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Group of States against corruption

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Third Evaluation Round

Evaluation Report on Austria
Transparency of Party Funding

(Theme II)

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I. INTRODUCTION

1. Austria joined GRECO on 1 December 2006, i.e. after the close of the First Evaluation Round. Consequently, Austria was submitted to a joint evaluation procedure covering the themes of the First and Second Evaluation Rounds. The relevant Joint First and Second Round Evaluation Report (Greco Eval I/II Rep (2007) 2E) in respect of Austria was adopted at its 38th Plenary Meeting (13 June 2008) available on GRECO's homepage (http://www.coe.int/greco).

2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption[1] (EST 173), Articles 1-6 of its Additional Protocol[2] (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

3. The GRECO Evaluation Team (hereafter referred to as the "GET") carried out an on-site visit to Austria from 6 to 10 June 2011. The GET for Theme II (8-10 June) was composed of Mr Igor STOROZHENKO, Assistant to the Deputy Chair of the State Duma (Russian Federation); Mr Lippold VON BREDOW, Secretariat of the Committee on Legal Affairs of the German Bundestag (Germany) and the scientific expert, Mr Yves-Marie DOUBLET, Deputy Director of the Legal Department of the National Assembly (France). The GET was supported by Mr Christophe SPECKBACHER from GRECO's Secretariat. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval III (2011) 4E, Theme II), as well as copies of relevant legislation.

4. The GET met with officials from the following governmental organisations: Federal State Chancellery, parliamentary administration, Federal Ministry of Finance, Federal Ministry of the Interior, Parliament and governmental administration of three *Länder* (Burgenland, Styria, Vienna), Austrian Court of Audit, Federal Anti-Corruption Office, Anti-Corruption Prosecution Office. Meetings were also held with representatives of academia, five political parties (SPÖ, ÖVP, FPÖ, Die Grünen, BZÖ, Liberales Forum) and party academies (SPÖ, ÖVP, FPÖ, Die Grünen, BZÖ), the written media, the Austrian Chapter of Transparency International.

5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Austrian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Austria in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2011) 3E - Theme I.

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[1] Austria signed the Criminal Law Convention on Corruption (ETS 173) on 13 October 2000 but has not ratified it yet.
[2] Austria has not ratified nor signed the Additional Protocol to the Criminal Law Convention (ETS 191).

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

7. Austria is a Federal State comprising nine provinces or *Länder*[3]. The Federal Parliament is a bicameral legislature representing both the Austrian population indivisibly and the parliaments of the *Länder*; whilst the parliaments of the *Länder* – Landtage are all monocameral. Vienna, the capital of Austria, plays a double role as city and *Land*, meaning that the mayor serves as governor and the city council as parliament of the *Land* or *Landtag* at the same time.

Definition of a political party, their founding and registration

8. Austria has no definition of political parties; according to the Austrian Constitutional Court in a decision dated 14/03/1997[4], the „formation of a common opinion among members about principal political questions" is the main task of political parties when no elections take place. Therefore, a political party could roughly be described as an „organisation of people to achieve certain goals of public life." Basic principles are laid down in Section 1 of the Political Parties Act (hereinafter, the PPA), in particular the fact that parties, assisting in the formation of political will, are essential to the democratic order:

> ***Political Parties Act – Section 1 (Constitutional stipulation)***
>
> *The existence and diversity of political parties are key elements of the Republic of Austria's democratic order (Art. 1 Federal Constitutional Law).*
> *Assisting in the formation of political will is one of the tasks of political parties.*
> *Political parties may be established at will so long as they do not violate federal constitutional law.*
> *The activities of political parties may not be subject to specific legal constraints.*
> *Political Parties must draw up statutes, which must be published in a periodical publication and submitted to the Ministry of the Interior. In particular, the statutes must clearly state their organisational structure and which organs are authorised to represent the party and which rights and obligations their members have. Upon submission of the statutes, the political party becomes a legal entity.*
> *Constitutional law may delegate to the President of the Court of Auditors the task of receiving and retaining lists of donations to political parties, and, following a request by the party concerned, to state publicly whether donations declared in the list handed over to him/her have been made in compliance with the law.*

9. In Austria, political parties can be formed freely. Groups may found political parties as long as they keep within the limits of constitutional law (cf. the prohibition of National Socialist organisations). The only condition these groups have to meet is that they adopt statutes which are published in a periodical publication. These statutes must then be deposited with the Federal Ministry of the Interior in order for the group to be endowed with legal personality. As indicated in Section 1 above, the statutes must clearly state the organisational structure of the party, the organs who are authorised to represent it and the rights and obligations of party members.

10. Neither the PPA nor other legal provisions entitle the Federal Minister of the Interior or any other authority to refuse the deposit of a party's statutes. On the contrary, all administrative authorities

[3] Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vienna, Vorarlberg.
[4] Link to the decision ; in this case, the Constitutional Court declared unconstitutional the requirement contained in the 1975 version of the PPA that applications for the allocation of subsidies for electoral expenditure must be filed, by parties already represented in the National Council (*Nationalrat*) 8 weeks at the latest before the election.

and courts have to specifically determine the legal personality of a political party in case of a pending decision coming under their jurisdiction (so called "incident" examination; see, for instance, decisions VfSlg 9648/1983, 11.258/1987, and 11.761/1988 of the Constitutional Court). The GET also noted that in accordance with Section 1 PPA, political parties may not be subject to specific legal constraints. As of 20 January 2011, a total of 901 statutes have been deposited with the Federal Ministry of the Interior (according to Section 1 Paragraph 4 of the Political Parties Act). There is no estimate of the number of unregistered political parties.

Participation in elections

11. Elections (universal direct suffrage) take place as follows: a) at the federal level: elections to the National Council – 183 members usually elected every 5 years (unless early elections are called by Parliament), presidential elections – every 6 years, European elections – every 5 years); b) at the level of the *Länder:* elections to the parliaments of the *Länder* – every 5 to 6 years, depending on the Land; c) at the local level: municipal elections, mayoral elections – every 5 to 6 years, depending on the Land. The last National Council elections took place on 28 September 2008, the European elections on 7 June 2009, and the presidential elections on 25 April 2010. The last national-wide referenda were held in 1978 and 1994.

12. As regards other elections, the second chamber of the Federal Parliament, the Federal Council or *Bundesrat* (62 members currently), which represents the parliaments of the *Länder*, is elected according to proportional representation. Members of the 9 provincial parliaments are elected for 5 to 6-year terms, depending on the Land. The composition of the *Bundesrat* therefore varies constantly depending on the results of provincial elections and the distribution of seats in the Austrian *Landtage*.

13. Parliamentary elections are based on the principles of proportional representation, a closed list system, and preferential votes. In Austria, there is no need to apply for registration before an election as all citizens with a permanent residence in the country are kept in a permanent register, maintained by the municipalities. Every person shall only be registered once. For European elections, a separate European Electoral Register is maintained. In general, the Austrian citizenship is a pre-condition to enjoy the active and passive right to vote (exception: in European Parliament elections and municipal elections, citizens of EU member states also enjoy voting rights). In 2007, the voting age was lowered to 16, the age to be elected remaining at 18. Citizens only lose the voting right if they are convicted for certain criminal offences and disenfranchisement was specifically pronounced in the judicial decision. All campaigning participants need supportive signatures by three members of the National Council or 2,600 declarations of support in order to run nationwide for national parliamentary elections.

14. The foundation of a political party is not required to stand for an election. Austrian election legislation refers to "campaign participants " (*Wahlwerbende Parteien*) as opposed to political parties. Campaign participants can be established as political parties or not. They have (limited) legal personality (i.e. it is temporarily granted to non-party structures). No minimum number of votes cast (minimum turnout) is required in elections. For the purposes of "distributing" seats of the National Council, the Republic of Austria is divided into nine constituencies (identical with the nine provinces) which are further divided into 43 regional constituencies. Seats at the National Council are assigned in the course of a three-stage process: a) Regional Constituencies; b) Provincial Constituencies; c) Final nationwide assignment process on the basis of the "d'Hondt Rule" of highest average, applied to each party's surplus votes; the threshold for obtaining seats is 4 %.

