



Strasbourg, 23 June 2006

**Public**  
**Greco RC-I (2003) 10E**  
**Addendum**

## **First Evaluation Round**

### **Addendum to the Compliance Report on France**

Adopted by GRECO  
at its 29<sup>th</sup> Plenary Meeting  
(Strasbourg, 19-23 June 2006)

## I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on France at its 6<sup>th</sup> plenary meeting (12-14 September 2001). It made the report (Greco Eval I Rep (2000) 4E) public on 2 October 2001, having been authorised to do so by the French authorities.
2. France submitted the Situation Report required by the GRECO compliance procedure on 25 April 2003. In the light of this report and a plenary debate, GRECO adopted the First Round Compliance Report (RC-Report) on France at its 15<sup>th</sup> plenary meeting (17 October 2003). The report was made public on 11 February 2004. The Compliance Report (Greco RC-I (2003) 10E) concluded that recommendations i, ii, iv, v, vi and vii had been implemented satisfactorily or dealt with in a satisfactory manner and that recommendations iii, viii, ix and x had been partly implemented. GRECO therefore asked the French authorities to submit additional information on the steps taken to comply with the recommendations that had been partly implemented. This additional information was submitted on 5 June 2006.
3. The purpose of this addendum to the First Round Compliance Report is, in accordance with Rule 31, paragraph 9.1, of GRECO's Rules of Procedure, to appraise the implementation of recommendations iii, viii, ix and x on the basis of the additional information referred to in paragraph 2.

## II. ANALYSIS

### Recommendation iii.

4. *GRECO recommended that France enact legislation confirming the commitments of the current Minister of Justice and her predecessor not to interfere in individual cases.*
5. GRECO had concluded in the Compliance Report that the recommendation had been only partly implemented because the commitments by the Minister of Justice not to interfere in individual cases had not been confirmed as such by the enactment of legislation. The Bill adapting the justice system to trends in crime did, however, strengthen the safeguards available to victims and complainants, in particular by making provision whereby they could appeal against a decision by a prosecutor not to proceed with a case and whereby victims could ensure that a prosecution took place by suing for damages.
6. GRECO had observed that, according to the French delegation to GRECO, orders from the Minister were definitely positive, obliging the prosecution service to go on. GRECO had invited France to provide further information concerning the increased safeguards to proscribe any undue interference in individual cases of corruption dealt with by the judicial system.
7. The French authorities have now informed GRECO that the Bill in question has been passed by Parliament and was published in Official Gazette No. 59 of 10.3.2004. The new law strengthens the powers of the Minister of Justice, for example by empowering the Minister to report criminal law offences of which he or she is aware to the Principal State Prosecutor and issue written instructions to the latter to initiate a prosecution or arrange for one to be initiated and to refer to the competent court such written submissions as the Minister deems appropriate (Article 30 of the Code of Criminal Procedure).

8. The French authorities wish to stress that with regard to the power of the Minister of Justice to instruct the Prosecutor's Office to refer such written submissions as the Minister deems appropriate to the competent court, such submissions - whether they concern an investigation measure, the choice of legal classification, the existence of sufficient incriminating evidence, the guilt of the person being prosecuted or the sentence(s) that can be handed down against that person - are merely requests submitted to an independent court, which is free to accede to them or not. In addition, the investigating judge and the trial court are free to decide on the legal classification of the facts submitted to them and whether there is sufficient incriminating evidence. In addition to this safeguard there is the additional one based on the fact that, in any event, the prosecuting authorities are free to make such oral observations as they see fit at the hearing (Article 33 of the Code of Criminal Procedure).
9. Pursuant to the above-mentioned law, Articles 40.1, paragraph 3, 40.2 and 40.3 of the Code of Criminal Procedure (these articles came into force on 1 January 2005) set out clear regulations governing prosecutors' decisions not to proceed with cases. In particular, grounds must be given for such decisions, and victims and complainants must be informed of them and have means of appeal. Furthermore, regardless of a decision not to proceed with a case, a victim can report an offence of corruption to the prosecuting authorities with claims for damages. This report of offence starts automatically the prosecution procedure.
10. The French authorities also refer to circular CRIM 04-6/G3-16-06 of 21.6.2004, as an example of a general instruction concerning prosecution for the purposes of combating corruption, designed to strengthen implementation of the recommendations made by GRECO and the OECD. The circular reminds representatives of Prosecutors' Offices, in particular, that decisions not to proceed with corruption cases may not be taken on grounds relating to the status of the person concerned and the national economic interest or the potential effects on relations with another State. Moreover, the conditions of admissibility for complaints by victims of corruption on the part of foreign public officials must be the same as for complaints with claims for damages against corruption on the part of French public officials (and the complainant must therefore be heard before a decision not to proceed with the case is taken and a prosecution must be commenced when alleged corruption may appear to have been responsible for the damage the victim claims to have suffered).
11. A few recent cases of corruption, including international ones, tended to the opening of judiciary information by the prosecution service (without any victim claim).
12. GRECO takes note of the new measures adopted. It notes that the new law does indeed include the safeguards that existed in the Bill adapting the justice system to trends in crime concerning decisions not to prosecute and that, thus, the principle of discretionary prosecution is better set out. However, GRECO notices that the law does not modify the previous situation with regard to risks of interferences in particular in the choice of offences retained by the Prosecution. Consequently, there is still a risk of interferences in corruption cases.
13. GRECO concludes that recommendation iii has been partly implemented.

