



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
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Third Evaluation Round

Evaluation Report on Denmark on Transparency of Party Funding (Theme II)

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I. INTRODUCTION

1. Denmark joined GRECO in 2000. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 6E Final) in respect of Denmark at its 10th Plenary Meeting (8-12 July 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 6E) at its 22nd Plenary Meeting (14-18 March 2005). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (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 for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Denmark on 10 and 11 December 2008, was composed of Ms Ülle MADISE, Director, National Audit Office (Estonia) and Mr Jens-Oscar NERGÅRD, Senior Adviser, Ministry of Government Administration and Reform (Norway). The GET was supported by Mr Bjorn JANSON, Deputy to the Executive Secretary of GRECO. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2008) 7E, Theme II), as well as copies of relevant legislation.
4. The GET met with representatives of the following public institutions: the Ministry of Justice (Constitutional Law Department), the Ministry of Social Welfare (on 7 April 2009, i.e. after the GET visit, the name of this Ministry changed to "the Ministry for the Interior and Social Affairs", which is used throughout the Report), the Head of General Audits and the Public Prosecutor for Serious Economic Crime (SØK). Moreover, the GET met with representatives of political parties represented in Parliament, the Association of Local Authorities and Regions, the Journalists Association and a journalist representing a daily newspaper (Berlingske Tidende), Transparency International and a representative of Copenhagen University.
5. The present report on Theme II of GRECO's 3rd Evaluation Round – "Transparency of Party Funding" – was prepared on the basis of the replies to the questionnaire and information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Danish 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 Denmark in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme II – "Incriminations", is set out in Greco Eval III Rep (2008) 9E, Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Description of the situation

Definitions

7. Political parties have existed in Denmark since the 1870's. The Danish Constitution, which forms the legal framework of the political system does not provide any definition of political parties, nor is there a general definition of political parties in the legislation. It will therefore depend on the matter covered by specific legislation how the term "political party" is to be understood; political parties are, for example, mentioned in the Parliamentary Election Act.
8. The Danish authorities stressed that political parties are understood as organisations which aim at working for a programmatic development of society and which nominate candidates for general elections in order to make their programmes a reality. Moreover, political parties can be seen as associations of people sharing the same basic political beliefs, who have pooled their efforts in order to try to influence political development through various public assemblies, such as Parliament (*the Folketing*), the European Parliament, district councils and county councils etc. However, a party can also act as a pressure group outside the elected bodies, e.g. by making interventions in the public debate, by holding meetings etc.
9. The authorities emphasised that traditional political parties have legal personality. However, this is a general anticipation and it may depend on a particular situation whether a party has legal personality or not. It was stressed to the GET that in case a political party has its own internal regulations and one or more persons are formally authorised to represent and sign on behalf of the party, the party will normally be considered to have legal personality, including the same rights and obligations as any business company.

Registration

10. The rules concerning the registration of parties entitled to participate in general elections are laid down in the Parliamentary Election Act (PEA). All political parties which gained representation in Parliament at the most recent election and which are still represented in Parliament when an election is called, are automatically assigned the right to participate in such elections as a registered party, according to section 11.1 PEA.
11. Other parties wishing to participate in a general election (sections 11-14 PEA) have to file a request for registration at the Ministry for the Interior and Social Affairs not later than 15 days before the polling day. Such a request has to be accompanied by signed statements from a number of individuals corresponding to at least 1/175 of all valid votes in the last general election. The number of signatures required for registration prior to the November 2007 election was 19,185 (i.e. 1/175 of the 3,357,212 valid votes cast in the February 2005 election). The voters' declaration is to be made on a specific form which has been approved by the Election Board in advance. In order to prevent forms from being signed by people without suffrage there is a special checking procedure foreseen in the law - aimed at securing the correctness of all signed forms - involving the Election Board and the local district authorities. In practice, a signed form is valid for three years. If a person has signed supporting forms for more than one party, only the first form signed is valid. The Election Board approves new party names to ensure that these are distinguishable from party names already in use etc.

12. An individual may stand for election, either on behalf of a party that is entitled to nominate candidates or as an independent candidate (section 32 PEA). While the former has to be approved by the party, the latter has to be recommended by at least 150 voters of the nominating district. Announcements of candidatures are to be submitted to the appropriate regional state administration (registration authority), using a special form provided by the Ministry for Social Welfare. Candidates must indicate whether they are standing for a party or if they are independent. The announcement form must state the full name of the candidate, his/her CRS number and address and must also be signed. Not later than 10 days prior to the election day, parties must give notice in writing of their approved candidates.
13. The Ministry for the Interior and Social Affairs is to publish the official list of registered parties, as well as their assigned party letters, in the official Gazette as soon as possible after the 15th day before an election. Following the registration, the election committee shall procure the ballot papers for use in the poll.
14. The rules concerning independent candidates to Parliamentary elections are laid down in sections 32 and 33 PEA. An independent candidate needs to be recommended by between 150 and 200 voters of the nomination district as supporters. Announcements of candidates are to be submitted using a specific form, including the name, address and CRS number of all supporters. The GET was informed that this kind of candidature is rare: only once has an individual candidate been elected to Parliament (1994).
15. The rules concerning local and regional elections (Local and Regional Government Elections Act) provide that those nominated for election are to be entered on candidate lists. A list of candidates shall, as a main rule, be signed by at least 25 supporters of a municipality or by 50 supporters for a regional election (for the City of Copenhagen the number may be higher). Lists of candidates may be established by parties, coalitions or individuals. The Election Committees, each one chosen by the local or regional assembly, receive and approve the lists of candidates, procure ballot papers and supervise the elections.

