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**Public**  
**Greco RC-III (2015) 13E**

## **Third Evaluation Round**

### ***Interim* Compliance Report on Romania**

#### **"Incriminations (ETS 173 and 191, GPC 2)"**

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#### **"Transparency of Party Funding"**

Adopted by GRECO  
at its 69<sup>th</sup> Plenary Meeting  
(Strasbourg, 12-16 October 2015)

## **I. INTRODUCTION**

1. The Third Round Evaluation Report was adopted at GRECO's 49<sup>th</sup> Plenary Meeting (3 December 2010) and made public on 15 March 2011, following the authorisation by Romania (Greco Eval III Rep (2010) 1E, [Theme I](#) and [Theme II](#)). It contained a total of 20 recommendations: seven in respect of Theme I and thirteen in respect of Theme II.
2. As required by GRECO's Rules of Procedure, the Romanian authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Turkey and the Russian Federation to appoint Rapporteurs for the compliance procedure.
3. According to the first Compliance Report ([Greco RC-III \(2012\) 18E](#)) adopted by GRECO at its 58<sup>th</sup> Plenary Meeting (11 February 2013), Romania had implemented or dealt with in a satisfactory manner three of the twenty recommendations contained in the Third Round Evaluation Report. Thirteen of the seventeen remaining recommendations had been partly implemented and the four other recommendations had not been implemented. GRECO noted that Romania had been able to demonstrate substantial reforms were underway and therefore concluded that the current low level of compliance with the recommendations is not globally unsatisfactory in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. It invited the Head of the delegation of Romania to submit further information on the implementation of recommendations pending.
4. The Second Compliance Report ([Greco RC-III \(2014\) 22E](#)) was adopted by GRECO at its 66<sup>th</sup> Plenary Meeting on 12 December 2014. With respect to Theme I – Incriminations, recommendations ii, iii, v and vii had been implemented satisfactorily, recommendation vi remained partly implemented and recommendations i and iv had still not been implemented. No tangible progress had been made in respect of Theme II – Transparency of Party Funding; recommendations ii, vi and x – as already noted in the first Compliance Report – had been implemented or dealt with in a satisfactory manner. Recommendations i, iv, v, viii and ix remained partly implemented and recommendations iii and vii had still not been implemented. GRECO had assessed the overall situation as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It asked the Head of Delegation of Romania to provide a report on the progress made in implementing recommendations i, iv and vi on Theme I – Incriminations, and recommendations i, iii, iv, v, vii, viii, ix, xi, xii, and xiii on Theme II – Transparency of Party Funding) by 30 June 2015. The requested information was submitted that day.
5. The current Interim Compliance Report, drawn up by Mrs Ayben IYISOY (Turkey) and Mr Vladimir LAFITSKIY (Russian Federation), assisted by the GRECO Secretariat, assesses the further implementation of the pending recommendations since the adoption of the Second Compliance Report, and performs an overall appraisal of the level of compliance with these recommendations.

## **II. ANALYSIS**

### **Theme I: Incriminations**

6. GRECO recalls that Romania adopted in 2009 a new Criminal Code (NCC), and subsequently a new Criminal Procedure Code (NCPC), which entered into force on 1 February 2014.

### **Recommendation i.**

7. *GRECO recommended criminalising active and passive bribery in the public sector and trading in influence so as to cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence.*
8. GRECO recalls that this recommendation was considered as not implemented. The Romanian authorities have referred to the new article 289 of the New Criminal Code (NCC) which now refers to "carrying out, not carrying out, expediting or delaying the carrying out of an *act which falls within his/her job responsibilities*" or *"is related to an act contrary to such responsibilities"*. They had also indicated that acts which fall outside the official competence of the public official committed by him/her (irrespective of the fact that s/he received an advantage for it), are prosecutable *inter alia* as *usurpation of a position* under article 300 NCC, *forgery of official documents* (article 320 NCC), *theft or destruction of documents* (article 259 NCC), *misappropriation or destruction of evidence or documents* (article 275 NCC), *abuse of position* (article 297 NCC). GRECO concluded that the new wording of article 289 NCC constitutes no improvement compared to the earlier provisions and that the applicability of other provisions was irrelevant for the purposes of the present recommendation; on the contrary, it might contribute to complicate the issues at stake even more.
9. The authorities of Romania do not refer to any new development.
10. In the absence of any follow-up measure, GRECO concludes that recommendation i has still not been implemented.

### **Recommendation iv.**

11. *GRECO recommended to ensure that the incrimination of bribery in the private sector – including in the New Criminal Code – covers as bribe-taker the full range of persons who work, in any capacity, for private sector entities whether legal persons or not.*
12. GRECO recalls that this recommendation had been categorised as not implemented. The authorities have so far referred to the incriminations contained in article 308 of the New Criminal Code, applicable as from 1 February 2014 to bribery acts committed in the private sector. Its insufficiencies had already been analysed and taken into account when this recommendation was issued – as its wording shows.
13. The authorities of Romania do not refer to any new development.
14. GRECO takes note of the absence of any new development and it refers back to its earlier detailed considerations contained in the Second compliance Report.
15. GRECO concludes that recommendation iv has still not been implemented.

### **Recommendation vi.**

16. *GRECO recommended i) to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery and trading in influence in cases of effective regret; ii) to clarify the conditions under which the defence of effective regret can be invoked; iii) to abolish the restitution of the bribe to the bribe-giver in such cases.*

17. GRECO recalls that this recommendation had been categorised as partly implemented. The Romanian authorities had conducted an analysis of cases in which effective regret had been applied. Certain findings of the analysis even appeared to confirm GRECO's concerns. The Romanian authorities had referred to the wording of the provisions on effective regret contained in articles 290 and 292 of the New Criminal Code, effective as of 1 February 2014. These improved the situation in respect of the outcome of the undue advantage, in a way which responds to the third part of the recommendation. For the rest, Romania had not amended the automatic – and mandatorily total – exemption from punishment nor taken any measures to clarify the conditions under which the defence of effective regret can be invoked.
18. The authorities of Romania do not refer to any new development.
19. GRECO takes note of the above. As it has pointed out previously, the purpose of the present recommendation is not to abolish the mechanism of effective regret but to provide for adequate safeguards against possible misuses.
20. GRECO concludes that recommendation vi remains partly implemented.

## **Theme II: Transparency of Party Funding**

21. As a general introduction, GRECO recalls that at the time of the first Compliance Report, the Permanent Electoral Authority (PEA) had finalised a Draft Law amending *Law no. 334/2006 on financing the activity of political parties and electoral campaigns*, which was then submitted to consultation with the main public advisory bodies and the public.
22. On 8 September 2013 the PEA drew the attention of both chambers of Parliament about the need for the Parliament to either proceed with the discussion and adoption of the PEA's draft, or to elaborate its own legislation on such a basis. The second option was finally followed by a group of MPs who took into account parts of the PEA's proposal. Their Draft Law was however rejected on 25 February 2014 by the Senate and re-discussed in the specialised commissions of the Chamber of Deputies, which has the final say in second reading. Moreover, the Government sent to Parliament on 14th April 2014 an Opinion regarding the Draft, with a series of observations and proposals based on the PEA's initial legislative proposal and GRECO recommendations.
23. The authorities indicate that the Parliament has now finally approved *Law no. 113/2015 amending and supplementing Law no. 334/2006 on financing of political parties and electoral campaigns*. It entered into force on 21 May 2015. They point out that the law is aiming mainly at the implementation of GRECO recommendations and public support to the funding of elections, through a system of reimbursement of expenditures from the state budget for political parties and independent candidates fulfilling a series of representativity criteria.
24. GRECO notes that the above law was actually republished in June 2015, with a renumbering of the various paragraphs (*Monitorul Oficial*, part I, nr 446 of 23 June 2015).

## Recommendation i.

25. *GRECO recommended i) to clarify how the financial activity of the various types of structures related to political parties is to be accounted for in the accounts of political parties; ii) to examine ways to increase the transparency of contributions by “third parties” (e.g. separate entities, interest groups) to political parties and candidates.*
26. GRECO recalls that his recommendation had been categorised as partly implemented. On the first part of the recommendation, the PEA issued Instruction no.1/2012, article 26 of which aims to clarify some theoretical aspects (that may be a source of problems in practice) of the Order of the Ministry of Economy and Finance (OMEF) no.1969/2007 on the approval of accountancy regulations for legal persons without patrimonial interest. This instruction was sent to all political parties and published on the PEA website. Additionally, the authorities made reference to the methodological guide on financing and controlling political parties and electoral campaigns, published in 2012, which contains the accounting requirements applicable to the structures related to political parties and to the checks carried out by the PEA. Romania had provided assurances that all territorial structures must in principle be taken into account for the consolidation of the parties' financial statements (first at county level, and then at national level). This is the document which reflects the overall financial situation of the party concerned. It is normally submitted to the tax authorities (see recommendation iii hereinafter). Amendments were contemplated by the initial draft prepared by the Permanent Electoral Authority (PEA) to ensure the submission of another document limited to items of income and expenditure, which would entail the overall consolidation of this kind of information from all entities related directly or indirectly to political parties and would facilitate the overview of the various reports dealing with specific sources of income and expenditure which political parties are required to publish themselves in the official journal. Subsequently, the draft which was then prepared by the Parliament took over the PEA's proposed provisions on consolidated reports on income and expenditure. Regarding the second part of the recommendation, the draft amendments prepared initially by the PEA contained provisions which appeared to meet the underlying concerns of the recommendation on third parties in the context of election campaigns. However, these were not retained by the Parliament in its own, subsequent draft amendments and this part of the recommendation was considered as not implemented.
27. The Romanian authorities now provide information showing that the amendments which concern *inter alia* consolidated reports on income and expenditure have been retained and finally adopted under article 49 in the version of Law 334/2006 republished in June 2015. As a consequence, the parties are now required to produce a detailed report on income and expenditure in the previous year. These must include breakdowns of information concerning the internal structures as referred to in article 4 paragraph 4 of the Political Parties Law no. 14/2003, as well as the same information concerning persons related directly or indirectly to the respective political party. The report is to be prepared annually, by the 30th of April, and political parties must submit it to the Permanent Electoral Authority (PEA). The Romanian authorities also refer to article 3 paragraph 8 of the Law, but these provisions do not constitute an innovation compared to the situation at the time of the evaluation.

