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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

REPUBLIC OF MOLDOVA

DRAFT JOINT OPINION

**ON THE LEGAL FRAMEWORK
OF THE REPUBLIC OF MOLDOVA
GOVERNING THE FUNDING OF POLITICAL PARTIES
AND ELECTORAL CAMPAIGNS**

on the basis of comments by

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DRAFT RESTRICTED

I. Introduction

1. By letter of 14 September 2017, Mr Cesar Florin Preda, Chair of the Monitoring Committee of the Council of Europe's Parliamentary Assembly, requested an Opinion of the Council of Europe's European Commission for Democracy through Law (Venice Commission) on the legal framework governing the funding of political parties and campaigns, as well as the recent amendments to the electoral legislation of the Republic of Moldova.
2. By letter of 15 September 2017, the Secretary of the Venice Commission confirmed the Venice Commission's readiness to carry out such an assessment and proposed, as a first step, that the Venice Commission jointly with the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) prepare an Opinion on the legal framework governing the funding of political parties and electoral campaigns. The recent amendments to the electoral legislation would be assessed at a later stage.
3. The Commission invited Mr Philip Dimitrov, Mr Michael Frenco and Mr Pieter van Dijk to act as rapporteurs for this Opinion. Ms Tatyana Hilscher-Bogussevich, Ms Alice Thomas, Mr Richard Katz and Mr Fernando Casal Bértoa were appointed as experts for the OSCE/ODIHR. In addition, the Council of Europe's Group of States against Corruption (GRECO) was invited to appoint an expert to contribute to this Opinion. The expert appointed was Mr Alvis Vilks.
4. On 17-18 October 2017, a delegation composed of Mr Philip Dimitrov and Mr Pieter van Dijk on behalf of the Venice Commission, accompanied by Mr Michael Janssen from the Secretariat, Ms Tatyana Hilscher-Bogussevich and Mr Fernando Casal Bértoa on behalf of the OSCE/ODIHR, and Mr Alvis Vilks on behalf of GRECO visited Chişinău and met with the Chairperson of the Central Electoral Commission (CEC), the Minister of Justice, the Chairperson of Parliament, representatives of the parliamentary factions and groups, as well as non-parliamentary groups, civil society and international organisations. This Joint Opinion takes into account the information obtained during the above-mentioned visit.
5. In 2013, the OSCE/ODIHR and the Venice Commission published a Joint Opinion on draft legislation of the Republic of Moldova pertaining to the financing of political parties and electoral campaigns (hereafter: 2013 Joint Opinion).¹ In 2015, the Republic of Moldova implemented a reform in this area. On 19 June 2017, a Joint Opinion on draft amendments to the electoral legislation (hereafter: 2017 Joint Opinion) – which included amendments to some campaign finance provisions – was adopted.² On 20 July 2017, the electoral reform was enacted. More details on the reform process are given below under section IV.B.
6. *The present Joint Opinion was adopted by the Council for Democratic Elections at its XXX meeting (Venice, XXX) and by the Venice Commission at its XXX plenary session (Venice, XXX).*
7. The OSCE/ODIHR and the Venice Commission remain at the disposal of the Moldovan authorities for any further assistance that they may require.

II. Scope of the Joint Opinion

8. The scope of this Joint Opinion covers the following legal provisions: Articles 24 to 31³ of the Law on Political Parties (LPP); Articles 35 to 38, 38², 38³, 41(2²), and 69 to 71 of the

¹ Joint Opinion on Draft Legislation of the Republic of Moldova pertaining to financing political parties and election campaigns [CDL-AD\(2013\)002](#).

² Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament) [CDL-AD\(2017\)012](#).

Electoral Code (EC); Articles 48 to 48² of the Code of Administrative Offences (CAO); and Article 181² of the Criminal Code (CC). Those provisions are assessed with a particular focus on the 2015 and 2017 legal reforms and on their compliance with the relevant recommendations made in the above-mentioned previous Joint Opinions.³

9. The Joint Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses rather on areas that require amendments or improvements than on the positive aspects of the legislation in place. The ensuing recommendations are based on relevant Council of Europe and other international human rights standards and obligations, OSCE commitments and good international practices. Reference is also made to the relevant findings and recommendations from the previous Joint Opinions, OSCE/ODIHR and Parliamentary Assembly of the Council of Europe (PACE) reports on elections observed⁴ and relevant GRECO reports.⁵

10. Moreover, in accordance with the commitments of the OSCE and the Council of Europe to mainstream a gender perspective into all policies, measures and activities,⁶ the Joint Opinion also takes account of the impact of the legislation on the equality between women and men.

11. The present Joint Opinion is based on English translations of the following legal texts, which must be read together: excerpts of the Law on Political Parties⁷ with amendments until 4 June 2013 and of the “Law Amending and Supplementing legislative instruments” of 9 April 2015, [CDL-REF\(2017\)044](#), the “Law Amending and Completing Certain Legislative Acts” of 20 July 2017, [CDL-REF\(2017\)045](#); as well as the Electoral Code as of 21 July 2016, [CDL-REF\(2017\)020](#). Inaccuracies may occur in this Joint Opinion as a result of incorrect translations.

12. The OSCE/ODIHR and the Venice Commission would like to note that this Joint Opinion may not cover all aspects of the legal framework governing the funding of political parties and electoral campaigns in the Republic of Moldova, and that it does not prevent them from formulating additional written or oral recommendations or comments on this matter in the future.

III. Executive Summary and Conclusions

13. The series of amendments introduced to the Law on Political Parties, the Electoral Code and other laws relevant to the financing of political parties and electoral campaigns in the Republic of Moldova during 2015-2017 brought improvements in a number of issues and some previous recommendations of the Venice Commission and the OSCE/ODIHR were taken into account.⁸ The amendments strengthened *inter alia* disclosure and reporting requirements on political parties and electoral contestants, supervision and sanctions available in case of violation of the rules. The 2015 reform, as complemented by some further amendments to the Electoral Code in 2017, was an important step in the right direction.

³ CDL-AD(2013)002 and CDL-AD(2017)012.

⁴ See [OSCE/ODIHR reports on elections in Moldova](#).

⁵ See in particular the third round evaluation report on transparency of party funding in the Republic of Moldova of 2011 ([GRECO Eval III Rep \(2010\) 8E](#)) and the subsequent [compliance reports](#).

⁶ See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, [MC.DEC/14/04 \(2004\)](#), which refers to commitments to mainstream a gender perspective into OSCE activities; and the [Council of Europe's Gender Equality Strategy 2014-2017](#), which includes the realisation of gender mainstreaming in all policies and measures as one of five strategic objectives.

⁷ It is to be noted that the LPP was amended beyond 4 June 2013 and after the 2015 reform (namely on 14 May 2015, 14 April 2016, 17 June 2016 and 13 October 2016) but these changes had no significant impact on the areas assessed in this Joint Opinion. A full version including these changes is available in [Russian](#).

⁸ Previous Joint Opinions CDL-AD(2013)002 and CDL-AD(2017)012.

14. That said, there remain several unaddressed recommendations from the 2013 and 2017 Joint Opinions and from past election observation reports. Furthermore, several concerns have been raised following the above-mentioned reforms, which are described in the present Joint Opinion. Moreover, the different amendments have led to some inconsistencies in the legal framework and introduced some provisions that are difficult to apply in practice and, thus, fail to be effective. Overall, a lack of comprehensive monitoring and insufficient enforcement of the rules seem to be the main concerns. In this regard, it must be stressed that effective reform of political financing in the Republic of Moldova is not only a question of adopting legislative texts, but also depends on the political will and the practical implementation of the provisions to create a truly transparent system and a level playing field for all political parties. It is crucial that any new regulations be construed in such a way that they can be effectively implemented.

