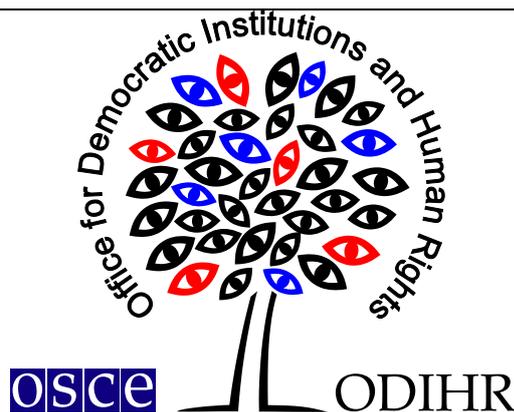


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## **OPINION ON LAWS REGULATING THE FUNDING OF POLITICAL PARTIES IN SPAIN**

**based on unofficial English translations of the Law on the Funding of Political Parties,  
the Law on the General Electoral Regime, as well as the Law on Political Parties**

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This Opinion is based on unofficial English translations of the laws submitted for review, which are annexed to this Opinion. Errors from translation may result. The Opinion is also available in Spanish. However, the English version remains the only official version of the document.

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### **Annex:**

**Law on the Funding of Political Parties of Spain ([excerpts] last amended in 2015)**

**Law on the General Electoral Regime of Spain ([excerpts] last amended in 2016)**

**Law on Political Parties of Spain (last amended in 2015)**

## **I. INTRODUCTION**

1. *On 18 May 2017, the President of the Committee for Auditing Democratic Quality, the Fight against Corruption and Institutional and Legal Reforms of the Congress of Deputies of Spain sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for legal review of the framework for financing political parties in Spain, namely, the Law on the Funding of Political Parties (hereinafter “the Political Party Funding Law”<sup>1</sup>), the Law on the General Electoral Regime (hereinafter “the Electoral Law”<sup>2</sup>) and the Law on Political Parties.<sup>3</sup>*
2. *On 6 June 2017, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of these laws with OSCE commitments and international standards. This Opinion was prepared in response to the above request.*

## **II. SCOPE OF REVIEW**

3. The scope of this Opinion covers only the legal framework of financing political parties in Spain, as covered by the Political Party Funding Law, the Electoral Law and the Law on Political Parties submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the regulation of political parties in Spain. As the financing of political parties is also influenced by other factors and by the choices made by the legislator in its regulation of political parties, this Opinion also mentions some of the afore-mentioned factors and makes recommendations on how to bring them in line with OSCE commitments, international obligations and other standards.
4. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, the Opinion focuses on those provisions that require improvements rather than on the positive aspects of the respective legislation under review. The ensuing recommendations are based on OSCE commitments, international obligations, standards and good practices related to political party regulation. The Opinion will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the respective legislation on women and men.<sup>4</sup>
5. This Opinion is based on an unofficial English translation of the laws submitted for review, which are attached to this document as an Annex. Errors from translation may result.
6. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not preclude the OSCE/ODIHR from formulating additional written or oral

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<sup>1</sup> Last amended in 2015.

<sup>2</sup> Last amended in 2016.

<sup>3</sup> Last amended in 2015.

<sup>4</sup> See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>.

recommendations or comments on the respective legal acts or related legislation of Spain that the OSCE/ODIHR may wish to make in the future.

### **III. EXECUTIVE SUMMARY**

7. At the outset, it is noted that the current legal framework of political party financing in Spain, especially following the latest round of legal reforms pertaining to the Political Party Funding Law, presents a significant improvement over earlier legislation and contains many positive additions. If adequately implemented, these additions will help contribute to fighting corruption, increasing transparency and leveling the playing field for political parties.
8. However, there remain areas of concern that should be enhanced in order to ensure that the relevant legislation effectively closes potential loopholes that could be used to circumvent regulations on party funding. Additionally, the balance between public and private funding could be reviewed and the legislator should ensure that the system of public funding of both statutory and campaign-related activities of political parties does not disproportionately favor larger, established parties to the detriment of smaller and/or new political parties. In some areas, the legislation could be rendered more accessible and contradictions and overlaps resulting from regulation of the same topic in different pieces of legislation should be eliminated.
9. More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the reviewed laws:
  - A. To make sure that the legal framework governing the financing of political parties is consistent and clear, in particular with regard to private donations, reporting deadlines and financial oversight; [pars 17, 34, 52, 59]
  - B. To consider reviewing the relevant legislation with a view to create an improved balance between public and private funding; [pars 18-21]
  - C. To ensure that bigger parties are not placed at a disproportional advantage in the allocation of public funding and other forms of public support; [pars 22-30]
  - D. To more strictly regulate the donation of real estate; [par 36]
  - E. To ensure that foundations and other entities linked to or dependent on political parties are covered by the same regulatory legislation and bound by those financial requirements that political parties must adhere to, as appropriate; [par 37- 40]
  - F. To require timely and accessible publication of campaign finance reports for an extended period of time; [par 55]
  - G. To ensure that infringements are efficiently sanctioned within their limitation period and that the Court of Audit has sufficient human and financial resources at its disposal to carry out investigations and initiate proceedings; [par 61]
  - H. To amend the Political Party Law to ensure that the Law allows dissolution of a political party only as a last resort in the gravest circumstances, which should be set out by law in a clear and precise manner; [pars 68-69] and
  - I. To consider mechanisms to link public funds to the advancement of the political participation of women and persons with disabilities [pars 70, 71].

*These and additional Recommendations, highlighted in bold, are also included in the text of the opinion.*

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. OSCE Commitments, International Obligations and Standards on Political Party Regulation and Political Party Financing**

10. This Opinion analyses the laws submitted for review with regard to their compatibility with international obligations and standards on the prevention of corruption in politics, political party and campaign financing, as well as with relevant OSCE commitments.
11. The regulation of political parties should be conducted in line with and should aim to enable the rights to freedom of association and expression, as well as to free elections. The right to free association in particular has been expressly extended to political parties by the European Court of Human Rights.<sup>5</sup> Article 22 of the International Covenant on Civil and Political Rights<sup>6</sup> (hereinafter “ICCPR”) and Article 11 of the European Convention on Human Rights<sup>7</sup> (hereinafter “ECHR”) protect the right to associate in political parties as part of the general freedom of assembly and association. Freedom of opinion (Article 19 of the ICCPR and Article 10 of the ECHR) is dependent upon free association in cases where individuals want to exercise their right to freedom of expression collectively via an association. As such, freedom of association at times helps ensure the collective exercise of other rights, such as the right to freedom of expression; at the same time, the latter also underpins other aspects of political participation, such as statements made by individual party members, or by candidates during election campaigns.
12. International standards pertaining to the financing of political parties and election campaigns are found in Article 7 par 3 of the United Nations (hereinafter “UN”) Convention against Corruption.<sup>8</sup> The right to free elections guaranteed by Article 3 of the First Protocol to the ECHR is also of relevance.<sup>9</sup>
13. This Opinion is further based on OSCE commitments, in particular the protection of the freedoms of association (1990 Copenhagen Document, par 9.3), of expression and opinion (1990 Copenhagen Document par. 9.1) and the conduct of elections (1990 Copenhagen Document, pars 5, 6, 7 and 8).<sup>10</sup>
14. In addition, other standards in this area can be found in the recommendations of the UN, the Council of Europe and the OSCE/ODIHR. At the UN level, these include General

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<sup>5</sup> *United Communist Party of Turkey and Others v. Turkey* (133/1996/752/951) (European Court of Human Rights, 30 January 1998), available at <http://hudoc.echr.coe.int/eng?i=001-58128>.

