costs must be borne by the parties themselves). Airtime for electoral campaigning by parties is allotted according to the principle of graded equal opportunities (Section 5 paragraph 1, PPA). In principle, donations by public entities are not allowed (Section 25 PPA) and political parties do not have a legal claim to the use of public facilities/premises, e.g. a community hall. If public facilities are made available for use by parties, all parties are entitled to equal treatment in accordance with Section 5 of the PPA. Another form of indirect state funding of parties exists by virtue of their exemption from inheritance and gift tax (section 13 (1) no. 18 of the German Inheritance Tax Act and because natural persons can claim tax relief on contributions given to political parties (paid-up membership subscriptions, contributions by elected representatives, and lawful donations). The latter option applies to contributions up to a total of €3,300 p.a. for individuals and €6,600 p.a. for couples assessed jointly for tax purposes (section 10b (2), section 34g sentence 2 of the German Income Tax Act. Contributions above these amounts are of course permitted, but they are not tax-deductible, nor are lawful donations by legal entities. The GET was advised on-site that in some cases (sponsoring), certain forms of donations can be deduced as publicity expenditures.

#### Private funding

45. In comparison with other countries, the system of private funding is quite liberal in Germany. Parties may receive donations from both natural and legal persons and there is no upper limit as to the amounts concerned. Some restrictions apply, however, under Section 25 PPA. Donations can be made in cash only up to 1000 Euro and political parties may not accept anonymous donations (including where they are obviously made through a third party) above 500 Euro in a given case. The donors' name must only be disclosed if a donation amounts to more than 10,000 euro.
46. Political parties may accept donations from companies – with the exclusion, however, of companies which are, entirely or in part, in public ownership or are managed or operated by

public agencies if the state's direct participation amounts to more than 25 per cent (Section 25 paragraph 2 no. 5 PPA).

47. Generally there are no restrictions imposed as regards acceptance of donations from companies which have been, or hope to be, awarded public contracts. However, a political party is barred from accepting a donation if it is "evidently made in the expectation of, or in return for, some specific financial or political advantage" (Section 25 paragraph 2 no. 7, PPA). Moreover, if donations by such companies are made to office holders, both the company and the office holder can be liable to criminal prosecution on corruption charges (Sections 331 *et seqq.* of the Criminal Code).
48. Donations from foreign persons/entities are subject to strict limitations under Section 25 paragraph 2 no. 3, PPA.
49. Political parties may not accept donations from public corporate entities, parliamentary parties and groups, political foundations and non-profit corporate entities (Section 25 paragraph 2 nos. 1 and 2 of the PPA). In addition, parties may not accept donations made to professional organisations with the proviso that the latter shall remit the donations to a political party (Section 25 paragraph 2 no. 4 of the PPA).
50. There are no limits with regard to the amount/size/periodicity of contributions a private contributor can make or which may be received by political parties/other entities/persons as described above. However, under Section 25 paragraph 3 of the PPA, large donations must be published. Donations and contributions paid by elected representatives/officials to a political party or to one or more of its regional/local branches to an amount exceeding 10,000 Euro per calendar year (accounting year) must, together with the donor's name and address and the total amount of the contribution, be listed in the statement of accounts. Single donations of more than 50,000 Euro must be reported immediately to the President of the German *Bundestag* (for publication with the donor's identity in *Bundestag* printed paper. If a party has failed to include donations in its statement of accounts in due form, it will be liable to pay twice the amount of the sum which, contrary to the provisions of the PPA, has not been disclosed.
51. Under Section 34g, 1<sup>st</sup> sentence, no. 1, of the Income Tax Act (*Einkommensteuergesetz - EStG*), up to 50 per cent of membership fees and donations („contributions“) paid, *inter alia*, to political parties are tax deductible up to the amount of 825 Euro (or 1,650 Euro for jointly assessed spouses). Contributions (to political parties) which exceed the deductible amount laid down in Section 34g no. 1 of the Income Tax Act may, under Section 10b paragraph 2 of the Income Tax Act, may be claimed as tax-exempt special expenses up to an amount of 1,650 € (or 3,300 euro for spouses).

#### Expenditures

52. Under Section 1 paragraph 4 of the PPA, political parties shall use their funds exclusively for the functions incumbent on them under the Basic Law and the PPA. Apart from this stipulation, there are – neither for elections nor day-to-day business - any other qualitative or quantitative restrictions as regards the expenditures of political parties or other persons/groups submitting nominations of candidates.

### III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

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

##### Books and accounts

53. The PPA contains detailed provisions governing accountability of political parties (sections 24 et seqq.). The statement of accounts consists of (1) an accountancy summary prepared on the basis of an income/expenditure tabulation complying with the provisions of the PPA, (2) a related asset and liability statement, and (3) an explanatory part. The statement of account must, in accordance with the principles of proper book-keeping and on the basis of the actual facts and circumstances, provide information on the source(s) and use of funds and on the party's assets (Section 24 paragraph 1 of the PPA). The generally applicable commercial law regulations governing the rendering of accounts, especially as regards the assessment and valuation of assets, are applied *mutatis mutandis* (Section 24 paragraph 2, PPA).
54. The statement of accounts must be submitted for the party as a whole and must include the statements of accounts of the national ("federal") branch and of the *Land* branches as well as the statements of accounts of the lower-level branches of each *Land* branch (Section 24 paragraph 3).
55. The PPA contains detailed provisions on the information to be provided in the income/expenditure statement and the assets and liability statement (cf. Section 24 paras. 4 to 7 of that Act). The extent to which information on assets is required is detailed in Section 24 paras. 6 and 7 and Section 28 of the PPA.
56. Under Section 26 of the PPA, income is defined as any financial or in-kind contribution received by a political party. Also, income is understood to include exemption from payment of liabilities arising customarily; payment by others for the organisation of events and activities explicitly aimed at canvassing for a political party; liquidation of reserve funds; and appreciation in value for capital assets. All items of income must be entered, with their full amount, in the appropriate place and must be included in the asset and liability statement. Non-monetary assets must be assessed at the prices usually to be paid in ordinary business transactions for identical or comparable goods or services. Voluntary work and services usually provided by party members free of charge do not count as income (Section 26 paragraph 4, PPA).
57. Under Section 24 paragraph 8 of the PPA, contributions made by natural persons shall be shown as a total amount in view of allowing computation of a party's contribution-based share in the assessment of the public funds to be allocated (cf. Section 18 paragraph 2 no. 3, PPA); contributions amounting to up to 3,300 euro per person and contributions of more than 3,300 euro per person, respectively, must be shown separately in the statement of accounts. Contributions totalling more than 10,000 euro in any one calendar year must be recorded, together with the donors' names and addresses and the total amount, in the statement of accounts. Single donations in excess of 50,000 euro must be reported at once to the President of the German *Bundestag* who will in a timely manner publish the donation, together with the donor's name, as a *Bundestag* printed paper. Non-compliance with these provisions renders a political party liable to pay twice the amount of the contribution that has not been published as prescribed (Section 31c paragraph 1, 2<sup>nd</sup> sentence, of the PPA); in certain cases, non-compliance may entail criminal liability as provided under Section 31d paragraph 1 no. 1 or 2 of the PPA.

