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## **Second Evaluation Round**

### **Evaluation Report on France**

Adopted by GRECO at its 21<sup>st</sup> Plenary Meeting  
(Strasbourg, 29 November - 2 December 2004)

## I. INTRODUCTION

1. France is the twelfth GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") visited France from 21 to 25 June 2004. It was composed of Mr Pieter Verrest, Principal Administrator, Ministry of Justice (Netherlands), Mr Peter De Roeck, Auditor General of Finances, Federal Budget Department, Integrity Monitoring Section (Belgium) and Mr Panagiotis Kaisaris, Prosecutor at the Athens Court of Appeal (Greece) and was accompanied by a member of the Council of Europe secretariat. Prior to the visit the GET experts received a very comprehensive reply to the evaluation questionnaire (Greco Eval II (2003) 4F) and copies of relevant legislation.
2. The GET met representatives of the following authorities: Ministry of Foreign Affairs (Legal Affairs Directorate; The Ambassador responsible for the fight against organised crime); Ministry of Justice (Judicial Services Inspectorate; Criminal Affairs and Pardons Directorate; Criminal Justice Special Sub-Directorate – Economic and Financial Crime Office – Anti-terrorism, Laundering and Organised Crime Office; Civil Affairs Directorate; Business Law Sub-Directorate; Judicial Services Directorate; European and International Affairs Department); Central Corruption Prevention Department; ); Ministry of the Interior (Central Police Directorate – Anti-corruption Brigade; Major Financial Crime Office; Local Authorities Directorate General; General Police Inspectorate); Ministry of Defence (National Gendarmerie General Directorate; General Armed Forces Directorate); Ministry for the Civil Service (Staff Regulations and Remuneration Sub-Directorate; State Public Service Ethics Commission;; General Inspectorate); Ministry of the Economy and Finance (Treasury Directorate; External Relations Directorate; Directorate General of Direct Taxes; Directorate General of Customs and Indirect Taxes; National Customs Investigations Directorate; TRACFIN; General Inspectorate of Finances); Paris Regional Court (Financial Section; Registry of the Regional Court); Registry of the Paris Commercial Court; Prosecution authority of the Court of Audit; Prosecution authority of the Budgetary and Financial Disciplinary Tribunal; Mediator/Ombudsman; Access to Administrative Documents Commission; National Commission for Ethics in the Law Enforcement Sector; Financial Markets Authority; National School of Administration (ENA); Judicial Training College (ENM); and the National Customs Training College. The GET also met the expert in economic and financial matters of the Court of Cassation and representatives of the General Secretariat of the Banking Commission; the French Banking Federation; the Supervisory Authority for the Audit Profession; the National Auditors Association; audit practices; private enterprises; the *Mouvement des Entreprises de France* (MEDEF - the French large employers' association) and Transparency International.
3. It is recalled that GRECO agreed at its 10<sup>th</sup> Plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, that the evaluation procedure would deal with the following themes:
  - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention<sup>1</sup>;
  - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
  - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

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<sup>1</sup> France signed the Criminal Law Convention on Corruption on 9 September 1999.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the French authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to France in order to improve its level of compliance with the provisions under consideration.

## II. THEME I - PROCEEDS OF CORRUPTION

### Interim measures

5. Under French law, seizure consists of placing objects and documents that could serve as evidence under court supervision. The Code of Criminal Procedure (CCP) authorises the seizure of instruments that have been used in or are intended for the commission of the offence, objects that are evidence of the offence and objects that appear to be the proceeds (Article 54 CCP). Any moveable or immovable objects may be seized, irrespective of their location or the person holding them, including legal persons, with the exception of correspondence between a lawyer and the person under investigation, if the lawyer has not been shown to have been a party to an offence. In the same way, documents classified as defence secrets cannot be seized if the classification has not been lifted by the consultative commission on national defence secrets.
6. Instruments and proceeds of corruption may be seized during on-the spot police investigations (Article 54 and 56 CPP), preliminary inquiries (Article 76 CPP) or judicial investigations (Article 97 CPP). Seizures may be delegated to police officers by national or international warrant issued by an investigating judge (Article 81 and 151ff CPP). Objects seized must be listed and placed under seal as proof of origin and to ensure that they are not tampered with (Article 56, 76, 97.2 CPP), with the exception of bank and post office accounts, which are simply blocked. The judicial authorities may also require persons under investigation to provide a surety, pursuant to Articles 138 paragraphs 11 and 15 CPP.
7. The French financial intelligence unit (TRACFIN), may also order the administrative blocking of suspect banking transactions for up to twelve hours. This deadline can be extended with the approval of the president of the Paris regional court (Article L 562-5 of the Monetary and Financial Code – MFC).
8. There is no special body for managing seized assets. Moveable assets are stored in court registries while fixed property is overseen by court-appointed guardians or receivers. If the seizure concerns money, bullion or bills of exchange or securities that do not have to be maintained in their original state for the purposes of evidence or to protect the rights of the parties, an investigating judge may authorise the court registrar to deposit them in the bank for official deposits (*Caisse des Dépôts et Consignations*) or the Bank of France.
9. Financial investigations are systematically launched in all corruption inquiries to identify bank accounts and other securities through which dubious funds may have been channelled, together with their origins, holders and beneficiaries. Banking secrecy and business confidentiality are not grounds for opposing such judicial action. To facilitate these investigations, an automated file of all open bank accounts in France (FICOBA) has been established (Article 1649A ff of the Monetary and Financial Code). It is also possible to use the simplification of tax procedures (SPI)

file to process national information on all individuals and legal persons covered by any tax, duty or contribution within the jurisdiction of the directorate general of taxes.