15. The Venice Commission and the OSCE/ODIHR make the following key recommendations:

- A. Permit private contributions, within clearly defined limits, by citizens of Moldova from their revenues obtained outside of the country, subject to adequate requirements of transparency and close supervision [paragraph 55];
- B. In light of the current context, further reduce annual ceilings for private donations to political parties and to electoral contestants [paragraphs 43 and 45];
- C. Significantly enhance the supervision and enforcement of the rules on party and campaign financing. The Central Electoral Commission (CEC), or other assigned body, should be given sufficient resources, including an appropriate number of staff specialised in financial auditing, as well as a clear mandate and obligation to audit financial reports of political parties and electoral contestants, to verify the accuracy of the information submitted, initiate investigations of possible irregularities, and to make use of enhanced powers for coordination with law enforcement and other relevant bodies [paragraph 74]; and
- D. Strengthen the regime of sanctions available for infringements of party and campaign funding rules, including by expanding parties' deprivation of public funds to violations other than the failure to execute summons by the CEC and by increasing the levels of administrative fines [paragraphs 77 to 79].

16. These and a number of additional recommendations, which are included throughout the text of this Joint Opinion (highlighted in bold), are aimed at further improving the compliance of the legal framework governing the funding of political parties and electoral campaigns in the Republic of Moldova with Council of Europe and other international human rights standards and obligations, OSCE commitments, and recommendations contained in previous Joint Opinions and election observation reports.

IV. Analysis and Recommendations

A. International standards relating to the financing of political parties and electoral campaigns

17. International standards relevant to the financing of political parties and election campaigns are found principally in the [United Nations \(UN\) Convention Against Corruption](#), and in Article 22 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and Article 11 of the [European Convention on Human Rights \(ECHR\)](#), which both protect the right to freedom of association. The right to freedom of opinion and expression under Article 10 of the ECHR and Article 19 of the ICCPR and the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR are also of relevance. Similarly, OSCE commitments under the [Copenhagen Document](#) include the protection of the freedom of association (paragraph 9.3) and of the freedom of opinion and expression (paragraph 9.1), as well as the holding of genuine and periodic elections (paragraphs 5, 6, 7 and 8).

18. In addition, standards in this area can be found in the recommendations of the UN, the Council of Europe and the OSCE. These include [General Comment 25 of the UN Human Rights Committee](#) on the right to participate in public affairs, voting rights and the right of equal access to public service, Council of Europe Committee of Ministers' [Recommendation \(2003\)4](#) on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns (hereafter: Rec(2003)4), the [Joint Guidelines on Political Party Regulation](#) issued by the OSCE/ODIHR and the Venice Commission (hereafter: *Guidelines*), the [Joint Guidelines on Freedom of Association](#) issued by the OSCE/ODIHR and the Venice Commission, the [Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes](#) issued by the OSCE/ODIHR and the Venice Commission,⁹ the Venice Commission [Guidelines and Report on the Financing of Political Parties](#),¹⁰ the Venice Commission [Code of Good Practice in the field of Political Parties](#)¹¹ and the Venice Commission [Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources](#).¹²

19. At the outset, the Venice Commission and the OSCE/ODIHR recall that political parties are associations and as such they – and their members – enjoy freedom of association as defined by Article 11 of the ECHR¹³ and other international human rights treaties. In accordance with Article 11 of the ECHR, the freedom of association may only be restricted by law, for one of the listed purposes and to the extent “necessary in a democratic society”. Pursuant to Principle 7 of the Joint Guidelines on Freedom of Association, “associations shall have the freedom to seek, receive and use financial, material and human resources ...” However, this freedom is subject, *inter alia*, to requirements “concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.”

20. According to the Joint Guidelines on Political Party Regulation, “the regulation of political party funding is essential to guarantee parties independence from undue influence created by donors and to ensure the opportunity for all parties to compete in accordance with the principle of equal opportunity and to provide for transparency in political finance.”¹⁴ The *Guidelines* also stress that legislation regulating political parties should attempt to achieve a balance between encouraging moderate contributions and limiting unduly large contributions.¹⁵

21. Attention is also drawn to Article 8 of the Recommendation Rec(2003)4 of the Council of Europe's Committee of Ministers, according to which “the rules regarding funding of political parties should apply *mutatis mutandis* to the funding of electoral campaigns of candidates for elections.”

B. National Legal Framework and Recent Reforms

22. In the Republic of Moldova, the funding of political parties and electoral campaigns is mainly governed by two different sets of rules, laid down by the 2007 LPP and the 1997 EC, as complemented by several other regulations. Both laws have been subject to repeated amendments in recent years. As far as party and campaign funding is concerned, a substantial reform was implemented in 2015. It consisted of legal amendments to eight relevant laws (EC, LPP, CC, CAO, Code of Criminal Procedure, Broadcasting Code, Tax Code and Law on the

⁹ CDL-AD(2016)004.

¹⁰ CDL-INF (2001) 8.

¹¹ CDL-AD(2009)021.

¹² CDL-AD(2006)014.

¹³ See the judgment of the European Court of Human Rights in the case of *United Communist Party of Turkey and Others v. Turkey*, application no. 19392/92, 30 January 1998.

¹⁴ See paragraph 159 of the *Guidelines*.

¹⁵ *Ibid.*

Court of Auditors) and was aimed at increasing transparency in political financing, strengthening the supervisory and enforcement mechanism and thereby implementing recommendations made by the Venice Commission and the OSCE/ODIHR, and by GRECO.

23. In the 2013 Joint Opinion¹⁶ the Venice Commission and the OSCE/ODIHR had assessed two alternative sets of draft legislation of 2012 that proposed to amend political party and campaign financing (referred to as “draft amendments” and “draft law”) and made nine key recommendations, as well as several further recommendations and observations. The 2015 amendments were based on the “draft amendments” but were not identical.

24. GRECO gave a positive assessment of the 2015 reform as far as implementation of nine specific GRECO recommendations, made in 2011, was concerned. At the same time, it reiterated the observation made in the Evaluation Report, “calling on the authorities of the Republic of Moldova to seek to ensure that the rules are applied in practice, notably by ensuring that the supervisory mechanism – which is now concentrated in the hands of the Central Electoral Commission – has the necessary resources to implement substantive, proactive oversight of the financing of election campaigns and of political parties in general.”¹⁷

25. The OSCE/ODIHR noted in its [observation report on the 2016 presidential election](#) that “despite substantial legal amendments regulating party and campaign finance introduced in 2015 that addressed some previous recommendations by the OSCE/ODIHR, the Venice Commission and the Council of Europe’s Group of States against Corruption (GRECO), the legal framework contains a number of gaps and leaves some previous recommendations unaddressed [...] overall, the regulatory system and its implementation continue to be insufficient to ensure transparency, integrity and accountability of campaign finances, and did not enjoy public confidence.”

26. In February 2016, the Government elaborated the [Priority Reform Action Roadmap](#) in response to [Council of the European Union conclusions on the Republic of Moldova](#). Enhancing transparency of political parties financing and the accountability of elected representatives was identified as an essential element of combating corruption, which was among the priorities of the Roadmap. One of the measures taken in that framework was the provision of public funding to political parties in 2016.

27. Most recently, further amendments to the EC relevant to the funding of electoral campaigns were included in the amendments adopted on 20 July 2017, with the main focus to change the electoral system from a proportional system in a nation-wide constituency, to a mixed system (half proportional, half plurality in one-member constituencies). Those amendments were based on the draft legislation examined by the Venice Commission and the OSCE/ODIHR in the 2017 Joint Opinion. In this Opinion it was noted that the new draft amendments to the EC did “not address earlier recommendations and concerns pertaining to the regulation and oversight of political party and campaign finance” and that “[r]evising political party and campaign finance legislation with a view to bringing it in closer conformity with international standards and good practice should be considered a priority.”¹⁸ Following the adoption of the Joint Opinion, some amendments regarding those matters were included in the amendment law,¹⁹ which are taken into account in the present assessment.