<sup>6</sup> International Covenant on Civil and Political Rights adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Covenant was ratified by Spain on 27 April 1977.

<sup>7</sup> The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, entered into force on 3 September 1953. Spain ratified the ECHR on 13 February 2008.

<sup>8</sup> UN Convention against Corruption, adopted on 31 October 2003, ratified by Spain on 19 June 2006, available at: [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf).

<sup>9</sup> Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms adopted on 20 March 1952, entered into force 18 May 1954. Spain ratified the Protocol on 27 November 1990.

<sup>10</sup> 1990 OSCE Copenhagen Document (29 June 1990) 29 ILM 1305, available at <http://www.osce.org/odihr/elections/14304?download=true>.

Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service.<sup>11</sup> Within the Council of Europe and OSCE areas, Council of Europe Committee of Ministers Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns,<sup>12</sup> as well as the Joint OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation set minimum guidelines with regard to the regulation of political parties in the area of funding and beyond.<sup>13</sup> Throughout the Opinion, reference will also be made to evaluation reports issued by the Council of Europe's Group of States against Corruption (GRECO),<sup>14</sup> and to previous opinions and reports issued by OSCE/ODIHR and the Venice Commission (either individually or jointly). Special reference is made to the OSCE/ODIHR's Election Assessment Mission Final Report of 20 December 2015 on the Parliamentary Elections of Spain.<sup>15</sup>

## **2. General Remarks**

15. The core role played by political finance in any democracy should not be underestimated. Political parties require resources for policy development, democratic outreach, and electoral campaigns. Without free competition among political entities, the democratic process is compromised. It is thus important to establish political party and campaign finance rules that are clear, equitable and enforceable. Developing such a comprehensive legislative framework presents numerous challenges, particularly as it requires balancing competing considerations in an ever-changing political environment. It will also require a significant amount of political will, as well as broad public consensus. While this Opinion only comments on enhancing the legislative framework, it emphasizes that for any legislation to achieve its intended purpose, this legislation must be effectively implemented.
16. From the outset, it should be noted that the changes and amendments to the laws regulating political parties, and, in particular, the financing of political parties in Spain that have been adopted in recent years, greatly contributed to making this area of legislation more comprehensive and accessible. These amendments also helped close certain loopholes in political party funding that in the past resulted in several high-profile corruption cases involving political parties and, subsequently, in a reported low

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<sup>11</sup> UN Human Rights Committee General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7, available at <http://www.refworld.org/docid/453883fc22.html>.

<sup>12</sup> Council of Europe Committee of Ministers Recommendation (2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, available at [http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20\(4\)%20pol%20parties%20EN.pdf](http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20(4)%20pol%20parties%20EN.pdf).

<sup>13</sup> OSCE/ODIHR and Venice Commission *Guidelines on Political Party Regulation* (2010), available at <http://www.osce.org/odihr/77812>.

<sup>14</sup> In particular, reference is made to the GRECO Third Evaluation Round, Third Evaluation Report on Spain - Transparency of Party Funding (Theme II) Greco Eval III Rep (2008) 3E (15 May 2009) available at <https://rm.coe.int/16806c9d72>, GRECO Third Evaluation Round , Addendum to the Second Compliance Report on Spain Greco RC-III (2014) 7E (10 October 2014), available at <https://rm.coe.int/16806c9db6> and GRECO Third Evaluation Round , Second Addendum to the Second Compliance Report on Spain Greco RC-III (2015) 16E (4 December 2015), available at <https://rm.coe.int/16806cac21>.

<sup>15</sup> The OSCE/ODIHR Election Assessment Mission Final Report on 20 December 2015 parliamentary elections in Spain , available at <http://www.osce.org/odihr/elections/spain/224411?download=true>.

level of trust in political parties in Spain.<sup>16</sup> In particular, this Opinion welcomes the fact that the lawmaker has implemented five out of six recommendations issued by GRECO with regard to increasing the transparency of party funding.<sup>17</sup>

17. The current regulatory framework for the funding of political parties is contained in the three pieces of legislation under review. While the manner of funding political parties is generally detailed in the Political Party Funding Law the funding of election campaigns is regulated in the Electoral Law. At times, the legal framework seems contradictory and unclear (see especially pars 34, 52, 59 *infra*). **In line with international recommendations, lawmakers should ensure that the legal framework is clear and precise, indicating to political parties what is prohibited and what is lawful.**<sup>18</sup>

### **3. Public Funding**

#### **3.1. Means of Public Funding**

18. Article 2 par 1 of the Law on the Political Party Funding Law identifies the various sources of direct public funding. These sources include public funding for electoral campaigns, annual state subsidies, extraordinary subsidies for referendums and contributions from parliamentary groups.<sup>19</sup>
19. The relevant legislation also provides several indirect forms of state support, such as tax relief to political parties, which can be construed as a form of indirect state support. Under the Article 10 par 1 of the Political Party Funding Law, parties are exempt from corporation tax on specific sources of income and capital gains. Moreover, membership fees and other party donations are tax deductible from the personal income tax base of

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<sup>16</sup> In a 2013 “Global Corruption Barometer” conducted by Transparency International, 83% of Spanish respondents felt that “political parties were corrupt/extremely corrupt” <https://www.transparency.org/gcb2013/country/?country=spain>.

<sup>17</sup> *Op. cit.* footnote 14, par 85 (GRECO Third Evaluation Round, Third Evaluation Report on Spain - Transparency of Party Funding (Theme II)) and pars 29, 60, 63 (Second Addendum to the Second Compliance Report on Spain). Recommendation ii “to take measures to increase the transparency of income and expenditure of (i) political parties at the local level; (ii) entities related directly or indirectly, to political parties or otherwise under their control)” remains only partly implemented.

<sup>18</sup> See *Op. cit.* footnote 13, Principle 3, par 16 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation); see also *Cumhuriyet Halk Partisi v Turkey* (Application No. 19920/13)) (ECtHR 26 June 2016), available at <http://hudoc.echr.coe.int/eng?i=001-162211>, where it was detailed that any regulation that could constitute a *de facto* limit on freedom of association (eg inspection of a political party’s expenditure) needs to meet the European Court of Human Rights’ standard of foreseeability and provide political parties with a reasonable indication as to how legal regulations would be interpreted and applied.