### Confiscation

10. Confiscation is an additional optional penalty which may become mandatory, and be ordered in the absence of a conviction in the case of objects classified as dangerous or harmful (Articles 131-10 and 131-21 of the Criminal Code). There are specific additional penalties for each offence, including all those relating to corruption and trading in influence. They may be in addition to or replace main sentences or fines and imprisonment, and may apply to legal persons. They must be expressly ordered by the trial court, and do not require a specific application from the prosecution. Unless an alternative provision is made, such as destruction or award to a third party, confiscated items become state property.
11. Confiscation may also be ordered pursuant to an administrative procedure. For example, the Customs Code authorises the seizure and confiscation of the proceeds of corruption when these are not properly declared at the frontier<sup>2</sup>.
12. Instrumentalities and proceeds of and objects connected with offences may be confiscated. For certain offences, including crimes against humanity, drug trafficking, laundering, trafficking in human beings and procuring, the Criminal Code authorises the general confiscation of the property of the offender, whether private individual or legal person, whatever its nature, movable or immovable. Under Article 131-21.4, when a confiscated item has not been seized or cannot be produced, confiscation will be to the equivalent value. The amount is decided by the trial court, often after seeking expert advice. Civil imprisonment may be used to recover the sum representing the value of the confiscated item.
13. It is possible to seize assets held by a third party when the latter is acting with criminal intent, has already been prosecuted or convicted or is unable to establish legal ownership of or title to the property (Article 131-21).
14. Regarding the apportionment of the burden of proof, courts have the power to deduce the fraudulent nature of assets from the manner in which they were acquired. According to the French authorities, this option is used in judicial practice without causing any difficulties.
15. There are no statistical data on the seizure or confiscation of the instrumentalities and proceeds of corruption or equivalent assets to these proceeds, but bank accounts are seized in nearly all corruption cases<sup>3</sup>.

### International co-operation

16. Judicial co-operation on interim measures and confiscation is subject to the same rules and machinery as mutual assistance in criminal matters in general. Requests for assistance from the French judicial authorities are made in accordance with the relevant conventions, in particular the

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<sup>2</sup> Article 419 of the Customs Code authorises the seizure and/or confiscation, as contraband items, of the proceeds of crime or sums whose origin cannot be established, including the proceeds of corruption, at frontier crossings.

<sup>3</sup> There are about one hundred convictions for corruption each year, to which should be added convictions for misuse of company property under which company managers are found guilty of bribing public officials to secure contracts. In a case of active corruption (giving bribes) and trading in influence involving the managing director of a company in difficulty and a court-appointed administrator, the trial court ordered the confiscation of the sum seized (Cass. Crim., 27 October 1998).

1959 European Convention on Mutual Assistance in Criminal Matters (ETS 30); the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141); the European Union Convention of 29 May 2000<sup>4</sup> and the Convention of 19 June 1990 implementing the Schengen Agreement. Direct transmission of requests between the judicial authorities of the European Union is possible even in non-urgent cases, in circumstances laid down in these conventions or the relevant articles of the Code of Criminal Procedure (part X of book IV). Implementation of interlocutory measures and confiscation abroad is the responsibility of the executing state and its lawfulness must normally be assessed in the light of the fundamental principles of foreign criminal procedure, particularly with regard to the rights of the defence.

17. When the French authorities receive a request for mutual assistance from abroad, applications for confiscation and seizure are dealt with in principle under Act no. 396-92 of 13 May 1996, implementing Convention ETS 141. These provisions apply whatever the offence and therefore also to applications concerning the proceeds of corruption. Implementation is the responsibility of the courts (the president of the regional court in the case of requests for seizure and the president of the regional criminal court for requests for confiscation), to whom the matter is referred by the state prosecutor. Requests may be refused if applicant states do not satisfy the reciprocity requirements concerning the offence and confiscation. The courts also apply a simplified seizure of accounts procedure and proceed with confiscating the sums seized, as well as their restitution, as provided for by Article 14 of the Act no. 96-392 of 13 May 1996<sup>5</sup>. The judicial authorities have the power to accept a request for judicial assistance from a state, even when no mutual assistance convention is applicable.
18. TRACFIN co-operates with its foreign counterparts under the Monetary and Financial Code, subject to reciprocity. In order to facilitate cooperation, TRACFIN has concluded bilateral co-operation agreements with 28 foreign counterparts.