15. The electoral legislation does not provide for campaign periods, free access to the public media etc.

Party representation in Parliament

16. From 1945 to 1986 Austria had two main parties, with a third party also winning seats occasionally in the National Council. Since 1986 there have been generally four parties, for a few years even five. The threshold for entering the national Council is 4% of votes (or winning a parliamentary seat in one of the regional constituencies).

17. The following parties participated in the last federal parliamentary elections for the National Council – on 28 September 2008; except the last four ones, all did present candidates in the 9 *Länder*, except : 1) Socialdemocrat Party of Austria (*Sozialdemokratische Partei Österreichs – SPÖ*); 2) Austrian People's Party (*Österreichische Volkspartei – ÖVP*); 3) Freedom Party of Austria (*Freiheitliche Partei Österreichs – FPÖ*); 4) The Greens – Green Alternative (*Die Grünen – Die Grüne Alternative – GRÜNE*); 5) Alliance for the Future of Austria – Liste Jörg Haider (BZÖ); 6) Citizens' Forum Austria – List Fritz Dinkhauser (*Bürgerforum Österreich - Liste Fritz Dinkhauser - FRITZ*); 7) Liste Dr. Martin; 8) The Christians (*Die Christen – DC*); 9) *Communist Party of Austria* (Kommunistische Partei Österreichs – KPÖ); 10) Liberal Forum (*Liberales Forum – LIF*); 11) Independent Citizens' Initiative Save Austria (*Unabhängige Bürgerinitiative Rettet Österreich* – RETTÖ) 12) The Left Wing (*Die Linke*; in Salzburg, Vienna, Oberösterreich, Tirol and Burgenland only); 13) Liste Stark (Carinthia only); 14) Liste Dipl.-Ing. Karlheinz Klement (Carinthia only); 15) Animal Welfare Party (*Tierrechtspartei*) earth-human-animals-nature (Vienna only). Not all of these were political parties; some were only formed as campaign participants with limited legal personality.

18. As a result of the above elections, the 5 following parties are currently represented in the National Council: 1) Socialdemocrat Party of Austria – SPÖ (57 seats); 2) Austrian People's Party – ÖVP (51 seats); 3) Freedom Party of Austria – FPÖ (37 seats); 4) Greens (20 seats); 5) Alliance for the Future of Austria – Liste Jörg Haider – BZÖ (16 seats).

Overview of the political funding system

19. Austria has adopted a mixed system of public and private political financing with substantial support from the Federal State and the *Länder*. Private support is not subject to any limitations.

Legal framework

20. The legal framework is composed of State- and *Länder*-level regulations. The main federal provisions are contained in a) the Federal Law on the Activities, Financing and Campaigns of Political Parties of 1975 (Political Parties Act – hereinafter the PPA)[5]; the second half of the PPA (Chapter IV i.e. Sections 6 to 14) provides for a declaration and supervision mechanism applicable to campaign expenditures which was to be applied temporarily to the National Council elections of 1975; they still appear in the PPA although they are obsolete; the current reporting obligations enshrined in the PPA (Section 4) became applicable in 1985 according to the final provisions of the law; b) the Federal Act on Public Funding for Political Education and Media

[5] Federal Law Gazette No 404/1975 as amended in Federal Law Gazette I No 111/2010 (German Version: "Bundesgesetz über die Aufgaben, Finanzierung und Wahlwerbung politischer Parteien; Parteiengesetz – PartG": http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000562)

Information of 1984 (hereinafter the AFPEMI)[6]; c) Parliamentary Groups Funding Act 1985 (hereinafter the PGFA)[7].

21. The following table provides an overview of the regulations applicable in the *Länder*:

Burgenland (Bgl)	Burgenland Act on support to political parties (**Burgenländisches Parteienförderungsgesetz** – LGBl. Nr. 23/1994 idF LGBL. Nr. 32/2001)
Carinthia (Car)	Carinthian Act on support to political parties (**Kärntner Parteienförderungsgesetz** – K-PFG, LGBl. Nr. 83/1991 idF LGBL. Nr. 72/2010)
Lower Austria (LA)	-Act on support to political parties (**Parteienförderungsgesetz**, LGBl. 0301) Act on support to the activities of parliamentary groups (**Gesetz über die Förderung der Tätigkeit der Landtagsklubs**, LGBl. 0011)
Upper Austria (UA)	**Parteienfinanzierungsgesetz**, LGBl. Nr. 25/1992 idF LGBL. Nr. 90/2001
Salzburg (Sbg)	**Salzburger Parteienförderungsgesetz**, LGBl. Nr. 79/1981 idF LGBl. Nr. 116/2009
Styria (Sty)	Act on support to political parties in the Land of Styria – **Steiermärkisches Parteienförderungsgesetz**, LGBl. Nr. 17/1992 idgF,
Tirol (Tir)	**Tiroler Parteienförderungsgesetz**, LGBl. Nr. 13/1995
Vorarlberg (Vbg)	1) Directive of the Land government about the allocation of financial support to the political parties represented in the parliament of the Land (**Richtlinie der Landesregierung über die Gewährung von Förderungen an die im Landtag vertretenen Parteien**) of 23.11.2004; 2) Resolution of the Land's Parliament on internal rules of procedure for the Parliament of Vorarlberg, LGBl. Nr. 11/1973 idgF
Vienna (Vie)	The matter is regulated in the following texts, which are not publicly available in a consolidated form[8] Verordnungen des Wiener Gemeinderates, Pr.Z. 212/96-GBI, Pr.Z. 1186/Gat/97, Pr.Z. 3142 sowie Pr.Z. 96/99-GIF

Public funding

22. At federal level, the PPA provides for state subsidies to support the political parties' work in the public sphere ("*Öffentlichkeitsarbeit*") which consists in advertising and campaigning**.** Each party represented in the National Council by five Members (the minimum required for the formation of a parliamentary group) receives an initial lump sum of € 218.019, and the balance is distributed among the individual parties in proportion to their share in the latest elections. Political parties not represented in the National Council but which received more than 1% of valid votes in elections to the National Council may also apply for a State grant for their work in the public sphere (Section 2 paragraph 2c) for the election year; these funds are to be paid to them in the quarter following the elections. The amount of allowances is updated at regular intervals. Political parties represented in the National Council received in 2010 a total of € 16.164.960 in allowances for

[6] Federal Act on support to political education and activities with the public (Bundesgesetz über die Förderung politischer Bildungsarbeit und Publizistik or Publizistikförderungsgesetz 1984 or "Publizistikförderungsgesetz – PubFG), BGBl. I Nr.364/1984 last amended in Federal Law Gazette I Nr. 42/2010 (German version: http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000784)

[7] Federal Act on facilitating the activity of the Parliamentary Groups of the campaigning parties in the National Council and in the Federal Council (*Bundesgesetz, mit dem die Tätigkeit der Klubs der wahlwerbenden Parteien im Nationalrat und im Bundesrat erleichtert wird - Klubfinanzierungsgesetz* 1985 - KlubFG), BGBl.Nr. 156/1985 as amended in Federal Law Gazette I Nr. 139/2008); German version: http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000815)

[8] These texts are not published in the official journal of Vienna (http://www.wien.gv.at/recht/landesrecht-wien/landesgesetzblatt/); therefore, even researchers have difficulties to obtain information and documentation on the applicable rules – Hubert Sickinger in *Politikfinanzierung in Oesterreich,* Wien Czernin Verlag 2009, page 331; the Federal Chancellery was provided with these texts by the Vienna authorities during the on-site visit of the GET and made them available to the latter.

public sphere activities (a total amount of € 15.583.000 has been budgetised in the Federal Budget for 2011[9]).

23. The PPA also provides for the partial coverage of campaign expenditures for parties represented in the National Council as well as parties represented in the European Parliament (Section 2a und Section 2b PPA). Here, too, the amounts made available are proportional to the percentage of votes received. Over the last decade political parties received the following amounts covering part of the costs of electoral campaigns: election to the National Council in 2002: € 11.455.901; election to the National Council in 2006: € 12.381.147; election to the National Council in 2008: € 13.871.993; election to the European Parliament in 2004: € 10.561.779; election to the European Parliament in 2009: € 12.415.780.