**Law 334/2006, as amended in May 2015 and republished on 23 June 2015**

**Article 3 (...)**

*(8) Political parties and their territorial organizations, including those created in the districts of Bucharest, are obliged to organise their own accounts, according to the applicable accounting regulations."*

**Article 49**

*(1) Every year, by the 30<sup>th</sup> of April, political parties are obliged to submit to the Permanent Electoral Authority a detailed report on revenues and expenditures in the previous year.*

*(2) The reports referred to in para. (1) shall include breakdowns of revenues and expenses of internal structures of political parties referred to in art. 4 para. (4) of the Political Parties Law no. 14/2003, republished, revenues and expenses of related persons directly or indirectly to the political party and the forms of association referred to in art. 13 of this law.*

*(3) Political parties are obliged to submit to the Permanent Electoral Authority annual financial statements within 15 days from registration at the relevant tax authority.*

*(4) The Permanent Electoral Authority will publish on its website the reports referred to in para. (1), the annual financial statements and summaries variants within 5 days from the submission date.*

*(5) The accounts of political parties are organized and lead, at national and county level, according to the Accounting Law no. 82/1991, as amended and supplemented."*

28. As for the second part of the recommendation, the amendments adopted in May 2015, and the Law 334/2006 as republished in June 2015, do not deal with third parties. The initial proposals of the PEA, which contained a section on election campaigns carried out by third parties, were not taken over by the Parliament in its own draft. This section contained provisions on: the definition of third parties; definition of persons who are directly or indirectly connected with political parties (with a distinction between natural and legal persons); rules on donations to political parties and candidates made by third parties; rules on costs that third parties can make in election campaigns for different elections; a third party registration mechanism.
29. The Romanian authorities point out that it can be argued that the Law does already establish a ban on campaigning applicable to persons other than political parties and election candidates: article 36 paragraph 4 of the Law, as republished, provides that "expenses related to propaganda materials shall be borne solely by their beneficiaries - independent candidates, political parties or political alliances". Moreover, paragraph 5 also prohibits the production and dissemination of propaganda material under conditions other than those stipulated by law. In addition, the law establishes a new mechanism on the public subsidisation of election campaigns according to which political parties and independent candidates who obtain a certain number of votes are entitled to reimbursement of their campaign expenditure. The authorities take the view that this public support is likely to have a positive effect on the reduction of hidden costs of political parties, which are made through third parties.
30. GRECO takes note of the above information. It would appear that the successive measures taken by Romania have now improved the situation as regards the consolidation of information in a uniform manner, in line with the first part of the recommendation. On the second part of the recommendation, GRECO regrets that no measures have finally been introduced to deal with the active participation of third parties in campaigning. Article 36 paragraph 4 of the Law existed already at the time of the evaluation but it offered apparently no satisfactory safeguard against third party campaigning or costs borne directly by such parties, even in combination with paragraph 5. GRECO does not disagree with the idea that the introduction of State support to the financing of election campaigns may contribute to reduce the financial competition between competing parties and candidates. But experience from other countries shows that one should not rely too much on this assumption: it may also lead to a growing competition for such support.

GRECO would clearly prefer the matter of third parties to be settled in clear terms, for instance in the way the PEA did in its original proposal.

31. GRECO concludes that recommendation i remains partly implemented.

**Recommendation iii.**

32. *GRECO recommended to require political parties to present their consolidated accounts to the Permanent Electoral Authority and to make an adequate summary available to the public.*
33. GRECO recalls that this recommendation has been categorised as not implemented. In particular, the Draft Law examined previously did not provide explicitly anymore for the submission of financial statements to the PEA – contrary to the initial draft proposals made by the PEA. These financial statements are the only kind of financial report providing a global accurate overview of the parties' actual financial situation (contrary to reports on income and expenditure). GRECO also concluded that clear deadlines for the submission of those statements would be preferable so as to make them timely available to the PEA.
34. The Romanian authorities indicate that according to 49 paragraph 3 and 4 of Law no. 334/2006, as amended on 21 May 2015 and republished in June 2015, political parties are required to submit to the PEA annual financial statements within 15 days of their registration with the tax authorities. The PEA is required to publish on its website the annual financial statements and summaries within 5 days from the submission date:

**Article 49 of Law 334/2006, as amended in May 2015 and republished on 23 June 2015**

*(1) Every year, by the 30<sup>th</sup> of April, political parties are required to submit to the Permanent Electoral Authority a detailed report of revenue and expenditure in the previous year.*

*(2) The reports referred to in para. (1) shall include breakdowns of revenues and expenditure of internal structures of the political parties referred to in art. 4 para. (4) of the Political Parties Law no. 14/2003, republished, revenues and expenditure of persons related directly or indirectly to political parties, as well as forms of associations as provided in article 17 of this law.*

*(3) Political parties are required to submit to the Permanent Electoral Authority annual financial statements within 15 days after their reception by the competent tax authorities.*

*(4) The Permanent Electoral Authority shall publish on its website the reports referred to in para. (1), the annual financial statements and summaries thereof within 5 days from the submission date.*

*(5) The accounts of political parties are organised and conducted at national and county level, according to the Accounting Law no. 82/1991, as amended and supplemented.*

35. GRECO is pleased to see that article 49 of Law 334/2006 finally adopted in May 2015 and re-amended in June 2015 provides explicitly for the submission of the financial statements to the Permanent Electoral Authority (PEA), in its capacity of political finance supervisor. The PEA has thus clearly access to information which is normally made available to the tax authorities and which is important for it to more effectively supervise political financing as a whole, as opposed to verifying the mere legality of items of income, as it was previously the case. GRECO is also pleased to see that the Law (article 49 paragraph 4) requires the publication of summaries of those financial statements on the PEA's website, in the interest of the public and to increase the preventive effect of transparency for the overall compliance with the political financing rules in Romania. That said, the information provided by Romania does not allow to draw a clear picture as to the timelines according to which all the relevant information would be made available to the PEA (for it to perform effective checks) and to the public, and whether the publicity given to the

summaries would be timely. The deadlines set forth in the Law are often inter-related and thus conditional. In particular, the financial statements are to be communicated to the PEA within 15 days of their submission to the tax authorities, whereas at the same time the audit reports concerning those statements are to be communicated to the PEA within 60 days of completion of the Audit (article 45 of Law 334/2006 as republished). The public summaries must become available on-line within five days after the submission of the financial statements to the PEA. The only precise deadline concerns the detailed reports on income and expenditure, which must be sent to the PEA by the 30<sup>th</sup> of April for the (previous) reference year. In their latest comments, the authorities explain that as a result from the Order n°65/2015 of the Minister of Finance and of the timelines and deadlines contained in Law 334/2006 that the deadlines for publication are as follows: 20 May for the publication of financial statements, 5 May for the publication of summaries of the detailed annual reports on income and expenditure. Above all, the information provided by Romania does not allow GRECO to assess the adequacy of the information to be included in the summaries which shall be published on the PEA's website. In their latest comments, the authorities explain that the methodological norms in this area are currently being discussed and that the summaries will include information on the income and expenditure. The PEA also intends to publish the financial statements of political parties submitted to the tax authorities without summarising them. Only the detailed reports on revenue and expenditure will be summarised. GRECO recalls that the mechanism for the reporting of information to the body responsible for political financing supervision and the publication of adequate summaries of that information are important elements for the transparency of political financing. It is looking forward to the finalisation of the above implementing measures.

36. GRECO concludes that recommendation iii has been partly implemented.

#### **Recommendation iv.**

37. *GRECO recommended to take appropriate measures i) to ensure that in-kind donations to parties and election campaign participants (other than voluntary work by non-professionals) are properly identified and accounted for at their market value, as donations; ii) to clarify the legal situation of loans.*
38. GRECO recalls that this recommendation had been categorised as partly implemented. As for the first part, the Government Ordinance no. 24 which had entered into force in 2011 sets a series of rules on the valuation of assets including in-kind donations. The valuation of assets shall be carried out by any person who is an authorised valuator pursuant to this ordinance. Reference was also made to the fact that the International Accounting Standards Board (IASB) published IFRS 13 on *Fair Value Measurement* in May 2012. The version of the first draft law prepared by the PEA also included new provisions<sup>1</sup> which required the valuation of movable and immovable (real estate) assets donated to political parties, as well as the valuation of free of charge services carried out by authorised valutors in accordance with the above Ordinance. GRECO noted that there was a need to keep the matter under review due to apparent contradictions between rules<sup>2</sup>.