### Laundering

19. The offence of money laundering (Articles 324-1 and 324-2 of the Criminal Code) applies to all serious and lesser indictable offences (*crimes* and *délits*) in French law, and therefore to the offences of corruption and trading in influence, even if committed abroad. The offence includes self-laundering<sup>6</sup>. Article 222-38 of the Criminal Code makes money laundering from drug trafficking a separate offence. There were 63 laundering convictions in 2003.
20. Other anti-laundering provisions include, firstly, the offence of customs laundering (Article 415 of the Customs Code). In addition, individuals are required to declare transfers abroad of securities and money to the value of € 7 600 or more. The offence of non-justification of income (linked to trafficking in drugs and human beings, criminal association, extortion of funds and terrorism) allows for the apprehension of persons who, though not participating directly in the criminal activity, benefit from the proceeds generated by criminals with whom they are in contact. Finally the declaration of suspicions system assists the detection of transactions linked to laundering.

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<sup>4</sup> This Convention which is in the process of being ratified, has already been incorporated into domestic law by virtue of the Law of 9 March 2004, known as the Perben II law.

<sup>5</sup> The authorisation to carry out confiscation implies that the confiscated property shall accrue in favour of the State, unless otherwise agreed with the requesting country.

<sup>6</sup> Cass. CRIM. 14-01-2004, Bull. crim. 2004, no. 12.

21. Article L 562-1 of the Monetary and Financial Code (MFC) lists the institutions that are required to declare suspicions to TRACFIN and the list is extended by Article 70 of Act no. 2004-130 of 11 February 2004. TRACFIN systematically informs the state prosecutor when there is evidence of an organised criminal activity, corruption, defrauding European Community interests, drug trafficking and the financing of terrorism (Article L 562-4 of the MFC) The prosecutor informs TRACFIN of final judgments in cases where such declarations have been made. TRACFIN received 9007 declarations of suspicion in 2003, and in the same year referred 302 cases to the state prosecutor.
22. Unauthorised disclosure of a declaration of suspicion to the person concerned is punishable by a fine<sup>7</sup>. However, lawyers at the *Conseil d'Etat*, the Court of Cassation and the courts of appeal are authorised to reveal to their clients the existence of declarations concerning them (Article L 574-1 of the MFC, as amended).
23. Finally, persons other than those required to make declarations of suspicion who, in the exercise of their profession, undertake, supervise or advise on transactions involving movements of funds that they know are the proceeds of drug trafficking, activities to financially defraud the European Communities, organised criminal activities, financing of terrorism or corruption are required to declare them to the state prosecutor (Article 561-1 of the MFC).

**b. Analysis**

24. From a general standpoint, the existing arrangements for identifying, freezing or seizing and confiscating the proceeds of corruption and the anti-laundering system show that the French authorities are highly committed to combating corruption and recovering criminal proceeds. This applies both to the legislation itself and to its application in judicial practice. Regarding the latter, the Ministry of Justice plays an important part through ministerial circulars that inform those in the field of recent changes in case-law and lay down guidelines on the best use of existing resources for seizure and confiscation, with a view to building up cases and securing convictions.
25. The GET notes the lack of specific statistical data on preventive measures, confiscation, laundering and international co-operation connected with corruption offences. However, the criminal affairs and pardons directorate of the justice ministry does collect and process criminal data on specific, particularly significant cases. There are also plans to establish a data collection system – *cassiopée* - on all criminal investigations, which should become operational in 2007.
26. The powers of investigation concerning the proceeds of crime and of requisition and search appear to be adequate. The so-called *Perben II* Act of 9 March 2004 to adapt the judicial system to changes in criminal practice has additional provisions on the requisition of documents, particularly *vis-à-vis* financial institutions (Articles 60-1 and 77-1-1 of the Code of Criminal Procedure). Nevertheless the special investigation methods applicable to organised crime introduced under the *Perben II* Act (such as infiltration) do not apply to corruption cases (see first round compliance report).
27. The range of possible interim measures has been extended. Seizure for the purposes of establishing evidence may be extended to become preventive seizure or attachment. The judicial authorities may order surety, which is compatible with other preventive measures and may be accompanied by the placement of the accused under court supervision, thus ensuring that the

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<sup>7</sup> The author of such a disclosure is liable to a fine of € 22 500, without prejudice to the application of penalties for any of the offences specified in Articles 222-34 to 222-41 of the Criminal Code and 415 of the Customs Code.

accused will be present at the proceedings and that the victims will be compensated, while opening up the possibility of eventual confiscation. The new provisions of the Perben II Act on preventive seizure (Article 706-103) with a view to confiscation are applicable to laundering but not to corruption cases. *The GET observes that the new provisions of the Perben II Act on preventive seizure should be extended to corruption cases.*