24. In addition, the Federal Act on Public Funding for Political Education and Media Information of 1984 (AFPEMI) provides for state support to civic education activities conducted by the foundations or associations established by the political parties which meet the above requirement to form a club in the National Council. The subsidy is paid annually, directly to the entity (if a party has established several entities, only one of these can benefit from the funding). The basic amount corresponds to the annual gross salaries of 5 university professor plus 7 State employees, and a variable additional amount corresponding to one state employee remuneration for every member of the club in the National Council. An extra allowance corresponding to 40% of the total above subsidy can be allocated for international political education. These funds are allocated under the responsibility and control of the Federal Government, assisted by an Advisory Committee to the Federal Chancellery (Section 3 AFPEMI). This public aid is paid subject to various conditions (revised annually) as regards the activities to be financed, the usage made of the subsidy, the adoption of statutes, the keeping of annual accounts to be audited and subsequently published in the Official Journal of the *Wiener Zeitung* (Section 1 AFPEMI). The subsidy is also allocated subject to the entity committing itself to submit a report (by 31 May of the year following the financial exercise) to the Austrian Court of Audit on the use of the public funding. Publicly subsidised entities are required to keep a separate accounting of funds received from other sources and they are subject to the general rules on associations and foundations regarding the use of such funds. The Federal Government shall reclaim any funds used by the entity in violation of its statutes and/or any applicable laws; such proceedings are subject to a statutory period of limitation of 5 years and legal disputes are subject to jurisdiction by the ordinary courts (Section 4 and 5 AFPEMI). The above allowances represented a total amount of 11,574,815 € in 2010[10].

25. The Parliamentary Groups Funding Act 1985 (hereinafter the PGFA) provides for the subsidisation of parliamentary groups (*Klubs* in the National Council and *Fraktionen* in the Federal Council), including in the European Parliament in order to cover staff- and other costs (infrastructures including IT equipment, public relations, events, hearings, press releases and circulars, printed publications, brochures and international activities) (Section 1 paragraph 2 PGFA). The subsidy comprises a) a lump sum allocated to each group, b) an additional amount for each member of a group in the National Council and in the Federal Council that exceeds the threshold for being considered as a group (5 members); c) a variable amount determined according to the size of the group (in the National Council, the Federal Council or European

[9] Political parties represented in the National Council received the following allowances in recent years: in 2002: € 14.383.192; in 2003: € 14.383.200; in 2004: € 14.283.200; in 2005: € 14.680.160; in 2006: € 15.028.766; in 2007: € 14.715.822; in 2008: € 15.571.041; in 2009: € 16.074.582; in 2010: € 16.164.960

[10] In 2002: € 8.535.262; in 2003: € 8.535.262; in 2004: € 8.535.262; in 2005: € 9.562.129; in 2006: € 8.343.444; in 2007: €10.913.576; in 2008: € 11.267.760; in 2009: € 11.606.508; in 2010: € 11.574.815

Parliament). These subsidies are calculated on the basis of the gross annual salary of federal contractual employees multiplied by a certain factor (10 for the basic lump sum allocated to all groups, 1 or 2 for the additional / proportional subsidy). They are paid in instalments transferred at the beginning of each quarter. The above allowances to political groups represented a total amount 18,730.000 € in 2010[11]. The maximum quarterly amount granted to one parliamentary group on the basis of the Law on the Funding of Parliamentary Groups actually (2011) is € 1.261.624.35, the minimum amount € 618.285,50.

26. Political parties also receive traditionally public financial support in accordance with the respective laws of the *Länder*. The replies to the questionnaire indicate that the political financing system of the *Länder* is harmonised with the State-level and the *Länder* provide in principle the same type of subsidies to parties, campaign participants, party academies, parliamentary groups. An analysis shows that there are, nevertheless, some variations which are summarised in the table below (which reflects the situation as of April 2008)[12].

	Bgl	Car	LA	UA	Sbg	Sty	Tir	Vbg	Vie
Funding of Parl. groups	yes	yes	yes	yes	yes	yes	(1)	(1)	(1)
Direct funding (incl. public education)	yes	yes	yes	yes	yes	yes	yes	(1)	(1)
Election campaign publicity funding	yes	(1)	(-)	(-)	(-)	(-)	yes	(-)	(-)
Election campaign funding for parties not represented in the Land's Parliament	yes	(-)	yes	yes	yes	yes	(-)	(-)	(-)
Groups in the municipal councils	(1)	?	(1)	(1)	(-)	yes	(-)	(-)	(1)
Auditing of use of funds	yes	yes	yes	yes	yes	yes	yes	(1)	(-)
Duty to reach an agreement on limiting campaign advertising expenditures	yes	yes	yes	yes	yes	yes	(-)	(1)	(-)

Notes: yes: legal basis; (1): no legal basis but funding/requirement does apply in practice; (-) no such funding/requirement in place

Private funding

27. Private funding of parties and election campaigns is free and not subject to any restrictions in the PPA or the other relevant acts. As a result, there are no limits with regard to the amount/size/periodicity of contributions from private donors, nor other restrictions applicable to donations and other forms of support from natural and legal persons, whether domestic or foreign, whether or not in business-relation with the administration. There are no limits either as regards the type of donor (public or private entities, non profit organisations, religious organisations etc.). There are no distinctions or restrictions made between various forms of donations, whether financial or in-kind, material or non-material, direct or indirect etc., and whether or not they take certain special forms (e.g. legacies, sponsoring, written-off debts and loans or services granted at discount rates etc.).

[11] in 2002: € 12,519.000; in 2003: € 12,041.000; in 2004: € 12,145.000; in 2005: € 12,277.000; in 2006: € 12,558.000, in 2007: € 15,543.000; in 2008: € 15,861.000; in 2009: € 18,480.000; in 2010: € 18,730.000

[12] Hubert Sickinger in *Politikfinanzierung in Oesterreich,* Wien Czernin Verlag 2009, page 296

28. Section 4 PPA only lists those sources of private income that, as a minimum, need to be declared in the annual financial statements of political parties receiving public subsidies – see paragraph 31 hereinafter): member contributions; special contributions from the members of parliament and officials belonging to the corresponding party; revenue form participation in commercial activities; revenue from other assets; donations ; net revenue from events, the sale of publications and logos as well as similar direct income from party activities; loans; allocations in the form of staff supplied free of charge or without corresponding remuneration (live subsidies); other types or revenue and income, whereby any corresponding to more than 5% of the annual income must be itemised separately.

Expenditures

29. At federal level, there are no general provisions regulating or limiting (certain types of) party expenditures or activities parties may engage in. The legislation of *Länder* sometimes provides for a general requirement for political parties to reach an agreement on limiting campaign advertising expenditures (see also the last row in the table at paragraph 26 above).

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

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

Books and accounts

30. Besides the arrangements on annual reporting and on the content of financial reports applicable to publicly subsidised parties (see below), there are no specific provisions, in the PPA and the other relevant legislation, on accounting and book-keeping standards to be applied by political parties generally. In accordance with the tax legislation (Federal Fiscal Code or *Bundesabgabenordung*), political parties have to keep records concerning tax related issues. These records are subject to review by the tax authorities. The same would apply for parliamentary groups (absence of specific bookkeeping requirements, but they may however provide for such rules in their statutes, which have only internal character).