Party representation in Parliament (*Folketinget*)

16. Denmark has a unicameral Parliament with 179 seats in total (including representation of the Faroe Islands and Greenland - two seats each). The principle of the Danish electoral system is the method of proportionate representation, i.e. a party is represented in Parliament in proportion to the number of votes obtained by the party on a nation-wide basis, and not only proportionally to the number of votes, which the candidate of the party obtained in his/her constituency. To this end, the country is divided into three electoral regions and the regions are divided into 10 multi-member constituencies. In order to provide for a regional affiliation of the candidates, 135 Parliamentary seats of the *Folketing* are to be obtained by election in the 10 multi-member constituencies and, for mathematical accuracy of a proportional division of seats in relation to the total votes cast for the parties, there are 40 supplementary seats.
17. Moreover, three different electoral thresholds are provided for, one of which has to be complied with in order for parties to have compensatory seats allocated to them (section 77 PEA). The three thresholds are 1) winning a seat directly in any of the 10 multi-member constituencies; 2) obtaining in two of the three electoral regions a number of votes corresponding to the regional votes/seat ratio; or 3) obtaining at least two per cent of the valid, national votes cast. The thresholds only apply in respect of complementary seats.

18. In the 2007 Parliamentary elections, nine political parties participated and eight of them gained seats (as well as two independent candidates) in Parliament. The current (minority) Government is made up of the Liberals and Conservatives. The seats in Parliament are divided in accordance with the following list (the number of seats is indicated within brackets):

- Liberals (47)
- Social Democrats (45)
- Danish People's Party (25)
- Socialist People's Party (23)
- Conservatives (18)
- Social Liberals (9)
- Unity List – Red-Green Alliance (4)
- New Alliance (3)
- Independent (1)
- The Unionist Party (Faroe Islands) (1)
- The Republican Party (Faroe Islands) (1)
- Community of the People (Greenland) (1)
- The Social Democrats of Greenland (Greenland) (1)

Participation in elections

19. Any person who is entitled to vote in Parliamentary elections (18 years of age, legal capacity and permanently resident in the realm) is eligible to the *Folketing*, according to section 4 PEA, unless s/he has been convicted of an act which in the view of the public makes him/her unworthy to become a member of Parliament (sections 30 and 33 of the Constitution).
20. The right to vote and to be eligible in local and regional council elections requires the person to be above 18 years of age, permanently resident in the municipality/region, to be a Danish citizen or to be permanently resident in the realm since three years, or to be a national of the European Union, Iceland or Norway (Part 1 of the Local and Regional Government Elections Act).

Overview of the party funding system

Public funding

21. Public funding from the State, regional and local authorities provide significant resources of income for political parties in Denmark. The total sum of public funding provided by the Ministry for the Interior and Social Affairs to political parties participating in the 2008 parliamentary election was approximately 93 000 000 DKK (EUR 12 500 000), which corresponds to 22.44 DDK (EUR 3) per voter. The total public funding at the county council elections (2005) has been estimated to approximately 10 000 000 DKK (1 340 000 EUR.), corresponding to 2.40 DKK (EUR 0.32) per voter. In respect of the district council elections 2005, the total funding has been estimated at almost 10 000 000 DKK (EUR 1 340 000) or 2.32 DKK (EUR 0.35) per voter. The current rules concerning direct public funding for political parties and individual candidates were enacted in 1986 and took effect as from 1987. The most recent legislation in this respect is the Consolidated Act no. 1291 of 8 December 2006 on Grants to Political Parties (Consolidation) Act (hereinafter "PFA", *Public Funding Act*), which provides that direct public financial support is to be provided, annually, by the Government, to the county councils and the district councils. There is no specific public funding for elections in addition to indirect support in the form of free access to publicly broadcast media.