28. Expertise in the field comes from two sources: i) detailed documentation, in the form of circulars, handbooks and so on, and ii) the use of specialist judges, specialised assistants and other experts, many of whom operate in economic and financial units<sup>8</sup>. The aforementioned documentation is made available and disseminated on the Internet site of the Ministry of Justice. The GET considers it very important for this information to be available to all those operating in the field, given the complexity of the subject.
29. Turning to financial investigations, the combined efforts of the major financial crime office, TRACFIN and the new anti-corruption brigade, together with co-operation with the tax authorities and the use of files such as FICOBA and SPI, offer a significant amount of information on the assets of individuals and legal persons suspected of corruption and of holding criminal proceeds. However, lawfully obtained assets, particularly via so-called civil law property companies, are less easily identified. Discussions are currently under way to increase the supervision of the assets of such companies. Moreover, the information available from asset investigations is not always updated between the start and end of proceedings. As part of the debate launched by the interior ministry in May 2004 on ways of making the fight against drug trafficking and drugs proceeds laundering more effective, the central police directorate has proposed the establishment of a special investigations unit. The unit would specialise in detecting illegally acquired assets resulting from laundering, corruption and dishonesty. Since 1996 it has been possible to prosecute for the laundering of any offence. The new unit would also be responsible for updating information on assets from the preliminary inquiries through to the trial stage, if any. **The GET recommends to pursue the existing activities within the police in order to make asset investigations more effective.**
30. There is no specialist body for seized assets. It emerged from the GET visit that it raised several problems among those concerned and that the various approaches used – depositing assets with court registries, the bank for official deposits or the Bank of France; seizure of accounts, security portfolios or shares in a business; placement under surveillance or sequestration; taking out a mortgage – involved numerous formalities and constraints. A special body, which could be responsible for all the specialist aspects of seizure and management of property and assets, such as associated costs, storage, disposal of perishable goods and so on, could simplify judges' work. *The GET observes that consideration should be given to setting up a specific body to manage seized assets .*
31. Confiscation is possible for the direct or indirect proceeds of all corruption offences (Article 131-24 CC). Confiscation of the equivalent value is possible, but according to practitioners whom the team met is hardly ever applied. The penalty of confiscation may also be applied to legal persons. In practice and to simplify matters, confiscations apply to assets previously seized, otherwise fines are imposed. The relatively limited use of confiscation in corruption cases is emphasised by a circular of the Minister of Justice (CRIM 04-6/G3-15.6.2004), dated 21 June 2004. This calls on judges to give more consideration to ordering confiscation as a penalty. After assessing the

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<sup>8</sup> The assistants specialising in economic and financial matters recently established within interregional jurisdictions have also been used for this purpose.

results of this circular, the French authorities might wish to encourage judges to make systematic use of confiscation, including by equivalent value, whenever appropriate.

32. It appears that in practice judges sometimes get round the problem of adducing evidence by "inferring" corruption from other associated offences, particularly laundering, embezzlement, violation of public tendering procedures, favouritism, misuse of company property and misappropriation. The GET's attention has been drawn to the fact that it is not possible to impose an additional penalty of confiscation for misuse of company property (Article L 241-3, 242-6 of the Commercial Code), even though the proceeds may be considerable. The additional penalty of confiscation is however possible for concealment of misuse of company property. *The GET observes that consideration should be given to making confiscation one of the possible penalties for misuse of company property.*
33. International co-operation regarding preventive seizure and confiscation of the proceeds of crime is mainly based on Convention ETS 141 and represents some fifteen requests a year (seizures and confiscations combined).
34. Legal provisions relating to laundering cover criminal offences (general and specifically drug-related), customs offences and declarations of suspicion. This represents a fairly wide range of tools for preventing, detecting and enforcing the law on the various forms of laundering. Any offence, including corruption, may constitute a principal offence for the offence of laundering. The information available does not make it possible to identify all the cases where the principal offence of money laundering was corruption. The 2003 report of the justice ministry's central corruption prevention department (SCPC) refers to the links between corruption and money laundering. On the one hand, proceeds of corruption that are used or transformed may be ingredients of the offence of laundering, while on the other, laundering inquiries, based on suspicious financial flows, may reveal cases of corruption and offer a wider range of investigation methods or the possibility of general confiscation.
35. The declaration of suspicions system has recently been extended to corruption. Persons and institutions covered by the legislation of 11/2/04 have a duty to report suspicious transactions that might involve corruption to TRACFIN. There are still no guidelines on or typologies of what might constitute such operations. TRACFIN plans to fill this gap, with the help of the central corruption prevention department (SCPC) and the liaison committee on laundering the proceeds of crime, composed of representatives of the private sector, supervisory authorities, the police, the prosecution service and the justice, finance and interior ministries. A large part of the SCPC's 2003 report was devoted to links between laundering and corruption. **The GET recommends to actively pursue the existing initiatives to establish guidelines on and typologies of operations that might involve corruption for persons and institutions with a duty to report suspect transactions.**

### **III. THEME II - PUBLIC ADMINISTRATION AND CORRUPTION**

#### **a. Description of the situation**

##### Administrative organisation and oversight

36. France is a unitary state with administrative and political decentralisation. In accordance with the principles of democracy, the rule of law and respect for human rights and fundamental freedoms, French public officials working for the state, local and regional authorities and other statutory



public law bodies must comply with the legislation in force and act in the general interest. Articles 13, 14 and 15 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789 stated that citizens could decide on the need for a public contribution and require of every public agent an account of his administration. In carrying out its activities, any body with a public service role must abide by the principles of legality, equality, neutrality, continuity and adaptability.