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<sup>1</sup> The proposed article of the Draft Law reads as follows: „(8<sup>1</sup>) Assets and free of charge services stipulated under para. (8) shall be valued according to Government Ordinance no. 24/2011 regarding measures in the field of asset valuation. (2) Donations of goods and free of charge services will be registered in the accounting books at their market value. At the registration in the accounting books, the valuation shall be made by valutors authorized according to Government Ordinance no. 24/2011 regarding measures in the field of asset valuation.”

<sup>2</sup> “GRECO recalls that the current version of Law 334/2006 contains two sets of provisions on in-kind support: a) article 6 requires that discounts above 20% of the value of goods and services offered to parties and candidates shall be considered as donations and recorded “according to regulations issued by the Ministry of Public Finance”; b) article 8 paragraph 2 requires that all donations in the form of goods or services free of charge need to be registered at their actual value “settled

In the subsequent draft amending legislation prepared by the Parliament, a different approach was followed, leaving it up to the political parties to assess the value by means of an internal committee and GRECO expressed a clear preference for the previous model. As for the second part of the recommendation, a new PEA instruction no. 1/2012 had made it clear that political parties may not use loans<sup>3</sup> but it remained silent as regards loans in the context of campaign financing. The subsequent draft prepared in Parliament followed a completely different approach by making provision on loans both in respect of party financing and of election campaigns.

39. The Romanian authorities point out that as regards the first element of the recommendation, Law 334/2006 as amended in May 2015 and republished in June 2015, address GRECO's concerns. According to art. 6 paragraphs 5 and 6, donations of goods and services provided free of charge must be reflected in the accounts of political parties at their actual value based on market prices and this applies both to movable and to immovable property assets. The valuation of goods and services is to be done by authorised valuers in accordance with Government Ordinance no. 24/2011 mentioned above, as amended by Law no. 99/2013. The assessment is to be registered in a document called "evaluation report" and to be carried out in accordance with specific standards including of professional conduct.

**Law 334/2006 as amended in May 2015 and republished in June 2015**

*Art. 6 - (1) Donations received by a political party in a fiscal year may not exceed 0.025% of the revenue provided for in the State budget for that year.*

*(2) The value of donations received from an individual in a year are limited to the equivalent of 200 gross minimum basic wages [47 400 euros], as at 1 January of that year.*

*(3) The value of donations received from a legal person in a year can be up to 500 gross minimum basic wages [118 500 euros], as at 1 January of that year.*

*(4) The total amount of donations made by legal entities directly or indirectly controlled by another person or a group of natural or legal persons may not exceed the limits provided in par. (2) and (3).*

*(5) The market value of movable and immovable assets donated to the party, as well as of services provided to the party free of charge counts for the value of donations within the limits provided in para (1), (2) and (3).*

*(6) The assessment of goods and services provided in par. (5) are performed by certified appraisers according to Government Ordinance no. 24/2011 regarding certain measures in the field of property valuation, approved with amendments by Law no. 99/2013, as amended and supplemented.*

*(7) legal persons is prohibited, the date of the donation, outstanding debts older than 60 days from the state budget, social security budget and local budgets to make donations to political parties, except when they recovered amounts higher than its own debt.*

*(8) In making the donation, the political party has a legal obligation to ask the person presenting a donor affidavit concerning the conditions specified in para. (7).*

*(9) It is forbidden to accept any form, direct or indirect, by political parties, donations of material goods or money or free services done with the obvious purpose of obtaining an economic advantage or in violation of para (8).*

40. On the second element of the recommendation, the revision of Law 334/2006 has led to a completely different approach from the previous one, in which the loans were not allowed. According to art. 3 of Law no. 334/2006, as amended and supplemented, political parties will be able to borrow money, using only authentic notarial acts, under penalty of nullity, accompanied by

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*according to law". This could be problematic in case certain services or goods are provided at a symbolic price; it would appear that the above lack of consistency will persist."*

<sup>3</sup> According to article 1 of PEA's Instruction no. 1/2012, "It is forbidden to finance the activity of political parties by means of loans, under the sanction regulated by article 41 paragraph 1 of Law no. 334/2006 on financing the activity of political parties and electoral campaigns, republished". In 2013, the PEA sanctioned the Romanian Ecologist Party and the Green Party for breaching the above mentioned instruction, as well as art. 3 paragraphs 2 and 3 of Law no. 334/2006.

documents substantiating the effective transfer, and the terms of the agreement on the conditions for repayment. Such repayments must take place within a period of 3 years. Loans and their repayment can only be made via bank transfer. Loans which are not repaid within the period of 3 years can become donations only upon the agreement of the parties and only up to the ceiling permitted for the year concerned – which is which 0.025% of the State budget. The list of loans with a value in excess of 100 minimum gross salaries [23 700 euros] is to be published in the Official Gazette of Romania, Part I. At the same time, it is prohibited for political parties, political or electoral alliances and independent candidates themselves, to propose loans to other natural or legal persons. The authorities also point out that since there is also still a risk that the rules on loans and donations be circumvented by means of donations, this matter was discussed in the context of the elaboration of the methodological norms, a new draft of which was published on the PEA's website on 29 September 2015. The text of the law also contains provisions on loans in the chapter on campaign financing. The campaign contributions that may be submitted by candidates or the financial agent may derive from loans from individuals or contracted with banking institutions.

***Law 334/2006 as amended in May 2015 and republished in June 2015***

***Article 28***

*(...)*

*(8) Election campaign contributions that may be submitted by candidates or financial agent can only come from donations received by candidates from individuals, from own revenues or by loans from individuals or contracted with banking institutions.*

41. In this case, the methodological norms will require further details in order to implement the principles on political financing, such as the principle of legality, the principle of equality, the principle of transparency of revenue and expenditure, the principle of independence of political parties and candidates from the contributors and the principle of political and electoral competition integrity. One possible approach is provided by article 38 paragraph 4 of the Law, according to which the amounts received from candidates by a political party are considered donations and shall follow accordingly the rules established by law in this respect. In such a case, the provisions of article 12 paragraph 1 would become applicable, under which, all donations, including confidential donations, must be recorded and properly highlighted in the accounts, specifying the information that allows for the identification of financing source, or loan source in this case.

***Law 334/2006 as amended in May 2015 and republished in June 2015***

***Article 3***

*(...)*

*(2) Political parties can borrow money only with authentic notarial acts, under penalty of nullity, accompanied by documents handover, the agreement providing for the manner and time of their refund.*

*(3) The deadline stipulated under para. (2) may not be more than 3 years.*

*(4) Loans and refund of money can be made only by bank transfer.*

*(5) Cash loans which are not repaid within the period specified in para. (3) can constitute donations only by consent and if the ceiling imposed for donations in that year provided by art. 5 para. (1) is not reached, up to that ceiling.*

*(6) Loans which have a value greater than 100 minimum gross salary are subject to the conditions laid down in Art. 9.*

*(7) Granting of loans by political parties, political or electoral alliances and independent candidates to natural or legal persons is prohibited.”*

**Article 7**

*(1) The amounts of loans received by a political party in a fiscal year may not exceed 0.025% of the revenue provided for in the State budget for that year.*

*(2) The amounts of loans received by a political party from an individual in a year can be up to 200 minimum gross salary at national level, at the existing value on 1 January of the year respectively.*

*(3) The amounts of loans received by a political party from a person in a year can be up to 500 minimum gross salary at national level, at the existing value on 1 January of the year respectively.*

*(4) The total value of the amounts of loans to political parties by legal entities directly or indirectly controlled by another person or a group of natural or legal persons can not exceed the limits provided in para. (1) - (3).*

*(5) The provisions of art. 5 para. (7) - (9) and of the art. 10 para. (1) - (3) shall apply accordingly."*

42. GRECO takes note of the above. Regarding the first part of the recommendation, it would appear that the amendments adopted have reintroduced earlier proposals made by the PEA in its draft law, especially additional modalities for the valuation by external authorised valuers (as provided in an ordinance of 2011) as opposed to valuation by internal committees, along the lines of rules to be determined in a future government decision. GRECO welcomes that such a system is now in place. It regrets that the rules are not yet fully consistent since article 6 paragraph 5 and article 10 according to the current numbering in the republished Law 334/2006 still follow different approaches (see footnote 3). Again, Romania would be well advised to keep this matter under review. Of greater concern are the new rules introduced in May 2015 under a new article 8: these provide for a derogatory regime applicable to property and financial support donated in relation to party headquarters :

**Law 334/2006 as amended in May 2015 and republished in June 2015**

**Article 8**

*(1) Donations of real estate to serve as locations for political party headquarters are exempted from the requirements of Art. 5 para. (2), (3), (4) and (5).*

*(2) Financial donations for acquiring office buildings intended for the political party are exempted from the requirements of Art. 5 para. (2), (3), (4) and (5).*

*(3) The political party is required to perform the task in para. (2) at the term and under the conditions stipulated in the contract of donation.*

*(4) The deadline for the fulfilment of the duty laid down in para. (3) may not exceed 2 years.*

*(5) Failure to meet the deadline provided in para. (4) entails cancellation of the exceptions provided in para. (1) and 2).*

43. The above provision provides for the non-applicability of the rules on ceilings on donations from natural or legal persons (and groups thereof). It also derogates from the general requirement for beneficiaries of in-kind donations to include the market value of movable and immovable property as well as services "in the value of donations" and to comply with these ceilings and the overall ceilings applicable to amalgamated donations within a year (article 6 of the Law, as republished in June 2015, which applies to all forms of assets). The benefit of the exception is conditional to the actual realisation of the deed of donation and the main consequence of not doing so, is the retroactive application of the rules of article 6, which can take place up to two years after the donation was made. GRECO is concerned about the enforceability of such rules and the risk that they be misused in future to circumvent the provisions on ceilings, to disguise and dissimulate large donations made in periods of elections etc. These arrangements will no doubt be difficult to enforce and they clearly contradict the ambition and purposes of Law 334/2006, including as concerns the rules on the valuation and declaration of donations.