58. Under Section 24 paragraph 6 no. 2 of the PPA, debits must be shown separately for reserve funds and liabilities.
59. Expenditures must be broken down by personnel-related expenditures and operating expenditures; the latter must be listed separately as expenditure on day-to-day business, general political work, election campaigns, asset management, and other interest earned (Section 24 paragraph 5, PPA). Additional provisions on expenditure accounting are contained in Section 26a of the PPA.
60. These accountability duties apply to political parties, including their legally independent or dependent sub-organisations, such as women's or youth associations. Accountability of other organisations, e.g. commercial enterprises owned by a political party, is governed by the general accountability regulations applying to the respective type of enterprise.
61. Donations to candidates may be assumed to be relatively rarely made since both the donor and the candidate and his/her party will prefer to have a contribution handled as a donation to the party for the following reasons: 1) a party will receive the contribution-based share of 0.38 euro for each euro received as a donation only for donations to the party, but not for donations to individual candidates; 2) the donor cannot claim the donation as tax-exempt because tax concessions are only granted for donations to political parties; 3) the candidate must report the donation as a gift to the appropriate revenue authority and pay the prescribed gift tax. Non compliance with this duty may entail liability for tax evasion.
62. Candidates who already are Members of the German *Bundestag* must, in accordance with the Code of Conduct for the Members of the German *Bundestag*, account for donations made to them for their political work.

#### Reporting obligations

63. Under Article 21 paragraph 1, 4<sup>th</sup> sentence, of the Basic Law, a political party must publicly account for the source(s) and use of its funds and on its assets. This constitutional stipulation is specified in Section 23 of the PPA (for detailed information, please see under point 14 above). Thus, a party must comply with its accountability obligation at the end of the calendar year, i.e. once a year, by submitting a statement of accounts.
64. In order to obtain public funds, parties must submit their (audited) statement of accounts by 30 September of the year following the accounting year; the time limit may be extended by up to three months (Section 19a paragraph 3, 1<sup>st</sup> and 2<sup>nd</sup> sentences). The GET was told that in practice, this additional deadline is applied frequently.
65. The special reporting duties of political parties as the recipients of donations made by a natural or legal person are as follows: 1) if a donation made by one donor exceeds 10,000 euro in any one calendar year, it must be recorded, together with the donor's name and the total amount of the donation, in the statement of accounts of the respective party (Section 25 paragraph 3, 1<sup>st</sup> sentence, of the PPA); 2) every party is required to prepare a statement of accounts and submit it to the President of the German *Bundestag* (Section 19a paragraph 3, 1<sup>st</sup> sentence, of the PPA). The President of the German *Bundestag* publishes the statements of accounts submitted by the parties as a *Bundestag* printed paper (Section 23 paragraph 2, 3<sup>rd</sup> sentence, of the PPA). *Bundestag* printed papers are also published on the Internet site of the German *Bundestag* so

that also the general public can, without any problems, access the parties' statements of accounts; 3) If a party receives a donation exceeding the amount of 50,000 euro, it is, in addition, required to report receipt of that donation to the President of the German *Bundestag* immediately. The President will then, in a timely manner, publish the donation, together with the donor's name and address, as a *Bundestag* printed paper (Section 25 paragraph 3, 2<sup>nd</sup> and 3<sup>rd</sup> sentences, of the PPA).

66. Political parties are not required to publish their financial records.
67. Financial backers of political parties are, for their part, not obliged to report any information on their donations; as a rule, however, they will have an interest in including their donations to parties in their tax return (please see under point 27 above). Parties are entitled to accept donations (Section 25 paragraph 1, 1<sup>st</sup> sentence, of the PPA). This means that they may, as a matter of principle, accept donations of an unlimited amount, both from natural and legal persons. Exclusions from the right to accept donations are conclusively listed in Section 25 paragraph 2 of the PPA.

#### Third parties

68. There are no rules on third parties and the way their possible election campaign activity and contributions should be taken into account in the context of party financing regulations; there is no need for campaign activities of third parties in Germany because of the central role and power of political parties, and the fact that these are already required to take into account all related entities in their consolidated accounts. Besides, given the absence of limits on campaign expenditures, parties are not incited to "externalise" part of the campaign activity in order to circumvent such limits.

#### Access to, and keeping of accounting records.

69. Accounting records, books, balance sheets and statements of accounts of political parties must be held for ten years. The retention period starts with the expiration of the accounting year (Section 24 paragraph 2, 2<sup>nd</sup> and 3<sup>rd</sup> sentences, of the PPA). Within the scope allowed under the Code of Criminal Procedure regarding rights of search, prosecuting authorities have access to the account books of political parties provided that there is an initial suspicion of an offence committed by a responsible party official (Section 102 of the Code of Criminal Procedure). Similar provisions apply to tax authorities under the Fiscal Code.
70. The President of the German *Bundestag* does not, as a matter of principle, have access to the account books of political parties. The President confines his/her verification to a review of the statement of accounts submitted by a party (Section 23 paragraph 3, PPA). However, if concrete evidence suggests the presence of incorrect data in a party's statement of accounts, a verification procedure may be initiated under certain circumstances as described in Section 23a paragraph 3 of the PPA; in that case, the party concerned must permit a certified auditor appointed by the President of the German *Bundestag* to access and inspect the records and supporting documents required for the audit.

#### Election campaigns

71. The PPA does not deal with election campaigns separately from the financing of political parties. As indicated earlier, candidates who have not yet held an office or a mandate are not subject to any book-keeping or accountability requirements. The *Länder* may legislate on matters not

covered by federal law, e.g. with regard to the funding of voters' associations or independent candidates in *Landtag* or local elections. In this respect, no further information was provided in the replies to the questionnaire nor available during the visit.

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

Auditing

72. Political parties are required both to carry out a) an internal audit before the presentation by the Executive Committee – at least every two years - of a general activity report (including the financial situation) to the members' assembly (party convention) (Section 9 paragraph 5 PPA); in this case, auditors are elected by the party convention; b) an external audit of the financial statements before their submission to the control by the President of the *Bundestag* (Section 23 paragraph 2 PPA). The role and scope of the external audit is specified in detail under Sections 29 to 31 PPA).
73. In principle, all parties must have their statement of accounts audited by one auditor. There are two exceptions: a) if a political party's income or assets in a given accounting year do not exceed 5,000 Euro, the party may submit an unaudited statement of accounts; b) the statement of accounts of parties not eligible for state-provided partial funding need not be audited by a certified auditor or an auditing firm but merely by a sworn accountant or an accountancy firm.
74. The external audit applies to the federal and *Länder*-level structures. Below that level, the auditor must take into account a minimum of 10 local entities. The duty of the auditor is to ascertain whether the party's financial statement reflects correctly the financial situation of the party on the basis of the information available. Parties must provide the certified auditor, or the auditing firm, with all clarifying information and documentary proof required for careful performance of the audit (Section 29 paragraph 2, PPA).
75. Section 31 of the PPA enumerates various measures to ensure the independence of auditors and sworn accountants from the political parties.