**Recommendation viii.**

14. *GRECO recommended that France assert the specialised and multidisciplinary nature of the Central Police Directorate's sub-directorate for economic and financial affairs as a body specialising in cases connected with economic criminal law. Within this multidisciplinary division, it*

is recommended that it create an investigative structure, to fight corruption and related offences, which would, apart from the police, include gendarmes and civil servants from the Ministry of the Economy and Finance, in order to respond to the needs of the judicial authorities, and in particular to those of the economic and financial units. The GET further considered that the setting up of ad hoc multidisciplinary investigation teams should be encouraged (including, in particular, police officers, gendarmes and civil servants who are specialised in financial matters) for the investigation of cases to be handled by the economic and financial units.

15. GRECO concluded in the Compliance Report that the recommendation had been only partly implemented as the Central Anti-Corruption Squad (*Brigade centrale de lutte contre la corruption*) had not yet been set up.
16. The French authorities have now informed GRECO that the *Brigade centrale de lutte contre la corruption (BCLC)* was set up further to an inter-ministerial instruction of 12.10.2004 (Ministries of the Interior, the Economy, Finance and Industry, the Defence and Justice), within the National Division of Financial Investigations (Ministry of the Interior, Central Police Directorate).<sup>1</sup>
17. Further to the above-mentioned instruction, the BCLC is empowered to carry out any investigations concerning acts of corruption, breaches of the duty of integrity, misuse of company property for personal advantage, the forging of accounts and other accounting offences, alone or with the help of the national police force, the gendarmerie and the customs and indirect taxation authorities or at their request, with the consent of the competent judicial authorities. The latest cases referred to the BCLC by the Public Prosecutor's Office and the investigation department of the Paris Financial Judicial Unit in particular, highlight, among other things, the bribing of foreigners involved in international commercial transactions (Article 435-4 of the Criminal Code).
18. The ultimate aim is to equip the BCLC with a staff of twenty. Since December 2005, it has comprised fourteen civil servants (eleven police officers, two gendarmes and a tax inspector). It is awaiting the assignment of a customs officer and an official from the General Directorate for Fair Trade, Consumer Affairs and Suppression of Fraud.
19. Public Prosecutors' Offices were informed of the existence of the BCLC by a circular from the Ministry of Justice dated 23 February 2005 encouraging them to refer cases to it whenever the complexity of corruption proceedings seemed to warrant such a referral.
20. GRECO welcomes the establishment of the Central Anti-Corruption Squad (*Brigade centrale de lutte contre la corruption - BCLC*) and the Ministry of Justice circular of 23.2.2005 encouraging Public Prosecutors' Offices to refer cases to the Squad. GRECO notes, however, that, at first sight, the powers assigned to the Squad are disproportionate in the light of the resources allocated to it (fourteen, and even twenty, civil servants might seem insufficient in view of the number of cases and the size of the country). Furthermore, the presence of a tax officer among national police officers and gendarmes is not likely to make the Squad genuinely multidisciplinary. Lastly, GRECO notes that the customs authorities and the General Directorate for Fair Trade, Consumer Affairs and Suppression of Fraud have not yet appointed representatives to the BCLC. While the French authorities should be congratulated on setting up the BCLC, GRECO considers that further measures should be taken to make it more multidisciplinary and improve its expertise

---

<sup>1</sup> Alongside the BCLC, there are other bodies, attached to the Paris Police Headquarters, which are competent to deal with cases involving international corruption: the Economic Crime Squad (*Brigade de repression de la délinquance économique – BRDE*), which has 45 civil servants, and the Finance Squad (*Brigade financière*), which has 80 civil servants.

and resources, particularly its human resources, so that it can effectively meet the expectations of the judiciary.