<sup>19</sup> Article 2 par 1 of the Political Party Funding Law states: “Resources from public funding:

- a) The public subsidies for electoral expenses, in the terms established in Organic Law 5/1985, on the general electoral system, and in the legislation which regulates the electoral processes of the legislative assemblies of the autonomous regions and the general assemblies of the historical Basque territories.
- b) The annual state subsidies for operating expenses, regulated in this Law.
- c) The annual subsidies established by the autonomous regions for operating expenses in the sphere of the respective autonomous region, as well as the subsidies granted by the historical Basque territories and, as the case may be, the local councils.
- d) The extraordinary subsidies for propaganda campaigns that may be established in the Organic Law which regulates the different kinds of referendums.
- e) The contributions which, as the case may be, political parties may receive from the parliamentary groups of the houses of Parliament, the legislative assemblies of the autonomous regions and the general assemblies of the historical Basque territories, as well as from the groups of representatives in the bodies of the local administrations”.

the donor at a rate of up to EUR 600 per year pursuant to Article 12 par 1 of the Political Party Funding Law.

20. Another source of indirect public funding of election campaigns is the provision of space for the free display of posters and other campaign material, special postage rates for the mailing of campaign materials, and free airtime on public broadcasters.
21. Generally, public funding plays an important role in preventing corruption, and supports the important role that political parties play in strengthening political pluralism, promoting equal opportunities and diminishing the reliance of parties on private donors.<sup>20</sup> While the caps for private donations are also quite high (see par 36 *infra*) and recent amendments have decreased the dependency on public funding, Spanish political parties traditionally have been, and still are, largely reliant on state funding when compared to parties in Northern, Western and Southern Europe.<sup>21</sup> Legislation should allow for a balance between public and private funding and to ensure that public funding is not used as a means to curtail the independence of political parties or to discourage the connection between political parties and their supporters.<sup>22</sup> **Hence, it may be advisable to review legislation with the aim of creating a better balance between the two main sources of funding.**

### **3.2. Allocation of Funds**

22. Pursuant to Article 3 par 1 of the Political Party Funding Law, only parties with representation in the Congress of Deputies (parliament) are eligible for regular public funding of political parties' statutory activities. While, in practice, due to the particularities of the Spanish electoral system with regard to the allocation of parliamentary seats, many smaller parties end up winning seats in the parliament and are therefore eligible for public funding, legislation should nevertheless ensure that **some regular public funding is also available for parties not meeting the electoral threshold, in particular new parties, to enhance political participation and pluralism.**<sup>23</sup> **It is therefore recommended to amend the Article 3 of the Funding Law accordingly.**
23. Moreover, the funding is allocated by dividing the respective budget into three equal amounts. While two of these are divided in proportion to all the votes obtained by each party in the recent parliamentary elections, one-third is distributed in proportion to the number of seats obtained by each party in said elections (Article 3 par 2 of the Political Party Funding Law). These means of distributing funds could disproportionately favor bigger parties. **Legislation should thus ensure that the formula for the allocation of public funding does not provide one or two parties with disproportionate amount of public funding.**<sup>24</sup>

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<sup>20</sup> *Op. cit.* footnote 13, par 176 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

<sup>21</sup> In 2012, almost 90% of political party income in Spain came from public funding, while, for other countries in Northern, Western and Southern Europe, the percentage of State dependency was below 70%; while public funding has been decreased since 2012, political parties in Spain remain largely reliant on public funding; see International IDEA Funding of Political Parties and Election Campaigns – A Handbook on Political Finance (Stockholm 2014) pp 224-225, available at <https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>.

<sup>22</sup> *Op. cit.* footnote 13, par 176 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

<sup>23</sup> *Ibid.* par 186.

<sup>24</sup> *Ibid.* par 187.

### **3.3. Public Support of Election Campaigns**

24. The Electoral Law contains provisions which raise concerns that the system, as a whole, disproportionately favours larger, established parties in campaign financing.
25. In particular, pursuant to Article 56 par 2 of the Electoral Law, municipal councils reserve official premises and public areas free of charge for electoral events and for the display of posters. These areas are then allocated to political parties by District Election Commissions, while taking into account the total number of votes obtained by each party in the previous equivalent election.
26. Further, free campaign slots in each of the publicly-owned media are allocated only to those parties fielding candidates in more than 75% of the constituencies located in the broadcasting area (Article 64 par 2 of the Electoral Law), with some exceptions for parties that won at least 20% of votes in an autonomous community (par 3 of the same article). The amount of airtime allocated to each party then follows a sliding scale based on seats obtained, and the percentage of votes received in the previous elections. This is a well-established approach, **but the gradient of the scale could be further revised, as it currently provides parties that were successful in the previous elections with a disproportionately higher amount of airtime.**<sup>25</sup>
27. A Radio and Television Committee under the direction of the Central Election Commission makes allocation proposals for free slots in publicly owned media pursuant to Article 65 par 2 of the Electoral Law. The Committee is composed of representatives from each party participating in the election that already has a representative in the Congress of Deputies (Article 65 par 3 of the Electoral Law). Each representative's vote is proportional to the Congress' total membership. **It should be ensured that access to public media is granted in a non-discriminatory manner that ensures equal treatment of all political parties and candidates.**<sup>26</sup>
28. Article 127 *bis* of the Electoral Law stipulates that advance partial payments of election subsidies are given only to parties that had obtained election subsidies in the prior election. The advance is made available from the 29th day after the calling of the elections, which is a full week before the start of the electoral campaign. This funding can be used by recipient parties to fund outreach activities (which do not involve explicitly seeking voter support) and campaign strategizing before the commencement of the campaign, which could provide them with an electoral advantage as compared to non-parliamentary parties.
29. After the party has submitted its election accounts to the Court of Audit, pursuant to Article 133 par 4 of the Electoral Law, the state will pay up to 90% of the subsidies that the party is entitled to, based on the election results, provided that the party is able to,

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<sup>25</sup> Currently the scale provides:

- 10 minutes to parties that did not stand or obtain a seat in the prior equivalent election;
- 15 minutes to parties that obtained seats in the prior election but did not get 5% of the total number of valid votes;
- 30 minutes for parties that obtained seats in the prior election and between 5 and 20% of the total number of valid votes;
- 45 minutes for parties that obtained seats in the prior election and at least 20% of the total number of valid votes.

<sup>26</sup> *Op. cit.* footnote 10, par 7.8 (1990 Copenhagen Document); *Op. cit.* footnote 13, pars 147-149 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

among other things, present a bank guarantee of 10% of the subsidies to be received. This means that securing bank guarantees may be easier for larger, more financially established parties than for newcomers.

30. Taken together, these provisions tilt the system designed to regulate political party funding in favor of large parties, or at least of parties already represented in the Congress of Deputies. **The legislator should consider changing at least some of the above-mentioned provisions to ensure that smaller or new parties have a chance to promote their ideas during election campaigns without being at a disproportionate disadvantage to the latter parties from the outset.**<sup>27</sup>
31. Notwithstanding, it should be noted that the current legislation contains several improvements in line with international standards and good practices. In particular, in respect of increasing transparency of political party funding, it is welcome that pursuant to Article 3 par 9 of the Party Funding Law, government and public agencies granting subsidies to political parties are obliged to publish the details of subsidies paid and the recipients receiving these subsidies at least once a year.