Monitoring

76. The President of the German *Bundestag* is the competent authority for fixing the rate of public funds to be allocated to an eligible political party (Section 19a paragraph 1, 1st sentence, of the PPA). Pursuant to Sections 23 paragraph 3 and paragraph 23a of the PPA, the President of the German *Bundestag* verifies compliance of the statements of accounts submitted by political parties with the provisions of Part V of the PPA (accountability). The President of the German *Bundestag* is also responsible for investigating and sanctioning infringements of the PPA.
77. The President of the German *Bundestag*, in the context of checking the financing of political parties, holds the status of an authority ("*Behörde*") as defined in Section 1 paragraph 4 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*), i.e. he/she performs functions of public administration. Decisions made by him/her within the scope of his/her responsibilities in this field may be reviewed in administrative court proceedings. The *Bundestag* President is not bound by instructions. There is no accountability required of the President of the German *Bundestag* him/herself. However, he/she is required to submit reports regarding the publication of the parties' statements of accounts and the development of party finances.

78. Organisational responsibility for party funding matters is assigned to the administration department of the German *Bundestag*. It is under the authority of the President of the German *Bundestag* on behalf of whom it performs the supervisory work. Substance-related responsibility lies with Directorate-General P (Parliament and MPs), its subordinate Directorate PM (mandate services) with the Directorate's Division PM 3 (party funding, *Land* parliaments). Division PM 3 has a total staff of 8 persons as follows: one head of division and two assistant heads of division (senior administrative service), one office manager (intermediate administrative service), two clerk officials in charge (clerical administrative service) and two typists. All staff members of this Division serve as civil servants or employees with the administration department of the *Bundestag*.
79. On behalf of the President of the German *Bundestag* they perform the control functions specified in the PPA. There are no specific provisions to ensure their statutory independence in daily work. Nevertheless, they are subject to a general Anti-Corruption Directive (*Korruptionsrichtlinie*). If there are indications suggesting an infringement of the PPA, other competent authorities, such as prosecuting authorities, may be involved and mutual administrative assistance may be initiated (Article 35 paragraph 1 of the Basic Law). The operating and personnel-related costs incurred for this activity are borne by the German *Bundestag*.
80. If concrete evidence is available to the President of the *Bundestag* that any information contained in a party's statement of accounts is incorrect, he/she will give that party an opportunity to comment (Section 23a paragraph 2, 1<sup>st</sup> sentence, of the PPA). The President may require the party to have the correctness of its comments confirmed by its certified auditor or any other persons authorised under the Act to carry out an audit. If the party's comments do not disprove the aforementioned concrete evidence regarding incorrect data, the President may, in agreement with the party concerned, commission a certified auditor of his/her choice to verify compliance of the party's statement of accounts with the relevant provisions of the PPA (Section 23a paragraph 3, PPA). If the evidence is confirmed, the President of the German *Bundestag* will, by an administrative act, lay down the sanction to be imposed on the party concerned.
81. There is no separate reporting obligation of the President of the German *Bundestag* as regards the procedure initiated in case of any infringement of the provisions of the PPA. He/she may initiate an inquiry into any possible violation of that Act on the basis of any previous investigations by prosecuting authorities, press reports on circumstances arousing suspicion, or a hint given by a citizen.
82. The President of the German *Bundestag* publishes the statements of accounts submitted by political parties as *Bundestag* printed papers pursuant to Section 23 paragraph 2, 3<sup>rd</sup> sentence, of the PPA. Statements of accounts submitted by a party in unaudited form may be made public by the President of the German *Bundestag* (PPA, Section 23 paragraph 2, 5<sup>th</sup> sentence, in conjunction with the 4<sup>th</sup> sentence). With regard to the development of the parties' finances and their statements of accounts, the President of the German *Bundestag* is required to report to the German *Bundestag* every two years. In addition, the President is required to prepare short annual comparative overviews of the parties' income and expenditure and their assets. These reports are all circulated as *Bundestag* printed papers (Section 23 paragraph 4, PPA).

### Statistics

83. In the period 1996 - 31 December 2008, a total number of 292 proceedings regarding infringements of the PPA were carried out. The replies to the questionnaire provided no further information (e.g. about the type of infringements, the entities involved, the status and outcome of



proceedings etc.). The German authorities explained after the visit that no figures are available with regard to the frequency of particular infringements of the Political Parties Act (PPA) or the amount of money involved and that such statistics would in any case be of only limited informative value in view of the legal changes which were introduced in 2002 and 2004.

#### Supervision in the context of election campaigns

84. As indicated earlier, the PPA does not deal with election campaigns separately from the financing of political parties and there is thus no specific mechanism applicable at federal level for the control of the financing of election campaigns which would be conducted by independent candidates. The *Länder* may legislate on matters not covered by federal law, e.g. with regard to the funding of voters' associations or independent candidates in *Landtag* or local elections. No further information was provided in the replies to the questionnaire nor available during the visit.

#### **(iii) Sanctions**

##### Party financing

85. Under the PPA, failure to submit a statement of accounts within the set time limit or submission of an inaccurate statement of accounts may entail financial consequences and sanctions and, in certain circumstances, even criminal law sanctions.
86. Under Section 19a paragraph 3 and paragraph 4 of the PPA, if a party eligible for public funding fails to submit its statement of accounts within the set time limit, it definitely forfeits its entitlement to the periodic share of public funds. If a party fails to submit its statement of accounts by 31 December of the year following the year of entitlement, it will definitely forfeit its entitlement to public funding for the year of entitlement.
87. Chapter 6 of the PPA deals with various infringements and the corresponding applicable sanctions. Some measures, of an administrative nature, are applicable to the parties as legal entities (Sections 31a to 31c). Others, which can only be imposed on natural persons, are criminal (Section 31d, which was introduced in 2004).
88. If contributions and donations were untruthfully stated in the statement of accounts and, as a result, the amount of public funds to be allotted to the party concerned was wrongly fixed, such public funds must be reimbursed if their disbursement was unjustified (Section 31a, PPA).
89. If, in the course of the verification of a statement of accounts, the President of the German *Bundestag* detects incorrect data in the statement, the party is liable to pay twice the amount of the wrongly stated sum (Section 31b of the PPA). If incorrect data in the asset and liability statement or in the explanatory part refer to the party's real estate or participations in companies, the party's liability amounts to 10 per cent of the value of the assets not included or listed inaccurately. If a party becomes aware of any incorrect data in a statement of accounts already submitted by it, it can avoid the aforementioned legal consequences if the following conditions are met: a) the inaccuracy in the statement of accounts must be notified, in writing, immediately after its detection to the President of the German *Bundestag*; b) there should be no concrete information suggesting that such incorrect data was publicly known, that they came to the knowledge of the President of the German *Bundestag* or came to be known in the course of any other official proceedings; c) finally, the party is required to fully disclose and correct the relevant facts and figures (Section 23b, PPA).