22. Direct public funding is available to parties as well as to independent lists/independent candidates, who participated in the latest *Folketing* election (government funding), the latest council election (county funding) or the latest district election (district funding), according to section 2 PFA. The purpose of direct public funding is to support general administration and election campaign activities of political parties and candidates but this financing is "not earmarked" for any specific activities. However, they must be spent in Denmark.
23. Government support is administered by the Ministry for the Interior and Social Affairs. Funds to the parties are awarded to the central party organisation which, in turn, is supposed to distribute the funds to the various parts of the organisation according to its own rules. The scheme for county support is administered by the local county councils and the scheme for district support is administered by the local district councils, (section 5, 8 and 11 PFA).
24. Public funding is provided annually and those entitled to funding (parties and individual candidates) must apply each year to the Ministry for the Interior and Social Affairs to obtain such means. The application is to be supplemented by written declarations concerning the amount of prospective expenditure for political purposes in respect of the budget year in question and the amount used for political purposes the previous year. The Ministry may reduce the annual allowance if the party budget does not fully correspond to the allowance. The application must be signed by the president of the party and certified by a licensed auditor. In addition to these declarations, the parties must submit a copy of their statutory annual account to the Ministry for the Interior and Social Affairs. This account is to provide information on the various types of income to the party. The schemes for county and district council financial funding of parties as well as independent lists and candidates follow similar principles.
25. Parties and independent candidates, fulfilling the formal requirements for the annual public funding (2009), are entitled to receive DKK 26.50 (EUR 3.50) per vote obtained in the previous *Folketing* election, provided they received at least 1,000 votes in the election. Furthermore, political parties as well as independent lists of candidates, who participated in the most recent election to the county council, are entitled to DKK 3.75 (EUR 0.50) per vote received in the latest county council election, provided they obtained at least 500 votes. Lastly, political parties and independent lists of candidates, participating in the most recent election to the district council, are entitled to DKK 6.00 (EUR 0.80) per vote, provided that they obtained at least 100 votes in the district election or, regarding the district of the municipality of Copenhagen, at least 500 votes).
26. Another form of direct public funding is provided to parliamentary factions, which is regulated under parliamentary rulings. The *Folketing* provides funding to the party groups represented in Parliament. These grants consist of a basic sum per party group and a so called "seat sums". The total amount to a party group is approximately 275 000 DKK (EUR 37 000) as the basic sum per month and 43 000 DKK (EUR 5 800) per member and month. A party group consisting of 10 members would approximately get some 700 000 DKK (EUR 94 000) per month.
27. Concerning indirect public funding, the only source provided in Denmark is free access to the public broadcast media during election campaigns. The guidelines of the "Danish Radio and Television" (a national public service station) aim at ensuring that all registered political parties are given equal access to pre-election programmes on radio and television. All parties (no matter how small) are given equal time free of charge to present their manifestos etc. to the public.

Private funding

28. There are no legal restrictions or limits in respect of the sources and amount of private funding and support that may be provided to political parties or individual candidates. Contributions may be given through any form of activity and by anyone, including individuals, organisations enterprises (whether private or public) as well as from foreign sources. There is no ban on anonymous donations (where the identity of the donor is unknown) to political parties.

Taxation regime

29. Contributions to political parties, entities affiliated with political parties, elected representatives, candidates for election and election campaigns are not (tax) deductible from the income of the donor.
30. Political parties are subject to taxation in respect of their business activities and are, in this respect, subject to the regulations of the Corporation Tax Act. Other types of funding of political parties, whether public or private, are exempt from taxation. Individual election candidates, like any citizen, are subject to taxation in respect of received financial contributions and are thus obliged to declare such income to the tax authorities.

Expenditures

31. There are no restrictions regarding to what use the political parties may put their funds more than that they may only be used for political purpose as detailed in section 1 PFA.

III. TRANSPARENCY OF PARTY FUNDING - SPECIFIC PART

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

Books and accounts

32. The general rules on accounting, which are contained in the Act on Bookkeeping and the Annual Accounts Act are applicable to physical and legal persons (including political parties) carrying out different forms of business activities. The GET was also informed that a political party that receives public funding would also be covered by the Act on Bookkeeping and that in practice the accounts of the political parties were drawn up in accordance with the principles of the Annual Accounts Act and the general principles of good accounting, which are considered binding according to the preparatory works of the Annual Accounts Act.
33. The Private Contribution to Political Parties and Publication of the Accounts of Political Parties Act (*Accounts of Political Parties Act, APPA*) requires that a nationwide organisation of a political party which has been registered for the latest general national elections or the latest European Parliament elections, must keep accounts of income and expenditure (section 3, subsection 1 APPA). The following types of income are required to be included:
- 1) Public party funding;
 - 2) Subscription income;
 - 3) Private contributions from individuals;
 - 4) Income from interests;
 - 5) Contributions from international organisations, collective private associations; trade unions, business associations, business companies, funds and associations;

It follows from the same law that foreign contributions are to be registered/recorded in the same way as domestic contributions.