28. Finally, the Venice Commission and the OSCE/ODIHR wish to stress that reforming political financing in the Republic of Moldova is not only a question of adopting legislative texts, but also depends on the political will and the institutional resources to implement the provisions, to

¹⁶ CDL-AD(2013)002.

¹⁷ See [Greco RC-III \(2015\) 8E](#), paragraph 21. See also the previous [GRECO reports](#) on transparency of party funding in the Republic of Moldova (Third Evaluation Round).

¹⁸ See CDL-AD(2017)012, paragraphs 16 and 22.

¹⁹ The “Law Amending and Completing Certain Legislative Acts” of 20 July 2017, CDL-REF(2017)045.

create a truly transparent system and a level playing field for all political parties, and to prevent the reform from remaining a mere declaration. In the particular situation of Moldova, it is worth pointing out that continued finetuning of regulations must not serve as a substitute for properly enforcing the already existing legislation.

29. In this regard, it is noted that according to GRECO's 2011 evaluation report, it was "above all necessary to improve the supervisory mechanism and the implementation of the rules already laid down." GRECO further took note of "concerns about various forms of covert financing of parties and election campaigns [...] on which it has so far not been possible to shed sufficient light. It was also pointed out that the political class currently lacked a genuine 'political culture' and was too heavily influenced by a narrow circle of private individuals and undertakings."²⁰

30. During their discussions with various interlocutors in Chişinău, the Venice Commission and OSCE/ODIHR delegation gained the impression that those concerns are still highly relevant in the present situation, despite the legal reforms already undertaken. Repeatedly, interlocutors referred to a considerable discrepancy between law and practice. The delegation noted with interest that several further draft amendments regarding party and campaign funding had in recent years been submitted to Parliament by opposition parties; that the CEC considered reforms in this area as a continuous process and had established a working group with participation of representatives of civil society and central authorities to discuss further possible improvements; and that the authorities met with during the visit declared their readiness to further amend the rules, as necessary. At the same time, some particular questions remain contested among the different political parties, *inter alia*, the level of donation ceilings, the prohibition of funding from revenues obtained outside the country and measures to strengthen the supervisory mechanism.

C. Funding Sources

31. Assets of political parties are regulated in Article 24 of the LPP and their financial sources in Article 25; more detailed rules on donations are contained in Articles 26 and on public funding in Articles 27f. The funding of electoral campaigns is mainly regulated in Articles 36 to 38 of the EC.

32. Provisions on direct public funding of political parties were introduced in the LPP already before the adoption of the 2013 Joint Opinion, but they were amended in the course of the 2015 reform. On that basis, the CEC started to allocate state funding to political parties in August 2016.²¹ It is recognised that public funding has the potential of preventing corruption and covert funding, removing undue reliance on private donors and ensuring the principle of equal opportunity of different parties.²² At the same time, it is crucial that the distribution of public support be clearly defined by law, be based on objective and fair criteria, and not lead to undue dependence on the state.

²⁰ GRECO Eval III Rep (2010) 8E, paragraphs 63 and 64.

²¹ Decision of the CEC no. 112 of 18 August 2016.

²² See in this connection Article 1 of Rec(2003)4 and paragraph 176 of the *Guidelines*.

33. Under Article 27 of the LPP, as amended in 2015, public funding of up to 0.2% of the state budget revenues is granted annually to political parties. 50% of the allowances are distributed to the parties “proportionally with the performance achieved in parliamentary elections” and the other 50% “proportionally with their performance in local general elections”. Those rules, which differ from the draft amendments assessed in the 2013 Joint Opinion, lack the necessary precision. In particular, it is not clear from the text whether the terms “proportionally with their performance” refer to the number of parliamentary seats or the number of votes received by each party. It was explained to the Venice Commission and OSCE/ODIHR delegation that the latter understanding was correct. **However, for the sake of legal certainty and clarity, it should be clarified in Article 27 of the LPP that the term “proportionally with their performance” refers to the number of votes received by each party, both under the proportional and the plurality system.**

34. The above-mentioned principle for the distribution of allowances is to be welcomed as it is based on an objective and fair criterion in line with the principle of equal opportunity, thereby strengthening political pluralism and also taking into account parties which have not gained seats in Parliament. At the same time, the authorities may consider the possibility of providing some public funding for newly-formed political parties that have not received votes in a previous election.²³

35. The 2017 reform inserted a new provision in Article 41(2²) of the EC which introduces financial incentives for political parties that register at least 40% of women candidates running in the uninominal constituencies (as required by law). Such parties would benefit from an increase of budgetary support of at least 10% of the amount allocated for the budgetary year to the respective party and a multiplication coefficient for every woman elected in the uninominal constituency according to the LPP. This amendment is to be welcomed as a response to the 2017 Joint Opinion, which noted that the draft legislation did not include measures aimed at enhancing the representation of women and was likely to affect it negatively, and which recommended giving further consideration to the matter.²⁴ That said, the practical effects of the amendment need to be kept under review, and the authorities are encouraged to consider the introduction of additional measures; for example, some public funding could be ear-marked for gender equality initiatives such as training of women candidates, programmes related to women’s empowerment and funds to support the functioning of women’s sections.²⁵ In any case, **the Venice Commission and the OSCE/ODIHR recommend that the multiplication coefficient for women elected (Article 41(2²) of the EC) be determined by law.**

36. As far as indirect public support of political parties and electoral contestants is concerned, the Venice Commission and the OSCE/ODIHR note that the EC includes specific provisions on access to the media. Article 64 of the EC requires public broadcasters to “allocate free airtime to electoral candidates in a fair and non-discriminatory manner, based on objective and transparent criteria”. Further details on media coverage in elections are regulated in Article 64¹ of the EC. In this respect, it is noted that the 2017 draft amendments to the EC included changes to that Article, according to which national and public broadcasters would no longer have been required to provide free airtime and to organise debates for candidates in majoritarian elections. However, those amendments were not adopted, in line with the recommendation made in the 2017 Joint Opinion,²⁶ which is to be welcomed.

²³ Cf. CDL-AD(2013)002, paragraph 57.

²⁴ See CDL-AD(2017)012, paragraphs 54 and 55.

²⁵ Such initiatives are in line with emerging practice and international standards such as the [UN Convention on the Elimination of All Forms of Discrimination Against Women](#), the [Beijing Declaration and Platform for Action](#), [Council of Europe Recommendation Rec\(2003\)3](#) of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making, as well as the [OSCE Ministerial Council Decision 7\(09\)](#) on Women’s Participation in Political and Public Life.

²⁶ See CDL-AD(2017)012, paragraph 68.

37. That said, the Venice Commission and OSCE/ODIHR delegation was concerned to hear allegations that the above-mentioned principles of fair and non-discriminatory allocation of free airtime were not respected as to their spirit, e.g. opposition candidates were not given airtime during prime time. As the Venice Commission and the OSCE/ODIHR have stressed on previous occasions, including in the 2017 Joint Opinion and the [observation report on the 2016 presidential election](#), free and equal or equitable access to media by all contestants is a cornerstone of democratic elections. According to the *Guidelines*, “the principle of equal treatment before the law with regard to the media refers not only to the time given to parties and candidates but also to the timing and location of such space.”²⁷ **In order to ensure a level playing field for electoral contestants, it is recommended that access to public media during electoral campaigns be regulated more specifically in Articles 64/64¹ of the EC, including by defining more precisely the principle of equal access to broadcasting, guaranteeing free airtime for all electoral contestants during prime time (for electoral advertising, election debates and broadcasting campaign meetings) and ensuring strict supervision.**

38. Private funding of political parties is subject to several restrictions under Article 26 of the LPP. *Inter alia*, pursuant to paragraph 3 of that Article, the annual income of a party derived from membership contributions and donations must not exceed the equivalent of 0.3% of the revenue provided in the state budget for the current year. In this respect, the 2013 Joint Opinion stated that “imposing an annual ceiling on the total of all permissible donations and membership fees received by a political party appears to be overly broad and should be reconsidered.”²⁸ In the meantime, the annual ceiling was increased from 0.25% to 0.3% of the revenue provided in the state budget. The Venice Commission and OSCE/ODIHR delegation was not provided with any indications that the current ceiling on private funding would unduly restrict political parties in their rights and activities.