90. If a party, in violation of its obligation under Section 25 paragraph 3 of the PPA, has failed to give, in its statement of accounts, information on donations and contributions by elected representatives, that amount to more than 10.000 Euro per calendar year, on the contributor's/donor's name and address and the total amount of the contribution/donation received, the party is liable to pay twice the amount of the unpublished sum of money (Section 31c PPA).
91. In the case of a donation that may not be accepted under Section 25 paragraph 2 of the PPA<sup>5</sup>, the receiving party is required to remit that donation to the President of the German *Bundestag* immediately or, at the latest, at the time of submission of its statement of accounts for the year in question (Section 25 paragraph 4, PPA). If the party does not comply with this obligation, it will be liable to pay three times the amount of the illegally obtained money; donations already turned over will be deducted from the payable amount (Section 31c of the PPA). By an administrative act, the President of the German *Bundestag* determines the party's obligation to pay the respective amount. The President of the German *Bundestag* does not have to report separately on the sanctioning procedure carried out by him/her under Sections 31b and 31c of the PPA.
92. The President of the German *Bundestag* imposes sanctions provided under the PPA as regards incorrect data in a statement of accounts, non-compliance with the obligation to publish donations received, and violation of the legal prohibitions regarding acceptance of donations. The notice on the sanctions to be imposed, which is issued by the *Bundestag* President at the conclusion of an administrative procedure specifically initiated by him/her in each case, ranks as an administrative act and is subject to full administrative court supervision. No provision has been made for a protest procedure prior to court proceedings. Rather, a political party wishing to oppose a sanction imposed by the President of the German *Bundestag* would have to bring an action against the imposition of the sanction directly before an administrative court. The addressee of a notice on sanctions issued by the President of the German *Bundestag* is the political party concerned. If a party is established at the national ("federal") level, the notice will accordingly be addressed to the party's national Executive Committee. In the case of a party organised only at the *Land* level, the addressee will be the respective *Land* Executive Committee. Individuals are not held liable under the PPA.
93. This does not affect any criminal liability of a natural person under the penal provision of Section 31d of the PPA or on the basis of general criminal law provisions, for instance

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<sup>5</sup> "1) donations from public corporations, parliamentary parties and groups and from parliamentary groups of municipal councils (local assemblies); 2) donations from political foundations, corporate entities, associations of persons and from estates which under the statutes, the foundation charter or other dispositions governing the constitution of such entities, and by the actual business conducted by such entities, are exclusively and directly intended for non-profit, charitable or church purposes (Sections 51 to 68 of the Internal Revenue Code [German Fiscal Code]); 3) donations from sources outside the territorial scope of this Act unless: a) these donations accrue directly to a political party from the assets of a German as defined by the Basic Law, of a citizen of the European Union, or of a business enterprise, of whose shares more than 50 per cent are owned by Germans as defined by the Basic Law or by a citizen of the European Union or whose registered office is located in a Member State of the European Union; b) they are donations transferred to parties of national minorities in their traditional settlement areas from countries which are adjacent to the Federal Republic of Germany and where members of their ethnic group live; or c) it is a donation not exceeding 1,000 euro made by a foreigner; 4) donations from professional organisations, which were made to the latter subject to the proviso that such funds be passed on to a political party; 5) donations from enterprises that are fully or partly in public ownership or are managed or operated by public agencies if the state's direct participation amounts to more than 25 percent; 6) any donations exceeding 1,000 euro each, which are made by an unidentified donor or which evidently are passed on as a donation by third parties not named; 7) donations which are evidently made in the expectation of, or in return for, some specific economic or political advantage; 8) donations solicited by a third party against a fee to be paid by the political party and amounting to more than 25 per cent of the value of the solicited donation."

Section 263 of the Criminal Code (fraud) or Section 266 of the Criminal Code (breach of trust). As regards Section 31d, a sanction of imprisonment up to three years or a fine may be imposed on whoever with the intent of concealing the origin of a party's funds or assets or to avoid the publication of accounts a) causes inaccuracies in the data of a party or submits an inaccurate statement of account to the President of the Bundestag; b) as a recipient, divides a donation into partial amounts; c) does not remit a donation to the competent persons of the party. The same penalties are applicable to auditors in case of a false audit report about the parties' accounts (higher sanctions are provided in some cases such as if the offender acts against payment).

94. Disqualification from holding public or elected office, including taking part in elections, is not provided directly for any offence under the PPA but in case of a criminal offence, it can be applied: a) automatically for any serious criminal offence sanctioned by the judge with at least one year imprisonment (Section 45 CC); b) optionally for certain criminal offences such as breach of state secret, treason, hindering elections, use of violence against voters, and certain bribery offences (bribery of voters under Section 108b CC, active and passive bribery of members of parliament under Section 108e CC, passive bribery of public officials under Section 332 CC).

#### Statistics

95. The replies to the questionnaire indicated that no statistical information is available about the sanctions imposed in practice, although as indicated earlier, 292 proceedings regarding infringements of the PPA were carried out.

#### Immunities

96. The general immunities from prosecution were examined in the [First Evaluation Round Report on Germany](#) from 2002. Under Article 46 paragraph 2 of the Basic Law, Members of the *Bundestag* enjoy immunity from criminal prosecution (similar rules apply to members of the 16 *Landtage*). Criminal prosecution may, in principle, be instituted only with the authorisation of the German *Bundestag*. In this respect, however, mention should be made of the *Bundestag's* policy resolution, which has been renewed for the current legislative period, according to which criminal investigation proceedings will be allowed in cases other than political defamation and only must be notified beforehand to the President of the German *Bundestag*. The German authorities stressed that the policy resolution passed by the *Bundestag* and the "Principles to apply in immunity matters" (*Grundsätze in Immunitätsangelegenheiten*) adopted by the Immunity Committee of the *Bundestag* and included, as Annex 6, in the *Bundestag* Rules of Procedure are a clear indication of the fact that immunity provisions must essentially be seen as a formality rooted in tradition and are not intended to function as an obstacle to criminal prosecution.

#### Statute of limitation

97. Under the regulations governing recovery of public funds and/or penalties to be paid for inaccurate statements of accounts, legal consequences may not be imposed after a period of ten years following expiration of the respective accounting year (Section 31a paragraph 2 PPA, in conjunction with Section 24 paragraph 2 and Section 31b, 4<sup>th</sup> sentence; Section 31c paragraph 1, 4<sup>th</sup> sentence PPA). The statute of limitation in respect of criminal offences is governed by the general regulations of the Criminal Code; for offences listed in Section 31d of the PPA, it is five years (Section 78 paragraph 3 CC).

## Election campaigns

98. The PPA does not deal with election campaigns separately from the financing of political parties. The *Länder* may legislate on matters not covered by federal law, e.g. with regard to the funding of voters associations or independent candidates in *Landtag* or local elections. No further information was provided in the replies to the questionnaire nor available during the visit.