#### **4. Private Funding**

##### **4.1 Sources of Private Funding and Limitations**

32. It is commendable that Article 2 par 2 of the Political Party Funding Law, as modified in 2015, now lists which private sources of funding are permissible. These include fees and donations from members, in-kind donations, loans and credits, inheritances and legacies. This same provision also encompasses income from party activity designed to facilitate public outreach, income from party asset management, and profits from promotional activity and certain types of services.
33. Private funding is strictly regulated under Spanish law. Article 5 par 1, sentence 1 of the Political Party Funding Law states that “[p]olitical parties may not accept or receive, directly or indirectly: (a) anonymous donations, fixed-purpose or revocable donations; (b) donations from the same person exceeding 50,000 EUR a year; (c) donations from legal persons and entities without legal personality”. In order to enhance the fight against corruption, the Political Party Funding Law also stipulates that “donations from individuals who, in pursuit of an economic or professional activity, (Article 4 par 2 (a) of the Political Party Funding Law) are part of an ongoing contract under the legislation of public sector contracts” are not allowed, which is welcome.
34. The Electoral Law sets out slightly different restrictions on private sources of funding. Under Article 129, both natural and legal persons are entitled to donate up to EUR 10,000 to an electoral contestant. It is **unusual that legal entities are barred from providing general support to political parties, but are allowed to donate to their electoral campaigns. Article 5 of the Political Party Funding Law thus warrants re-examination and highlights the need for a review of the laws regulating political finance.**

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<sup>27</sup> *Op. cit.* footnote 10, par. 7.6 (1990 Copenhagen Document).

35. It is also noted that membership fees are currently not covered by any legal limit. **The legislator could consider treating membership fees as donations, to ensure that high membership fees are not used as a means to circumvent the donation limit.**<sup>28</sup>

#### **4.2 Exceptions for Certain Types of In-Kind Donations**

36. The contribution cap at EUR 50,000 for individual donations to political parties is, though relatively high compared to other European countries,<sup>29</sup> in line with international practice, in particular, as the emphasis in funding of political parties in Spain is placed on public rather than private funding. However, despite these limitations on private donations, the legislation still leaves several loopholes that would allow for a circumvention of the contribution limits: Namely, according to Article 5 par 1, sentence 2 of the Political Party Funding Law, real estate exceeding a value of EUR 50,000 can be donated provided that it fulfills the requirements of Article 4 par 2 (e), which sets out the formalities that need to be fulfilled in order for a donation to be considered as accepted by a political party. According to Article 2 of the Council of Europe Recommendation Rec (2003)4, a donation to a political party is “any deliberate act to bestow advantage, economic or otherwise, on a political party” which includes in-kind donations, including in the form of real estate.<sup>30</sup> As it is the objective of donation limits to diminish the possibility of corruption and the disproportionate influence of a few wealthy individuals on political parties, it is particularly important for limits to apply to particularly valuable in-kind donations, such as real estate. **The exclusion of real estate from the donation limit opens up the possibility to circumvent donation limits and might make them less effective. It is therefore recommended to amend Article 4 of the Political Party Funding Law and to more strictly regulate real estate donations, either by making them subject to the EUR 50,000 donation limit or by setting a separate limit specifically for donations of real estate.**

#### **4.3. Regulation of Foundations and Entities Linked to or Dependent on Political Parties**

37. While political foundations can contribute to public policy discussions and act as “catalysts for new ideas, analysis and policy options,”<sup>31</sup> the existence of foundations/associations and other entities linked to or dependent on political parties in Spain at the same time might hamper the effectiveness of the provisions regulating political party financing. This issue has been addressed in GRECO’s recommendations since its 2009 Evaluation Report on Spain, in which GRECO recommended that Spain “take measures to increase the transparency of income and expenditure of [...] entities related directly or indirectly, to political parties or otherwise under their

<sup>28</sup> *Op. cit.* footnote 13, par 163 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

<sup>29</sup> See eg *op. cit.* footnote 21, p 220, which provides examples for annual limits for donations by individuals to political parties (International IDEA Funding of Political Parties and Election Campaigns – A Handbook on Political Finance)..

<sup>30</sup> *Op. cit.* footnote 12 (Council of Europe Committee of Ministers Recommendation (2003)4).

<sup>31</sup> (3) of Regulation (EC) No 1524/2007 of the European Parliament and of the Council of 18 December 2007 amending Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding [no longer in force], available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007R1524>.

control”.<sup>32</sup> Similar recommendations were made in the OSCE/ODIHR’s Election Assessment Mission Final Report on the 2015 parliamentary elections, which stated that “[c]onsideration should be given to making the donation limit and the prohibition provisions apply to all foundations and associations affiliated with political parties, and to obliging them to also report their expenditures.”<sup>33</sup> In its Second Addendum to the Second Compliance Report on Spain, of 2015, GRECO concluded that, with regard to transparency of party funding, this recommendation was the only one which remained only partly implemented.

38. Pursuant to Additional Provision No. 7 par 4 of the Political Party Funding Law, donations from foundations and entities linked to political parties or dependent on them shall be subject to the limits and requirements of Chapter Two of Title II of the Political Party Funding Law. At the same time, the provisions of Article 5 par 1 (b) and (c) of the same law shall not apply. As stated above, Article 5 par 1 (b) imposes a limit of EUR 50,000 per year on donations from the same person, while Article 5 par 1 (c) prohibits donations from legal entities and persons without legal personality. Further, Additional Provision No. 7 par 4 of the Political Party Funding Law sets forth that monetary donations of more than EUR 120,000 need to be formalized in a publicly available notarized document. Additionally, Article 9 of the Political Party Funding Law clarifies that Title III of the Party Funding Law regulates “the taxation of political parties as well as the regime applicable to fees, contributions and donations made by individuals”, without mentioning foundations and entities linked to political parties or dependent on them within the ambit of Title III.
39. **Foundations and other entities with such close ties to political parties should be included within the same regulatory legislation and be bound by those financial requirements that political parties are held to adhere to, as appropriate.**<sup>34</sup> This is necessary to ensure the efficiency of political party financing regulations and to guarantee that the objectives of the law, which include “ensuring maximum levels of transparency and publicity and regulating the control mechanisms to prevent deviations from [the political parties’] functions”, as highlighted in the Statement of Motives preceding the Political Party Funding Law. The current legislation creates a more permissive framework of financial regulations for foundations and other entities linked to or dependent on political parties. This could lead to a situation where such entities are used as “parallel avenues for fraudulent funding of routine or campaign activities in spite of the applicable restrictions and thresholds set by law for the latter”.<sup>35</sup> Corporate donations and unlimited donations from individuals, generally prohibited by the Political Party Funding Law, could be funnelled through these related entities and then used to fund political party activity. **It is therefore recommended to amend Additional Provision No. 7, Title III and other relevant provisions within the legal framework of political party financing so that foundations and other entities linked**

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<sup>32</sup> See *op. cit.* footnote 14, Recommendation II, par 85 (GRECO Third Evaluation Round, Third Evaluation Report on Spain - Transparency of Party Funding (Theme II)).