34. Furthermore, it is required that party accounts contain information on the name and address of any private contributor (physical or legal person) from whom the nationwide organisation during the accounting year has received one or more contributions which, in total, exceed DKK 20,000 (EUR 2 700). However, it is not required to report the specific value of such donations; the parties are only obliged to provide the total sum of all donations and a list of the donors. The accounts are also to contain a total sum of all anonymous contributions received during the accounting year and information on the size of any anonymous contribution exceeding DKK 20 000 (EUR 2 700) (section 3, subsection 2 APPA).
35. According to the preparatory works of the *Accounts of Political Parties Act (Betaenkning, 24 May 1995, page 903)*, a contribution to a political party is normally understood as a monetary transaction. However, other forms of contributions, such as in-kind contributions, would also be covered by the law and it is assumed that all income is to be accounted for in accordance with "normal principles of good accounting"; i.e. that the accounts must, *inter alia*, contain information on the size (the cash value) of each of the various forms of income. The Preparatory works also discusses the border line between what is to be accounted for as an in-kind contribution and what would not be necessary to account for and some guidelines were provided by the Ministry of Justice at the time. For example, an in-kind contribution to a party for which the donor would normally charge a fee is to be accounted for at the market value. On the other hand, contributions by members of the party for traditional voluntary work, such as hanging up posters etc, would not be covered by the accounting obligation. The GET was informed that the Ministry of Justice was not aware of any particular problems concerning the interpretation of the term contribution in practice.
36. The party accounting rules follow largely the general accounting rules for any legal person: The purpose or nature of the contributions does not have to be specified in the accounts nor is it required that the accounts make a distinction between regular income on the one hand, and income relating to election campaigns on the other hand. Neither is it required that income for different election campaigns running in parallel be distinguished from each other in the accounts.
37. The *Accounts of Political Parties Act* does not contain any requirements concerning which expenditures are to be included in the accounts or the level of detail. The only requirement in this respect is that the accounts must contain information about the total expenditure; balance and the net worth (section 3, subsection 3 APPA).
38. The accounts are to be signed by representatives of the leadership of the party and must contain a statement that the nationwide organisation did not have any other income than that stated in the account (section 4, subsection 2 APPA). There is no requirement in the APPA that the accounts be checked by certified accountants or audited internally, however, in practice the accounts of political parties represented in the Folketing are checked by accountants. The accounting year runs from the period of 1 January to 31 December.

Reporting obligations

Political parties and election candidates

39. Political parties with a nationwide organisation which have been registered for the national or European Parliament elections are obliged, within 12 months of the end of the accounting year,

to submit their annual accounts (described above) to Parliament (section 5 APPA). The Folketing does not check the accounts. The check of the accounts lies in the fact that these are made public. As mentioned above, the accounts of political parties are to contain information on any private contributor who has donated in total more than DKK 20 000 (EUR 2 700), but not the specific value of such donations. The accounts are also to contain the total sum of all anonymous contributions and information on the size of any anonymous contribution exceeding DKK 20 000 (EUR 2 700).

40. Moreover, political parties that wish to apply for public funding have to submit their recent accounts before the end of the calendar year for which the grant is requested. The accounts are to be submitted to the Ministry for the Interior and Social Welfare together with the application for new funds (section 7b. PFA). The application is to be supplemented by written declarations concerning the amount of prospective expenditure for political purposes in respect of the budget year in question and the amount used for political purposes the previous year. These declarations must be audited.
41. Individual candidates, who participated in the previous elections to the Folketing must - in order to obtain public funding - state the amount used for political purposes in the previous year. There are no other reporting obligations upon them. Lists of candidates (including those with only one name) are obliged to inform the local and regional authorities about private donations and anonymous donations following the same principles as political parties (see paragraph 39).

Donors

42. Donors are not subject to any reporting obligations.

Access to accounting and tax records

43. According to the Act on Bookkeeping (section 10), anyone obliged to keep annual accounts in Denmark is obliged to keep the accounts for a period of at least five years. In so far as political parties or election candidates carry out business activities or receive public funding, these rules apply also to them. However, the specific accounting rules for political parties under the *Accounts of Political Parties Act* do not require the preservation of accounts. Taxation rules apply in respect of political parties which carry out business activity.
44. There are no general accounting obligations that party accounts and taxation documentation have to be publicly available. However, parties with a nationwide organisation which have been registered for the national or European Parliament elections, must submit their annual accounts to Parliament, which renders them public (section 5 APPA). The GET was informed that public access to these accounts is provided on-line on the homepage of the *Folketing*.

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

45. Political parties, when they carry out business activities, like any other entities covered by the Accounting Act, are obliged to have their accounts audited by certified auditors. The GET was informed that all parties represented in Parliament have two auditors for this purpose. The Act on Auditors stipulates that an auditor has to be independent from the company concerned. This is, according to the Danish authorities, also applicable in respect of political parties. The GET was also informed that some parties have engaged the same auditors for this purpose for a long period of time and that there are no particular measures in place - in addition to the Act on

Auditors – to prevent situations of conflicts of interest, such as party membership or limitations in respect of the number of years that the same auditor may audit the accounts of the same party.

46. There is no specific authority in Denmark entrusted with monitoring the adherence to political financing rules by political parties, related entities or election candidates and there is no public authority established to check the relevant accounting records of such entities and persons. However, the General Audit Office (*Rigsrevisionen*), which is an independent institution under Parliament, examines the soundness of all state accounts, i.e. checks that they are without significant errors and deficiencies and this Office is, according to the *Public Funding Act* (Section 7c), authorised to demand accounting records from the beneficiary parties that have received public funding in order to examine how such funding has been spent and, in this context, may check the accounts of political parties. The GET was informed that the General Audit has never used this particular possibility in respect of any political party.