## **IV. ANALYSIS**

### In general

99. The German legislation on political financing, the Political Parties Act (PPA) of 1967, presents at least five undeniable qualities : it is one of the oldest regulatory frameworks in this area on the European continent ; it has deep constitutional roots which owes much to the jurisprudence of the Constitutional Court; it puts strong emphasis on the transparency of the political parties' resources ; it has contributed to an intelligent balance between private and public funding of the political formations so that the latter do not rely solely on state support (see paragraph 39); it has instituted a consolidation of political party accounts which, in comparison with other GRECO members' legislation examined until now, is very detailed and unique enough to be underlined.
100. Like in other countries, financial-political scandals have emerged at regular intervals: Flick case in the 1980s, Kohl case in the 1990s, corrupt dealings more recently at local level in Cologne, Hamburg, Wuppertal and the dissimulation of certain forms of income in the accounts of political parties. This shows that total transparency is difficult to achieve and that the supervision in place in Germany does not always succeed in uncovering illegitimate funding sources. The evaluation carried out by the GET in the period of 10 to 12 June has allowed, in the light of *Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns* to identify certain gaps in respect of the three areas under review, namely the transparency of accounts, the monitoring of compliance with legislation and the adequacy and effectiveness of sanctions. To a larger extent than the GET would have liked, the analysis lacks elements from the practice due to limited information available from the central actor in this field, namely the *Bundestag* in its supervisory function.

### Transparency

101. Under the Constitution, political parties have a central role in the German democracy. This is one of the reasons why the Political Parties Act (PPA) has opted to address political parties exclusively; this choice has been confirmed on several occasions since then, for instance by the Constitutional Court. Given certain developments that occurred in recent years and the fact that parties do not have the full monopoly of the presentation of candidates anymore, this approach raises certain questions. The first question concerns the absence in German legislation of any legal requirements for the transparency (and control) of the funding of independent candidates. Because of the traditional prevalence of parties in German political life, the participation of such candidates has been marginal up until now at federal level<sup>6</sup>. The German authorities stressed that the situation is not much different at regional and/or local level and the very few isolated candidates concerned would display a rather low level of professionalism or would in fact become part of an association of voters (see below). The GET accepts that given these specific

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<sup>6</sup> According to the information available to the GET, the last time independent candidates ran successfully for elections to the Bundestag was in 1949 (the last noticeable attempt by an independent candidate to enter the Bundestag failed in 1969). At the time of the on-site visit, two members of the Bundestag were not affiliated with any political party; but the persons concerned were in fact deputies who had left their party after they had been elected.

circumstances, it may not be necessary to provide for a legal framework applicable specifically to such independent candidates.

102. The second question is whether all political organisations participating in election campaigns are subjected to the Political Parties Act. The time when political life was driven by four or five well established parties (CDU, SPD, FDP, CSU, Greens) belongs to the past. Not only did new parties appear on the political scene at federal level, but associations of voters (“*Wählergemeinschaften*”, “*Wählervereinigungen*”) are at present competing with the parties and do present candidates for the regional, European Parliament and communal elections (notably in Bavaria). The federal authorities indicated to the GET that the number of such associations was unknown. Politically, associations of voters are trying to differentiate themselves from the classical parties (their programme is often based on a particular political, social, environmental issue), whereas they contribute to the formation of political will and fulfill the criteria of the Constitution (article 21). Legally speaking, their position in respect of the PPA is ambiguous (except for their participation in European elections<sup>7</sup>): either they are subject to this law and present for control by the *Bundestag* their annual statement of accounts – in which case they may be entitled to receiving state support; or they do not submit such statements and remain outside the scope of the law. In the Land of Thuringia, for instance, one such grouping could not receive any funding since it had not submitted its financial statements. The GET was advised that besides the criteria of participation in elections (see paragraph 12), it is very much left to individual state bodies to decide whether a group is a party or not and this would partly depend on whether the group presents itself as a party or not during contacts with the state institutions. The situation is made even more complex by the fact that donations to these associations are handled from the point of view of tax regulations, in the same way as donations to political parties. Furthermore, the legislation on elections to the regional parliaments and municipal elections falls within the competence of the *Länder*; it may not be the same in all of them. If there was an agreement that these associations of voters participate in the formation of political will to the same extent as the parties in the strict sense, clarification would be required to the effect that these groups are subject to similar rules on transparency. The Federal Constitutional Court has confirmed on multiple occasions the principle of equality of chances in the political competition; in addition, the federal constitution imposes a duty of transparency. Therefore, associations of voters should in principle be placed on an equal footing with political parties proper. The GET therefore recommends **to invite the *Länder* to subject associations of voters (*Wählervereinigungen*) which participate in political life not only at local level, to the rules applicable to political parties as regards transparency requirements, the supervision of accounts and sanctions for violation of the applicable rules.**
103. Since 1994, public funding of political parties is not limited to the financing of their campaigns as it was the case in the past. But given the lack of a definition of the duration of campaigns, the fact that political parties do not publish separately campaign accounts and the difficulty for political parties to distinguish in their annual accounts financial movements related to regular activities from income and expenditures related to campaigning, it seems particularly difficult to get a picture of electoral expenditures incurred by the major formations, even a rough one. The annual accounts of political parties are published by the *Bundestag* as printed documents as well as on-line once they have been examined and formally approved. For that purpose, parties must submit their financial report by the 30<sup>th</sup> of September of the year following the one of the financial year under consideration. This period can be extended by an additional 3 months, which happens

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<sup>7</sup> Associations of voters participating in European Elections who according to the final election result have obtained at least 0.5 % of the valid votes cast in the electoral area shall be granted 0.70 Euro per year for every valid vote obtained. The provisions of the Political Parties Act concerning the obligation to publicly render and audit accounts shall apply as appropriate. (Section 28 paragraph 2 European Elections Act).

frequently in practice. When adding these deadlines to the time needed for the *Bundestag* administration to carry its control functions, the information is available publicly after a period of about two years after an election. This means that society at large has no real possibility to exert any form of social control. The GET discussed this issue at length during the on-site visit. It was told that only a couple of parties would publish on-line and on their own initiative, a provisional version of the annual accounts as soon as they are available. Different opinions were expressed about the possibility of shortening the deadlines, publishing possible campaign accounts separately and in real time etc. The GET believes that the current arrangements are clearly inadequate to ensure a satisfactory level of transparency of campaign financing, as promoted in the Recommendation of 2003. Besides, as mentioned above, there are no arrangements at all applicable to associations of voters campaigning for elections, including at the level of the *Länder* and local level; this would require the adoption of provisions at regional level and the GET believes this should be seen as a minimum requirement for the transparency of political financing, notwithstanding the recommendation made at paragraph 102 in respect of the general situation of associations of voters. The GET recommends **i) to introduce a system for the publication of election campaign accounts at federal level, which would make the information available shortly after election campaigns; ii) to invite the *Länder* to adopt similar measures that would be applicable to associations of voters participating in elections to *Länder* parliaments and at local level.**