37. French law offers various avenues of appeal against public decisions and actions, including applications to the same administrative authorities to review their decisions, appeals to higher administrative authorities and action in the courts. The first two extend the period within which applications can be made to the courts and can be based on grounds of fact, law or expediency. Judicial proceedings come before courts with the relevant statutory jurisdiction in terms of geographical area and subject matter. The courts must consider the admissibility of such applications, which may concern requests to declare an unlawful law or regulation null and void or to set aside its application in a particular case. Certain criteria must be met for applications to be admissible. Actions for abuse of authority, or *ultra vires*, may be brought against any administrative decision by any applicant with a personal interest within a time period of two months, subject to specific exceptions. There is no time limit for actions on grounds of unlawfulness when it comes to an action with a regulatory nature.
38. The Act of 3 January 1973 (as amended by that of 24 December 1976) instituted the office of mediator, or ombudsman. The ombudsman or his assistants may receive applications from any individual or legal person via a member of parliament. He may also, on his own initiative, take up any issue relating to the detection or prevention of corruption in government. Administrative authorities contacted by the ombudsman must co-operate with him and forward any documents relevant to the matter under investigation. The ombudsman carries out a preliminary investigation to ensure that the application is admissible both on the merits and procedurally (exhaustion of other remedies). He may offer to mediate and in the event of regular maladministration or the unfair application of laws and regulations he can issue recommendations or proposals to the government, parliament, or the specific departments or agencies concerned. In carrying out his task, he is supported by various supervisory bodies and inspectorates, and can carry out investigations, take disciplinary action, issue directives and publish his findings, as laid down in the law of 3 January 1973.
39. Other checks are carried out on public authorities, *a priori* and *a posteriori*. *A priori* checks are made on public sector accountants on the basis of payments. *A posteriori* the court of auditors and regional audit bodies examine the accounts. Moreover, sanctions may be imposed by the disciplinary offences (budget and finance) court on public decision-makers for violations of financial and accounting rules. In addition, numerous special bodies, such as the committee of inquiry into the cost and output of public services, and the various inspectorates (inter-ministerial inspectorates - the general inspectorates of finance, of administration and of social affairs - individual ministerial inspectorates - such as the judicial services inspectorate placed under the authority of the Ministry of Justice - and technical inspectorates answerable to directors general - such as the general inspectorate of the national police (IGPN), the technical inspectorate of the national gendarmerie (ITGN) and the inspectorate of civil security), supplement the existing system. These ministerial and inter-ministerial inspectorates are composed of 800 senior public officials. There are also the "general councils" such as the general council for roads and bridges, technology and rural development, water and forests. These institutions are all involved to varying extents in preventing corruption.

### Anti-corruption policy

40. Preventing and combating corruption and emphasising and developing ethical practices have been one of the major strands of administrative reform in the last ten years. This has included closer supervision of public procurement and tendering, anti-corruption arrangements, closer checks on public officials leaving for the private sector and more ethical training. With its emphasis on greater transparency in the public sector, this anti-corruption policy has strengthened existing provisions on bribery, trading in influence, illegal acquisitions of interest and improper moves to the private sector<sup>9</sup>. Act no 13-122 of 29 January 1993 established the central corruption prevention department (SCPC), whose task is to centralise information that might help in the detection of corruption and advise public authorities on how to prevent it. The SCPC plays a key role in designing, adapting and implementing anti-corruption strategies. It has organised training for several departments, agencies and professional bodies. Since the entry into force of the Anti-Corruption Act, no 2000-595 of 30 June 2000, which modifies the Criminal Code and the Code of Criminal Procedure, the different French government departments and agencies have made even more efforts to bring the problem of corruption and the need to report it to the attention of officials.

### Transparency in public administration

41. The main statutes establishing an obligation of communication and transparency in government are the acts of 17 July 1978 to improve relations between government and the public (Act no 78-753) and of 11 July 1979 on justifying administrative decisions (Act no 79-587). They were supplemented by Act no 2000-321 of 12 April 2000 on citizens' rights in their relations with government. The authorities can only refuse to grant access to administrative documents if this is necessary for lawful purposes and subject to conditions laid down in law. The commission on access to administrative documents monitors the application of this legislation. The use of new technologies such as the Internet has made government more transparent. France has established a body responsible for liaising with users and administrative simplification and an agency for developing e-government to improve still further relations between the public service and individuals. Finally, citizen consultation, public inquiry and specialist *ad hoc* or permanent committee procedures may need to be completed before decisions involving significant public expenditure can be taken.

### Employment in the public service

42. The public service includes all those occupying permanent posts in the state, local and regional authorities and their public bodies and the staff of public hospitals. Various statutes and regulations determine the rights of civil public employees, in particular Act no 84-16 of 11 January 1984, which establishes the general statute, or staff regulations, of state public officials. Government may also employ non-established staff or employees or collaborators with private law contracts.
43. The recruitment of established public officials is mainly by competitive examination. This legal procedure is considered to offer numerous safeguards for both the officials themselves and the users of public services. It is intended to ensure compliance with the principles of equality,

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<sup>9</sup> Act no 93-122 of 29 January 1993, as amended, on prevention of corruption and transparency in business and public proceedings and Decree no 95-168 of 17 February 1995 on private activities by public officials who have temporarily or permanently ceased their duties.

neutrality and impartiality of the public services. Certain criminal convictions are incompatible with the exercise of the duties concerned.