<sup>33</sup> See *op. cit.* footnote 15, p 13 (OSCE/ODIHR Election Assessment Mission Final Report).

<sup>34</sup> *Op. cit.* footnote 12, Article 6 (CoE Committee of Ministers Recommendation (2003)4), which states “Rules concerning donations to political parties, with the exception of those concerning tax deductibility [...] should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party”; see also eg Article 20 Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations.

<sup>35</sup> *Op. cit.* footnote 14, par 65, (GRECO Second Addendum to the Second Compliance Report on Spain).

**to or dependent on political parties are, as appropriate, covered by the same regulations, including limitations, as political parties.**

40. Moreover, Additional Provision No. 7 par 5 of the Political Party Funding Law states that “for the sole purpose of this additional provision, monetary or asset contributions made by a natural or legal person to finance an activity or a specific project of the foundation or entity shall not be considered donations, when such an activity or project is carried out as a consequence of a common personal interest or derived from the activities inherent to the corporate or statutory object of both entities.” While there may be grounds for exempting certain monetary or other contributions from the requirements commonly set out for donations, the wording of Additional Provision No. 7 par 5 of the Political Party Funding Law is quite broad and vaguely formulated, so that any number of situations could be considered to fall under it. Moreover, it may be presumed that in all cases involving individual contributions to political parties or foundations, this will be a consequence of some sort of “common personal interest”. **Additional Provision No. 7 par 5 should be deleted, or substantially revised, to avoid a situation where it is abused to channel resources in circumvention of established limits on the financing of political parties.**

#### **4.4 Foreign Donations**

41. Pursuant to Article 7 of Council of Europe Committee of Ministers Recommendation (2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, “[S]tates should specifically limit, prohibit or otherwise regulate donations from foreign donors”.<sup>36</sup> Article 7 of the Political Party Funding Law states that foreign individuals may donate to political parties within the general limits for private donations. In contrast, political parties are not allowed to receive any donations from “foreign governments, agencies, or entities or foreign public companies, or enterprises directly or indirectly related to them”.
42. While private foreign donations are prohibited in many states in Europe in order to curtail any influence on domestic political affairs,<sup>37</sup> it is noted that this does not appear to be the case in Spain. On the other hand, in light of European integration, some European countries include the possibility of receiving support, including financial support, from foreign chapters or international umbrella organizations of a political party, in line with the intent of paras 10.4 and 26 of the 1990 Copenhagen Document, which deal with external co-operation and support for individuals, groups and organizations promoting human rights and fundamental freedoms.<sup>38</sup> **Consideration**

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<sup>36</sup> *Op. cit.* footnote 12 (CoE Committee of Ministers Recommendation (2003)4).

<sup>37</sup> Venice Commission Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources (31 March 2006), available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)014-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)014-e), p 6; see also *op. cit.* footnote 13, par 172 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation); .

<sup>38</sup> *Op. cit.* footnote 10 (1990 Copenhagen Document); see also *op. cit.* footnote 13, par 172 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation); there are countries (e.g., Austria, Belgium, Denmark, Finland) which, for various reasons, do not prohibit donations from foreign political parties, see *op. cit.* footnote 36, par 23 (Venice Commission Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources); see also OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine (26 October 2015), available at <http://www.legislationline.org/documents/id/19868>, par 33.

**may be given to adding this type of provision to the Political Party Funding Law and allowing for this type of external support.**

#### **4.5. Other Issues related to Private Funding**

43. It is welcome that Article 4 par 4 of the Political Party Funding Law implements GRECO Recommendation I by banning debt cancellation.<sup>39</sup> This provision explicitly bans “total or partial cancellation of the principal loan or the due interest, or the renegotiation of the interest rate below market conditions”. However, the amended law still raises some additional issues. One relates to the possibility left in Article 4 par 4 of the Political Party Funding Law to agree on a cancellation not of the debt but of the underlying guarantee, such as a mortgage. It could be problematic to uphold a debt or ensure that it is paid back once the guarantee is cancelled. Moreover, the prohibition of debt cancellation could be circumvented by simply deferring payment of the debt indefinitely or in a way which, in practice, means that the debt is never paid back. **It is recommended that the legislator also include such *de facto* cancellations of debts within the ambit of the Political Party Funding Law.**
44. **Additionally, it should be ensured that Article 4 par 4 as well as other provisions in the Political Party Funding Law cover not only loans from credit institutions, but also loans from other sources, such as corporations, other legal entities or individuals.**
45. It is crucial that oversight bodies have the power to investigate and ensure that loans are not cancelled, in particular if the period for repayment of the loan is quite long (see also more on effective oversight and sanctions in paras 57-67 *infra*).

### **5. Expenditures**

46. The Electoral Law regulates election campaign spending. Election expenses must not exceed the set limit, which is calculated on the basis of a certain amount per voter in each constituency where the party stands for election (see Article 131 par 1 of the Electoral Law and Article 175 par 2 of the Electoral Law for parliamentary elections, Article 193 par 2 Electoral Law for Municipal Elections and Article 227 par 2 of the Electoral Law for Elections to the European Parliament). Pursuant to Article 58 par 1 of the Electoral Law, no more than 20% of the party’s expenditure can be spent on advertising. The reimbursement of campaign expenses cannot exceed the amount of election expenditure declared in the party’s campaign finance report and verified by the Court of Audit according to Article 127 par 1 of the Electoral Law.
47. The only provision in the Political Party Funding Law that directly addresses political party expenditure (other than for recordkeeping and reporting purposes) relates to spending by third parties. Article 4 par 3 of the Political Party Funding Law states that political parties ‘may not accept that, directly or indirectly, third parties effectively assume the cost of their goods, services or any other expenses generated by their activity.’

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<sup>39</sup> See *op. cit.* footnote 14, par 85 (GRECO Third Evaluation Round, Third Evaluation Report on Spain - Transparency of Party Funding (Theme II)).