(iii) Sanctions (Article 16 of Recommendation Rec(2003)4)

47. The requirements, contained in the *Accounts of Political Parties Act* in respect of political parties with a nationwide organisation which have been registered for the national or European Parliament elections, to maintain accounts of income and expenditure are connected to sanctions according to the same law. Anyone who gives incorrect and insufficient information in respect of income, expenditure or in the obligatory statement concerning the correctness of the accounts, may be punished with a fine or imprisonment of up to 4 months (section 6a APPA). Furthermore, if a party fails to submit its statutory annual account to Parliament, and to provide the required information on various types of income according to section 3 APPA, further annual government funding will not be disbursed to that party.
48. Sanctions are also provided in respect of the *Public Funding Act*: anyone who gives incorrect statements or declarations during the process of requesting public funding (national, regional or local levels) may be punished by a fine or imprisonment of up to 4 months (section 14 a PFA).
49. Moreover, the GET was informed that certain criminal offences, such as bookkeeping offences are covered by general criminal legislation. The rules on complicity of the Criminal Code (section 23), i.e. that a person who has contributed to the execution of an offence is liable to a penalty according to the same rules as the principal offender, are applicable also in respect to the particular offences provided for in the *Accounts of Political Parties Act* and *Public Funding Act*.
50. All the abovementioned sanctions or measures are always to be decided by a court. They may be imposed on organisations holding legal personality as well as individuals. Sanctions imposed on an organisation do not exclude that individuals be sanctioned or vice-versa.

Immunities

51. Danish law does not provide for immunities for individuals (elected representatives or candidates for election) or entities (political parties or related entities), which would allow them to avoid proceedings or sanctions for violating laws and regulations, including in respect of misgivings regarding political funding, except in respect of members of Parliament who, according to section 57 of the Constitution, enjoy immunity from prosecution or arrest, in any matter whatsoever, without the consent of Parliament unless he or she is caught *in flagrante delicto*. The GET was informed that there has never been a case where the Folketing has refused to lift the immunity of a member of Parliament for reasons of prosecution.

Statutes of limitation

52. According to section 93, subsection 1 of the Criminal Code, infringements of the Accounts of Political Parties Act and the Act on Public Financial Funding for Political Parties is statute-barred for two years after the commitment of the infringement.

IV. ANALYSIS

53. Denmark has a long tradition of parliamentary democracy and the political parties have a dominant position in this system. The political parties active at the national level are relatively few in number, which may be explained by the fact that the process of registering a party under the *Parliamentary Election Act* is a rather cumbersome and demanding process, not least in respect of the large number of supporters required, which in the most recent elections was almost 20.000. Moreover, the registration procedure has to be repeated prior to every election if the party did not gain any seats in the previous parliamentary elections. As a consequence, each parliamentary election will comprise only parties already represented in Parliament and newly registered parties.
54. While the registration process is well-defined in Denmark, the legal status of political parties is not as clear in law and there is no formal requirement for a political party to adopt a particular legal status. However, the GET learned that most of the political parties in Denmark would be considered as legal persons with their own rights and obligations and that all parties represented in Parliament hold legal personality. The fact that some political parties may not be considered legal persons appears not to constitute any practical problem as sanctions for violations of political financing rules may be addressed in respect of legal and/or physical persons interchangeably.
55. The large majority of the political financing in Denmark is based on public grants at national, regional and local levels; the share of public funding of the total income of political parties represented in elected bodies is on average as high as 75 per cent. This is, in itself, an important safeguard and a preventive measure against dubious financing practice. It needs to be added that public funding at parliamentary level is not only possible in respect of political parties but also *vis-a-vis* individual candidates, who are to follow the same procedure as political parties to obtain such funds. This appears to open the system towards candidate voting as an equal alternative to the traditional party voting; however, currently, voting for individual candidates does not play an important role in practice, at least not at national level. It appears to be extremely difficult for an independent candidate to be elected to Parliament, considering that s/he is obliged to win one out of 135 constituency seats in order to be elected. Since 1930, this has only happened once. The participation of individual candidates in Parliamentary elections is accordingly low and individual candidates only play a minor role in Parliamentary elections in Denmark. At the regional and local levels, however, the lists of independent candidates play a more important role.
56. There is detailed legislation in Denmark specifically aimed at regulating the *public* financing of political parties and election candidates provided for in the *Public Funding Act* (PFA). However, in respect of the sources of income of political parties/candidates other than funding stipulated by law, i.e. funding from the private domain, there are very few regulations in place. For example, there are no particular restrictions to limit donations from abroad, from legal persons or from anonymous donors. Furthermore, there are no restrictions in respect of the amounts that may be donated and there are no limitations on the total amount of expenditure that a political party may incur. It follows from the above that several of the principles contained in Recommendation

Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns have not been implemented in the Danish system, however, these particular areas are not covered by the current evaluation. Moreover, the GET noted that there are no restrictions concerning donations to parties or candidates from legal persons in the public sector (e.g. state or municipality owned companies). Therefore, it would appear that a donation from an entity/company with its own legal personality under the control or ownership of the state, a county council or a municipality would in principle be possible. However, the Danish authorities have denied that such a possibility exists as public entities may only undertake a task if this is specifically provided for in law.