44. Initial and in-service training is used to inform public officials of the fundamental principles and ethical rules governing their conduct throughout their careers, from start to finish. Such training should also inform them of their criminal liability and the need to avoid conduct likely to incur it. The French authorities, particularly the SCPC, have made great efforts to train, inform and educate officials about the risks of corruption, particularly those involved in at-risk activities or who are likely to uncover corruption in the course of their duties (those working in the foreign, economy, finance and industry, defence and interior ministries). Training has also been introduced on a general scale to encourage internal monitoring, thus helping to prevent public sector corruption. The SCPC also assists supervisory and monitoring bodies by developing indicators that help to identify and prove the existence of certain forms of financial arrangement<sup>10</sup>.
45. In areas of government that are particularly vulnerable to corruption there is a system of compulsory mobility. This particularly concerns senior state officials and senior management of the Ministry of Finance or of State Public Works. Similarly, the use of secondment for officials required to take decisions with significant financial implications means that those concerned only stay in post for a limited time. A Council of Ministers memorandum of 22 October 2003 emphasised the need for a policy of continuous mobility within government.

#### Conflicts of interest, incompatibilities and improper moves to the private sector

46. Conflicts of interest and incompatibilities are the subject of staff rules and special legislation, such as that governing elected members' or officials' participation in local semi-public companies. To encourage integrity among public officials, the French Criminal Code makes it an offence for officials to acquire interests illegally whether in the exercise of their duties or after leaving the service (Articles 432-12 and 432-13 of the Criminal Code).
47. Similarly, the general staff regulations of civil servants prohibit incompatible functions and provide an exhaustive list of the private activities that public officials who are available for service or on leave or have left the service are authorised to undertake (section 87 of the Act of 29 January 1993 on prevention of corruption and transparency in business and public proceedings, implemented by the Decree of 17 February 1995). More specifically, there are strict rules governing the departure of officials to the private sector within five years of leaving the service. Before granting authorisation, it must first be formally established whether the civil servant intends to remain available to serve or to definitively leave the public service in order to verify whether the private activity the official intends to perform will not involve the illegal acquisition of interests and that this activity is not to the detriment of his department and does not discredit the public service. A professional ethics commission for each public service has been established under the authority of the Prime Minister, to which all such cases must be referred, to ensure that the ban on incompatible functions is enforced. It issues opinions, though these are not binding on the managing authority, which has sole power to decide whether or not to authorise the official's departure. Moreover, the civil servant can, if necessary, be subject to judicial control on the basis

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<sup>10</sup> Training is also provided outside the traditional institutional setting, for example in public enterprises or ones with public shareholdings, the association for public service purchasing, the monitoring centre for local authority legal risks, the national institute of statistics and economic studies and so on. Practical information is included in their annual reports, including information for readers who do not necessarily have a legal training, and is also included in, for example, a local authority newsletter circulated to the mayors of France's 36 000 municipalities.

of the criminal offence of illegal acquisition of interests (Articles 432013 CC). This is an a *posteriori* control independent of that carried out by the professional ethics commission.

#### Codes of conduct and ethics

48. Public officials are bound by ethical rules. In the public sector, rules of conduct derive from the law, regulations, circulars and, to a certain extent, court rulings and professional good practice guides. Although there is no code of conduct or ethics as such for all public officials, the existing sources – general statute/staff regulations of public officials, specific laws and regulations, case-law and ethical codes and guides of each department or service – together constitute a homogeneous body of rules. Nevertheless, several services, such as the national police force, the directorate of taxes and the economy and finance ministry and the ministry of public facilities, have drawn up detailed ethical guides adapted to their circumstances and the specific risks they may face. The annual reports of the ethics commissions are also circulated widely throughout government.
49. Officials who breach these rules may be liable to penalties, after their hierarchical superior has considered the case. They may appeal against these penalties to their own or higher administrative authorities or refer the matter to the appeals commission of the state public service higher council, which advises the relevant minister as appropriate. Disciplinary penalties range from simple reprimand to dismissal. For all penalties involving more than a reprimand, a disciplinary commission must be consulted. The statistics on disciplinary penalties are centralised by the public service statute office and published by the directorate general of administration and the public service, without, however, specifying the cases in which the sanctions were imposed for corruption.

#### Gifts

50. Article 432-11 of the Criminal Code prohibits officials from accepting gifts when these are intended to secure certain benefits or advantages from them. Similarly, the general statute/staff regulations of public officials prohibits any conduct that could threaten officials' independence. In view of the wide range of possible situations, the government has preferred not to issue exhaustive regulations covering every possible case. It is then departmental heads' responsibility to decide whether or not any gifts received by their staff are purely symbolic in nature. The more sensitive the department is to pressure, the more comprehensive the ban on accepting gifts.

#### Reporting corruption

51. Public officials who suspect corruption or any other offences representing a threat to integrity, are required to report them to the state prosecutor (Article 40.2 of the Code of Criminal Procedure), without the need to seek their hierarchical superior's approval. The Code of Criminal Procedure does not stipulate any particular procedure for carrying out this obligation (Cass. Crim 28 February 1992). Public officials who follow this procedure cannot be disciplined by their superiors (CE, Guignon, 15 March 1996), or be accused of breaching their duty of professional confidentiality (Article 229-14 of the Criminal Code). Subject to judicial authorisation, those making such reports may be heard without their identity being revealed if such a hearing might pose a threat to their life or that of their family (Articles 706-58 to 706-62 of the Code of Criminal Procedure).