48. It is positive that the legislation includes a provision aimed at precluding a possible circumvention of spending limits. However, the manner in which it is formulated could raise concerns about the implementation of the provision as currently in place. In particular, it is unclear what would constitute ‘acceptance’ or “directly or indirectly [...] effectively assum[ing]” of third-party involvement in paying such costs. Third-party funded campaign materials similar in tone and message to those produced by the party could potentially be considered to be “accepted” or “indirectly assumed” by the party even if it was not consulted about their production or usage. **The legislator should consider clarifying these issues by amending Article 4 of the Political Party Funding Law, namely by defining the above-mentioned terms in greater detail to make it clear to political parties and to third parties what is allowed and what is prohibited.**

## **6. Recordkeeping, Reporting and Disclosure**

49. The Political Party Funding Law sets out a fairly comprehensive set of recordkeeping and reporting requirements. These include: the appointment of a person responsible for the economic and financial management within the party, with proven knowledge and experience in the economic sphere, and with integrity (Article 14 *bis*); the opening of specific bank accounts, which are reported to the Court of Audit (Article 8); instructions on the information about donations to be recorded and an obligation to keep detailed accounting books (Article 14); an obligation to establish internal financial controls; and, the obligation to produce consolidated financial statements for all levels (central and local) of the party. In this regard, Spain has been quite receptive and responsive to the recommendations made by OSCE/ODIHR and GRECO and its approach has been consistent with international standards.<sup>40</sup>
50. The Law requires political parties to open a special bank account for fees received from members and another for other private donations (Article 8 of the Political Party Funding Law). While it is possible that, in line with international recommendations, this regulation was introduced with the purpose of ensuring that membership fees are not used as hidden donations (see also par 35 *supra*),<sup>41</sup> **it may be advisable for the legislator to evaluate the necessity of maintaining different bank accounts should it prove unnecessarily burdensome in practice, especially for new or smaller parties.**
51. Article 14 par 6 of the Political Party Funding Law stipulates that political parties must submit their consolidated annual accounts to the Court of Audit by 30 June of the following fiscal year (eg within six months). These accounts must contain information for specified categories of income and expenditure, and be accompanied by supporting information about loans and by an internal review report. It is commendable that the Court of Audit has prescribed a standardized format for annual account and expenditure returns.
52. Under Article 8 par 3 of the Political Party Funding Law, political parties are to report (individual or cumulative) donations that exceed EUR 25,000 and real estate donations to the Court of Audit within three months of the end of the accounting year, whereas Article 5 par 2 requires parties to report donations that exceed EUR 25,000 and

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<sup>40</sup> *Op. cit.* footnote 13, pars 202-203 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation); *op. cit.* footnote 12, Article 11 (CoE Committee of Ministers Recommendation 2003(4)).

<sup>41</sup> *Op. cit.* footnote 13, par 163 (Guidelines on Political Party Regulation).

donations of real estate within three months of their acceptance. In this context, it is also noted that under Article 4 par 2 (d) of the Political Party Funding Law, cash donations are deemed to have been accepted if they are not returned to the donor within three months. Read in conjunction with Article 5 par 2 of the Political Party Funding Law, this means that a party would potentially have six months from the receipt of a large donation to report it to the Court of Audit, which seems quite long. Overall, there appears to be a lack of consistency within the legislation regarding reporting deadlines. **This aspect of the Political Party Funding Law would benefit from clarification – in particular, Articles 5 and 8 should be made consistent. Legislators and relevant stakeholders should bear in mind that deadlines should provide political parties and regulatory bodies with a reasonable amount of time to fulfil their reporting, analysis and auditing obligations, while at the same time not compromising the public’s right to information and transparency.**

53. The Court of Audit receives campaign finance information from three sources:
- a. The general managers of parties which qualify for state subsidies shall provide a detailed and documented account of election income and expenses between 100 and 125 days after the election (Article 133 pars 1 and 2 of the Electoral Law);
  - b. Financial institutions that have made loans to these parties shall submit a notice with the details of the loan conferred within the same 100 – 125-day period (Article 133 par 3 of the Electoral Law);
  - c. Companies that have invoiced the parties for electoral expenses above EUR 10,000 are to notify the Court of Audit (Article 133 par 5 of the Electoral Law).
54. Reports on campaign finance should ideally be submitted in a standardized format, within a reasonable time, eg no more than 30 days after the election, depending on the extent of the reporting obligations and whether further steps, such as an independent audit of the reports, are required before submission.<sup>42</sup> It is positive that the Court of Audit has issued a common format for parties’ accounts and financial returns. In addition, the Political Party Funding Law requires parties to publish their annual accounts on their own website within a month of submitting them to the Court of Audit, and they must also publish the Court’s control report on their accounts within 15 days of issuance (Article 14 pars 8-9 of the Political Party Funding Law). This is welcome, and in line with prior international recommendations;<sup>43</sup> Article 14 thereby also addresses previously voiced concerns over the lack of public accessibility to financial information regarding political parties’ activities.<sup>44</sup>
55. In contrast, there is no legal requirement to make parties’ election campaign reports public. In line with Article 7(3) of the UN Convention against Corruption which underlines the importance of transparency in political finance<sup>45</sup> and the OSCE/ODIHR

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<sup>42</sup> *Op. cit.* footnote 13, par 200 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

<sup>43</sup> *Ibid.* par 198 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

<sup>44</sup> See *op. cit.* footnote 14, par 50 (GRECO Third Evaluation Round, Third Evaluation Report on Spain - Transparency of Party Funding (Theme II)).

<sup>45</sup> Article 7 par 3 states: “Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”

Venice Commission Guidelines on Political Party Regulation,<sup>46</sup> **the respective legal framework should be amended to require timely and accessible publication of campaign finance reports over an extended period of time.**<sup>47</sup>

56. The development of information technology has diversified options for the reporting and publication of political finance data. **Instead of having parties publish information on their own websites, consideration may be given to developing a centralized portal that would allow parties to submit their reports online.** Such a system could save time and minimize human error for those required to submit financial data and could make information available in a user-friendly manner for an extended period of time. It could also be an important tool for the oversight body to use in performing its supervisory and enforcement roles.

## **7. Effective Oversight**

57. Oversight of party and campaign finance is conferred upon the Court of Audit, which consists of 12 members appointed by the Congress of Deputies.<sup>48</sup> As noted in the OSCE/ODIHR 2015 Election Assessment Mission Final Report,<sup>49</sup> the Court of Audit has wide investigative powers and can carry out investigations both *ex officio* and upon complaint. It is explicitly tasked with overseeing all annual accounts of parties that receive any form of public subsidy and has discretion to perform audits of other parties. Should the Court of Audit determine that infractions of the law have occurred, it has the power to impose sanctions as discussed below at pars 60-67.
58. It is welcome that the Court of Audit has broad investigative powers, without which it would be difficult to fulfil its mandate.<sup>50</sup> The Court of Audit has six months from the receipt of a party's annual account to issue a report on its audit findings, which is then submitted to the Congress of Deputies for publication in the "Official Gazette." **The Parliamentary Committee known as the "Joint Commission for Relations with the Court of Audit" may request the responsible person of any party receiving a public subsidy to appear, to discuss any violations or irregularities noted in the Court of Audit report under Article 16 of the Political Party Funding Law.** Generally, a Parliamentary Committee, provided it acts in a non-partisan manner, could also serve as a good platform to reflect on the overall work of the Court of Audit through discussion of annual reports. **Given that the Law clearly provides for an independent investigative and sanctioning regime with a right of appeal to the Supreme Court, the legislator could, however, consider limiting parliamentary control to exceptional cases in which the Court of Audit noticed infringements which are**

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<sup>46</sup> *Op. cit.* footnote 13, pars 200, 202, 206 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

<sup>47</sup> See also OSCE/ODIHR Opinion on Draft Amendments to some Legislative Acts of Ukraine concerning Transparency of Financing of Political Parties and Election Campaigns (14 September 2014), available at <http://www.osce.org/odihr/123753?download=true> par 25; OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Act to Regulate the Formation, the Inner Structures, Functioning and Financing of Political Parties and their Participation in Elections of Malta (14 October 2014), available at <http://www.legislationline.org/documents/id/19359>, par 38; and *op. cit.* footnote 38, par 60 (OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine).