39. Article 38(3) of the EC lays down restrictions on direct or indirect financing or material support of electoral campaigns/electoral contestants (including political parties) which are similar to those applicable to general party funding under Article 26 of the LPP. That said, instead of campaign ceilings it foresees limits on electoral campaign expenditure. Such a measure is in line with international standards²⁹ and may contribute to ensuring equality between candidates and pluralism in elections. While the 2013 Joint Opinion had commented positively on that approach, it had expressed concerns about the rule³⁰ that those limits were set by the CEC.³¹ **It recommended, in line with paragraph 196 of the *Guidelines*, that the basis for the CEC calculation of those limits should be indicated in the law itself, either as an absolute or as a relative sum, and that such basis should be maintained at a reasonable level. This recommendation from the 2013 Opinion has not been implemented³² and thus remains to be addressed.**

40. A particular feature of the electoral campaign funding rules, as revised in 2015, is the requirement for electoral contestants to open an electoral fund (i.e. a special bank account) through which all financial transactions must be conducted; see Article 38(2) of the EC. The 2013 Joint Opinion had welcomed this approach, which facilitates transparency and oversight over campaign expenditures, but it had also noted that the existence of such a fund “does not guarantee that no transactions will by-pass the fund and that the expenditure ceilings will not be

²⁷ See paragraph 149 of the *Guidelines*, which goes on to state that “legislation should set out requirements for equal treatment, ensuring there are no discrepancies between parties through the allotment of prime viewing times to particular parties and late-night or off-peak slots to other parties.”

²⁸ See CDL-AD(2013)002, paragraph 30.

²⁹ See e.g. General Comment 25 of the UN Human Rights Committee (paragraph 19), Article 9 of Rec(2003)4 and paragraphs 193ff. of the *Guidelines*.

³⁰ Cf. Article 38(2) of the EC in its previous form, which was only slightly modified by the draft amendments.

³¹ See CDL-AD(2013)002, paragraph 59 and 60.

³² Cf. Article 38(2)d) of the EC in its current form.

violated. For this reason, as an additional measure, **a more comprehensive approach to include details of the campaign period, campaign definition and campaign expenditure ceiling could be used, stipulating by law that all transactions apart from regular party operations (office, salaries of the permanent staff) are campaign expenditures and be administered through the fund.**³³ This proposal has apparently not been introduced and should again be taken into consideration by the authorities.

41. Paragraphs 4 and 5 of Article 26 of the LPP, as amended in 2015, set ceilings for donations by individuals (200 average monthly salaries i.e. approximately € 55,000)³⁴ and legal entities (400 average salaries i.e. approximately € 110,000) to one or several political parties. Under the previous legislation, the ceiling was 500 and 1,000 average salaries respectively.

42. According to the *Guidelines*, limitations on donations “have been shown to be effective in minimizing the possibility of corruption or the purchasing of political influence”; they should be “carefully balanced between ensuring that there is no distortion in the political process in favour of wealthy interests and in encouraging political participation”.³⁵ As the 2013 Joint Opinion noted, “one may assume that the lower the ceiling, the greater the number and variety of private donors required to fund the activities of a political party.”³⁶ Therefore, it supported the much lower ceilings foreseen in the draft amendments, i.e. respectively 20 and 40 average salaries for individuals and legal entities.³⁷ GRECO also supported the planned decrease in the limits on donations, which had been considered “clearly too high in the light of Moldova’s social and economic situation”³⁸ (but no concrete recommendation was made because of the limited scope of GRECO’s third evaluation round). In this connection, GRECO referred to statements that the political class was “too heavily influenced by a narrow circle of private individuals and undertakings.”

43. Most of the interlocutors interviewed in Chişinău considered the current donation ceilings – which are ten times higher than those set out in the 2012 draft amendments – to be excessively high and to constitute one of the main deficiencies of the current party funding regime. They argued that significantly lower ceilings³⁹ would decrease parties’ heavy dependence on wealthy donors and businesses and further the principle of equal opportunity for smaller parties. The Venice Commission and OSCE/ODIHR delegation was not provided any explanation that would justify the considerable increase of donation ceilings as compared to the 2012 draft amendments. **The recommendation to (further) reduce annual ceilings for private donations to political parties, as proposed by the 2012 draft amendments and in light of Moldova’s current social and economic situation, is therefore reiterated.**

44. With respect to electoral campaigns, the 2012 draft amendments had envisaged the introduction of ceilings of 20 and 40 average salaries for individuals and legal entities respectively – which had been commended in the 2013 Joint Opinion – but the 2015 reform set ceilings of 200 and 400 average salaries. It is welcomed that the 2017 reform of the EC reduced the ceiling to 50 and 100 average salaries, see Article 38(2)e) of the EC.

³³ See CDL-AD(2013)002, paragraph 75.

³⁴ The average monthly salary in 2017 is MDL 5,600/approximately € 275.

³⁵ See paragraph 175 of the *Guidelines*.

³⁶ See CDL-AD(2013)002, paragraph 42f.

³⁷ See also e.g. the Joint Opinion on Draft Amendments to the Law on the financing of political activities of Serbia, [CDL-AD\(2014\)034](#), paragraph 28, where the existing donation limits were considered too high to be effective; they amounted to annually 40 average salaries by a private individual and up to 400 average salaries by a company in an election year.

³⁸ See GRECO Eval III Rep (2010) 8E, paragraph 64.

³⁹ Representatives of civil society proposed e.g. ceilings of four to five, or even two average salaries. Other methods of determination of ceilings might also be considered, e.g. clearly defined amounts of money, percentage of the income, or a combination of such criteria, as is the case in some other countries.

45. While the most recent reduction of donation ceilings applicable to electoral campaigns (for all electoral contestants, including independent candidates, parties, other socio-political organisations and electoral blocs) is to be welcomed, the Venice Commission and OSCE/ODIHR delegation was not given any convincing arguments as to why the even lower ceilings foreseen in the draft amendments had not been adopted. The above concerns about high ceilings seem to be even more relevant when it comes to campaign funding as a sharp influx of money can easily distort public opinion during the limited and crucial period of the electoral campaign. **Consequently, the recommendation to (further) reduce donation ceilings, as proposed by the 2012 draft amendments and in light of Moldova's current social and economic situation, remains also relevant for the funding of electoral campaigns.**

46. **In addition, the recommendation made in the 2013 Joint Opinion to clarify by law whether the ceiling for donations for electoral campaigns under Article 38 of the EC allows donations in addition to the annual permissible ceilings for individual donations to political parties,⁴⁰ has not been addressed and is therefore likewise reiterated.** The authorities explained that the two regimes of donation limits were indeed independent from each other; however, this should be clearly stated in the law, for the sake of legal certainty.

47. A further matter relating to donations that was not examined in detail in the 2013 Joint Opinion, but has in the meantime triggered public debates, is the regulation of cash donations. Pursuant to Article 26(2) of the LPP, as amended in 2015, monetary donations to political parties shall be effected through banking operations. However, cash donations are permitted in case a donor does not have a bank account. Representatives of the CEC indicated to the Venice Commission and OSCE/ODIHR delegation that it was impossible for them to verify for all donors whether they had a bank account, and the above rule thus had little if any effect in practice. In addition, it does not seem to be fully consistent with Article 25 of the LPP, according to which donations may be collected during "entertainment, cultural, sport and other mass activities organised by the party".