44. On the second part of the recommendation, the amendments approved in May 2015 appear to confirm that Law 334/2006 is following an approach which is presented by the Romanian authorities as radically different from the path followed so far. GRECO recalls that at the time of the evaluation, loans were not listed among the authorised sources of political financing and that this was interpreted in different manner by a variety of interlocutors of the evaluation teams. As a result of this recommendation, the PEA had then issued an instruction no. 1/2012 according to which loans are prohibited and it had already enforced sanctions in this area. GRECO recalls that it is not in a position to support either approach, and the wording of the recommendation refers to the need for adequate clarification for the reasons recalled above. In the Second Compliance report, GRECO pointed out that there was a risk for the credibility of the Romanian political financing system if the law in parliament did not confirm the path followed by the PEA, given the impact a radical change of approach could have for the validity/enforceability of sanctions imposed in the last two years. In any event, the information provided by the Romanian authorities, which refer to the need to adopt new guidelines and implementing measures to address the various implications of the new legal rules on loans, suggests that this part of the recommendation has still not been fully implemented. GRECO uses this opportunity to recall that contrary to Romania, other GRECO member States have sometimes restricted loans to those granted by financial institutions, in particular to reduce the risks that certain restrictions applicable to donations be circumvented.
45. GRECO concludes that recommendation iv remains partly implemented.

#### **Recommendation v.**

46. *GRECO recommended i) to require that all donations be, as a rule, recorded and included in the accounts of political parties and campaign participants; ii) to introduce a requirement that all donations above a certain threshold be made through the banking system.*
47. GRECO recalls that the present recommendation had been categorised as partly implemented. As for the first part of the recommendation, the authorities of Romania had acknowledged the problematic distinction between donations and “hand gifts” identified in the Evaluation Report, which leads to the duty to register only donations above the equivalent of 420 Euro (at the time of the visit). They had indicated that in order to clarify the interpretation of the provisions, the last sentence of art. 6 para. (1) of GD no. 749/2007 will be repealed when the GD no. 749/2007 is amended and once the Draft Law on political financing is adopted. GRECO appraised positively that a new draft provision (article 8 paragraph 1) provided that: “**All donations, regardless of their value, shall be registered and highlighted in a proper way in the accounting documents, mentioning the date when the donations were made, as well as other information allowing the identification of the financing sources and the donators**”. On the second part of the recommendation, GRECO regretted that the Draft Law in parliament (contrary to the PEA’s initial draft) did not oblige all financial contributions exceeding 1 minimum gross salary (approx. 237 Euro) to be made only through the banking system, at least at national level. This concerns the general rules applicable to the financing of political parties as well as the specific rules on the financing of election campaigns.
48. The Romanian authorities state that the first part of the recommendation is addressed by Law 334/2006, as amended in May and republished in June 2015, under article 12 paragraphs 1 and 2, and article 13 (in the version of May 2015: article 8 (1) and (2) and article 9). All donations, including those for which the identity of the donor is not to be published in the Official Journal, are to be recorded and properly identified in the accounts. Campaigns can only be financed

through contributions from candidates and transfers of funds from the current accounts of political parties; contributions made by the candidates (which can be based on their own income, private donations or loans) are subjected to the general limits on donations. Contributions made by candidates are considered donations to political parties and, therefore, they must also follow the same rules on the registration in accounting documents (article 38 paragraph 4 in the republished version of the Law, article 31 paragraph 4 in the version adopted in May 2015). The process for the adoption of a new Government Decision which will repeal GD 749/2007 is on-going and expected to be completed by the end of October 2015.

**Law 334/2006 as amended in May 2015 and republished in June 2015**

**Article 12** - (1) All donations, including confidential ones, shall be registered and highlighted in a proper way within the accounting documents, mentioning the date when the donations were made, as well as other information allowing the identification of the financing sources and the donors.

(2) Donations of goods and free of charge services will be registered in the accounting books at their market value.

(...)

**Article 13** - (1) The political parties have the obligation to publish in the Official Journal of Romania, Part I, the list of the natural and legal persons who have made within one fiscal year, donations whose cumulated value exceeds 10 minimum gross salaries at national level [approx. 2 370 euros], the list of natural and legal persons who have made loans whose value exceeds 100 minimum gross salary [23 700 euros] at national level, and the total amount of confidential donations, meaning the total amount of loans with a value of less than 100 minimum salary at national level received, until the 30th of April of the next year.

(2) The list mentioned at para (1) shall contain the following mandatory elements:

a) for natural persons - donor's or loaners full name, citizenship, value, the type and date the donation or loan was made. In case of a loan the return deadline is also given;

b) for legal persons - name, address, nationality, unique registration code, value, the type of donation or loan and the date the donation or loan was made. In case of a loan the return deadline is also given.

**Article 38** – (...)

(4) The amounts of money received from the candidates proposed for elections by a political party shall be deemed donations and the provisions of this law shall be applied accordingly.”

49. As for the second part of the recommendation, the authorities refer to the following provisions of Law 334 / 2006 as revised and republished. These require the mandatory use of bank accounts to collect donations above the amount of 10 minimum gross salaries (approx. 2 370 euros). Since contributions from candidates are considered donations to political parties, they must follow the same rule according to article 28 paragraph 3.

**Law 334/2006 as amended in May 2015 and republished in June 2015**

**Article 9** - Donations the value of which exceeds 10 minimum gross salaries at national level [2 370 euros] will be made only through bank accounts.

**Article 28** – (...)

(3) Election campaign contributions are deposited or transferred to the accounts referred to in para. (1) only by the candidates or the financial agent, as their proxy.

50. GRECO takes note of the above. On the first part of the recommendation, Law 334/2006, as amended and subsequently republished in June 2015 establishes under article 12 a clear requirement for all donations to be recorded with all the relevant information including on the

donors' identity. This is to be welcome. But at the same time, GRECO is concerned by the redundancy and inconsistency of the rules in place: besides the above mentioned article 12, article 11 also requires the mandatory registration of donations including identification data; but it still leaves it possible to preserve the anonymity of the donor at his/her request if the donation does not exceed 10 minimum gross salaries – above that amount, the identity of the donor is to be published, as mentioned earlier:

**Law 334/2006 as amended in May 2015 and republished in June 2015**

**Article 11** - (1) *When receiving a donation, it is mandatory to check and register the donor's identity, irrespective of the public or confidential [from the viewpoint of publication in the Official Gazette] character of the donation.*

(2) *Upon the donor's written request, his/her identity may remain confidential, provided the donation does not exceed the limit of 10 minimum gross salaries.*

(3) *The total amount received by a political party as confidential donations shall not exceed the equivalent of 0.006% of the incomes provided by the state budget for that year.*

51. Above that amount, article 13 mentioned previously imposes the publication in the official journal of individual donations with the disclosure of the donor's identity; but anonymous donations are only published in an amalgamated manner. The situation is unnecessary complex and it creates certain risks for the effectiveness of the rules.
52. Moreover, in the light of the information supplied, it would appear that similar arrangements on the registration and identification of all donations have not been made for contributions to the candidates. In fact, article 38 of Law 334/2006, mentioned by the Romanian authorities, pursues a different objective which is the centralisation of funds received by political parties from their candidates. Finally, as indicated already under recommendation iv above, the derogatory regime introduced lately under article 8 of the republished Law, concerning real estate, funding and equipment intended for the parties' headquarter structures, raises significant concerns. This part of the recommendation has thus not been fully implemented.
53. As for the second element of the recommendation, whereas article 9 refers to the use of the banking system for donations made to political parties, the arrangements of article 28 cited by the Romanian authorities pursue another objective than imposing similar obligations for candidates and the financing of their campaigns. GRECO regrets that the PEA's initial proposal in this respect have received no greater consideration<sup>4</sup>. Romania needs to pursue consideration of the above matters. Romania also may wish to review the threshold for donations via the banking system since it appears clearly disproportionately high in the context of the country (it represents a tenfold increase compared to the PEA's initial proposal of 1 national minimum gross salary - i.e. approximately 237 euros).
54. GRECO concludes that recommendation v remains partly implemented.