Transparency

57. There is a legal framework in Denmark to provide for transparency of *private* contributions to political parties at the national level contained in the *Accounts of Political Parties Act (APPA)* and *Public Funding Act (PFA)*. These two sets of legislation, which have been gradually amended and improved to provide for more openness of political funding in recent years, constitute the legal basis for transparency in respect of political financing. Denmark should be commended for its achievements so far and, at the same time, the GET encourages further progress, where openness could be improved.
58. As mentioned above, there are no restrictions in respect of the sources and amounts of private funding and support provided to political parties or individual candidates in Denmark. There is no ban on anonymous donations (where the identity of the donor is unknown to the receiver) in Denmark in respect of any type of private organisation, trade union etc. A ban against such donations to political parties would, according to the Danish authorities, go against long standing tradition in Denmark of protecting citizens' right to anonymity. The GET takes the view that anonymous donations to political parties are not to be compared with such donations to other forms of private entities as anonymous donations have a particularly negative impact on the legitimate interest of transparency concerning political funding. This matter was discussed in Denmark in connection with the adoption of the APPA and the GET recalls from the preparatory works to that legislation that anonymous donations to political parties were not considered a problem in Denmark at the time, *inter alia*, because such contributions, by definition, are thought to be unable to create ties between the donor and the receiver as the donor is not known to the receiver. The GET has a somewhat more pragmatic approach to this issue; the existence of the possibility to anonymously provide important contributions may easily be used as a means for circumventing the rules on transparency and, consequently, constitutes a loophole in the system aiming at transparency of political financing. The provision (section 3 APPA) that anonymous donations are also to be accounted for like any other contribution exceeding the threshold of 20 000 DKK (EUR 2 700), does not remedy this situation. Therefore, even if anonymous donations to political parties and candidates reportedly hardly exist in Denmark, the GET recommends to **introduce a ban on donations from donors whose identity is not known to the political party/election candidate.**
59. The GET welcomes that section 3.2 APPA regulates that private contributions to political parties above the stipulated threshold of 20 000 DKK (EUR 2 700) are to be accounted for (and subsequently reported to the public); however, the law does not go any further than to oblige political parties to specify the name and the address of such contributors but not the value of what each donator has provided (except for anonymous donations). The GET was made aware that the current procedure not to disclose the amount of contributions is subject to criticism in Denmark as it does not distinguish small contributions from large scale contributions. Comparing the Danish rules in this regard with Articles 12 and 13 of Recommendation Rec(2003)4 on

Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, which provide as a minimum that the amount of each donation above the stipulated threshold should be made public together with the identification of the donor, it can only be concluded that Denmark is not fully in line with the Recommendation in this regard. Therefore, the GET recommends that the accounting/reporting obligation in respect of donations exceeding the threshold stipulated in the *Accounts of Political Parties Act*, be complemented with an obligation upon political parties to report the total value of donations provided by each donor, in addition to the identity of the donors.

60. Another issue noted by the GET is that the *Accounts of Political Parties Act* does not expressly indicate that in-kind donations should also be included in the income statement. However, it appears from the preparatory works to the Act that the position of the Ministry for the Interior and Social Affairs at the time was that such contributions were to be accounted for, following normal principles of good accounting. Leaving aside ordinary minor contributions provided by party members, such as the distribution of leaflets and similar tasks, the GET understood that this would imply that in-kind contributions are to be accounted for at their market value; however, it appears doubtful whether this matter is sufficiently clear to those subject to reporting obligations, i.e. the political parties. In any event, the legislation taken alone is unclear in this respect and the GET was not made aware of any guidance other than the indicative discussion contained in the preparatory works. The GET therefore recommends to **provide further guidance on the reporting and valuation of in-kind contributions to political parties.**
61. Political parties with a nationwide organisation which have been registered for the national or European Parliament elections are obliged, within 12 months of the end of the accounting year, to submit their annual accounts to Parliament (section 5 APPA). There is no additional reporting obligation upon political parties, for example in connection with election campaigns. This means that such reporting is likely to appear as an integral part of parties' general accounts and that information relating to election campaigns is only submitted long after the elections are over. The GET is of the opinion that transparency of political financing during election campaigns is of particular importance to the electorate at the time of the elections or at least close to the elections and that more frequent reporting of income and expenditure in connection with elections would serve a legitimate purpose. The GET recommends to **consider introducing more frequent reporting on income and expenditure relating to election campaigns and to make sure that relevant information is disclosed in a way that provides for access by the public.**
62. The GET also notes that the list of income for which a party has to account, according to section 3 APPA, although generally rather complete in terms of contributions from the non-public sector, does not cover the party's own income from property or various forms of activity, including fundraising. The GET wishes to stress that information concerning internal transactions may be of crucial importance in assessing the funding of a political party, especially in tracing possible transactions from party entities not covered by the reporting regime. Moreover, there are no consolidation requirements in respect of the accounts of political parties, i.e. that these ought to reflect the accounts of entities relating directly or indirectly to the political party or which are otherwise under the control of a party (third party) as provided for in Article 11 of Recommendation Rec(2003)4. The GET is fully aware that such entities would normally be under ordinary accounting obligations; however, such records are not necessarily in the public domain. Moreover, third party entities could, in principle, contribute indirectly to party campaigns. Current party regulations are not broad enough to provide the full picture of third party contributions and could therefore provide a "back-door" for hidden party financing. The GET therefore recommends to **consider expanding political parties' accounting/reporting obligations to include income from the parties' own activity and property at central, and to the extent possible,**

regional and local levels and to seek ways to increase the transparency of contributions by "third parties" (e.g. related entities and interest groups etc) to political parties.