48. It would thus appear more consistent and effective to generally permit cash donations up to a certain amount. Such an approach would also be in line with GRECO's recommendation to promote recourse to the banking system in order to make donations (and expenditures) traceable, a recommendation based on information that "significant amounts" were frequently donated in cash, thereby hampering verifications.⁴¹ Such a situation could be more effectively prevented by admitting only small cash donations, independently of whether a donor has a bank account or not. Notably, the CEC had introduced a ceiling for donations which a person could make annually to one political party in cash in their "Regulation on political parties' financing" of 23 December 2015; it amounted to one average salary (i.e. MDL 5,600/approximately € 275, in 2017). Representatives of the CEC informed the Venice Commission and OSCE/ODIHR delegation that this rule had been introduced following consultations with all relevant stakeholders. However, political parties successfully challenged the relevant provision in Paragraph 32 of the Regulation before court; such a rule would have to be introduced by law. **The Venice Commission and the OSCE/ODIHR therefore recommend making the LPP rules on cash donations more consistent and, in particular, making it clear that small cash donations are generally permitted but only up to a clearly specified, low threshold. Such a threshold needs to be significantly lower than the – even reduced – general donation ceilings, in order to prevent circumvention of the general transparency regulations, including full and traceable information on the donor.**

49. The Venice Commission and OSCE/ODIHR delegation was concerned to hear from several interlocutors that recent reforms had made it difficult for certain opposition parties to secure

⁴⁰ See CDL-AD(2013)002, paragraph 41.

⁴¹ See GRECO Eval III Rep (2010) 8E, paragraph 70.

adequate funding through donations. They explained this by referring to the unclear situation regarding cash donations (see above) and to administrative burdens and obstacles (e.g. smaller parties at times did not have enough cashiers to confirm donations in the form required by Article 26(2) of the LPP, banks did not always indicate the donor identity in the bank document as required by the same provision, donations by electronic means such as the Internet or SMS were not permitted, and the organisation of fundraising activities by political parties was extremely cumbersome since parties were treated as commercial entities). Finally, interlocutors noted that potential donors were intimidated and afraid of supporting opposition parties, given the fact that all donations – and the identity of donors – are publicly disclosed (cf. Article 29(3) and (4) of the LPP). According to some civil society representatives, donations to certain parties have practically stopped in recent years. This is a worrying development which needs to be addressed, without calling into question the general approach of recent reforms to increase transparency in political financing. **It is therefore recommended that legal measures be taken to facilitate donations to and fundraising by political parties, for example by regulating that donations may be made electronically and that the identity of donors in case of – clearly defined – small donations is not disclosed to the public but only to the CEC.** This would still be compatible with GRECO's recommendation to require that all donations received by political parties "that exceed a given amount", as well as the identity of the donors, are disclosed and made public.⁴²

50. Another matter which had been examined in the 2013 Joint Opinion was donors' statements of liability. It was noted that, according to the draft amendments, Article 26(5) of the LPP required a legal person to present *inter alia* the official decision of its competent bodies on making a donation, and it was recommended that analogous requirements should be introduced in the EC, so as to demonstrate proper internal decision-making processes of donor legal entities.⁴³ However, after the 2015 (and 2017) reforms, neither the LPP nor the EC contain such requirements; cf. the relevant provisions in Article 26(5) of the LPP and Article 38(2)f) and g) of the EC. **The recommendation on introducing donors' statements of liability for legal persons under the EC and the LPP as described in the 2013 Joint Opinion is therefore maintained.**

51. According to the 2012 draft amendments, donations by citizens of Moldova residing abroad were permitted under draft Article 26(6) of the LPP, but prohibited under draft Article 38(2) of the EC. It was therefore recommended in the 2013 Joint Opinion to clarify this point and to introduce consistent provisions in both laws.⁴⁴ This has now been achieved, since Article 38(2) of the EC in its current form does not foresee such a prohibition. That said, in the 2013 Joint Opinion it was also recommended that **if donations were permitted from citizens residing abroad, "special measures should be taken to ensure maximum transparency, to avoid potential abuse (e.g. to channel funds from unknown sources), and facilitate the investigation of and appropriate sanctions for such abuse."** It would appear that such special measures have not been taken in the meantime; this part of the recommendation thus remains valid.

52. In this context, attention is drawn to new provisions in Article 26(6)b) of the LPP and Article 38(3)c) of the EC, which were introduced in 2015 and prohibit party and campaign financing by citizens of Moldova from revenues obtained outside the country. This rule, which was not included in the 2012 draft amendments examined in the 2013 Joint Opinion, seems to be in contradiction to the lifting of the prohibition of donations from Moldovan citizens residing abroad

⁴² See GRECO Eval III Rep (2010) 8E, paragraph 70.

⁴³ See CDL-AD(2013)002, paragraph 38. Article 38(1)e) and f) of the EC, as revised by the draft amendments, foresaw similar but not identical requirements for election campaigns: the documents to be submitted by legal persons under paragraph 1)e) attested to the non-existence of foreign or state shares in capital, but not to the decision-making process leading to the donation.

⁴⁴ See CDL-AD(2013)002, paragraph 45.

and appears overly restrictive. Given Moldovan EU aspirations, it should also be noted that such provisions appear highly problematic with regard to the EU principles of freedom of movement. Furthermore, the OSCE/ODIHR [Limited Election Observation Mission Report on the local elections](#) of 14 and 28 June (page 13) noted that the ban on donations from out-of-country income may constitute a disproportionate restriction on political participation.

53. International standards generally give the following indications in this area: donations from foreign states or enterprises may be banned but this prohibition should not prevent financial donations from nationals living abroad.⁴⁵ In order to establish whether the prohibition of financing from abroad is problematic (disproportionate) in light of Article 11 of the ECHR, every individual case has to be considered separately in the context of the general legislation on financing of parties.⁴⁶ While international standards tend to be restrictive when it comes to foreign funding of political parties and electoral campaigns, they generally refer to the situation of foreign donors, in the interests of avoiding undue influence of foreign interests in domestic political affairs.⁴⁷

54. The situation is different in the present case, where Moldovan citizens (both residents and non-residents) are prevented from donating out-of-country income. This prohibition covers, for example, situations of persons renting their apartment located abroad. Furthermore, it concerns a significant part of Moldovan citizens, who work abroad (reportedly around 1/3) and are eligible to vote but cannot use the financial resources legally earned abroad, in order to support political parties or electoral campaigns at home. The current regulation also prohibits Moldovan citizens who are members of a political party and derive income from an activity abroad, from paying membership fees to a party. Moreover, during the meetings in Chişinău, no answer was given to the question of how to deal with situations where citizens have income both from within the country and from abroad. It would appear that in such cases, citizens have refrained from supporting political parties in order to avoid possible sanctions. It was also stressed that certain parties which were supported by Moldovan citizens working and/or living abroad, were *de facto* excluded from an important source of income.

55. This question is highly controversial among the different political parties. Those who defend the current prohibition – *inter alia*, the governing parties – mainly refer to difficulties in supervising the legality of such revenues from abroad and risks of abuse, e.g. by foreign countries which might have an interest in influencing electoral campaigns. However, such concerns could be met by special measures as recommended in the 2013 Joint Opinion – and above – with respect to donations by citizens of Moldova residing abroad and via the existing ban on foreign funding already set out in Article 26(6)c), f) and g) of the LPP and in Articles 36 and 38(3)a) and g) of the EC. Such measures could, for example, include setting increased transparency standards or prohibiting cash donations in such cases, and requiring additional layers of supervision. The Venice Commission and the OSCE/ODIHR, thus, take the view that an absolute prohibition of contributions by Moldovan citizens to political parties from out-of-country income restricts the rights of both citizens and political parties, including the right to

⁴⁵ See the Venice Commission Code of Good Practice in the field of Political Parties and its Explanatory Report, CDL-AD(2009)021, paragraph 160; the Venice Commission Guidelines and Report on the Financing of Political Parties, CDL-INF (2001) 8, paragraphs 6 and 10.