Reporting obligations

31. Under the currently applicable regime of Section 4 paragraphs 1 and 4 PPA, political parties which are publicly subsidised in accordance with the PPA are required to: a) keep detailed records of the way they spend the subsidy allocated for work in the public area – "*Öffentlichkeitsarbeit*" (under Section 2 paragraph 1) and to have those audited. The GET noted that campaign-related subsidies are addressed specifically under Sections 2a and 2b and Section 4 does not refer to those: the Austrian authorities explained that according to Section 2a paragraph 4, Section 4 must be applied mutatis mutandis to campaign-related subsidies (campaign expenditures). So in fact there is no distinction between "*Öffentlichkeitsarbeit*" and campaign related expenditure regarding reporting obligations; b) compile an annual financial report on their income and expenditure (also subject to auditing) concerning "at least" the following items of income and expenditure:

INCOME	EXPENDITURE
- member contributions; - allocations according to the PPA; - special contributions from the members of parliament and officials belonging to the corresponding party; - revenue form participation in undertakings; - revenue from other assets; - donations (Section 4 paragraph 7 PPA); - net revenue from events, the sale of publications and logos as well as similar direct income from party activities; - loans; - allocations in the form of staff supplied free of charge or without corresponding remuneration (live subsidies); - other types or revenue and income, whereby any corresponding to more than 5% of the annual income must be itemised separately.	- staff costs; - office costs and purchases; - administrative costs for campaigning work including press products; - events; - car-fleet expenses; - other costs generated by administration; - member contributions; - legal, auditing and consultancy costs; - loan-related costs and repayments; - international work; - other types of costs, whereby those in excess of 72,672 € must be itemised specifically.

32. Donations – insofar as they exceed € 7.260 – must be included as follows in the financial statements subject to publication (Section 4 paragraph 7 PPA): 1) the total amount of contributions from natural persons other than those of item 2 hereinafter; 2) the total amount of contributions from natural or legal persons recorded in the Register of Companies; 3) the total amount of contributions from associations, other than those of item 4 hereinafter, and 4) the total amount of contributions from any public law corporation, professional association and trade union based on voluntary membership, from institutions [*Anstalten*], foundations [*Stiftungen*] or funds [*Fonds*]. The above applies for donations received by a party or one of its territorial branches (province, district or local level).

33. Before 30 September of the year following the financial exercise, donations are to be reported directly to the Court of Account (Section 4 paragraph 8 PPA) by those political parties which received public support on the basis of the PPA. To this end, they are required to establish lists of the donations mentioned in the above paragraph, except those falling under item 4 (contributions from any public law corporation, professional association and trade union based on voluntary membership, from institutions [*Anstalten*], foundations [*Stiftungen*] or funds [*Fonds*]). The donations are included individually with the indication of the amount, and name and address of the donor.

Tax regime applicable to donations

34. In principle, donations to political parties are not subject to a favourable taxation treatment for the donor (tax deductibility). The replies to the questionnaire indicate, however, that donations to certain entities or organisations related to a political party can be tax deductible if they are treated as contributions to a professional association or trade union. These payments are deductible as professional/business expenses as long as their amount is reasonable. Furthermore payments to political parties, which are made due to a political function, are deductible if these payments are

obligatory (i.e. the refusal to pay leads to a loss of the political function). The obligation for such payments must be based upon a decision of the relevant statutory authority. Other political contributions including membership fees are non deductible items.

Publication obligations

35. The annual financial statements of political parties which receive state support must be published in the official journal of the *Wiener Zeitung.* The deadline for publication is 30 September of the year following the annual exercise year (Section 4 paragraph 9 PPA). The audit reports pertaining to the financial annual statements of parties which receive state funding under the PPA must also be published in the official journal of the *Wiener Zeitung*. The PPA apparently does not foresee a time limit for this but the Austrian authorities indicated that in practice, the financial statements and the audit reports are published together.

Third parties

36. This matter is not regulated in the PPA, nor addressed in the other federal or regional laws.

Access to, and keeping of accounting records.

37. The information gathered during the on-site visit showed that political parties and campaign participants are not subject to particular book- and record keeping requirements.

Election campaigns

38. The Austrian legislation is based on the system of annual reporting of political parties (annual reports would include income and expenditure related to campaign activities – see the table in paragraph 31); there are no particular provisions for the reporting on election campaign financing that would apply to independent (lists of) candidates or require for instance disclosure of donations during the election campaign.

	Bgl	Car	LA	UA	Sbg	Sty	Tir	Vbg	Vie
Duty for parties to publish a financial report	(-)	(-)	(-)	(-)	yes	(-) Audit report is to be published	(-) Audit report is to be published	(-) Audit report is to be published	(-)
Requirements as to the content of reports	(-)	(-)	(-)	(-)	yes: minimum requirements for expenditure and income, including consolidated amount of donations	(-)	(-)	(-)	(-)
Disclosure and / or publication of major donors	(-)	(-)	(-)	(-)	no; same system as for Federal level	(-)	(-)	(-)	(-)

Notes: yes: legal basis; (-) no such requirement in place

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

Auditing

39. At State level, under the PPA, the records on the use of subsidies allocated for public work (Section 4 paragraph 1 combined with Section 2 paragraph 1) are subject to auditing; these records and all accompanying documents are to be examined annually by two sworn auditors; the result of the audit is to be published in the *Amtsblatt zur Wiener Zeitung* (*Wiener Zeitung* Official Gazette). Auditors assigned with the audit of a political party are to be appointed from a list of five auditors presented by each party within 4 weeks to the Minister of Finance; should a party fail to submit a list within the period prescribed, the Minister of Finance appoints the auditors *ex officio*. The proposed auditors cannot be members of a company providing audit services). Under the AFPEMI, the accounts of academies are examined separately: they are audited by a certified auditor and then handed over in abridged form to the Court of Audit and published in the Official Gazette.

40. At *Länder* level, the relevant legislation requires that financial statements of political parties represented in the regional Parliament and which receive a subsidy for their work in the public sphere, are to be audited / certified by one auditor (in most laws) or a similar professional (see table hereinafter). In Vienna there is no audit requirement.

Public supervision / monitoring

41. At State level, the basic philosophy underlying party finance supervision is enshrined in Section 1 (especially paragraph 5) and Section 4 paragraph 8 PPA according to which it is only upon explicit federal legal provision that "the President of the Court of Audit may be entrusted with the task of collecting and retaining lists of donations to political parties, and, following a request by the party concerned, to state publicly whether donors have been declared in the list, in compliance with the law".

42. As the GET noted and as the interviews confirmed, academics have sometimes pointed out that no political party has ever voluntarily submitted a request for issuance of such a public statement on the basis of Section 4 paragraph 8 of the PPA, since the enactment in 2000 of the above provision (at least up to 2009)[13]. One political party publishes on a voluntary basis the list of donors on its website. In accordance with the PPA, Section 1 has constitutional value and the GET understands that no ordinary law may thus derogate to those principles. The replies to the questionnaire also indicate that the Austrian Court of Auditors on the basis of its overall competence may examine the financial administration of Parliamentary Groups upon their request.

43. The GET notes that in 1998 (i.e. before the above amendment), the Parliament asked the Austrian Court of Auditors (ACA) to carry out a special audit on the financing of political parties and parliamentary groups. The report released subsequently in 2000, and which is publicly available on the ACA's website[14] contained a series of recommendations for improvement including: need for secondary regulations/guidelines to clarify such concepts as "work in the public sphere" (*Öffentlichkeitsarbeit*) of the parties (costs related to administrative, financial, infrastructural and internal decisions should not be accounted for as expenses for work in the public sphere), need for better justification / documentation of financial activity, need for an

[13] Sickinger, page 117
[14] http://www.rechnungshof.gv.at/beratung/kernaussagen/parteienfinanzierung.html

agreement that public subsidies – allocated by the State on the basis of the PPA – transferred by the parties to related entities are used in accordance with the PPA, need to improve the internal control of political parties, need to change the system for the designation of private auditors (need for a rotation system in particular) etc.

44. The GET was told that in the absence of specific legal provisions to that effect, the public authorities can not perform additional controls and they have to rely on the conclusions of the private audit when deciding to allocate / renew annually the public subsidy to a political party. The GET was told on site that the main task carried out *ex officio* by the Federal Chancellery is to check whether political parties publish their financial statements in time.

45. The legislation of some of the *Länders* provides for the possibility to order an additional audit in case the auditor has identified major insufficiencies in the financial statement of a party (e.g. Burgenland*)* or if a party has not performed a private audit (e.g. Tirol).