63. Moving to the area of *individual candidates and lists of candidates*, the GET notes that the Danish election system in some respects places on a somewhat equal footing individual candidates/lists of candidates with political parties. For example, public funding at the parliamentary level may be provided to individual candidates on similar grounds, as such funding is provided to political parties (section 2 PFA) and lists of candidates at the regional and local levels may also be granted public funding (section 3 PFA). Despite this, there are no obligations upon election candidates or lists of candidates – as opposed to political parties – to keep accounts. Moreover, whereas the accounts of the larger political parties are made public according to section 5 APPA, there is no such requirement in respect of individual candidates and lists of candidates. It is true that lists of candidates, in order to receive public support, have to report the name and address of any private contribution exceeding 20 000 DKK (EUR 2 700) in total during the previous year, as well as the total amount of anonymous contributions and the size of each anonymous contribution exceeding 20 000 DKK (EUR 2 700) (Article 10b and 11d PFA). Obviously the obligation concerning disclosure of such information is only applicable when the candidate list actually applies for grants. Besides this, candidate lists are not obliged to submit any accounting reports, concerning income or expenditure. Moreover, there is no statutory authority for making any such information public. During the on-site visit, the GET was told that the essential difference between candidates and lists of candidates on the one hand and political parties on the other is that the former are regarded as part of the private sphere and hence their funding should remain confidential. Considered in the context of the limited importance that candidates play in the current political system in comparison with political parties, the GET may well understand that there are significant differences between political parties and candidates in respect of their obligations to account for, report and make public their financial situation. However, in a situation where individual candidates (at parliamentary level) and lists of candidates (at the regional and local level) may receive public funding, the GET takes the firm view that the transparency of their financing would need to be reinforced to the extent feasible, however bearing in mind the minor role individual candidates play at parliamentary level. For these reasons, the GET recommends **to ensure through appropriate regulations that, to the extent feasible, donations to lists of candidates and individual candidates above a certain threshold (including the identity of the donor and the total of donations by the same donor) are to be disclosed.**

Supervision

64. Political parties are to submit a copy of their accounts annually to Parliament and - in order to receive the annual public funding - to the Ministry for the Interior and Social Affairs. Concerning the returns to the Folketing, there are no statutory auditing requirements; accounts need only to be signed by the leadership of the party. However, in respect of the returns to the Ministry (when applying for public funds), the declarations concerning the prospective expenditure of the budget year (as referred to in paragraph 40) must have been audited by a state authorised or registered accountant. The GET was informed that this inconsistency in legislation has no practical implication, because in practice, all parties represented in Parliament are subject to accounting obligations under the general accounting legislation as these carry out business activities and receive public funding. As a consequence, parties submit copies of their respective accounts – both to Parliament and to the Ministry – which pursuant to the general accounting legislation have been audited. The GET shares the opinion that the inconsistency in legislation can be regarded as a pure formality concerning the parties represented in the *Folketing*. However, the accounting obligation in section 3 APPA applies to all parties which have been registered for the

national or European Parliament elections and the GET is not convinced that all such parties will always also be covered by the audit requirements of the general accounting legislation. This being said, while as a principle accounts of significant national parties need to be audited in a consistent way, a more flexible approach is necessary in respect of smaller parties and parties at the local level. Furthermore, the GET learned that there are no particular requirements to prevent conflicts of interest in auditing political parties, in addition to general auditing standards, i.e. that an auditor has to be independent from the company audited (section 24 of the Act on Auditors). The GET is of the opinion that the auditing of political parties' accounts is not fully comparable with company audits as the public interest aspect of political parties' activities may be greater than it is in respect of companies. There is no limit as to the period of time that the same auditor may audit a company or a political party and the GET was made aware of situations where the same auditor had audited the same political party for decades. Such situations may raise questions as to the auditor's independence. In the light of the situation described, the GET recommends to **ensure independent and consistent auditing in respect of all political parties registered for national elections, elections to the European Parliament and as appropriate those involved at regional and local level; and to establish clear rules / guidelines ensuring the necessary independence of auditors who are to audit the accounts of political parties.**

65. As mentioned above, both Parliament and the Ministry for the Interior and Social Affairs carry out some monitoring of political parties for different reasons. Pursuant to section 5 APPA, political parties are obliged to send a certified copy of their annual accounts to the *Folketing*, within 12 months of the end of the accounting year. It follows from the law, as supported by the relevant preparatory works and the information obtained on-site, that the *Folketing* is meant to have a passive role in the reporting system, its function being to submit the accounts to the public – in itself an important function. The State Audit, as a body under Parliament which checks the soundness of all state funding, may in principle also check public funding provided to political parties but has never done so in practice. Furthermore, the mechanism of the Ministry Social Welfare is limited to assessing the accounts and budgets of parties in fulfilling the requirements for obtaining new public funds. The GET is of the firm opinion that none of these mechanisms is fully in line with the monitoring principles in Article 14 of Rec (2003)4 for several reasons; in particular, "the *Folketing* process" does not involve any monitoring of the substance, the State Audit appears not to exercise any genuine monitoring function in respect of political parties and the role of the Ministry for the Interior and Social Affairs in this area is limited to granting new public funds on the basis of previous expenditure. Even if these processes taken together appear more complete, their scrutiny is limited in respect of the parties they cover. As a consequence, Denmark is not fully in line with Article 14 of Rec (2003)4. The GET therefore recommends to **ensure independent and substantial monitoring in respect of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.**