⁴⁶ See CDL-AD(2009)021, paragraph 160, which refers to the conclusion of the Venice Commission Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, CDL-AD(2006)014, paragraph 34. The European Court of Human Rights stated in this connection “that this matter falls within the residual margin of appreciation afforded to the Contracting States, which remain free to determine which sources of foreign funding may be received by political parties”; that said, it needs to be determined in practical terms whether the measure is proportionate to the aim pursued: see the judgment in the case of *Parti Nationaliste Basque – Organisation Régionale d’Iparralde v. France*, application no. [71251/01](#), 7 June 2007.

⁴⁷ See e.g. Article 7 of Rec(2003)4: “States should specifically limit, prohibit or otherwise regulate donations from foreign donors.” See also paragraph 172 of the *Guidelines*, where it is also stressed that “this is an area which should be regulated carefully”.

freedom of association, beyond the conditions of necessity and proportionality.⁴⁸ **It is therefore recommended to permit private contributions, within clearly defined limits, by citizens of Moldova from their revenues obtained outside of the country, subject to adequate requirements of transparency and close supervision.**

56. Article 26(6) of the LPP and Article 38(3) of the EC also contain a prohibition of donations by international organisations, including international political organisations. Contrary to the situation commented on in the 2013 Joint Opinion, both Articles now use the same wording which is to be commended. However, according to the 2013 Joint Opinion **it should be clarified whether the prohibition “also includes capacity-building support provided by international organisations such as the Council of Europe, United Nations or the OSCE.”**⁴⁹ **This point remains to be addressed.**

57. In the 2013 Joint Opinion, the Venice Commission and the OSCE/ODIHR recommended to remove from the draft amendments to Article 38(3) of the EC the blanket ban on certain third-party donations (namely, ordering of advertising materials by natural or legal persons for/in favour of electoral contestants and paying the corresponding expenses), with reference to Article 10 of the ECHR and related European case-law,⁵⁰ and to introduce alternative measures.⁵¹ In response, the ban has been removed⁵² and some measures aimed at increasing transparency have been taken: Article 38²(1)g) of the EC as amended in 2015 requires electoral contestants (in particular political parties) to include in their financial reports full accounting information with respect to legal entities established by the party concerned or otherwise under its control. Those steps are to be welcomed but do not appear sufficient to ensure adequate transparency in third party support. Information gathered by the Venice Commission and OSCE/ODIHR delegation during the interviews clearly suggests that this is a grey zone which needs to be further addressed. **Possible additional measures to regulate contributions by third parties to electoral campaigns were mentioned in the 2013 Joint Opinion, such as “establishing a reasonable spending limit [or] requiring third parties (meaning individuals or organisations that are not standing or fielding candidates at an election) to register as taking part in the campaign”. The introduction of such or similar measures is still recommended.**

58. Article 26(6) of the LPP in principle prohibits donations to political parties by legal entities financed from the state budget or with state capital. The same rule is contained in Article 38(3) of the EC which further bans donations by legal entities which, one year before the start of the electoral period, have carried out activities financed or paid with public means. In this respect, concerns have been raised by a number of interlocutors about an insufficient separation of state interest and political financing. While this could not be verified by the Venice Commission and OSCE/ODIHR delegation, it is important to stress that it is vital for the credibility of a democratic process that private donors of political parties are clearly separated from state business.⁵³ In this context, the delegation was informed about draft legislation which had been submitted to Parliament according to which companies which benefitted from contracts with the state should be banned from making donations during a period of three years, which appears reasonable in the current context. **It is recommended that both Article 26(6) of the LPP and**

⁴⁸ Those conditions are further developed in paragraphs 17 and 50ff. of the *Guidelines*. It is emphasised that “regulation of political parties should be implemented with restraint, acknowledging that the allowable limitations to the right of free association for political parties have been narrowly interpreted by the European Court of Human Rights.”

⁴⁹ See CDL-AD(2013)002, paragraph 46.

⁵⁰ See the judgment of the Grand Chamber of the European Court of Human Rights in the case of *Bowman v. the United Kingdom*, application no. 24839/94, 19 February 1998, paragraph 47.

⁵¹ See CDL-AD(2013)002, paragraph 63.

⁵² See the relevant provisions of Article 38(4) of the EC in its current form.

⁵³ Cf. paragraph 5.4 of the Copenhagen Document. See also the [Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes](#) issued by the OSCE/ODIHR and the Venice Commission, CDL-AD(2016)004.

Article 38(3) of the EC are amended so as to prohibit legal persons involved in contracts or public tenders with any public institution from making donations to political parties or electoral candidates for a specified period, for example, at least for three subsequent years. Such a prohibition should also apply to in-kind donations, loans, credits and cancellation of debts, in order to prevent circumvention of the rules.

59. As far as voluntary (in-kind) support of electoral campaigns is concerned, the 2017 reform introduced paragraph 9 to Article 38² of the EC, which states that “all the services and actions envisaged in paragraph 7⁵⁴ provided by individuals or legal entities for free and all the volunteering actions performed during the period of collecting signatures and during the electoral campaign in favour of the candidate or the electoral competitor shall be evaluated by the initiative group and the electoral candidate and shall be indicated on compulsory basis in the financial report”. While this new provision may in principle be welcomed as a move towards enhanced transparency, its practical effects are questionable. Representatives of political parties and of the CEC indicated that they lacked any tools to properly evaluate such voluntary support, and some parties advocated for deleting this provision. That said, the monetary valuation of in-kind contributions is an essential component of campaign finance transparency. **It is recommended to clarify in Article 38(2) of the EC on what basis voluntary services are to be calculated. This may include using pre-existing cost estimates from relevant state agencies. At the same time, the law should include value thresholds for publicly disclosing the support by a given individual or legal entity.**

60. Turning to voluntary support of political parties, the 2015 reform introduced a new rule in Article 26(7) of the LPP according to which “donations are not considered the activities provided for political parties on a voluntary basis under the legislation governing such activities.” Such a rule may have the benefit of favouring voluntary party work and thus citizens’ participation in political life. At the same time, it may create risks of hidden party funding circumventing existing limitations. While it does not seem necessary to introduce the same requirements as exists currently with respect to the crucial period of the electoral campaign (see above), **it is recommended that the applicable rules governing voluntary activities be more clearly specified in Article 26(7) of the LPP itself and that an adequate degree of transparency and accountability of such activities be ensured. This should include clear guidance on how voluntary activities be evaluated, including using pre-existing cost estimates from relevant state agencies. At the same time, the law should include value thresholds for publicly disclosing the support by a given individual or legal entity.**

D. Reporting Requirements and Oversight

61. The 2015 amendments furthermore included new disclosure requirements for political parties in Article 29 of the LPP: parties must now submit regular financial reports to the CEC as the main supervisory body and, in case political parties receive public funding, also to the Court of Accounts. The financial reports must contain detailed information on party income and expenditure, including the identity of donors, and this information is published on the websites of the CEC and of the party concerned, if any exists. Such enhanced disclosure rules are in line with international standards⁵⁵ and were, in principle, positively assessed in the 2013 Joint Opinion.⁵⁶ That said, a recommendation to further improve the disclosure rules had been made,⁵⁷ which remains valid. In particular, **it is recommended to outline in the law that the CEC retains all annual financial reports in an accessible manner and for an extended period of time.** Moreover, the Venice Commission and OSCE/ODIHR delegation noted with interest that it is planned to develop an online system of financial reporting. The introduction of

⁵⁴ E.g. costs of meetings and electoral events, advertising expenses, expenditures for promotion materials, transportation costs, maintenance costs for offices, salaries etc.

⁵⁵ See, in particular, Articles 12 and 13 of Rec(2003)4 and paragraphs 201ff. of the *Guidelines*.

⁵⁶ The underlying draft amendments were similar to those finally adopted.

⁵⁷ See CDL-AD(2013)002, paragraph 69.

such a new tool, which should be open to all political parties and accessible to citizens, media, etc., has significant potential and should be supported.