<sup>48</sup> *Op. cit.* footnote 15, p 14 (OSCE/ODIHR Election Assessment Mission Final Report).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Op. cit.* footnote 13, par 220 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

considered “very serious” pursuant to Article 17 par 2 of the Political Party Funding Law.

59. With regard to campaign finance oversight during the electoral period, Article 132 of the Electoral Law states that “[f]rom the calling of the elections until the hundredth day after the poll, the Central Election Commission and Provincial Commissions shall ensure compliance with the rules [...] and “[f]or that purpose the Central Election Commission may collaborate with the Auditing Court.” The Central Election Commission is authorized to obtain documents from banking institutions and election managers (Article 13 of the Electoral Law), and to sanction infringements. In practice, there may be no overlap between the mandate of the Court of Audit and the Central Election Commission, but there is scope for ambiguity given the wording in the different laws. **Thus, it may be worthwhile to review the relevant provisions to ensure consistency across the different pieces of legislation. Additionally, it is recommended to strengthen the wording on collaboration between the two bodies, to highlight the importance of co-operation and information-sharing and avoid duplication or overlap of work and/or responsibilities.**

## **8. Sanctions**

60. Article 16 of Recommendation Rec (2003)4 emphasizes the need for ‘effective, proportionate and dissuasive sanctions for breaches of party and campaign finance rules. As noted in the 2015 OSCE/ODIHR Election Assessment Mission Report, the 2015 amendments to the respective legislation created a graduated system of monetary sanctions for non-criminal infringements. This certainly is a positive step. However, the new provisions still raise further questions. For example, for some infringements, the range of financial penalties is quite wide (e.g. a minimum of EUR 50,000 and a maximum of EUR 100,000). **To avoid perceptions of inconsistent or partial decision-making, it may be beneficial for legislation to require the Court of Audit to develop and publish by-laws and guidelines with certain criteria that should be taken into account when determining the amount of a discretionary fine.**
61. Additionally, Article 17 par 5 of the Political Party Funding Law states that “[v]ery serious offenses shall prescribe after five years, serious offenses after three years and minor offenses after two years” from the time when the offence was committed. This is a positive development compared to the previous limitation periods ranging from one to four years, which had been criticized by GRECO.<sup>51</sup> As highlighted by GRECO “the soundness and credibility of the system could certainly be compromised if infringements of the rules are not coupled, in law but also in practice, with effective sanctions.”<sup>52</sup> **If the legislator decides not to extend these limitation periods further, it is all the more important to provide a legal framework within which disclosure and reporting, as well as subsequent oversight, can be conducted in a speedy and efficient manner. This includes legal guarantees ensuring that oversight bodies have sufficient human and financial resources to carry out investigations and initiate proceedings in time and that the system as a whole is regularly re-evaluated.**

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<sup>51</sup> See *op. cit.* footnote 14, par 51 (GRECO Third Evaluation Round, Addendum to the Second Compliance Report on Spain).

<sup>52</sup> *Ibid.*

62. It is noted that for non-criminal offences, the sanctions are exclusively monetary (withholding or reducing public subsidies, imposing a monetary penalty). To complement the current range of financial penalties, **it may be worth considering other forms of sanctions. The Law could, among others, provide the Court of Audit with the mandate to require a political party to undertake certain action designed to foster future compliance with the rules. For example, where a party has failed to provide the required information, it could be obligatory for its officers involved in recordkeeping and reporting of financial information to participate in training on these issues organized by the Court of Audit.**
63. With regard to excessive donations, the law presently provides for any amount exceeding the donation ceiling to be returned to the donor, where possible. **It could be more effective and dissuasive on both parties and donors if such donations had to be forfeited to the Treasury.**
64. Article 16 par 2 of the Political Party Funding Law establishes that the Court of Audit oversees all accounts of parties, which receive public funding and that, with respect to parties not receiving public funding, it will audit as it deems appropriate in its action plans. In line with prior ODIHR recommendations, small or new parties that do not (yet) engage in significant financial activities (eg, cash flow in and out of political parties' accounts) could be exempted from auditing requirements, as this may overstretch their financial or human resources and could, consequently, have a discriminatory effect on them.<sup>53</sup> However, the formulation of Article 16 par 2 of the Political Party Funding Law seems to leave the selection of parties for audit solely to the Court of Audit, without providing any guidance or methodology as to how to select parties for audit. **It is therefore recommended that the Court of Audit sets out an audit strategy that includes criteria (ie a party with cash flow above a certain limit has to undergo an audit once within a set number of years) to be used when selecting parties for audit.**
65. With respect to disciplinary proceedings, which are also regulated under Title VI on the system for penalties, Article 18 par 2 of the Political Party Funding Law states that parties have fifteen days after the initiation of disciplinary proceedings against them to provide documents, evidence and supporting information. **It would be advisable to extend this deadline to one month or provide the Court of Audit with the authority to extend deadlines when the circumstances justify doing so, in order to make sure that political parties have sufficient time to challenge procedures initiated against them.**
66. It is noted that some infringements foreseen in the Political Party Funding Law, such as the non-submission of reports to the Court of Audit by foundations and associations, or the failure to open a specific bank account to collect donations, are not sanctioned, which is not in line with international standards, notably those reflected in Article 16 of CoE Committee of Ministers Rec(2003)4.<sup>54</sup> **It is recommended that sanctions to be included for such infringements of the law.**

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<sup>53</sup> *Op. cit* footnote 38, par 46 (OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine).

<sup>54</sup> *Op. cit.* footnote 12 (Council of Europe Committee of Ministers Recommendation (2003)4). Article 16 states "States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions".

67. Additionally, it would be preferable if the fines (and, thereby, the donation and expenditure limits on which the fines are based) stipulated in the Political Party Funding Law would **be re-evaluated on a regular basis to ensure that sanctions remain effective, proportionate and dissuasive.**