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<sup>4</sup> Draft provisions proposed by the PEA in its initial draft: *Art. 5<sup>1</sup>. – Money donations whose value exceeds 1 minimum gross salary at national level [approx. 237 Euro] shall be made only through bank accounts. Art. 23<sup>1</sup>. – After the beginning of the electoral period, money donations received from natural or legal persons, which exceed 1 minimum gross salary at national level, shall be made only through bank accounts.*

## Recommendation vii.

55. GRECO recommended to amend the rules on the presentation of financial statements concerning election campaigns to the Permanent Electoral Authority (PEA) so that all legitimate claims and debts are adequately followed-up by the PEA.
56. GRECO recalls that this recommendation has been categorised as not implemented. Draft provisions had been included in the initial Draft Law prepared by the PEA<sup>5</sup>, which required that a) political parties and independent candidates spend all donations and legacies received for the campaign by the time of submission of the report on electoral income and expenses, and for paying the costs incurred during the election; b) financial representatives submit detailed reports to the PEA on revenue and expenditure of the political parties, political alliances and electoral alliances, the organisations of Romanian citizens belonging to national minorities and of independent candidates within 15 days from the date of elections; c) political parties and independent candidates submit a list of their creditors in relation to the financing of their campaign, and the amount of those debts; d) political parties and individual candidates report quarterly to the PEA the status of their debts until they are paid in full. But these initial proposals were not retained in the draft discussed in Parliament: it retained partly the elements mentioned under a) in the above paragraph, insofar as draft article 34<sup>3</sup> kept such a duty to spend the income and liquidate debts incurred in connection with the campaign (by the time the financial statements are submitted). Unspent income will thus be transferred to the State budget. At the same time, the other draft provisions mentioned under c) and d) were not included (anymore) in the wording of the draft in Parliament.
57. The Romanian authorities now state that according to the revision of Law 334/2006, as republished in June 2015, financial agents need to submit to the PEA detailed reports on income and expenditure of political parties, political alliances and electoral alliances, organisations of Romanian citizens belonging to national minorities and independent candidates within 15 days from the day of the election. At the same time, political parties and independent candidates shall submit a list of their creditors regarding campaign financing and the amount of these debts. Political parties and independent candidates are required to report quarterly to the PEA on the settlement of any debts until these are fully repaid (article 47 paragraph 4 of the Law, as republished). In order to follow-up on these, the PEA may request documents and information from natural and legal persons who have provided services for free or against remuneration to political parties, as well as from any public institutions, and the request must be met within 15 days.

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<sup>5</sup> The proposed amendments read as follows: "Art. 34<sup>3</sup> - (1) Political parties and independent candidates shall use donations and inheritances received for the electoral campaign, to pay the costs incurred during the elections by the deadline for submitting the report of electoral income and expenses. (2) All amounts not spent referred by para. (1) shall be made revenue at the state budget." Art. 38 - (1) Within 15 days from the date of elections, financial representatives shall submit detailed reports to the Permanent Electoral Authority on revenue and expenditure of the political parties, political alliances and electoral alliances, the organisations of Romanian citizens belonging to national minorities and of independent candidates, as well as lists of persons to whom debt is owed as a result of the election campaign, and the amount of the debts. (4) Reports referred to by para (1) and (2), lists of persons to whom debt is owed as a result of the election campaign, and the amount of the debts shall be published in the Official Gazette of Romania, Part I, by Permanent Electoral Authority, in a term of 60 days since the publication of the election results. (5) If at the time of submission of the detailed report on electoral income and expense, candidates or political parties will record debts, they shall report to the PEA, quarterly on debt payment, until the debts are fully paid."

**Law 334/2006 as amended in May 2015 and republished in June 2015**

**Article 43** - (1) To check the legality of income and expenditure of political parties, the Permanent Electoral Authority may require documents and information from natural or legal persons who have provided services, free of charge or against payment to political parties, as well as from third parties.

(2) The natural and legal persons referred to in para. (1) have the obligation to submit to representatives of the Permanent Electoral Authority documents and information required.

(3) Political parties are required to provide access of control bodies of the Permanent Electoral Authority to their premises.

(4) Political parties and all persons mentioned at para. (1) are required to submit to the Permanent Electoral Authority all documents and information required within 15 days of the request.”

**Article 47** - (1) Within 15 days from the date of an election, the financial representatives shall submit detailed reports to the Permanent Electoral Authority on revenue and expenditure of the political parties, political alliances and electoral alliances, the organisations of Romanian citizens belonging to national minorities and of independent candidates, as well as lists of persons to whom debt is owed as a result of the election campaign, and the amount of the debts, together with the declarations stipulated at art. 23 para. (9).

(2) The Permanent Electoral Authority provides public disclosure of the list of political parties, political alliances, electoral alliances, organizations of Romanian citizens belonging to national minorities and independent candidates which have submitted detailed reports of election income and expenditure as well as the list of the third parties which have submitted detailed reports of election expenditure made during the electoral campaign, as they are submitted,, by successive publication in the Official Journal, Part I.

(3) The reports mentioned in para (1) and (2), the lists of persons to whom a debt is owed as a result of the election campaign, and the amount of the debts shall be published in the Official Journal of Romania, Part I, by the Permanent Electoral Authority, in a term of 60 days since the publication of the election results.

(4) If at the time of submission of the detailed report on electoral income and expense, candidates or political parties have record debts, they shall report quarterly to the PEA until these debts are fully repaid.

(5) The mandates of the candidates who have been declared elected cannot be validated if the detailed report of the electoral incomes and expenditures for each political party or independent candidate has not been sent under the conditions of the law.”

58. GRECO takes note of the above amendments which require political parties and campaign participants to inform the PEA about their creditors and at regular interval after an election to report back to the PEA about the repayment of any outstanding debt. This innovation which was recommended by GRECO is aimed *inter alia* to limit risks of disguised donations in case certain debts are written-off. The PEA is given the responsibility to follow-up on these financial settlements and it would appear that it has the legal means to perform such checks effectively. Overall, GRECO is pleased to see that the initial proposals of the PEA – which had not been retained in the draft in Parliament – have found their way back into the final adopted wording of Law 334/2006.

59. GRECO concludes that recommendation vii has been implemented satisfactorily.

**Recommendation viii.**

60. GRECO recommended to require that the annual accounts of political parties – to be presented to the Permanent Electoral Authority, as recommended earlier – are subject to independent auditing prior to their submission.

61. GRECO recalls that this recommendation had been categorised as partly implemented. Audit requirements were introduced by amendments of 2011 to the Law no. 82/1991 on accountancy, concerning political parties which benefit from state funding (5 political parties at the time of the first Compliance Report). Since this rule was not specific to political parties (it concerns “all legal persons without a patrimonial interest which receive public subsidies”) a draft provision was

inserted in the initial Draft Law prepared by the Permanent Electoral Authority (PEA)<sup>6</sup>, which did also foresee that the audit reports are to be communicated by the political parties to the PEA. First measures to increase the independence, objectivity and integrity of auditors were included in a recent Government Decision no. 433/2011, especially an article 59 on the prevention of conflicts of interest in the relationship with the client but it seemed to apply only where the client is a business. It was announced that additional amendments would be made to Law 334/2006 on financing the activity of political parties and electoral campaigns, to avoid that the audit can be done by a party member or by the same business for more than 4 years in a row. These proposals were not retained in the subsequent draft prepared by the Parliament.

62. The Romanian authorities now state that the amendments to the Law 334/2006, adopted in May 2015, have reintroduced proposals made earlier by the PEA in its draft. According to article 45 paragraph 1 of the version of the Law republished in June, the annual financial statements of political parties which receive State subsidies are subject to a statutory audit, which is carried out by statutory auditors, natural or legal persons authorised under Government Emergency Ordinance no. 90/2008 *on statutory audits of annual accounts and the consolidated annual financial statements and public oversight of the accounting profession*, approved by Law no. 278/2008, as amended and supplemented. The Law further provides that the political parties will transmit to the PEA a copy of the audit report within 60 days from the date of performance of the said audit. In their additional comments, the authorities detail the guarantees of independence that statutory auditors are subjected to, including concerning the independence from the audited entity's decision-making process, prohibition of any other direct or indirect financial / business / employment /other relationship (article 21), mandatory rotation (every seven years) and quality checks of audit reports every three years including an assessment of the auditors independence (article 48).

**Law 334/2006 as amended in May 2015 and republished in June 2015**

**Article 45 - (1)** *The annual financial statements drawn up by political parties which receive subsidies from the State budget are subject to statutory audit, which is carried out by statutory auditors, natural or legal persons authorised by law.*

*(2) Within 60 days from the date of the audit, the political parties stipulated in para. (1) transmit to the Permanent Electoral Authority a copy of the audit report."*

63. GRECO takes note of the above. It is pleased to see that the final wording of the amendments to Law 334/2006 has now introduced a clear requirement for political parties to have their accounts audited and that the corresponding audit report is to be sent to the PEA. The duty is limited to parties which receive State support and as GRECO had pointed out earlier, this seems to cover all the more important political parties. GRECO also appreciates the guarantees of independence offered by the norms applicable to statutory auditors; these address the requirements of the present recommendation.