104. The GET noted that, in addition, the only possible financial campaign information published immediately by the *Bundestag* appears to be of a marginal use since it contains only donors whose contribution to parties exceeds a 50,000 Euro threshold; not only is this figure excessively high in itself, but the GET strongly believes that it is inadequate to ensure a sufficient level of transparency in the funding of political activities at local level, where the political and economic sphere are closer to each other and where interactions can be influenced with amounts lower than the aforementioned 50,000 Euro. Most other countries in Europe have set the threshold for the public disclosure of donors at much lower levels. The GET found that for similar reasons the other thresholds are also quite high: only donors who make contributions above 500 Euro need to be identified and their identity must only be disclosed (in the financial statements subjected to control) if the donation amounts to more than 10,000 Euro (aggregated amount over a period of one year). The GET recommends **i) to lower the 50,000 Euro threshold for the immediate reporting and disclosure, under the Political Parties Act, of donations made to political parties; ii) to put a ban on anonymous donations and iii) to consider reducing significantly the threshold for the disclosure of donations and donors.**
105. The splitting of donations is the most traditional way, under any domestic legislation, to circumvent the rules on transparency and Germany is certainly no exception. Of greater importance is the issue of donations made directly to candidates and elected members of parliament. The German system in place being focused on political parties, there are little opportunities for independent candidates to participate in election campaigns. But in any event, nothing prevents a candidate presented by his/her party or an elected member of parliament from receiving financial support from private donors. Direct donations to candidates who are not members of the *Bundestag* are not addressed by the PPA at all. As far as donations to *Bundestag* members are concerned, these are regulated in Sections 4 et seqq. of the Code of Conduct annexed to the Rules of Procedure of the *Bundestag* (see above, paragraph 32). There is thus a distortion in the legal treatment of candidates who are newcomers and parliamentarians standing again for an election. The GET noted that it is left to the parliamentarian to decide to transfer or not to his/her political party donations received since Section 25 paragraph 1 PPA is not applicable (nor is there an offence in this respect). The rules applicable are rather loose, if one compares these with the ones applicable to political parties under the PPA: the Code of

Conduct is just an annex to a text of regulatory nature, parliamentarians are required to keep a record of donations but all donations can be made in cash and the threshold for donor identification (5 000 Euro) is much higher than in the PPA, the sanction mechanism provided under Section 8 of the Code of Conduct is drafted in rather general terms when compared with Sections 31c and 31d PPA etc. In terms of transparency of financing, the GET concluded that there seems to be a marked imbalance between the strict provisions applicable to political parties under the PPA on the one hand, and those applicable to candidates and elected officials on the other hand; this is likely to affect the efficiency of the PPA. Besides, one needs to bear in mind that corruption of members of public assemblies is criminalised only to a very limited extent (see the first part of this report, on the topic of incriminations). Either Germany applies the initial logic of the legislation where parties are the interlocutor of potential donors - in which case parties would centralise all donations and candidates and parliamentarians would not be entitled to handle donations, subject to strict provisions; or, if one accepts that donations can be made to candidates and parliamentarians, strict regulations and precise sanctions would need to apply (see also paragraph 102 above). The GET therefore recommends **to prohibit donations to parliamentarians and candidates who are members of political parties or, alternatively, to subject them to requirements for record keeping and disclosure similar to those applicable to political parties.**

106. Question marks remain as regards the financial relations between the political parties on the one hand, and foundations (*Stiftungen*) and parliamentary groups on the other. The foundations related to political parties constitute another specificity of the German political system since one of them was established as early as in 1925 and since the main parties all have foundations which are financed mainly with public support (about 95 million Euros per year altogether). According to a decision of the Federal Constitutional Court rendered on 14 July 1986, foundations are to be considered as organisations independent from the political parties. Nevertheless, the proximity of their activities with those conducted by political parties sometimes makes difficult in practice the total separation between these two types of entities, claimed in the constitutional jurisprudence.
107. Parliamentary groups, just like political foundations, are considered to be economically powerful. Article 25 of the PPA prohibits political parties to receive donations from parliamentary groups. However, the GET noted that it is not uncommon that party presidents are at the same time presidents of parliamentary groups at federal or regional level (Rhineland-Palatinate) and that parties and political groups do organise events jointly, which affects in practice the principle of separation. Less visible relations also exist in various forms<sup>8</sup> and the GET was advised that until now, no way had been found on how to cope with these links at the level of the *Bundestag*, the Courts of accounts and other state institutions. The GET was sent, after the visit, a partial overview of cases handled in recent years by the administration of the *Bundestag*. A majority of these involved prohibited or at least questionable financial links between parties and the parliamentary groups or foundations.
108. If one adds to the above that subsidies and other forms of aid are also available to certain party entities at federal or regional level (for instance the subsidies given to youth groups or movements, which are not to be included in the calculation of the maximum upper limit of state support to political parties - 133 million Euro), it appears that the global amount of 117 million Euro allocated to them (for the year 2009) reflects only partly the reality of federal public support. This partial overview illustrates the clear need for a compilation of the various forms of state

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<sup>8</sup> The following phenomena have been observed: groups giving contracts to business entities of the parties or granting loans at advantageous conditions to the parties and which sometimes reach the end of the annual financial exercise with inexplicable, excessive debts or credits.

support to political parties at federal and regional level; this need was expressed on various occasions during the interviews. It is therefore recommended **i) to develop a more global approach of party financing in Germany by presenting in an official document the various forms of state support effectively granted or available; ii) to initiate consultations about the additional measures needed to better ensure the strict separation, under the law, of the financing of political parties on the one hand, and foundations and parliamentary groups on the other hand.**

109. Sponsoring (i.e. a business or other entity bearing costs related to certain political activities, in exchange for some form of publicity) is another problematic area. Interviews held on-site showed that support to political parties in the form of sponsoring is quite substantial, and increasingly important according to certain interlocutors of the GET. From the point of view of taxation, expenses related to sponsoring are not apprehended as donations but as (deductible) publicity expenditures, whereas they are recorded as donations in the accounts of political parties. Moreover, Section 25 paragraph 7 of the PPA prohibits donations made with the obvious expectation of a political or economic advantage in return. This very general provision is ambiguous since the expression « obvious » can be subject to variable interpretation. Various interlocutors admitted that sponsoring does imply something in return (which is typically laid down in an agreement). Therefore, it is likely that this form of support cannot fulfil entirely the requirements of Section 25 paragraph 7 of the PPA, and that it does not, ultimately, comply with the law. Since nothing can prevent a business entity from making a donation and to participate in tenders with a state body, Section 25 paragraph 7 of the PPA loses much of its practical significance. Finally, it was not entirely clear to the GET which provisions of the PPA apply to support in the form of sponsoring: a) the rules on donations in the strict sense (« *Spenden* ») under Section 25 (in combination with the definitions of Section 26 and the specific criminal sanctions applicable in case of non compliance with this Section); b) or those on other forms of party income under Section 26 (where sponsoring is explicitly described, but which would entail administrative sanctions). The PPA has the advantage of addressing many specific issues, but there is obvious room for improving the clarity of certain provisions; given the great practical importance of sponsoring in Germany, the GET recommends **to clarify the conditions under which sponsoring for the benefit of political parties is permissible, as well as the applicable legal, accounting and fiscal regime.**