21. GRECO concludes that recommendation viii has been dealt with satisfactorily.

**Recommendation ix.**

22. *GRECO recommended that France allocate more staff resources to the MIEM (interministerial investigation mission on public procurement and public contracts), and strengthen the guarantees that, when asked for technical advice on a case (presented anonymously to the MIEM), it would be reported to the Prosecutor's Office by the requesting body if the MIEM concluded that there had been embezzlement, and grant the MIEM the power to decide on its own whether to investigate a case, as it requested in its 1999 report.*
23. The recommendation was only partly implemented, in particular because the MIEM could still not investigate cases of its own motion and because its resources had not been increased.
24. The French authorities have now informed GRECO that the MIEM is still not empowered to investigate cases of its own motion and that its staff has decreased since 1999, largely because of:
- the easing of supervision of public procurement and public contracts, out of a concern to respect the independence of local councillors, which has led to a substantial decline in the number of irregularities reported to the authorities and cases referred to the MIEM. Since April 2003, no request for an investigation has been referred to the MIEM.
  - the significant increase in the resources assigned to other instruments for combating corruption: police units specialising in financial matters, the new Central Anti-Corruption Squad, which is recognised as competent to deal with cases involving favouritism, and inter-regional courts specialising in economic and financial cases, set up to deal with highly complex cases involving favouritism.
25. The French authorities have also stated that in 2004 the MIEM's work consisted of completing investigations under way, replying to eleven opinions sent to it and organising training courses for public-sector buyers and French and foreign inspection bodies. These spontaneous reports, which do not necessarily give rise to judicial investigations, show that, given its expertise in public-contract law, which is technical, complex and constantly changing, the MIEM is in a position to intervene before contracts go ahead by analysing them in cases where the traditional inspection bodies have merely expressed misgivings.
26. It will be remembered that the interministerial investigation mission on public procurement and public contracts (referred to below as the MIEM) was set up in 1991 with the introduction of the offence of favouritism in French criminal law. By law, only public authorities are allowed to refer cases to the MIEM: the ministerial and prefectural authorities and the Auditor General's Department (*Cour des Comptes*) are entitled to entrust it with an investigation. The Court of Cassation has, however, had occasion to specify that, while the director general responsible for fair trade is not authorised by law to submit a request for an investigation to the MIEM, he or she may forward information to it, which enables the head of the MIEM to ascertain the existence of the offence of favouritism and to pass the case file on to the prosecution authorities, under Article 40 of the Code of Criminal Procedure (obligation on the part of civil servants to report offences).

27. GRECO would point out that public procurement and public contracts are an area particularly susceptible to corruption and that recent cases and judgments demonstrate the importance of setting up appropriate systems for preventing and detecting offences of corruption and favouritism. The French authorities themselves acknowledge that the MIEM is a body with useful expertise in the prevention and detection of corruption but that the current referral system does not enable it to perform its duties as well as it might and make a substantial contribution to combating corruption – with due regard for the principle of local self-government. Lastly, GRECO notes that, while the law-enforcement authorities, for example the BCLC, now have the power to investigate public contracts, they do not at present seem to be fulfilling the role played at an earlier stage in the proceedings by the MIEM; nor do they have its multidisciplinary expertise (in criminal and administrative law and in public procurement as it takes place in practice).
28. GRECO concludes that recommendation ix has been partly implemented.

#### **Recommendation x.**

29. *GRECO recommended that France empower the IGF (general financial inspectorate) to carry out investigations and inspections in addition to those ordered by the Minister.*
30. According to the Compliance Report, the recommendation was only partly implemented because, while the IGF's power to instigate certain investigations or verifications of its own motion is on the whole recognised, it could be consolidated if that power were clearly specified and if clearer regulations governing instructions or possible cases of refusal by a Minister to authorise an investigation were introduced.
31. The French authorities have now informed GRECO that the IGF does not, in the performance of its duties, have criminal investigation powers such as have been assigned to the MIEM and is not therefore empowered to ascertain the existence of corruption offences. If, however, when carrying out an inspection, the IGF were to suspect misappropriation, it would pass on the relevant information without delay to the State Prosecutor, as any civil servant who becomes acquainted with an offence in the performance of his or her duties is required to do under Article 40 of the Code of Criminal Procedure. The same provisions apply to the ministerial inspectorates general and the Auditor General's Department (*Cour des Comptes*).
32. GRECO takes note of the information submitted. It observes that the situation remains unchanged with regard to the power of the IGF to carry out investigations and inspections in addition to those ordered by the Minister. In GRECO's view, inspectorates general such as the IGF may be required, in the performance of their duties, to look for, detect and report cases of suspected corruption and they should do so regardless of whether the parent ministry has asked for an investigation. In addition, a better knowledge of the risks of corruption, the vulnerable sectors and possible clues enabling such offences to be detected, could enhance the IGF's contribution to efforts to combat corruption without undermining its special responsibilities or affecting its priorities.
33. GRECO concludes that recommendation x has been partly implemented.

### **III. CONCLUSIONS**

34. In addition to the conclusions of the First Round Compliance Report on France and in the light of the foregoing, GRECO concludes that recommendation viii has been dealt with satisfactorily.

Recommendations iii, ix and x are still only partly implemented, despite the fact that the French authorities have taken a number of constructive measures. GRECO encourages France to make further efforts to enhance the contribution of the general financial inspectorate (IGF) and the interministerial investigation mission on public procurement and public contracts (MIEM) to the detection and reporting of cases of corruption. GRECO earnestly hopes that additional measures will be taken concerning interferences in individual cases of corruption and that the resources of the Central Anti-Corruption Squad (BCLC) will be increased and that it will be made more multidisciplinary.

35. The adoption of this Addendum to the Compliance Report concludes the First Evaluation Round compliance procedure concerning France.