62. As regards publication of the parties' annual reports by the CEC, it is to be noted that certain information contained in the reports is currently not disclosed to the public, reportedly for data protection reasons. This does not only concern personal data such as the donor's date and place of birth and residence, but also information on the "office and occupation/work or type of activity". According to a number of civil society representatives, such information was particularly relevant since it had helped them gain knowledge of several cases where unemployed persons or persons with low income had made very high donations to political parties. In this connection, the Venice Commission and OSCE/ODIHR delegation noted that the category of "office and occupation/work or type of activity" is explicitly mentioned in Article 29(4) of the LPP in the catalogue of data to be included in the forms for financial reports, while according to paragraph 3 of the same Article, the information contained in those reports is to be made public on the CEC website. The current practice seems to be in contradiction with those requirements. Therefore, **in the interest of legal certainty, it should be expressly stated in Article 29 of the LPP that information on donors' occupation/activity should be publicly disclosed; however, this should be applicable only to donations above clearly specified amounts, in order to not discourage citizens who only wish to make smaller donations.**

63. As for general party funding, detailed provisions on financial reports of electoral contestants were introduced in 2015; see Article 38² of the EC. It is to be noted that paragraph 1 of that Article was again amended in 2017 to require that reports be submitted to the CEC on a weekly basis instead of once every two weeks: it was convincingly explained to the delegation that more frequent reporting was necessary to ensure adequate transparency, taking into account that the 2017 reform restricted the electoral period.⁵⁸

64. Article 31 of the LPP, as amended in 2015, requires political parties whose annual income or expenses exceed one million MDL (approximately € 49,000) to audit their reports on financial management at least once every three years, in accordance with the national legislation and national and international auditing standards. The audit reports must be submitted to the CEC and, in case political parties receive public funding, also to the Court of Accounts. **In the 2013 Joint Opinion, it was recommended to specify in the law that the auditors should be certified in accordance with relevant legislation of Moldova, in order to ensure full transparency and independence of the auditors. In addition, the CEC should "also have the power to commission external auditors if needed, as part of its oversight functions."**⁵⁹ This recommendation remains to be addressed. It would also be preferable for audits of financial reports to be made compulsory for all the political parties receiving public funding and for such audits to be covered from public funds in order to prevent any potential conflict of interests.

65. External oversight of party and campaign funding is mainly regulated in Article 30 of the LPP and Articles 22, 38² and 65 ff. of the EC. This has been one of the main areas of concern for several years. For instance, the 2013 Joint Opinion noted that "overall, the lack of thorough scrutiny of previous campaign finance reports underscored the lack of an effective system in place and no official body that would be clearly responsible for verifying the accuracy of campaign finance reports and enforcement of campaign financing rules." Similar concerns were raised with respect to general party funding by GRECO.

66. As a result of the 2015 reform, the supervision of both party and campaign funding is now concentrated in the hands of the CEC (except for the control of allocations from the state budget, which is to be performed by the Court of Accounts), which has been assigned new

⁵⁸ Cf. Article 1 of the EC as amended.

⁵⁹ See CDL-AD(2013)002, paragraph 70.

powers to fulfil this role, including the right to apply certain sanctions to political parties and electoral contestants.⁶⁰ This approach was welcomed by GRECO, bearing in mind that “the CEC receives financial information from parties and electoral contestants as well as from other state bodies, and thus has an overview of various aspects of political finances, and given that the CEC offers more statutory guarantees of independence than other bodies such as the Tax Inspectorate of the Ministry of Finance.”⁶¹ However, GRECO also stressed the need to ensure that the new party and campaign funding rules are applied in practice, notably by ensuring that the supervisory mechanism “has the necessary resources to implement substantive, proactive oversight of the financing of election campaigns and of political parties in general.”⁶²

67. During its visit to Chişinău, the Venice Commission and OSCE/ODIHR delegation was made aware that such substantive and proactive oversight mechanisms still do not exist. Representatives of the CEC indicated that they merely receive and publish the financial reports and contact the relevant authorities in case of non-submission of reports. They have also acted on two complaints received in relation to a possible violation of donation ceilings. In contrast, they do not check the content of reports and the veracity of the information submitted. The Venice Commission and OSCE/ODIHR delegation was left with the impression that the CEC does not assume a proactive role in coordination with law enforcement and other state bodies.

68. This is particularly worrying as there have been numerous allegations of various covert funding schemes. They related, for example, to cases of funding through intermediaries, by using lending contracts or other types of contracts to transfer funds, and where the final sources of these funds were offshore enterprises. Furthermore, the OSCE/ODIHR noted in its [observation report on the 2016 presidential election](#) that “continued instances of abuse of administrative resources detracted from the process” and called for the introduction of an effective enforcement mechanism “to promote a level playing field among contestants and ensure the separation of state and party interests.” During the meetings conducted in Chişinău, several interlocutors referred, for example, to cases of unemployed persons who made large donations to political parties and to the organisation of campaign events which were not reported in the campaign funding reports. They also stressed that political advertising accounted for the largest share of campaign spending, but that this was not comprehensively reflected in the financial reports. A need for thorough oversight of parties’ investments in private media and in foundations and charity organisations created by them was also indicated.

69. The current absence of substantial oversight and investigation of such instances may be explained by the following reasons. First, the CEC considers that it lacks the legal competences to check the content of financial reports and investigate irregularities. However, this point of view is difficult to reconcile with the law: Article 22 of the EC sets out the CEC’s competences, which include e.g. exercising the right of access to information held by public authorities at all levels and applying or requesting the application of sanctions. In addition, Article 29(2) of the LPP makes it clear that parties’ annual reports are checked and analysed by the CEC, and that the CEC may ask political parties and public or private institutions the necessary information. In spite of these competences, representatives of several authorities took the view that it was not – and should not be – the task of the CEC to investigate infringements of the law; this should rather be performed by other competent bodies such as the tax authorities, the Ministry of Finance, the Court of Accounts, the prosecution service and courts or the National Anticorruption Center.

70. In this connection, the Venice Commission and the OSCE/ODIHR note that the above-mentioned bodies would seem to be supplementary supervisory mechanisms only, since tax authorities have a different control function, and may not always have the necessary

⁶⁰ Cf. Article 22(2) of the EC.

⁶¹ See Greco RC-III (2013) 2E, paragraph 81.

⁶² See Greco RC-III (2015) 8E, paragraph 21.

information and skills to adequately oversee political financing, while court proceedings may take a long time and the National Anticorruption Center will take action only in very specific cases. In sum, the situation is largely the same as before the reform, i.e. there is no authority which would take the lead in supervising party and campaign financing and coordinate the work of the different bodies involved. It therefore appears necessary to make it even clearer in the law – both in the EC and the LPP – that this leading role is assigned to the CEC, notwithstanding the fact that active and effective collaboration between various institutions will still be required.⁶³ This must necessarily include substantial checks of financial reports as well as the possibility to initiate investigations; ideally, the CEC itself would be entrusted with certain investigative functions. These kinds of competences are in line with international standards, as also stressed by the Venice Commission and the OSCE/ODIHR in previous Joint Opinions as well as by GRECO in its evaluation report on transparency of party funding in the Republic of Moldova.⁶⁴ In the terms of the *Guidelines*, “legislation should grant regulatory agencies the ability to investigate and pursue potential violations. Absent such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate.”⁶⁵

71. Furthermore, the CEC currently lacks sufficient resources to exercise full supervision; only two employees of the financial department are assigned to handle the financial information reported by political parties and electoral contestants.⁶⁶ It would also appear that around twenty vacancies within the CEC are not filled due to unattractive working conditions. Moreover, additional specialised staff is needed to carry out in-depth control of financial reports. The Venice Commission and OSCE/ODIHR delegation was informed by the Minister of Justice that the CEC had the possibility to make a reasoned request for additional staff but had not done so to date. It would therefore appear appropriate to further define budget and staff allocations to the CEC and to provide for better working conditions to ensure that the CEC has both the human and the financial resources to fulfil its mandate.