Sanctions

66. The particular legislation on political financing in Denmark is connected to sanctions, i.e. both the *Accounts of Political Parties Act* and the *Public Funding Act* contain sanctions in case political parties, their representatives or election candidates provide incorrect or insufficient information. The sanctions comprise a fine or imprisonment of up to 4 months and can, similar to any other offence (for example bookkeeping offences under the Criminal Code) only be imposed by a court of law following the ordinary criminal law procedure. Furthermore, the failure to submit the annual accounts in the request for public funding will lead to the non provision of such funding.

67. The GET takes the view that in the current situation, Denmark has an adequate sanctioning system; however, in light of the need for a more complete and developed monitoring mechanism, there are also good reasons to establish a more flexible approach in respect of the execution of sanctions. If, for example, Denmark provided for a more proactive monitoring mechanism in the future, such an institution might be in a position to impose (administrative) sanctions without involving the ordinary criminal justice mechanism, which is a more cumbersome procedure. Consequently, the GET recommends **that yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by flexible sanctions, for example of an administrative nature, which are effective, proportionate and dissuasive.**

V. CONCLUSIONS

68. The political election system in Denmark is dominated by few political parties and even if the system opens up for individual election candidates to participate fully in the process, they play only a minor role in practice. Overall, the political funding of parties and candidates is to a large degree provided by public means, which in itself may be a guarantee that dubious financing practices are less prevalent. From another angle, in respect of the sources of income other than public funding stipulated by law, i.e. funding from the private domain, there are either few or no regulations in place; e.g. there are no particular restrictions to limit donations from abroad, from legal persons or from anonymous donors or in respect of the amounts that may be donated.
69. There are, however, rules in Denmark to provide for the transparency of political party financing at the national level, as contained in the *Accounts of Political Parties Act* and *Public Funding Act*. These two sets of legislation have been gradually amended and improved to provide for more transparency in respect of political financing over recent years. It is to be welcomed, for example, that Parliament makes party accounts available to the public. However, the level of transparency in respect of various contributions to political parties could be further enhanced and the fact that anonymous contributions are allowed without limit opens up the possibility to circumvent the existing transparency rules. The current system, which obliges political parties to report the identity of donors in respect of donations over a certain value could well be complemented with an obligation to report the amounts actually donated. Moreover, the reporting on parties' own income as well as contributions from related entities and interest groups ("third parties") would need to be strengthened. There is also a need to develop the existing monitoring mechanism in order to ensure a more than a formalistic checking of the accounts of parties represented in Parliament and to complement this mechanism with more flexible effective, proportionate and dissuasive sanctions for infringements of the rules concerning the funding of political parties and electoral campaigns.
70. In view of the above, GRECO addresses the following recommendations to Denmark:
- i. **to introduce a ban on donations from donors whose identity is not known to the political party/election candidate (paragraph 58);**
 - ii. **that the accounting/reporting obligation in respect of donations exceeding the threshold stipulated in the *Accounts of Political Parties Act*, be complemented with an obligation upon political parties to report the total value of donations provided by each donator, in addition to the identity of the donors (paragraph 59);**
 - iii. **to provide further guidance on the reporting and valuation of in-kind contributions to political parties (paragraph 60);**

- iv. to consider introducing more frequent reporting on income and expenditure relating to election campaigns and to make sure that relevant information is disclosed in a way that provides for access by the public (paragraph 61);
 - v. to consider expanding political parties' accounting/reporting obligations to include income from the parties' own activity and property at central, and to the extent possible, regional and local levels and to seek ways to increase the transparency of contributions by "third parties" (e.g. related entities and interest groups etc) to political parties (paragraph 62);
 - vi. to ensure through appropriate regulations that, to the extent feasible, donations to lists of candidates and individual candidates above a certain threshold (including the identity of the donor and the total of donations by the same donor) are to be disclosed (paragraph 63);
 - vii. to ensure independent and consistent auditing in respect of all political parties registered for national elections, elections to the European Parliament and as appropriate those involved at regional and local level; and to establish clear rules / guidelines ensuring the necessary independence of auditors who are to audit the accounts of political parties (paragraph 64);
 - viii. to ensure independent and substantial monitoring in respect of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (paragraph 65);
 - ix. that yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by flexible sanctions, for example of an administrative nature, which are effective, proportionate and dissuasive (paragraph 67).
71. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Denmark to present a report on the implementation of the above-mentioned recommendations by 31 January 2011.
72. Finally, GRECO invites the authorities of Denmark 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.