### Supervision

110. Two main actors are involved in the supervision of party accounts: auditors and an administrative unit of the Bundestag (acting on behalf of the President of the Bundestag).
111. Auditors are required to audit the accounts of the party structures at federal and Länder level, at least of those parties which fulfil the requirements for auditing (turnover of 5000 Euro or more and receipt of state support). The audit report is communicated to the President of the *Bundestag* together with the financial statements of the party and also published by the *Bundestag*. Auditors are freely chosen by the parties and there are no disqualification rules as regards membership in the party. Nevertheless, Article 31 of the PPA contains various rules to ensure the strict independence of auditors including the incompatibility with the exercise of accountancy work and other responsibilities within the party or one of its structures, and auditors are subject to criminal liability under the PPA (3 years imprisonment or a fine under Section 31d paragraph 2) in case they have deliberately altered the reliability or accuracy of their report. Auditors are also supervised themselves by a professional body, the Institute of Auditors (*IDW*). They are furthermore required, as in the case of other countries, to apply due diligence and to report to the Financial Intelligence Unit (via the *IDW*) possible money laundering facts they may come across



in the course of their activities, in accordance with the Act on the Detection of Proceeds from Serious Crimes (Money Laundering Act, version as of August 2008). As far as the GET could see from the publication of financial statements for the year 2007, the auditors' observations sometimes include references to inaccuracies and other problems (statements not available at the level of local structures etc.). Interlocutors of the GET generally expressed satisfaction with the guarantees of independence but more could still be done, for instance by introducing a system of rotation after a few years since auditors may be subject to certain "comfortable" routines. Of particular concern to the GET was the fact that although local party structures are to be taken into account by the auditors, the 2007 statements showed that auditors do not go much beyond the sample of at least 10 local sections that the PPA determines and which are to be chosen by the auditors themselves: although the biggest political parties, represented in the Bundestag, sometimes have a very large number of local sections (up to 10,000), the fact that only 10 to 13 local sections per party have been included by the auditors raises certain questions. Besides, there are inevitable risks inherent to proximity between donors and parties at local level. The German authorities might thus wish to review this situation and to consider the advisability of enlarging the sample of local sections included for the audit of large parties without this delaying further the submission and control of accounts. At the same time, it is obvious that the amount of information subject to audit is significant. It is likely that the involvement of a second auditor would make the exercise less time-consuming and a "four eyes" control involving an additional auditor (from another company) would also offer additional guarantees. The GET therefore recommends **to strengthen the independence of the external audit of the parties' financial statements, for instance by introducing a reasonable degree of rotation or by appointing a second auditor from a different company.**

112. The President of the *Bundestag* is responsible for the supervision of the accounts of political parties and to this effect, was given the role and powers of an administrative authority. In practice, the work is performed by a specific unit (Division PM 3) of the parliament. It is also this unit which publishes the parties' consolidated annual accounts as Bundestag printed papers and on the Internet (where the reports are available from 1983 onwards). The staff of the administrative control unit of the Bundestag counts 8 persons only (9 at the time of the on-site visit). They come from the general pool of staff of the *Bundestag* and there are no special requirements as to their background (they may, however, attend in-house training in such areas as accountancy) whereas article 15 of the Recommendation of 2003 advocates the appointment of a body with specialised control staff. These civil servants have no access to the original accounting documents of the political parties and they cannot carry out controls directly: during the various steps of their work, they must use auditors (chosen by them) to perform specific checks. For serious deficiencies requiring a proper investigation, the unit of the *Bundestag* can forward the case to the prosecution authorities; this was done for instance in respect of the accounts of the *Nationaldemokratische Partei Deutschlands - NPD* in 2008 (this party had refused repeatedly to submit audited accounts). With the little legal and other means available, one may wonder how the members of the unit can obtain the evidence needed to initiate any proceedings and to impose a sanction. The GET was advised that the unit uses often tips and information from the public and the parties themselves, but it would help if other sources of information were available, like for instance the tax authorities (see also paragraph 116 below). Moreover, although the PPA requires that in-kind donations are to be assessed on the basis of an equivalent market value, the control unit has no specific reference tool to value in-kind donations.
113. The transfer of the Head of the control unit at the end of 2008 to another service has generated controversies in the media which perceived this as an issue for the independence of the *Bundestag's* control activity in the area of party financing. The GET also noted at the time of the

visit that the *Bundestag*, since 2002, had not published any report of activity on its supervision work, although this is a requirement under the PPA; a report covering the years 2002-2007 was released afterwards, at the end of October 2009. The GET was told during the visit that the lack of means was the reason for the absence of annual activity reports during those years.

114. The above circumstances have led the GET to question the adequacy of the control by the *Bundestag*, in the light of Article 14 of the Recommendation. During the on-site discussions, various ideas were formulated as to how to reform the system in place. It was suggested to transfer the control function to a special commission or to the Federal Court of Accounts. The latter can already avail itself of the experience gathered in the supervision (under Section 21 of the PPA) over the allocation of public aid by the parliament, even though this supervision is mostly formalistic in practice. Besides, the Federal Court of Accounts (and its counterparts in the *Länder*) is also already involved in the control of the *Bundestag* and the *Länder* parliaments (and thus, indirectly, in the use of public funds by the parliamentary groups). A reform in this direction would have the advantage of not requiring a constitutional amendment. In the view of the above, and although there are three different types of actors involved directly or indirectly in the supervision of political financing, the GET recommends **to ensure that the body to which the supervision of party financing is attributed, enjoys a sufficient degree of independence and is equipped with proper means of control, adequate staffing and appropriate expertise.**

#### Other bodies and cooperation between bodies

115. The Federal Court of Accounts is not entitled to exert any form of direct control in respect of political parties and parliamentary groups. The latter are in principle subject to controls by the (federal or regional) parliaments and the federal or regional court intervene ultimately to assess the level of financial discipline and control over the use of public funds by the parliaments. Nevertheless, the Federal Court of Accounts seems well aware of illegitimate practices as regards the links between political parties and parliamentary groups and it has occasionally criticised the *Bundestag* for the lack of control over the allocation of funds.
116. Tax authorities appear to be in the possession of information that could be useful for the control work in the area of party and campaign financing. They have another picture of the financial dimension and economic activities of political parties (which parties are free to conduct in Germany), as well as that of economic entities making donations to political parties. It remained unclear whether tax information can be accessed and used in the context of party financing supervision. What is clear, however, is the fact that no cooperation exists in practice between the *Bundestag* and the tax authorities. The German authorities may thus wish to consider the merits of introducing such a mechanism.

#### Sanctions

117. When looking for the first time at the provisions of Chapter 6 of the PPA, one might conclude that the various requirements of the Act are subject to financial and criminal sanctions in case of infringements and that the situation would be in conformity with the criteria of Article 16 of the Committee of Ministers' Recommendation of 2003. The sanction mechanism addresses several practical issues, including the liability of auditors and donors, and the splitting of donations to avoid the application of identification or immediate reporting requirements.
118. Several critical issues need highlighting. First of all, it is not entirely clear whether the refunding of public subsidies for parties, under Section 31a of the PPA, is applicable as a sanction or just

as a public finance corrective measure. The PPA does not spell out clearly whether an infringement, and which one, would lead to this measure and it seems that the provision is meant primarily to protect the interests of the state and the tax payer in case a subsidy was allocated unduly (because public subsidies are granted on the basis of the importance of donations received from natural persons). As regards the financial measures of Section 31c PPA, which provides for a penalty of two or three times the amount of an illegal donation, the applicability for infringements under Section 25 paragraph 1 PPA (i.e. accepting donations in cash above 1000 Euros; failing to register donations) is not foreseen. Section 31d PPA, which provides for criminal sanctions applicable to natural persons (as opposed to the parties as legal entities, under the provisions of Section 31c) seems to remedy this situation, but it still remains unclear whether accepting large amounts in cash is liable to penalties. In any event, it was not entirely clear to the GET to what extent criminal sanctions under this section (which were introduced in 2004) had actually been applied in practice. Therefore, it is difficult to conclude for the time being, that the sanctions provided for are effective and meet the criteria of Article 16 of the Recommendation although they contain important safeguards (e.g. liability of donors, prohibition of the structuring of donations) which should have found an application in the context of Germany. The GET recommends **i) to harmonise the sanctions for non compliance with the requirements of the Political Parties Act, and to address in this context the absence of sanctions for donations over 1000 Euro made in cash and; ii) to ensure that sanctions are applicable in case of non compliance with the requirements concerning the identification of donors.**