72. In addition, during the conversations held on site different opinions were expressed as to the impartiality and independence of the CEC. It was also stressed that the CEC was subject to political pressure and attacked in public, and repeated allegations were made about selective application of the law by the CEC. Whatever the veracity of such allegations, it is of paramount importance that the supervisory body is – and is perceived to be – independent from political pressure and committed to impartiality.⁶⁷

73. One possible measure to strengthen the oversight of party and campaign financing would be the establishment of an independent Directorate of Financial Control in the CEC, as foreseen in the 2012 draft law which was not adopted. According to the draft, the Head of the Directorate should be appointed following an open and transparent recruitment procedure. The 2013 Joint Opinion supported such a move and noted positively that only such persons should be eligible for Head of the Directorate, who have not been members of political parties for the five preceding years: given that the Central Election Commission is made up of members appointed by political figures/institutions (i.e. the President of the Republic and Parliament),⁶⁸ “appointing such an individual as leading the oversight over financing of political parties and electoral contestants would help remove any suspicions of potentially politically motivated

⁶³ See also the OSCE/ODIHR [Limited Election Observation Mission Report on the local elections](#) of 14 and 28 June (pages 13f. and recommendation no. 4).

⁶⁴ See Greco Eval III Rep (2010) 8E, paragraph 75.

⁶⁵ Cf. paragraph 220 of the *Guidelines*. See also Article 14 of Rec(2003)4; Joint Opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine, [CDL-AD\(2015\)025](#), paragraph 36; Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, [CDL-AD\(2014\)035](#), paragraphs 42 and 43.

⁶⁶ See also the *Campaign Finance* section and recommendations of the OSCE/ODIHR [observation report on the 2016 presidential election](#).

⁶⁷ Cf. paragraph 212 of the *Guidelines*.

⁶⁸ See Article 16(2) of the EC.

sanctions against political parties.”⁶⁹

74. It is therefore recommended that the supervision and enforcement of the rules on party and campaign financing be significantly enhanced. The CEC, or other assigned body, should be given sufficient resources, including an appropriate number of staff specialised in financial auditing, as well as a clear mandate and obligation to audit financial reports of political parties and electoral contestants, to verify the accuracy of the information submitted, to initiate investigations of possible irregularities, and to make use of enhanced powers for coordination with law enforcement and other relevant bodies.

75. Finally, it would appear that a recommendation relating to oversight, which was made in the 2017 Joint Opinion, has been taken into account in the 2017 electoral reform: the 2017 draft amendments of the EC proposed the transfer of responsibility for control over campaign finance, as well as of a number of aspects of the electoral process, from the CEC to the District Electoral Councils.⁷⁰ This was criticised in the 2017 Joint Opinion, according to which such a move “would pose further challenges to effective control and supervision. This includes lack of appropriate resources.”⁷¹ In the end, such a transfer of responsibility with respect to campaign finance has not been effectuated;⁷² the corresponding draft provisions were removed from the amendment law.

E. Sanctions

76. Sanctions available for infringements of party and campaign financing rules are regulated in Articles 31¹ to 31³ of the LPP, Articles 69 to 71 of the EC,⁷³ Article 181² of the CC and Articles 48 to 48² of the CAO. Those provisions are similar to the 2012 draft amendments which, according to the 2013 Joint Opinion, outlined a “comprehensive system for breaches to existing rules and regulations regarding violations, which includes a graduated system of including regulatory, civil, and criminal sanctions for non-compliance.” That said, some specific recommendations were made as outlined below.

77. Namely, according to the 2013 Joint Opinion, **it should be clarified whether administrative or criminal sanctions in this area may also be issued towards legal entities. If this was the case, the legislators should review whether for certain violations the law should also foresee punitive sanctions for political parties themselves, not only for individual party members or leaders.**⁷⁴ **This remains to be addressed.**⁷⁵ The Venice Commission and the OSCE/ODIHR take the view that appropriate clarifications should be provided in the law itself, i.e. in the relevant CAO and CC provisions. It seems logical to require, *mutatis mutandis*, that the scope of the sanctioning provisions cover all persons/entities upon which the LPP and the EC impose obligations.

⁶⁹ See CDL-AD(2013)002, paragraph 78.

⁷⁰ According to draft articles 38²(5) and 65(6) of the EC, District Electoral Councils would have been competent to receive financial reports – as well as complaints in this area – not only in local elections but also in parliamentary elections in uninominal constituencies.

⁷¹ See CDL-AD(2017)012, paragraph 16.

⁷² District Electoral Councils have only kept their competences in this area in the context of local elections, which were assigned to them already before the recent reforms.

⁷³ The 2017 reform of the EC included some further amendments to Article 69(2) of the EC which enumerate more clearly the different sanctions available.

⁷⁴ See CDL-AD(2013)002, paragraph 81.

⁷⁵ Pursuant to Article 69(1) of the EC, which was already in place when the 2013 Joint Opinion was adopted, individuals and legal entities who breach the provisions of the electoral legislation “are liable under current legislation”. However, it is not specified which types of sanctions could possibly be imposed on legal entities and political parties in particular (other than deprivation from allocations from the state budget, see Article 69(3¹) of the EC). The same is true for violations by political parties of LPP provisions.

78. Furthermore, the 2013 Joint Opinion **recommended to expand Article 31¹(4) of the LPP, as amended, to the effect that the decision to deprive parties of state funds – which may prove very effective in terms of deterrence – may also be taken in cases of violations other than the failure to execute summons by the CEC, for example, repeated violations concerning financial management under Article 31² of the LPP.**⁷⁶ This recommendation remains to be implemented as well.

79. More generally, it would appear that the regime of sanctions available for infringements of party and campaign funding rules, has not proved to be dissuasive and effective to date, as required by international standards.⁷⁷ In addition to the shortcomings addressed by the preceding recommendations, the levels of fines available under the above-mentioned CAO and CC provisions – which are measured in conventional units of MDL 50 (approximately € 2.5) – appear too low, especially when compared to the amounts at stake in the area of political financing.⁷⁸ In particular, this concerns administrative fines: for example, the failure by election candidates to present financial reports is subject to administrative fines ranging from approximately € 150 to € 225.⁷⁹ According to information provided by the CEC, in the last year administrative sanctions were imposed on political parties in 15 cases, mostly for non-submission of financial reports, while more than half of the parties concerned did not react or send the required information. Other sanctions such as criminal ones or deregistration of candidates have not been applied in practice since the enactment of the reforms. Therefore, **the Venice Commission and the OSCE/ODIHR recommend that the regime of sanctions available for infringements of party and campaign funding rules be reviewed, so as to ensure dissuasive and effective sanctioning, including by increasing the levels of administrative fines. At the same time, the concept of proportionate punishment should be explicitly included in all the relevant provisions,** in line with previous pronouncements on this matter by the Venice Commission and the OSCE/ODIHR.⁸⁰

⁷⁶ See CDL-AD(2013)002, paragraph 82.

⁷⁷ See, in particular, Article 16 Rec(2003)4, which requires “effective, proportionate and dissuasive sanctions”, and paragraph 224 of the *Guidelines*, which calls for “objective, enforceable, effective and proportionate” sanctions.

⁷⁸ Bearing in mind e.g. the ceilings for donations which one individual (approximately € 55,000) or legal person (approximately € 110,000) may annually make to political parties.

⁷⁹ Cf. Article 48¹ (1) CAO. It should be noted that the amount of a conventional unit was increased from MDL 20 to 50 in 2017; at the same time, however, the number of conventional units was decreased for a number of offences including e.g. those under Article 48¹ (1) CAO.

⁸⁰ See e.g. Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, CDL-AD(2014)035, paragraph 45.