	Bgl	Car	LA	UA	Sbg	Sty	Tir	Vbg	Vie
Auditors	1 auditor, selected by the party	1 auditor, selected by the party	1 auditor, selected by the Government from a list of 3 names proposed by the party	1 auditor, selected by the party	Report on use of subsidy and report on income and expenditure to be certified by 2 auditors, selected by the party	2 auditors, selected by the party	1 auditor, selected by the party	Audit by 1 trustee / tax adviser	[1]
Public body involved	Government of the Land	Government of the Land	Government of the Land, after prior examination by the Land's Court of Audit	Governmen t of the Land	Government of the Land and Land's Court of Audit	Governme nt of the Land	Government of the Land	Government of the Land	[1]
Possibilities for the public body	Gov. can order separate audit in case of non compliance	Gov. suspends subsidy if party indicates that audit has found major insufficiencies	Gov. can appoint ex officio an auditor if party does not submit list	Gov. can order separate audit in case of non compliance	None, apart from declaring that a donation is lawful upon request of party	No explicit powers to suspend payment of subsidy	Gov. can proceed ex officio with audit if party has not	Party must reimburse subsidy if does not comply with requirements on use of funds, auditing duty etc.	[1]

Notes: [1] the on-site discussions of the GET confirmed that there is no private audit nor any form of public control in place

Supervision in the context of election campaigns

46. As already indicated, the financing of election campaigns is not subject to specific rules/regulations.

Other relevant provisions

47. The GET noted that in accordance with Section 5 of the AFPEMI, any legal disputes concerning the entitlement to funding (Section 3, paragraph 1), the withdrawal of eligibility for funding (Section 3, paragraph 1) as well as any reclaim of funds (Section 4, paragraph 3) shall be subject to jurisdiction by the ordinary courts of law. There are no similar specific arrangements made for disputes arising in connection with the implementation of the PPA. The Austrian authorities confirmed this before the visit, but indicated that according to Article 137 of the Federal Constitution, the Constitutional Court issues rulings on pecuniary claims against the Federation,

the *Länder*, the municipalities and municipal associations which cannot be settled by ordinary legal process nor be liquidated by the ruling of an administrative authority.

(iii) Sanctions

Party financing

48. The replies to the questionnaire only state that sanctions are provided under the PPA (Section 4 paragraph 10) as follows: "*If a political party does not publish or submit the report provided in paragraph 8 and 9, the list of donations or list of donors in accordance with the time limit provided in Sections 8 and 9* [30 September of the year following the financial exercise]*, the Federal Chancellor* [upon a notification by the ACA] *must withhold any allocations (Section 3 Paragraph 2) falling to the party until the publication or submission is made in compliance with the law*."

49. During the visit, it was indicated that: The Federal Chancellery checks whether political parties publish in time their financial statements. The reference to Section 3 paragraph 2 PPA – which then refers to Section 2 - seems to imply that subsidies allocated as a form of partial reimbursement of campaign expenditures of Section 2a) may not be suspended and are excluded from the above sanction mechanism, although in principle all parties receiving any state subsidy under the PPA are subjected to publication and reporting obligations – in accordance with Section 2a, paragraph 4, and Sections 4 et seq. PPA. The Austrian authorities confirmed that this reading of the GET was correct and that there are no other infringements (and corresponding sanctions) provided in the PPA, for instance in case a party would omit in its statements certain items of income or expenditure.

50. It would appear that the legislation of the *Länder* does not provide for sanctions other than those provided in the PPA. In fact, the different pieces of legislation almost never address irregularities apart from the fact that a party would not comply with auditing requirements; there are two noticeable exceptions: in Carinthia, the regional government can decide not to allocate the subsidy for the following year in case the private audit reveals major irregularities in the financial statement (on the use of the Land's subsidy for work in the public area); in Vorarlberg, the directive foresees a series of circumstances in which the public subsidy must be reimbursed if funds have not been used according to their purpose, if the audit has not been carried out etc.

Overall Statistics

51. The replies to the questionnaire indicate that no information is available concerning the number and types of cases dealt with within the framework of political funding supervision (as indicated earlier, the Court of Audit is not entrusted with control powers in practice), nor as regards (criminal or other) investigations, prosecutions and convictions carried out so far in connection with political funding. Parties have reportedly complied so far with the general publication and reporting deadlines. The Austrian authorities confirmed during the visit that the Chancellor has never suspended (nor had to decide on a suspension) of the public subsidisation.

Immunities

52. In the context of the PPA and of the system of sanctions described above, the question of immunities is irrelevant. As for the general rules on immunity, these were examined in the context of the joint First and Second Round Evaluation Report on Austria adopted in June 2008[15]. A

[15] Link to the evaluation report and to compliance reports.

series of improvements were recommended to Austria and assessed (actually as non-implemented) in the first Compliance Report adopted in June 2010[16].

Statute of limitation

53. Given the current system of sanctions of the PPA, the question of statutes of limitation appears to be irrelevant.

Election campaigns

54. As already indicated, the financing of election campaigns is not subject to specific rules/regulations.

IV. ANALYSIS

In general

55. The relevant legal framework on political financing in Austria is composed of the Political Parties Act (hereinafter the PPA) of 1975, the Federal Act on Public Funding for Political Education and Media Information (hereinafter the AFPEMI) of 1984, the Parliamentary Groups Funding Act (hereinafter the PGFA) of 1985 and similar legislation in place in each of the 9 *Länder*. Although by European standards, this legal framework is not recent, it does not meet by far the standards enshrined in Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns – an assessment acknowledged by most interlocutors the GET met on-site. As indicated in paragraph 43, following a request from Parliament in 1998, the Austrian Court of Audit produced a special report on the political financing system of the country. No follow-up was given to the recommendations for improvement contained therein, but it would appear that some of the Austrian parties comply with some of these recommendations on a voluntary basis.

56. The main purpose of the Austrian legal framework on political financing is not to ensure a level of transparency and supervision that would limit risks of corruption (for instance by imposing a duty to disclose all donations, by regulating sources of funding and prohibiting anonymous donations etc.). Instead, its focus is to provide a control restricted to the way public subsidies are used by political parties (and other campaign participants entitled to state support depending on their result in elections), political academies used by the parties for political education purposes, and finally parliamentary groups. In this sense, it can be said that the scope of the legal framework is "compartmentalised" in that federal legislation applies mostly in relation to federal grants and the activity (including elections) of parties at federal level, and the legislation of the states (*Länder*) to the parties' subsidisation and activity at regional level. There are some exceptions: for instance, Section 4 paragraph 7 PPA requires that the aggregated value of donations in excess of 7,260 € made during the reference year to a political party or to its organisations (whether provincial, district or local organisations) be recorded. Some of the party officials (even of leading parties) indicated their party had not received any such donation in recent years, whereas others stressed that there is no consolidated register of donations that would cover all their party's organisational

[16] GRECO recommended to "a) adopt guidelines providing for specific and objective criteria to be applied in determining whether an act is connected to the official functions of a parliamentarian and thus whether the immunity of that member applies and can be lifted; b) ensure that these guidelines reflect the needs of the fight against corruption and c) require the competent parliamentary committees at federal and *Länder* levels to give grounds for their decision to lift or not to lift immunity in a given case."

levels and branches; as a result, no one knows if and how much a donor has donated to the political party concerned "as a whole" in the relevant accounting year. At the same time, the legal framework is inconsistent: with the exception of one or two *Länder*, the regional laws do not reflect even the basic requirements applicable in accordance with the federal law. As regards Vienna in particular (which is both the capital city and a Land), the on-site discussions of the GET confirmed that besides the general issue of transparency as regards the legislation applicable (a consolidated version is not available to the general public (see paragraph 21 and footnote 8), there is no transparency, disclosure or publication policy as regards parties' income and expenditures, nor any requirement for the parties to submit their accounts to private auditing or to a public control mechanism.

57. It appears that although the share of public support to political parties is seen by academics as one of the highest in the world (in euros per registered voter), political financing is seen as a particularly controversial matter and the media have reported in a number of instances about malpractices, misuse of public facilities and resources in general, the dissimulation of donations through businesses and other entities related to the parties (so-called *Vorfeldorganisationen)* and the like. The GET was told that financing of political parties is often accompanied by "grey schemes", including the use of fictitious advertising contracts, large payments for simulated consultancy services (which later settle on party accounts) etc. Some party representatives added to the above list the practice of "laundering of donations" (interest groups and other structures acting as intermediaries between the parties and donors: they collect individual donations in cash or otherwise and hand over the aggregated amounts to the parties) and the existence of links with corruption. Most interlocutors stressed that regional and local levels were particularly exposed to the above-mentioned risks.