## **9. Dissolution**

68. It is noted that a party's annual subsidy may be suspended by a judicial decision upon application of the Minister of the Interior, if an action has been commenced to ban the party under on the Political Party Law. That Law provides for the dissolution of any political party that fails to respect democratic principles and human rights as set forth under its Article 9 par 2. As the Parliamentary Assembly of the Council of Europe (PACE) states, "restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country."<sup>55</sup> Hence, the dissolution of a party is a measure of last resort and the legislation on which this measure is based must be exceptionally narrowly tailored and applied only in extreme cases.<sup>56</sup>
69. Article 9 par 2 of the Political Party Law has a broad sweep and its terminology appears to be relatively vague given the consequences that ensue from engaging in the prohibited activity. Among other reasons, Article 9 par 2 (a) states that a party should be dissolved if it does one of the following: "excluding or persecuting individuals on the grounds of their ideology, religion, beliefs, nationality, race, sex or sexual orientation".<sup>57</sup> While parties should also adhere to the principle of non-discrimination in their internal issues, this needs to be balanced with the principle of party autonomy. Associations, including political parties, have the right to deny membership to persons who do not subscribe to the values that the association is based on.<sup>58</sup> Even though the provision is limited by the caveat that any actions leading to dissolution must be "grave and repeated", excluding persons because they do not share the basic values that the party stands for or because they subscribe to an ideology which contradicts the one propagated by the party could, technically, lead to dissolution of the party. Similarly, Article 9 par 2 (c) of the Political Party Law, which states that political parties shall be declared illegal if they "[s]upplement and politically support the actions of terrorist organisations" is too vague. Article 9 par 3 of the Political Party Law, which further specifies prohibited conduct, likewise potentially includes a wide range of activities, while still employing vague terminology. As such, it does not clearly determine which specific actions can lead to a political party's prohibition. **It is therefore recommended to amend Article 9 par 2 of the Political Party Law to ensure that the Law allows dissolution only as a last**

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<sup>55</sup> Resolution 1308(2002), "Restrictions on political parties in the Council of Europe's member states", (18 November 2002) available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17063&lang=en> par 11.

<sup>56</sup> *Op. cit.* footnote 5 (*United Communist Party of Turkey and Others v. Turkey*); *Op. cit.* footnote 13, pars 89-96 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

<sup>57</sup> Article 9 par 2 (a) of the Political Party Law.

<sup>58</sup> *Associated Society of Locomotive Engineers and Firemen v. the United Kingdom*, (Application no. 11002/05) (European Court of Human Rights, 27 May 2007), available at <http://hudoc.echr.coe.int/eng?i=001-79604>; see also *Op. cit.* footnote 13, par 116 (Guidelines on Political Party Regulation); see further OSCE/ODIHR Guidelines on Freedom of Association pars 124-126, available at <http://www.osce.org/odihr/132371?download=true>.

**resort in the gravest circumstances, which are to be set out by law in a clear and precise manner.**

## **10. Other Remarks**

70. It is welcome that Article 2 par 2 of the Political Party Law allows for the establishment of youth organizations within the party in line with international good practice; in this context, it is important to ensure that persons below the age of 18 can participate despite the legal age limit for party membership in Article 8 par 1 of the Political Party Law. Moreover, it has been positively noted that the 2007 amendments to the Electoral Law introduced a balanced representation of female and male candidates, by requiring a minimum of 40% and a maximum of 60% of either sex among the candidates on parties' electoral lists (Article 44 of the Electoral Law). Globally, political finance for women candidates remains one of the greatest barriers to women's entry into politics. **For this reason, the legislator might consider mentioning specific women's sections within parties alongside youth organizations in Article 2 par 2 of the Political Party Law. In addition, consideration could be given to linking the allocation of public funding to meeting the quotas stipulated in Article 44 of the Electoral Law<sup>59</sup> or disbursing a certain percentage of public funding in proportion to female candidates or women elected.<sup>60</sup> Some public funding could also be ear-marked for gender equality initiatives, such as for example training of women candidates, programmes related to women's empowerment and funds to support the functioning of women's sections.<sup>61</sup>** These initiatives are in line with emerging practice and international standards such as the UN Convention on the Elimination of All Forms of Discrimination Against Women<sup>62</sup>, the Beijing Declaration and Platform for Action<sup>63</sup>, Council of Europe Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making, as well as the OSCE Ministerial Council Decision 7(09) on Women's Participation in Political and Public Life.<sup>64</sup>
71. In addition, in accordance with another emerging international trend, public funds can also be used to increase participation in political life of persons with disabilities to political life in line with the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Pursuant to Article 29 of the Convention States shall "[e]nsure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected." Through various measures ensuring accessibility and representation States shall furthermore promote the participation of persons with disabilities "in the activities and

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<sup>59</sup> *Op. cit* footnote 13, par 136 (OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation).

<sup>60</sup> *Op. cit.* footnote 38, par 61 (OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine); see also *op. cit.* footnote 21, p 321-322 (International IDEA Funding of Political Parties and Election Campaigns).

<sup>61</sup> *Ibid* p 322.

<sup>62</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by UN General Assembly resolution 34/180 on 18 December 1979. Spain ratified the convention on 5 January 1984.

<sup>63</sup> Fourth World Conference on Women 'Beijing Declaration and Platform for Action' in 'Report' (17 October 1995) UN Doc A/CONF.177/20, 4.

<sup>64</sup> OSCE Ministerial Council Decision 7(09) on Women's Participation in Political and Public Life (4 December 2009), available at <http://www.osce.org/mc/40710?download=true>.

administration of political parties” (Article 29 (b) (i) of the UNCRPD. Legislation should ensure that persons with disabilities can participate in political life, including through engagement in political parties accordingly. **Some public funding could also be ear-marked for initiatives supporting participation of persons with disabilities in political life. This may include public subsidies for providing campaign material in accessible formats.**

72. Article 50 par 4 of the Electoral Law provides for strict limits on persons who are allowed to conduct electoral campaigns. Such limits on third-party campaigning might be contrary to the ruling by the ECHR in *Bowman v UK*, where the Court held that “free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system. The two rights are interrelated and operate to reinforce each other: [...] freedom of expression is one of the ‘conditions’ necessary to ‘ensure the free expression of the opinion of the people in the choice of the legislature’. For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely.”<sup>65</sup> Any limitation on freedom of expression has to be necessary in a democratic society and should be narrowly construed.
73. As previously mentioned (par 25 *supra*), Article 56 par 2 of the Electoral Law reserves official premises and public areas to display posters of political parties during the election period. Pursuant to Article 55 par 2 of the Electoral Law, displaying posters outside of these designated areas is only allowed on authorized commercial premises. While this is common practice in other European countries as well<sup>66</sup>, this provision could raise concerns with regard to freedom of political speech if it prohibits individuals and non-party campaigners from expressing their affiliation with or support for a specific political party during an election campaign, by e.g. publicly displaying a sign of a political party on their own property. **It is recommended to amend the provision accordingly.**
74. Finally, Article 6 par 1 of the Political Party Funding Law states that political parties may not carry out any kind of commercial activity. While it is welcome and in line with international standards to strictly restrict the degree to which political parties may engage in commercial activities, **it may be advisable to include in the Law an exception for certain activities, such as selling party merchandise in order to advertise support for the party.**

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<sup>65</sup> *Bowman v UK* (Application No. 141/1996/760/961) (ECtHR, 19 February 1998) par 42, available at <http://hudoc.echr.coe.int/eng?i=001-58134>.

<sup>66</sup> Eg Italy, see Article 1 Norme per la disciplina della propaganda elettorale, available at [http://www.esteri.it/mae/normative/normativa\\_consolare/votoestero/normativagenerale/1\\_212\\_04041956.pdf](http://www.esteri.it/mae/normative/normativa_consolare/votoestero/normativagenerale/1_212_04041956.pdf).