## Disciplinary procedures

52. The main bodies responsible for disciplinary inquiries are the general, ministerial and inter-ministerial inspectorates and the financial and budgetary disciplinary court (for which public prosecution is carried out by the prosecutor general of the court of audit). They may intervene *ex ante* or *ex post*. Their *ex ante* activities are concerned with ensuring that departments are functioning properly. Inspectorates may undertake *ex post* inquiries when disciplinary offences have been reported. However such inquiries are not carried out systematically and are generally decided on by disciplinary boards that examine cases or when disciplinary proceedings are brought. In such cases, officials only incur liability for offences under the public service status legislation of 13 July 1983 committed in or during the exercise of their responsibilities. The penalties that may be imposed are listed exhaustively in section 66 of Act No. 84-16 of 11 January 1984 laying down the regulations governing state public servants. Disciplinary proceedings may be followed by criminal proceedings when a disciplinary offence may also constitute a criminal offence. In such cases, the official's hierarchical superior has a duty to report the official to the relevant state prosecutor. The prosecutor must inform hierarchical superiors of any of their officials being prosecuted for offences committed in the exercise of their duties.

### **b. Analysis**

53. There are numerous traditional and well-tested rules, regulations and procedures governing ethics, transparency and supervision in the various branches of the French public service. Successive public service reforms have laid great stress on ethical requirements and quality of service. Honesty and integrity are considered to be crucial. The central corruption prevention department (SCPC), the different inspectorates and the directorate general for the administration and the public service play a key part in maintaining and developing these requirements, which are essential if corruption is to be effectively combated and weeded out. Co-operation between the two bodies is still inadequate, for example in terms of training, and needs to be strengthened.

54. The transparency requirement is long-standing, statutory and accompanied by adequate supervision. The access to administrative documents commission (CADA) plays an important part and makes sure that individuals are all entitled to see administrative documents, subject to any necessary statutory restrictions. The GET has received representative examples of CADA decisions that have helped to reduce corruption by encouraging transparency in government departments, other public bodies and private bodies receiving public funding or serving the public interest. The users' and administrative simplifications office (DUSA) and the agency for developing e-government (ADAE) are helping to introduce a more proactive information policy based on greater use of new information technologies.

55. France has a wide range of effective administrative, judicial and specialist oversight and supervisory arrangements and a well-developed system of inspectorates, such as the inspectorates general of administration and of finance, the judicial services and police and gendarmerie inspectorates, and the general supervisory body for the armed forces. Controls carried out by the financial jurisdictions (court of audit, regional audit bodies) may lead to public accountants who are unable to justify expenditure that they have authorised being required to reimburse it from their own pockets. Despite the system of indirect referrals, via parliament, the mediator/ombudsman and his 227 assistants at *département* level received nearly 55 000 individual applications in 2003 and made some twenty proposals for reforms. However, in thirty years of existence, the ombudsman has not once had a corruption case referred to him. According to those whom the GET spoke to, citizens are more inclined to adopt alternative

approaches when they suspect corruption. Nevertheless, it considers that the ombudsman and his decentralised bodies have very significant powers of oversight that could be deployed very effectively against corruption. The ombudsman is a member of the committee of inquiry into the cost and output of public services, which offers an overview of how government departments are working. He can also bring disciplinary proceedings against any official or refer their cases to the courts, although so far he has never done so. The institution's activities could therefore be strengthened, for example by providing citizens with more information on the role of the ombudsman and his decentralised assistants in combating corruption. There could also be closer co-operation between the ombudsman, the various inspectorates, the corruption prevention department and the other anti-corruption departments and agencies.

56. Although there is a long tradition of administrative codes of ethics in France the GET had the impression that, aside from the activities of the central corruption prevention department (SCPC), the authorities' approach to the question of ethics and to the fight against corruption could be ill-suited to changes in the public service environment, stricter effectiveness and performance requirements if it is not accompanied by a preventive and co-ordinated approach geared towards the day-to-day management of public services and organisational ethics. The GET takes the view that current efforts to modernise government and existing internal and external controls take insufficient account of the risks of corruption and issues relating to professional ethics. Beyond a number of initiatives taken by departments more concerned by risks of corruption, and despite SCPC recommendations and its special training activities, the existing systems of control do not allow the sufficient mastering of such risks. The efficiency of their actions would be enhanced by increased cooperation and the sharing of experience and results. The general introduction of a public service internal control system would make it easier to counter corruption and other forms of unethical behaviour, such as dubious promises and gifts, incompatible functions and associations, misuse of information or powers, discrimination and intimidation, corruption and fraud. This could be achieved by providing indicators, insisting on separation of functions, monitoring budgets, careful listing of assets and available resources and exchanging information. To contribute to good governance in the public sector, the system of internal control should be supplemented by an independent system of audit, which could be effected through the strengthening of the external control exercised by the financial jurisdictions. Integrated risk management carried out notably with the support of the SCPC would, for example, make it easier to identify the most vulnerable areas and functions of the French public service, and different departments' and agencies' capacity to counter, identify and punish such unethical conduct. Finally, the cultural changes accompanying the modernisation process call for a form of management to complement existing law and ethical codes. Major changes in administration and the introduction of new management methods to increase efficiency, effectiveness and transparency must be accompanied by a genuine and appropriate organisational ethic, for example by laying down, drawing attention to and developing ethical values and encouraging enlightened dialogue and commitment among staff who subscribe to them. **The GET recommends that consideration be given to strengthening the existing internal and external control systems in public departments and agencies, accompanied by the integrated management of the risks of corruption and ethical breaches and the establishment of an appropriate organisational ethic.**
57. In theory the recruitment of officials of the public service by competitive examination guarantees, in principle, the objectivity of the recruitment process. However, apart from checks on their criminal records candidates are not tested on the ethical values and conduct expected in their future posts. Nor are officials' ethical skills assessed in the course of their careers.