64. GRECO concludes that recommendation viii has been implemented satisfactorily.

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<sup>6</sup> The proposed amendment reads as follows: "Political parties which receive public subsidies shall have an annual external audit of their financial statements. The audit reports shall be submitted to the PEA".

## Recommendation ix.

65. GRECO recommended i) to give the Permanent Electoral Authority (PEA), the full responsibility of monitoring compliance with the Law no. 334/2006 on the financing of activities of the political parties and election campaigns; ii) to strengthen the effectiveness of the PEA's supervision over party and election campaign financing, including endowing the PEA with additional control powers regarding party expenditure and entities other than political parties, and sufficient human and other resources to perform this task.
66. GRECO recalls that his recommendation was considered partly implemented since some progress was recorded on both components. Some measures had been taken in order a) to clarify the distribution of tasks between the Permanent Electoral Authority (PEA) and the Court of Accounts (CoA): signature of a protocol detailing how simultaneous controls on State subsidies are to be carried out, indication in the National Anticorruption Strategy (NAS) approved in 2012 that it is the PEA which is the sole authority responsible for implementing the objective *Increasing transparency of political party and electoral campaigns financing*; b) to supplement as from 2013 the human resources of the PEA's political financing control department (with an increase of 11 positions in the organisational chart and additional financial resources); c) to amend article 35 paragraph (1) of the Draft Law and to propose more explicitly that the "PEA shall be empowered to monitor compliance with legal provisions concerning revenues and expenditures of political parties, political alliances or election of independent candidates, as well as the legality of campaign financing"; d) and likewise to provide in article Art. 35<sup>1</sup> of the Draft Law for additional powers, such that "(1) In order to check the legality of income and expenditure of political parties, the PEA may request documents and information from natural and legal persons who provide services, remunerated or non-remunerated, to political parties, as well as from third parties. (2) Natural and legal persons referred to at para (1) are under the obligation to submit to PEA representatives requested documents and information. (3) Political parties are under the obligation to allow control bodies of the PEA to access their premises. (4) Political parties shall provide PEA all documents and information required within 15 days of the request." GRECO recalled the findings of the Evaluation Report and encouraged Romania to adopt the intended amendments and to clarify the actual increase in the PEA's resources allocated to financial supervision. It expected that convincing elements would be provided in due course demonstrating the PEA's ability to address major recurring problems including overspending during election campaigns and undeclared sources of funding, which were mentioned in the Evaluation Report. Information provided by the authorities in respect of sanctions applied at the time of the first Compliance Report suggested that the PEA was progressively confirming its position and authority, but also – regrettably – that the infringements detected still concerned formal requirements, mostly.
67. In the Second Compliance Report, it was then noted that most of the changes proposed by the PEA in its draft were retained in the draft prepared by the Parliament. Romani also reported that the Department of the PEA responsible for supervision counted at present 25 employees, i.e. 8 more staff than at the time of the on-site visit and it confirms the plans announced in the first Compliance Report 2 years ago. Moreover, on the occasion of the elections in May 2014 and their financing in accordance with Government Decision no. 103/2014, funds were attributed for the PEA to create 34 county offices (under the coordination of the 8 existing PEA regional branches) with one person in each office having responsibility for party and campaign financing supervision.

68. The authorities of Romania now refer to the fact that article 42 paragraph 2 of Law 334/2006 as amended in May and republished in June 2015 retains the previous overlapping competencies of the Court of Accounts and Permanent Electoral Authority – PEA, without compromising the efficiency or oversight of political financing by the PEA. The PEA is now explicitly empowered to control the legality of political parties' expenditure and not just of the income, as it was the case before. The number of reports submitted by the political parties to the PEA has increased exponentially, and the PEA has now access to the annual financial statements of political parties and the annual detailed reports of political parties, as well as the reports related to the financing of election campaigns. The PEA has also access to other documents related to the activities of the parties' activities which generate an income or expenditure, the audit reports on the annual financial statements of political parties, as well as supporting documentation for the expenditure of election campaign of political parties and independent candidates. Also, the new wording of the law indirectly makes accountable persons responsible of managing the funds of the political party at national and county level, as well as persons entitled to represent the political parties at national and county level, who must be in a register held by the PEA. The authorities refer to parts of the new provisions (article 42 paragraphs 1 and 2 in accordance with the amendments of June 2015 - previously article 35 paragraphs 1 and 2). For the sake of a better overview of the actual achievements, the Secretariat and the rapporteurs feel it more appropriate to give a broader overview of the main provisions:

**CHAPTER V of Law 334/2006 as amended in May 2015 and republished in June 2015**

*Control of financing political parties and electoral campaigns*

**Article 42**

(1) *The Permanent Electoral Authority is empowered to monitor compliance with the legal provisions on income and expenditure of political parties, political or electoral alliances, independent candidates, as well as the legality of election campaign financing.*

(2) *Controls of subsidies from the State budget will be performed simultaneously with the Court of Auditors, in accordance with Law no. 94/1992 on the organisation and functioning of the Court, as republished.*

(3) *the Permanent Electoral Authority is established, within 60 days from the date of entry into force of this Act, the Department of Control financing political parties and electoral campaigns by supplementing existing staff.*

(4) *The entire staff of the Permanent Electoral Authority benefits from an increase of salary of 30% applied to the gross monthly base salary, due to the complexity of the work. (...)*

(5) *The documents and information which can be requested by the Permanent Electoral Authority can only be related to the activities of political parties concerning the generation of revenue and expenditure.*

(6) (...)

**Article 43**

(1) *In order to verify the legality of revenue and expenditure of political parties, the Permanent Electoral Authority may request documents and information from natural and legal persons who have provided free or remunerated services to political parties, as well as from any public institution.*

(2) *The natural and legal persons referred to in para. (1) shall make available the documents and information requested by the representatives of the Permanent Electoral Authority.*

(3) *Political parties have an obligation to allow access of control bodies of the Permanent Electoral Authority to their premises.*

(4) *Political parties and persons referred to in para. (1) are required to submit to the Permanent Electoral Authority all the documents and information required within 15 days of the request.*

**Article 44**

(1) *Annually and whenever it receives a notification, the Permanent Electoral Authority checks each party with regard to the legal provisions relating to the revenue and expenditure of political parties.*

(2) *The Permanent Electoral Authority may be notified by any person who presents evidence of a breach of legislation concerning the financing of political parties and election campaigns.*

(3) An annual report is published in the Official Gazette of Romania, Part I, and on the website of the Permanent Electoral Authority, by 30 April of the following year.

(4) The Permanent Electoral Authority can control compliance with the law on financing political parties and electoral campaigns when there is suspicion of violation of legal provisions concerning financing of political parties and electoral campaigns, upon notification of any interested person or ex officio.

(5) In the framework of controls performed by the Election Authority in connection with the legal rules on the financing political parties and election campaigns, should there be a suspicion of a criminal act, the Permanent Electoral Authority shall notify the prosecution authorities.

(6) The results of each inspection are published in the Official Gazette of Romania, Part I, and on the website of the Permanent Electoral Authority within 45 days after completion.

69. GRECO takes note of the final wording of Law 334/2006 and of the fact that the intended amendments have materialised concerning the role and responsibilities of the PEA as regards the income and expenditure of political parties and other election campaign participants. Combined with the improvements reported earlier including a memorandum of understanding with the Court of Accounts, the increase of structures and staffing, GRECO considers that globally, the concerns underlying the two components of this recommendation have been addressed. GRECO expresses the hope that the PEA will be able in future to make effective use of its new means and responsibilities and to demonstrate its ability to deal with infringements other than formal (e.g. hidden sources of funding, undeclared spending). It is recalled that at the time of the on-site visit, there was for instance a strong perception of frequent hidden over-spending by political parties during election campaigns which was not at all addressed by the PEA.

70. GRECO concludes that recommendation ix has been implemented satisfactorily.

#### **Recommendation xi.**

71. *GRECO recommended to provide in Law no. 334/2006 on the financing of activities of the political parties and election campaigns that the Permanent Electoral Authority report suspicions of criminal offences to the competent criminal law bodies.*

72. GRECO recalls that this recommendation had been categorised as partly implemented since the draft amendments contemplated to date included a provision<sup>7</sup> which explicitly compelled the PEA to notify the criminal investigation bodies of suspicions of a crime. GRECO also had misgivings as to whether the intended provision was broad enough to enable it to report suspicions concerning any relevant criminal offence in the context of its activities<sup>8</sup>.

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<sup>7</sup> The Draft proposal reads as follows: "If suspicions related to the commission of a crime arise during a control carried out by the PEA on compliance with the legal provisions regarding political party and electoral campaign financing, PEA notifies the organs of penal pursuit."