58. The political parties met by the GET were aware of the need to pass new legislation on political financing. Although it appears that the main parliamentary factions have reached a general consensus, the negotiation process is going on slowly and it was expected that a draft law be prepared by the end of the year 2011 at the earliest. Some of the largest political parties have not excluded the possibility of adopting amendments to the existing legislation only after careful consideration of the present GRECO report and its recommendations for improvement.

59. At the moment, it would appear that opinions are split as to whether the future federal legislation should apply to the whole of the country or not. Supporters of a unified legislation stressed this would be the only way to ensure a consistent approach, whereas others called for a cautious approach to limit risks of an unconstitutionality decision. Bearing particularly in mind that the 9 *Länder* have not managed after several years to align their legislation on the federal rules and the fact that all the leading parties, most of which have a long tradition, operate on a country-wide basis, it would appear that a consolidated legislation would be preferable. The experience of other federal States has shown that this would ensure a high degree of consistency of the future legislation, bearing in mind the need to consolidate the parties' financial reports (see hereinafter). This would also limit risks that essential requirements – for instance on permitted sources of income, thresholds for the obligatory identification of donors etc. – be circumvented because of diverging legislation at regional level (it was occasionally stressed that even if there was consistency between federal and *Länder* legislation, donations would still run the risk of being fragmented to avoid the future thresholds for disclosure and publication of individual donors' names). It was argued that the nine *Länder* could be forced to align their rules on the federal law if the latter was of a constitutional nature. In any event, the introduction of a coordination mechanism involving the federation and the *Länder* would be a positive initiative to facilitate the coherence of the legal framework(s) throughout the country. The experience in other countries

has demonstrated the benefit of the designation/appointment of such a body with a clear leading role to monitor the legal and practical developments and to make proposals for the necessary changes. In the light of the considerations contained in the above paragraphs, the GET recommends **to adopt the necessary measures, including for instance the designation of a coordination body, to ensure that future legislation regarding political funding applies in a uniform manner to the whole of Austria and takes into account the principles set forth in *Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*.**

60. Any ambitious legislation to be introduced by Austria on party and campaign financing would need to be accompanied by a regulatory package to address the direct financing of elected officials. The GET was informed on-site that currently, there are no such rules in place and parliamentarians may receive freely financial or material support from donors, in the absence of an adequate declaration, supervision and sanctions in case of non-disclosure or other infringements. The experience in other countries has shown that this is an important aspect of party and campaign financing regulations. In the absence of an adequate framework for the financing of elected representatives, there is always a risk that the official financial statements of political parties and list of candidates do not reflect the financial reality of candidates' campaigning activity; there is also an obvious risk that ultimately, in case of bad faith of the beneficiaries and/or donors concerned, rules on party and campaign financing be circumvented. An adequate and consistent regulatory framework would also be in line with Article 8 of the Recommendation of 2003, which addresses this matter. The GET therefore recommends **i) to introduce adequate regulations on the financing of the political activities of elected representatives and ii) to invite the *Länder* to do the same.**

Transparency

61. As indicated in the descriptive part, political parties and campaign participants are not subject to particular book- and record keeping requirements. Political party representatives met on-site described this as a grey area since the current standards used in practice are a combination of general principles, auditing standards etc. which are applied in different manners. In contrast, Austrian associations are subject to clear legal requirements and the GET was told that these could be adapted to suit the specificities of political parties. The GET recalls that Article 11 of the Recommendation provides that political parties and campaign participants must be subject to adequate book- and record keeping requirements; this is clearly not the case at the moment. The GET recommends **i) to ensure that the future legislation on the financing of political parties and election campaigns provides for adequate accounting standards and ii) to invite the *Länder* to do the same.**

62. The on-site interviews also confirmed that political parties do not, in practice, consolidate their financial statements so as to include all the territorial branches and organisations that are under their control (there seems to be only one or two political parties which do so as part of their own transparency policy and they publish their consolidated statements on-line). This state of affairs is also not in line with Article 11 of the Recommendation. The issue of donations in excess of 7,260€, mentioned earlier, is a striking illustration for this. Currently, parties are free to determine in their statutes what the party structures are and which ones need, as a consequence, to be included in the consolidated accounting and financial records. The on-site discussion showed that parties follow different practices and that generally speaking, a number of entities under their control are not included in consolidated financial documents. An agreement reached in Parliament in October 2010 has reportedly opted for an overall consolidation of all territorial,

social and other entities related directly to party activities, as well as entities controlled by the political parties where these have no separate legal personality. These intentions were reiterated more recently, in October 2011, in public statements published in the media. The GET welcomes an inclusive approach but it is obvious it would affect the reliability of the financial information if all the bodies and entities which have a separate legal personality where left out of the political parties' accounting perimeter. Political parties sometimes control a large number of business structures: according to media material, one of them controls for instance, through one of its associations and a couple of economic sub-structures, a network of 30 limited liability companies. These are involved in various sectors of the industry including construction, publishing/printing/media, communication etc. The GET was also told on-site that some political parties use a variety of foundations and other structures without effective or precise activity, but which are used in practice to collect private support and co-finance campaign and other activities of the party. Austria will therefore need to establish in future regulations a much broader financial scope for accounting purposes and the content of annual financial statements subject to disclosure. This is a principle clearly enshrined in Article 12 of the Recommendation. At the same time, there is also a need to provide for a mechanism for dealing with campaign contributions and support received from third parties, and the way these are to be accounted for. Finally, the way legislation is designed requires only political parties and campaign participants receiving public subsidies to account for, and disclose for control purposes, their income and expenditure. This is understandable given the current purpose of the legislation, but for the sake of overall transparency, all political parties and campaign participants need to be subject to proper financial disclosure and supervision requirements. The GET therefore recommends **to ensure that the future legislation on the financing of political parties and election campaigns i) requires the consolidation of party accounts and annual financial statements so as to include all territorial sections of the parties and other entities under their control; ii) addresses the question of support from third parties and iii) applies to all political parties and election campaign participants, whether or not they receive public financial support.**

63. In the above context, it appeared that particular attention will need to be given to political academies and parliamentary groups. These receive substantial separate support both from the Federation and the *Länder* and the receiving of private donations is seen as permitted since it is not regulated. At the same time, it would appear that the financial separation between these bodies and political parties is not as strict in practice as the law and general principles seem to provide for. The GET was informed of the existence of financial flows and other forms of support by the aforementioned bodies to "their" parties, especially since parties may establish several academies (in which case only the one – or the local ones – receiving state support is/are subject to supervision by the Austrian Court of Audit). Moreover, political groups are not subject to adequate financial supervision (the GET was told that it is only upon their request that the Court of Audit can carry out an audit since the latter is a parliamentary body and the parliament cannot audit itself in principle). The Austrian authorities may wish to bear in mind the above.