119. What is clear is that the provisions applicable to sanctions imposed on *Bundestag* members under Rule 4 of annex 1 to the *Bundestag's* rules of procedures do not meet the criteria of Article 16 of the Recommendation (no information was available about the application in practice). In the absence of a clearer enumeration of the infringements, one may even wonder whether they meet the requirements of Article 7 of the European Convention on Human Rights and Fundamental Freedoms as regards the legality of punishments (subject to this provision of the *Bundestag's* rules of procedures being treated equally to criminal sanctions). In the view of the above, the GET recommends **i) to clarify the possible infringements to the Code of Conduct appended to the Rules of Procedure of the Bundestag, as regards the regime of donations to parliamentarians; ii) to ensure that these infringements are subject to effective, proportionate and dissuasive sanctions.**
120. As indicated in the descriptive part of this report, ineligibility for up to five years can be imposed by the judge for certain offences of the Criminal Code (CC). This does not include, however, the criminal sanctions under Section 31d of the PPA (see above) although it is the only provision of this Act under which members of a party can be held responsible on an individual basis. The GET takes the view that the applicability of ineligibility to a broader range of offences, especially those which are relevant in the context of political financing, would give the applicable sanctions a greater dissuasive effect; besides, it would increase further the level of self-discipline in the context of party and campaign financing.
121. The GET was advised that in principle, any mistake or inaccuracy in the financial statements of political parties may trigger the application of sanctions, even obvious calculation mistakes or very minor incorrect data of a few Euro, a situation which was criticised during meetings with the political parties. It is perhaps for this reason that the PPA provides for a system of self correction by the political parties and to avoid that this facility is not misused, certain conditions have been provided for (the initiative must come spontaneously from the party itself and not result from the revelation of incorrect data in the media or during administrative or criminal inquiries or proceedings etc.). This being said, the PPA does not set a time limit for self-correction and (parties may thus correct their accounts after several months). The GET also received

confirmation that there are no rules nor a consistent practice as to whether a party can take back – for correction purposes – a statement of accounts already submitted (currently, the policy of the Bundestag is rather to refuse giving the statements back). The German authorities also confirmed that if self-correction in principle exempts the parties from sanctions and penalties, the provisions on infringements to the various bans on donations remain applicable. Besides, parties have in any event to return any financial advantage unduly obtained to the President of the Bundestag.

## V. CONCLUSIONS

122. Germany has opted for a liberal model of political financing. In return, there is much to be commended in the Political Parties Act, when it comes to party financing regulations: it requires a global consolidation of accounts to include all the territorial and other entities of the parties down to the lowest levels, including all economic entities; it introduces a clear separation between parties on the one hand, and parliamentary groups and political foundations on the other; it addresses such issues as in-kind donations, voluntary work and sponsoring. The Act also provides for a control mechanism and various sanctions which cover most possible infringements committed by the parties but also any physical person involved (donors, persons acting on behalf of beneficiaries and auditors). Until now, there has been no need to introduce specific regulations concerning the financing of election campaigns that would apply to independent candidates since political parties enjoy traditionally the quasi monopoly over the presentation of candidates. This being said, political life has evolved in recent years and German legislation needs to be adjusted in order to better deal with new realities connected with the participation of associations of voters. The increasing practice of sponsoring will also need to be re-examined. Furthermore, despite undeniable efforts to strengthen the transparency of political parties' financial activities, relevant financial information is available to the general public only with significant delays of up to two years. A great source of concern is the level of control exerted by the *Bundestag*, the Federal Parliament: it has limited means and powers to respond in a fully satisfactory manner to the tasks given to it by the Political Parties Act, and the independence of its control work has been questioned in the media. Moreover, there is an urgent need to review the situation of members of parliament as regards the financing of their political activity and to subject them to stricter rules concerning the receipt of support from private sources (especially given the current gaps in the criminalisation of corruption involving members of parliament).
123. In view of the above, GRECO addresses the following recommendations to Germany:
- i. **to invite the *Länder* to subject associations of voters (*Wählervereinigungen*) which participate in political life not only at local level, to the rules applicable to political parties as regards transparency requirements, the supervision of accounts and sanctions for violation of the applicable rules (paragraph 102);**
  - ii. **i) to introduce a system for the publication of election campaign accounts at federal level, which would make the information available shortly after election campaigns; ii) to invite the *Länder* to adopt similar measures that would be applicable to associations of voters participating in elections to *Länder* parliaments and at local level (paragraph 103);**
  - iii. **i) to lower the 50,000 Euro threshold for the immediate reporting and disclosure, under the Political Parties Act, of donations made to political parties; ii) to put a ban on anonymous donations and iii) to consider reducing significantly the threshold for the disclosure of donations and donors (paragraph 104);**

- iv. **to prohibit donations to parliamentarians and candidates who are members of political parties or, alternatively, to subject them to requirements for record keeping and disclosure similar to those applicable to political parties (paragraph 105);**
  - v. **i) to develop a more global approach of party financing in Germany by presenting in an official document the various forms of state support effectively granted or available; ii) to initiate consultations about the additional measures needed to better ensure the strict separation, under the law, of the financing of political parties on the one hand, and foundations and parliamentary groups on the other hand (paragraph 108);**
  - vi. **to clarify the conditions under which sponsoring for the benefit of political parties is permissible, as well as the applicable legal, accounting and fiscal regime (paragraph 109);**
  - vii. **to strengthen the independence of the external audit of the parties' financial statements, for instance by introducing a reasonable degree of rotation or by appointing a second auditor from a different company (paragraph 111);**
  - viii. **to ensure that the body to which the supervision of party financing is attributed, enjoys a sufficient degree of independence and is equipped with proper means of control, adequate staffing and appropriate expertise (paragraph 114);**
  - ix. **i) to harmonise the sanctions for non compliance with the requirements of the Political Parties Act, and to address in this context the absence of sanctions for donations over 1000 Euro made in cash and; ii) to ensure that sanctions are applicable in case of non compliance with the requirements concerning the identification of donors (paragraph 118);**
  - x. **i) to clarify the possible infringements to the Code of Conduct appended to the Rules of Procedure of the Bundestag, as regards the regime of donations to parliamentarians; ii) to ensure that these infringements are subject to effective, proportionate and dissuasive sanctions (paragraph 119).**
124. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the German authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2011.
125. Finally, GRECO invites the authorities of Germany 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.