<sup>8</sup> The Evaluation Report (paragraph 124) pointed out that "Law no. 334/2006 lists a series of infringements and sanctions which apply in relation to most of the requirements of the Law. But there are some exceptions; for instance in case of misuse of public facilities and resources (article 10 paragraph 1 of Law no. 334/2006). The GET was advised by the Ministry of Justice that such acts are nevertheless prosecutable in accordance with the general criminal law provisions (for instance abuse of office, "embezzlement" of public resources etc.), since Law no. 334/2006 does not exclude the applicability of offences contained in the Criminal Code (CC); the same goes for special legislation, such as the anti-corruption law of 2000 presented in the other report on Theme I – Incriminations – which contains offences of particular relevance in the context of political financing (for instance certain forms of misuse of his/her influence by an elected official to obtain an advantage for his/her political party or political activities)."

73. The Romanian authorities indicate that the draft provision presented earlier was retained in the amendments passed in May 2015 and in the Law 334/2006 subsequently republished in June 2015:

**Article 44 (5) (formerly article 36-5) Law 334/2006**

*If suspicions related to the commission of a criminal act arise during a control carried out by the PEA as regards compliance with the legal provisions on political party and electoral campaign financing, the PEA notifies the organs of penal pursuit.*

74. GRECO is pleased to see that the draft amendment contemplated earlier was adopted under article 44(5) of Law 334/2006 as amended and republished last in June 2015. The Permanent Electoral Authority (PEA) is now explicitly entitled / required to notify the criminal law bodies of suspicions of crimes encountered in the context of its control activity. GRECO also notes that all criminal offences have at present been removed from law 334/2006: false statements under former article 36 (which has become article 44) was the last one of these. But the Romanian authorities provide assurances that this bears no consequences whatsoever since this offence is now regulated under article 326 of the New Criminal Code and the PEA can notify the criminal justice bodies of all pertinent offences contained in the criminal Code and other penal laws.
75. GRECO concludes that recommendation xi has been implemented satisfactorily.

**Recommendation xii.**

76. *GRECO recommended to increase the penalties applicable in accordance with Law no. 334/2006 on the financing of activities of the political parties and election campaigns and thus to ensure that all infringements are punishable by effective, proportionate and dissuasive sanctions.*
77. GRECO recalls that this recommendation had been categorised as partly implemented since the initial draft amendments to Law 334/2006, prepared by the PEA, included under (draft) article 41 a consistent set of sanctions organised in two categories of administrative contraventions dealing with the requirements of the Law. The draft filled certain gaps by sanctioning explicitly certain infringements not explicitly provided for at the time of the evaluation. The initial draft prepared by the PEA, increased significantly the level of the applicable fines (two-fold and fourfold increase for the lesser and serious infringements, respectively). At the same time, the new wording contemplated for article 42 ensured that the forced transfer to the State budget of any illegal funding would be applicable in respect of both categories of offences and GRECO considered that this was an important measure given the still limited fines<sup>9</sup> in case of major illegal donations or overspending.
78. The subsequent draft in parliament examined by GRECO still appeared to provide for sanctions for breaches to most requirements of Law 334/2006. But compared to the initial proposal, the upper limit of the fines did not respond to the recommendation. The increase foreseen concerned only some of the offences and it remained moderate (from 1 100 – 5 600 EUR to 1 650 – 7 700 EUR).

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<sup>9</sup> The Romanian authorities indicated this is the maximum level of fines applicable in cases of misdemeanours, in accordance with Government Ordinance no. 2/2001, as amended.

79. The Romanian authorities now state that unlike the previous legal framework under which all violations were punishable by a fine of 5,000 up to 25,000 lei, the new wording of article 41 which has become article 52 in the version republished in June 2015, defines three categories of offenses, depending on their gravity, which entail a fine in the range of 10.000 to 25.000 lei, 15.000 to 50,000 lei and 100,000 to 200,000 lei. The authorities also point out that the new provisions prescribe more contraventions than before (article 41 of the Law). For the sake of clarity, the Secretariat and the rapporteurs have, again, included an overview of the situation over time in the following tables:

Provisions on sanctions before May 2015:	Provisions of the initial Draft commented in the first Compliance Report	Provisions of the Draft Law in Parliament at the time of the second compliance Report
<p>Art. 41            (1) Breaching the provisions of art. 3 para (2) and (3), art. 4 para (3) and (4), art. 5, 6, 7, 8, 9, art. 10 para (2) and (3), art. 11 para (1) and (3), art. 12 para (1) and (3), art. 13 para (1) and (2), art. 20 para (2), art. 23, art. 24 para (1), art. 25 para (1) and (2), art. 26 para. (1), (2), (3), (7) and (9), art. 29 para (2) - (4) and (6), art. 30 para (2) and (3), art. 31, 38 and art. 39 para (2) shall be deemed contraventions and punished with a fine from 5.000 lei to 25.000 lei. <b>[1.100-5.600 EUR]</b>            (2) The sanctions shall be applied, as the case may be, to the political party, the independent candidate, the financial manager and/or the donor who has breached the provisions of para (1).</p>	<p>Art. 41. – (1) Breaching the provisions of art. 4 para. (3)-(5), art. 5, art. 5<sup>1</sup>, art. 6, art. 7, art. 8, art. 9, art. 10 para. (2) and (3), art. 11 para. (1) and (3), art. 12 para. (1) and (3), art. 13 para. (1), (2) and (4), art. 24 para. (1), art. 25 para. (1) and (2), art. 26 para. (1)-(4) and para. (11)-(13), art. 29 para. (2) - (4), (6), and (7), art. 32 para (1) and art. 49 para. (2) shall be deemed contraventions and punished with a fine from 10.000 lei to 50.000 lei. <b>[2 200 - 11 200 EUR]</b>            (2) Breaching the provisions of art. 3 para. (2)-(6), art. 20 alin. (2), art. 23, art. 23<sup>1</sup>, art. 23<sup>2</sup>, art. 25<sup>1</sup>, art. 30 para. (2)-(4), art. 31, art. 33 para. (1), art. [34<sup>1</sup> to 34<sup>6</sup>], art. 35<sup>1</sup> para. (2) -(4), art. 36<sup>1</sup>, 38 para. (1), (2) and (5), art. 38<sup>1</sup> para. (1)-(3) and (5), art. 39 para. (2) and art. 40 para. (2) shall be deemed contraventions and punished with a fine from 50.000 lei to 100.000 lei. <b>[11.200-22.500 EUR]</b>            (3) The sanctions shall be applied, as the case may be, to the political party, the independent candidate, the persons stipulated at art. 38<sup>1</sup> para. (5), the financial manager, the third party, and/or the donor who has breached the provisions of para (1) and (2).            (4) Propaganda materials that do not comply with the provisions of art. 29 are confiscated or removed, as appropriate, of persons empowered by mayors.            (5) The application of the sanctions set out in para (1) and (2) shall expire after 3 years from the date of the commission of the act.”</p>	<p>Art. 41. – (1) Breaching the provisions of art. 4 para. (3) and (4), art. 5, art. 5<sup>1</sup> para. (1) and (2), art. 6, art. 7, art. 8, art. 9, art. 10 para. (2) and (3), art. 11 para. (1) and (3), art. 12 para. (1) and (3), art. 13 para. (1), (2) and (4), art. 24 para. (1), art. 25 para. (1) and (2), art. 26 para. (1)-(4) and para. (11)-(13), art. 29 para. (2) - (4), (6), art. 32 para (1) and art. 49 para. (2) shall be deemed contraventions and punished with a fine from 5.000 lei to 25.000 lei. <b>[1 100 -5 600 EUR]</b>            (2) Breaching the provisions of art. 3 para. (2)-(5), art. 20 alin. (2), art. 23, art. 23<sup>1</sup>, art. 30 para. (2)-(4), art. 31, art. 33 para. (1), art. [34<sup>1</sup> to 34<sup>6</sup>], art. 35<sup>1</sup> para. (2) -(4), 38 para. (1), (2) and (5), art. 38<sup>1</sup> para. (1)-(3) and (5), art. 39 para. (2) shall be deemed contraventions and punished with a fine from 7.500 lei to 35.000 lei. <b>[1 650 to 7 700 EUR]</b>            (3) The sanctions shall be applied, as the case may be, to the political party, the independent candidate, the persons stipulated at art. 38<sup>1</sup> para. (5), the financial manager, the third party, and/or the donor who has breached the provisions of para (1) and (2).            (4) The application of the sanctions set out in para (1) and (2) shall expire after 2 years from the date of the commission of the act.            (5) In case of continuous contraventions, the period stipulated in para (4) runs from the moment the deed is found.”</p>

**Provisions of article 41 of the revision of Law 334/2006 adopted in May 2015 – article 52 in the version republished in June 2015, with corresponding renumbering**

**Art. 41 - (1)** The offenses, if not committed in such circumstances as to be considered a crime according to criminal law, are punishable by a fine of **10,000 lei to 25,000 lei [approx.. 2 200 – 5 600 EUR]** for violation of the provisions of art. 4 para. (3) - (5), art. 5, art. 51, art. 52 para. (1) and (2), art. 6, art. 7, art. 8, art. 9, art. 10 para. (2) and (3), art. 11 para. (1) and (3), art. 12 para. (1) and (3), art. 24 para. (1), art. 25 para. (1) and (2), art. 29 para. (2) - (4) and (6), 32 para. (1) and art. 49 para. (3).