64. At the moment, the sources of support other than public subsidies are not regulated except for the way donations in excess of € 7.260 (see paragraph 32) are to be accounted for. When Austria amends the current legislation and makes it clear that all forms of income and expenditure need to be accounted for, technical questions will arise as to the necessity of a proper accounting format that would take into account the various forms of income, rights, assets, debts and liabilities of political parties since the current list of items referred to in the PPA (see paragraph 31) does not cover all the relevant information. An important element in that context is the proper itemisation of election campaign expenditures. Currently, although campaign expenditures need to be included in the financial statements of the parties according to the PPA (see paragraph 31),

this is not done in practice. The on-site discussions confirmed that for the time being, the concepts of "donations" and "support" are mostly understood to mean direct monetary contributions and that, in practice, a variety of in-kind advantages are not accounted for at their market value (e.g. premises and loans provided at preferential rates). There will thus also be a need to make it clear that all forms of private support (except legitimate forms of voluntary work) qualify as donations and to determine how to value in-kind donations, how to account for sponsoring support (e.g. a donor bearing the costs of an event), how to deal with services provided at preferential rates or debts which have been written off. A particular issue might be the distinction between membership fees and donations from party members since the on-site discussions showed that some parties at least, allow their members if they so wish to pay fees which exceed the regular amounts provided by statutes. Despite the fact that Austria has so far pursued a very liberal approach without any limitations as to sources of income, it will need to envisage limits to certain forms of support. For instance, anonymous donations will clearly need to be prohibited. Also, some of the entities controlled by political parties carry out business activities and they enter into contractual relations with the State. A number of countries evaluated to date by GRECO have restricted such relationships by prohibiting donations from companies which supply goods and services to the State and regional/local administrations. Practices which are described as particularly problematic exist in Austria especially during election campaigns, for instance when ministries or municipal administrations buy advertising space in free newspapers which are then distributed on public premises or when commercial billboard spaces are rented to deliver some form of public policy message shortly before elections (there is no definition of campaign period in Austria nor advertising regulations in that context). In the light of the above, the GET recommends **i) to regulate in an adequate manner the various forms of support used in practice for the financing of political parties and election campaigns; ii) to introduce in that context a ban on donations from donors whose identity is not known to the political party or election campaign participant; iii) to provide for an appropriate, standardised format for the accounts and financial statements that would require the recording of all forms of income and expenditure, assets and liabilities, and the effective itemisation of campaign expenditure and in this context; iv) to issue accompanying guidance documents that would in particular deal with the valuation of in-kind support, including sponsorship and v) to invite the *Länder* to do the same.**

65. In accordance with the PPA, only donations above 7260 € must be included in the parties' financial statements. They must also be itemised separately in an annex to the annual financial statements with an indication of the donor's identity. These rules are not applicable to all political parties (only those which received public financial support) nor to campaign participants other than political parties. The annex is disclosed to the President of the Austrian Court of Audit (ACA) before the 30th of September of the following year but the information remains confidential for the public. At the sole request of the party concerned (for instance if a controversy arises about a specific donation), the President of the ACA may publicly state that a donation was legal (or not). But in 26 years, this has never happened. The legislation of the *Länder* does not need to provide for any similar arrangement since the above requirement is of country-wide application. Articles 12 and 13 of the Recommendation, when combined, provide for the need to disclose to the supervisory body the donations and the name of donors where these exceed a certain amount, but above all, to make also the information public. Austria therefore needs to take measures to implement this principle and to ensure that the information is disclosed and published in a timely manner; this is particularly important in the context of election campaigns in order for the principle of publication to fulfil its purpose of transparency. The GET therefore recommends **i) to publish the identity of donors whose contributions to a political party or campaign participant**

exceed a certain threshold and to ensure the information is made available to the general public in a timely manner and ii) to invite the *Länder* to do the same.

66. Up to now, the financial statements of the political parties have been published in the official Gazette, which is linked to a daily newspaper, the *Wiener Zeitung*. The financial statements are not kept elsewhere in a systematic manner that would facilitate their access for any interested person. The access to the website of the *Wiener Zeitung* is free only during a time limit of 7 days; Austrian citizens have to take a subscription after this deadline to collect information on the scarce data on party accounts. For the sake of greater transparency and information of the public including journalists (who reportedly play a major role in Austria in the uncovering of corruption-related offences involving political figures and political financing), it would clearly be desirable that the future consolidated reports of political parties and election campaign participants be more easily accessible and retrievable, also for comparative purposes, for instance on the website of the body to be appointed for the supervision of political financing, or that of the Federal Chancellery. The GET recommends **i) to improve the accessibility to all financial reports submitted by the political parties and by participants in election campaigns and ii) to invite the *Länder* to do the same.**

Supervision

67. Overall supervision over political parties in Austria is currently the task of private auditors, both at federal and at State level. The representatives of the profession cancelled the meeting at the last minute during the on-site visit and the GET could not discuss directly such matters as the scope of audits, and the standards and impartiality requirements in place. Audit requirements only apply in respect of those parties which receive public support in accordance with the legislation of the federation and the *Länder* and it would appear that the scope of the audit performed focuses mainly on the main purposes of the legislation, i.e. the accounting documentation and financial statements pertaining to the use made of public subsidies. The GET noted that the federal law and the legislation of the *Länder* provide sometimes for modalities to ensure a minimum level of impartiality of auditors vis-a-vis their client. These are applied in a very inconsistent manner, though. The supervision of the proper use of federal budget support according to Section 2 paragraph 1 PPA for the purposes of publicity and "general campaigning" (*Öffentlichkeitsarbeit*) is carried out by two sworn auditors (Section 4 paragraph 2 PPA), chosen by the Minister of Finance from a list of five auditors provided by the political party to be audited (Section 4 paragraph 3 PPA). This procedure of assignment, guaranteeing a certain degree of impartiality and objectiveness, is not to be applied in case of auditing the annual report of a political party (Section 4 paragraph 4 PPA). The legislation of the respective *Länder* varies to an even greater extent[17] and Austria has no control mechanism at all (not even as regards the proper use of allocated public funds). In the opinion of the GET, the above situation clearly requires improvement and the Austrian Court of Audit in its report released in 2000 has already pointed to such desirable improvements through the introduction of a rotation requirement for auditors. The GET therefore recommends **i) to strengthen the independence of the external audit of the political parties' annual statements on income and expenditure, for instance by generalising the procedure of assignment of sworn auditors chosen by the public**

[17] According to the relevant laws in *Kärnten, Oberösterreich, Vorarlberg, Tirol* and *Burgenland*, the proper use of allocated public funds by the *Landtagsparteien* is checked annually by a sworn auditor assigned by the concerned political party. In *Niederösterreich,* the auditor is assigned by the *Land's* Government, chosen from a list of three auditors proposed by the political party (Section 4 para. 1 PPA-*Niederösterreich*). In *Salzburg* and *Steiermark* the audit is carried out by two sworn auditors, chosen by the political party. As indicated in the descriptive part, Vienna has no regulations and policies at all in place as regards transparency and supervision of political financing.

authority from a list of auditors provided by the political party and – additionally – by introducing a reasonable degree of rotation of auditors and ii) to invite the *Länder* to do the same.

68. Currently, the role of the Austrian Court of Audit (ACA) is very limited under the PPA. Information gathered on site suggests that its supervision over the proper use of funds allocated to the academies linked to political parties, under the AFPEMI is much more effective. Even though the ACA is required to monitor the adequate use of public subsidies under the PPA, in practice it only records the donations of which it is informed pursuant to the PPA. As indicated earlier, the only mechanism in place to monitor the implementation of the rules on donations (see paragraph 42 - when a political party would ask the ACA to deliver a public statement about a specific donation) – has never been applied. As the former President of the ACA explained to the GET, the President of this public body can only confirm a donation but nothing more. The GET was also concerned to learn that despite the many allegations of public bodies providing disguised support to political parties, especially at local level, the ACA does not apply the general principles and guidelines for public auditing such as the appropriateness of public expenditure, the efficiency for the tax payers and accountability on local level. It would also appear that the ACA has no adequate legal and other means to carry out proper administrative enquiries and investigations. In the context of the planned revision of the legal framework on political financing, different institutional models for the future supervisory body have been discussed. It would however appear that the ACA seems to be the most appropriate body, on condition that its supervisory function is strengthened through adequate means of control and the provision of the necessary staffing and expertise. The ACA enjoys a positive reputation and is considered as an institution which offers sufficient guarantees of operational independence. It will be crucial that whichever entity is designated for the supervision of political financing, a duty to disclose financial statements applies clearly to all political parties and campaign participants, whether or not they receive public support. The GET recommends **i) to ensure the effective and independent supervision of the financing of political parties and election campaigns, in accordance with Article 14 of Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; ii) to ensure that a duty to disclose financial reports applies to all political parties and participants in election campaigns, whether or not they receive public support and iii) to invite the *Länder* to do the same.**

69. The GET recalls that in the context of the fight against corruption in the context of political financing, it is important that the body responsible for the supervision of political financing is in a position to forward possible criminal cases to the criminal justice bodies. In GRECO's joint first and second round evaluation, a recommendation (recommendation xv) was made to the effect that the Austrian Court of Audit informs the prosecutor's office in case it would come across an act attracting criminal sanctions. In the compliance report adopted in June 2010, the Austrian authorities indicated that in accordance with Article 78 of the Code of Criminal Procedure, the ACA – as any other authority – has to report to the Criminal Investigation Department or to the Public Prosecution Office when it suspects that a criminal offence has been committed in fields within its legal scope and – as a consequence – the recommendation was considered implemented. However, the GET was informed during the present on-site visit that this was an interpretation of the law that does not prevail anymore. It regrets this, especially given the allegations heard by the GET concerning illicit activities, including of corruption linked with party financing. Furthermore, it would be a logical prerequisite for the possible introduction of criminal law sanctions in the future legislation (see also the paragraph below). The GET therefore refers to the earlier recommendation, namely **to introduce suitable measures that would ensure that**

the Austrian Court of Audit is in a position to report to the competent authorities both suspicions of corruption in connection with political financing and cases of mismanagement liable to attract criminal sanctions.

Sanctions

70. The on-site discussions with representatives of the criminal justice system confirmed that in the light of a recent series of 3 or 4 major cases concerning allegations of corruption, the current system of immunities had constituted an obstacle to the effective prosecution of possible corruption cases involving political figures: the lifting of their immunity was debated at length, the decision had accordingly taken a long time and the suspects had taken this opportunity to make evidence disappear. The GET was also informed that if the immunity suspends the statute of limitation, this applies only for the immunity-holder, not for his/her the possible accomplices, and by the time immunity is lifted and these persons are cited / identified as accomplices, they become non prosecutable. This general matter is still pending in the context of the on-going compliance procedure pertaining to the joint First and Second round Evaluation of Austria and the GET very much hopes that the country will take effective measures to implement the corresponding recommendation (recommendation x of the Second Evaluation Round report).

71. As a result of the general approach taken by the Austrian legislation, especially in the absence of more specific requirements on donations and transparency of political financing that could prevent potentially corruptive influences, the PPA does not contain a system of sanctions. The provision in Section 4 paragraph 10 PPA – which has never been applied in practice – cannot be regarded as a "sanction", due to the fact that the only consequence of a failure to publish the report and the list of donations or to submit the list of donors within the specified time limits may only result in withholding any allocations falling to the political party until the obligation to publish or to submit the information required is fulfilled. As for the *Länder*, none of the relevant laws on political party financing at the level of the *Länder* (except for *Carinthia*) provides for any possibility to impose sanctions on political parties in case of infringements of accounting requirements and the obligation to submit and/or publish an audit report on the proper use of allocated funds[18]. Neither the PPA, nor the regulations of the *Länder* do even state an obligation to refund state subsidies in case they are not used properly – except for the regulations applicable in *Vorarlberg*. The GET considers that without an adequate system of sanctions that would allow to address the various infringements, any present or future legislation on political financing runs the risk of remaining dead letter. Therefore, the GET recommends **i) to clearly define infringements of existing (and yet to be established) provisions with regard to the transparency of party funding and to introduce effective, proportionate and dissuasive sanctions for these infringements, in accordance with Article 16 of Council of Europe *Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns* and ii) to invite the *Länder* to do the same.**

[18] Only the legislation of Carinthia provides for the automatic loss of entitlement to state subsidies for the following year in case the audit (by a sworn auditor) on the proper use of public funds has resulted in serious consequences. Presumably, the *Land's* Government, which has to be informed by the political party about the results of the audit, is competent to declare the ineligibility to public aid for the following year. The obligation of a party represented in parliament to publish an annual financial report exists only under the legislation of the *Land Salzburg* – but the law does not provide for any possibility to impose sanctions in case of an infringement.

V. CONCLUSIONS

72. Although by European standards, the Austrian legal framework on the financing of political parties is not recent (the Political Parties Act in particular dates back to 1975), most representatives of State and non governmental institutions, including political parties, seem to acknowledge that it does not meet by far the standards enshrined in Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. The focus of the current legislation is on the allocation of public subsidies to political parties and their activities; private donations are not regulated and Austria has no public supervision mechanism – besides the certification of political parties' financial statements by private auditors – nor sanctions in place to deal with possible infringements of the existing rules. The Land of Vienna, despite its economic and political importance, has not even adopted any minimum standards in this respect. Following a request by Parliament in 1998, the Austrian Court of Audit issued a special report on the political financing system of the country and to date, the recommendations contained therein have not led to any noticeable improvement of the situation. At the same time, although the share of public support to political parties (calculated in euro per registered voter) is reportedly among the highest in the world, political financing is seen as a particularly controversial area, reportedly affected by a variety of malpractices involving notably the misuse of public resources and the dissimulation of donations through entities linked to the political parties. Parliamentary work was initiated in 2010 to fill the gaps. In the present context, this is a timely initiative which GRECO welcomes. It encourages Austria to swiftly proceed with the necessary amendments to the existing legal framework in order to provide for adequate transparency and supervision of the financing of political parties and election campaigns, as well as effective, proportionate and dissuasive sanctions in case of non compliance.

73. In view of the above, GRECO addresses the following recommendations to Austria:

i. **to adopt the necessary measures, including for instance the designation of a coordination body, to ensure that future legislation regarding political funding applies in a uniform manner to the whole of Austria and takes into account the principles set forth in *Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*** (paragraph 59);

ii. **i) to introduce adequate regulations on the financing of the political activities of elected representatives and ii) to invite the *Länder* to do the same** (paragraph 60);

iii. **i) to ensure that the future legislation on the financing of political parties and election campaigns provides for adequate accounting standards and ii) to invite the *Länder* to do the same** (paragraph 61);

iv. **to ensure that the future legislation on the financing of political parties and election campaigns i) requires the consolidation of party accounts and annual financial statements so as to include all territorial sections of the parties and other entities under their control; ii) addresses the question of support from third parties and iii) applies to all political parties and election campaign participants, whether or not they receive public financial support** (paragraph 62);

v. **i) to regulate in an adequate manner the various forms of support used in practice for the financing of political parties and election campaigns; ii) to introduce in that**

context a ban on donations from donors whose identity is not known to the political party or election campaign participant; iii) to provide for an appropriate, standardised format for the accounts and financial statements that would require the recording of all forms of income and expenditure, assets and liabilities, and the effective itemisation of campaign expenditure and in this context; iv) to issue accompanying guidance documents that would in particular deal with the valuation of in-kind support, including sponsorship and v) to invite the *Länder* to do the same (paragraph 64);

vi. **i) to publish the identity of donors whose contributions to a political party or campaign participant exceed a certain threshold and to ensure the information is made available to the general public in a timely manner and ii) to invite the *Länder* to do the same** (paragraph 65);

vii. **i) to improve the accessibility to all financial reports submitted by the political parties and by participants in election campaigns and ii) to invite the *Länder* to do the same** (paragraph 66);

viii. **i) to strengthen the independence of the external audit of the political parties' annual statements on income and expenditure, for instance by generalising the procedure of assignment of sworn auditors chosen by the public authority from a list of auditors provided by the political party and – additionally – by introducing a reasonable degree of rotation of auditors and ii) to invite the *Länder* to do the same** (paragraph 67);

ix. **i) to ensure the effective and independent supervision of the financing of political parties and election campaigns, in accordance with Article 14 of Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; ii) to ensure that a duty to disclose financial reports applies to all political parties and participants in election campaigns, whether or not they receive public support and iii) to invite the *Länder* to do the same** (paragraph 68);

x. **to introduce suitable measures that would ensure that the Austrian Court of Audit is in a position to report to the competent authorities both suspicions of corruption in connection with political financing and cases of mismanagement liable to attract criminal sanctions** (paragraph 69);

xi. **i) to clearly define infringements of existing (and yet to be established) provisions with regard to the transparency of party funding and to introduce effective, proportionate and dissuasive sanctions for these infringements, in accordance with Article 16 of Council of Europe *Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns* and ii) to invite the *Länder* to do the same** (paragraph 71).

74. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Austrian authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2013.

75. Finally, GRECO invites the authorities of Austria to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.