(2) The following offenses, if they were not committed under such conditions as to be considered a crime according to criminal law, are punishable by a fine of **15,000 to 50,000 lei [approx. 3 300 – 11 200 EUR]** for violation of the provisions of art. 3 para. (2) and (6) - (10), art. 20 para. (2), art. 23, art. 231, art. 232, art. 30, art. 31, art. 351 para. (2) - (4), Art. 361, art. 38 para. (1), (2) and (5), art. 382 para. (1), (2), (3) and (5) and art. 39 para. (2).

(3) Are offenses, unless they were committed under such conditions as to be considered a crime according to criminal law, and punishable by a fine of **100,000 lei to 200,000 lei, [approx.. 22 000 – 44 000 EUR]** violations of the provisions of art. 8 para. (3).

(...)

**Art. 52. In the version republished**

(1) Are offenses, unless they are committed in such circumstances as to be considered as crimes under the criminal law, and punishable by a fine of **10,000 lei to 25,000 lei [approx. 2 200 -5 600 EUR]** violations of the provisions of art. 5 paragraph. (3) - (5), Art. 6 art. 7 art. 8 par. (1) and (2), Art. 10, art. 11, art. 12, art. 13, art. 14 para. (2) and (3), art. 15 para. (1) and (3), Art. 16 para. (1) and (3), Art. 32 para. (1), Art. 33 para. (1) and (2), art. 36 para. (2) - (4) and (6),. 39 para. (1) and Art. 60 para. (3).

(2) Are offences, unless they are not committed under such conditions as to be considered as crimes under criminal law, and punishable by a fine of **15,000 to 50,000 lei [approx..3 300 – 11 200 EUR]** violations of the provisions of art. 3 para. (2) and (6) - (10), art. 25 para. (2) art. 28, art. 29, art. 30, art. 37, art. 38, art. 43 para. (2) - (4), Art. 45, art. 47 para. (1), (2) and (5), art. 49 para. (1), (2), (3) and (5) and 50 para. (2).

(3) constitute offenses if they were committed in such conditions that be considered criminal law, crime and is punishable by a fine of **100,000 lei to 200,000 lei [approx. 22 000 – 44 000 EUR ]** violation of the provisions of art. 8 para. (3).

(4) The penalties may apply, as appropriate, to the political party, political alliance, organisation of citizens belonging to national minorities, independent candidates, financial agent and / or donor who has violated the provisions of para. (1) - (3).

(5) The application of sanctions under para. (1) - (3) shall be prescribed within 3 years from the date of the conduct.

(6) In case of continued offenses the period stipulated in para. (5) runs from the date of termination of the offense.

80. GRECO takes note of the above. It recalls that at the time of the evaluation, the system of sanctions was based on a) administrative fines for specifically defined infringements (see table above); b) forced transfer into the State budget of the amounts concerned or the value equivalent to goods or services involved in such infringements – the same applied for a few infringements which attract no fine); c) imprisonment of 1 to 3 years in case of false statements (former article 36 paragraph 3 of law 334/2006). The amendments to Law 334/2006 as republished in June 2015, have retained the principle of forced transfer to the State budget under article 53 of the republished version of the Law for the general rule (and various specific provisions to the same effect). As regards the fines, the new system of categorisation of infringements has not led to significant improvements, especially if one bears in mind the earlier proposals of the PEA. The upper level of the fine was raised only for the second category of offences but the maximum amount is still half way of the maximum amount of fines permissible under the general rules on administrative contraventions. For the first category of infringements which sometimes concern important requirements (including on donations and publication), the upper maximum of the fines contemplated remains unchanged whereas for the third (highest) category of fines, these are only applicable in connection with infringements to the (questionable) new provisions on donations involving real estate and property for party headquarters (article 8 of Law 334/2006 as republished): the fine is in the range of 22 000 to 44 000 EUR, whereas the illegal amounts involved – especially in relation to real estate operations, may be disproportionately higher<sup>10</sup>. Overall, despite some improvements and the fact that illegal support is in principle subject to

<sup>10</sup> According to certain estimates, the value of real estate property in Bucharest is 1 000 EUR per m<sup>2</sup>

confiscation, Law 334/2006 as revised in May 2015 does not deliver the right message by not providing for sufficiently effective, proportionate and dissuasive sanctions.

81. GRECO concludes that recommendation xii remains partly implemented.

#### **Recommendation xiii.**

82. *GRECO recommended to extend the statute of limitation applicable to violations of Law no. 334/2006 on the financing of activities of the political parties and election campaigns.*
83. GRECO recalls that this recommendation has been categorised as partly implemented since the draft amendments (article 41 paragraph 5 of the Draft Law) examined in the first compliance report proposed to increase the statute of limitation for the application of sanctions provided by Law no. 334/2006 from 6 months to 3 years. The later draft examined in parliament then referred to a period of two years and GRECO expressed some reservations with this new proposal.
84. The authorities of Romania refer to the revised provisions of Law 334/2006, adopted in May 2015, which have retained under article 52 paragraphs 5 and 6 the principle of an extension of the statute of limitation, and increased it from 6 months to 3 years from the date of the violation. In case of continuous infringements, the limitation period of 3 years is to be calculated from the date of cessation of the deed. This extension of the limitation period gives the PEA sufficient time to carry out checks, while addressing both the financial activity of their central organisations and county organisations. See the text in recommendation xii above.
85. GRECO is pleased to see that the final version of Law 334/2006 adopted in May and republished in June 2015 has opted for the initially proposed three year term for the new statute of limitation.
86. GRECO concludes that recommendation xiii has been implemented satisfactorily.

### **III. CONCLUSIONS**

87. **In view of the conclusions contained in the Third Round Compliance Reports on Romania and of the analysis set out above, GRECO concludes that Romania has now implemented five additional recommendations.** Out of a total of twenty recommendations, twelve of these can now be categorised as implemented or dealt with in a satisfactory manner. Six recommendations remain partly implemented and two recommendations have not been implemented.
88. With respect to Theme I – Incriminations, the situation remains unchanged: recommendations ii, iii, v and vii have been implemented satisfactorily, recommendation vi remains partly implemented and recommendations i and iv remain not implemented. With respect to Theme II – Transparency of Party Funding, recommendations ii, vi, vii, viii, ix, x, xi and xiii have now been implemented satisfactorily, recommendations i, iii, iv, v and xii remain partly implemented.
89. Concerning incriminations, GRECO regrets the fact that no further progress has been achieved and that Romania has not engaged any work, nor announced any plans for the future. GRECO urges the country to resume active consideration of the pending recommendations.
90. Concerning transparency of political funding, GRECO welcomes the final adoption in May 2015 of legislation amending Law 334/2006 on the financing of the activities of political parties and of

election campaigns (subsequently republished in June 2015). This law, which originated in Parliament, has taken on board several proposals contained in the draft which the Permanent Electoral Authority (PEA) had elaborated in 2012. Romania has thus taken appropriate measures to make adequate financial information available to the PEA as the body responsible for the supervision of political financing. GRECO is also pleased to see that the PEA is now entitled to also control the spending of parties and candidates and that it was provided with material, human and legal means to perform its tasks more effectively than it has done until now. The PEA was also given a clear central responsibility to supervise political financing as a whole in Romania and it is now clearly entitled to report to the prosecutorial authorities suspicions of any criminal offence in connection with its mandate. The (administrative) statute of limitation in relation to infringements has now been extended from 6 months to three years, which gives the PEA much better capacities to follow-up on possible infringements. It would appear that due to the recent adoption of the amendments, a number of adjustments still need to be done in implementing provisions and guidance especially where the legislator has opted for a radically new approach, for instance by legalising loans whereas the PEA had until recently followed a completely different path, more in line with a strict reading of Law 334/2006. Likewise, Romania needs to ensure that appropriate annual summaries of information will be published in the near future concerning the financial situation of the political parties and that a format is put in place to that effect. A variety of issues also clearly need to be reconsidered, for instance the level of sanctions which remain disproportionately low in comparison with the logic of the Law, the financial ceilings and thresholds it sets forth etc. GRECO observes a tendency of the legislation to be unnecessary complex, regarding for instance the reporting obligations and the deadlines applicable thereto, as well as the rules applicable to donations. GRECO is particularly concerned about a new derogatory regime applicable to donations in the form of real estate and financial support to the party headquarters: it urges Romania to reconsider this matter. Despite various improvements introduced in May 2015, the country still needs to take more vigorous steps to take into account the various improvements recommended by GRECO.

91. In view of the above, GRECO concludes that the current level of compliance with the recommendations is no longer “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
92. In view of the fact that a large number of recommendations are yet to be implemented and that some important gaps need to be addressed, GRECO in accordance with Rule 31 Revised, paragraph 9 of its Rules of Procedure asks the Head of the delegation of Romania to submit additional information, namely regarding the implementation of recommendations i, iv and vi regarding Theme I – Incriminations and recommendations i, iii, iv, v and xii regarding Theme II – Transparency of party funding by 31 July 2016 at the latest.
93. GRECO invites the Romanian authorities to authorise, as soon as possible, the publication of this report, to translate it into the national language and to make this translation available to the public.