58. The *grandes écoles* (higher education and training establishments) and the numerous branches of government offer a wide range of training courses and other activities, often under the auspices of or assisted by the SCPC, to make officials more aware of the risks of corruption and breach of ethics. In this respect, it should be noted that the national police conducts a policy of prevention in the field of ethics, within the framework of initial and ongoing training for all its officials. The SCPC's courses seek to prevent the emergence of corruption in the public and private sectors and help those concerned to detect fraud and corruption through a detailed analysis of risks. Such training is also provided in numerous international co-operation and assistance programmes. Nevertheless, certain areas and staff, including non-established staff, have still not been introduced to the risks involved. Nor have the longest serving staff always had their original training updated. Finally, the training provided under SCPC auspices does not always lay sufficient emphasis on threats to ethical standards and the risks of corruption. The GET welcomes the SCPC's central role in this field, including its recommendations (particularly in its 2002 report) and its practical training modules, which also take account of international standards such as the Council of Europe's Recommendation R (2000) 10. All the same, it has to be said that only certain departments and agencies – above all those represented on it - call on its services and that its financial and staffing resources are still limited. Yet the fact that its members come from across government and its legal and technical expertise should enable the SCPC to become the first point of contact on corruption issues for every department, whether for approving initiatives (new rules or organisational changes), educating and training officials in the risks of corruption or centralising relevant information. **The GET recommends that all public officials receive adequate training in ethical issues and the risks of corruption, if necessary, with the support of the central corruption prevention department (SCPC).**
59. Professional rules of conduct reflect the public service staff regulations, as well as other relevant legislation, regulations, circulars and case-law and professional good practice guides. Much of the SCPC's 2002 report was devoted to this subject and the French public and private sectors should continue to pay close attention to it. The GET welcomes the ample body of legislation that makes certain offences committed by officials in the performance of their duties - trading in influence, illegal acquisitions of interest, favouritism and improper moves to the private sector - liable to criminal sanctions. The GET wishes to emphasise the role played by the Prime Minister's professional ethics commission. Over the years, the commission has established a body of decisions that take account of the wide range of existing circumstances in the various departments and agencies of government. The GET notes, however, that the control exercised by the commission is limited to certain possibilities offered to officials to carry out a private activity (availability to serve, leaving definitively the public service). The GET therefore poses the question whether it might be appropriate to extend the commission's field of competence to cover all situations in which a public official is allowed to carry out a private activity, in order to ensure increased integrity. **Therefore, the GET recommends that consideration be given to extending the area of responsibility of the professional ethics commission.**
60. Finally, certain departments have precise statistics on disciplinary proceedings and sanctions against their staff. From 1995 to June 2004, for example, 48 disciplinary sanctions were imposed in the national police force for corruption offences. Since 2001 there have been 16 cases of corruption in the customs. However, it has emerged that there is no clear overview of the number of and reasons for disciplinary sanctions in some branches of government. Subject to adequate safeguards in terms of data protection, it could be envisaged to establish an appropriate system for registering disciplinary proceedings and sanctions against public officials, and to making the SCPC responsible for centralising information on such proceedings, at least when they relate to

corruption or related offences, with a view to improving the effectiveness of, and the follow up to, such proceedings and to evaluating the relevance of the penalties imposed.

#### **IV. THEME III - LEGAL PERSONS AND CORRUPTION**

##### Definition of legal persons

61. French law draws a distinction between public and private law legal persons. The former include the state/central government, local and regional authorities, public institutions, professional bodies and public interest groupings. The latter include associations, non-commercial and commercial partnerships, economic interest groupings, trade unions, foundations and political parties or groups. Legal persons have the legal right to appear in court and have their own assets. There are also mixed companies where private and public persons are party to the capital. There is also a specific body of legislation concerned with conflicts of interest and incompatibilities regarding mixed companies, including local public-private commercial companies.

##### Constitution and registration

62. The conditions governing the establishment and registration of legal persons differ according to whether they are public or private law institutions and are sufficiently clearly laid down in the legislation on each category. Commercial companies are registered with the commercial and company register maintained by each court registry. These registers are public. Associations must be declared and are registered in the register of associations maintained by the interior ministry.

##### Professional disqualifications

63. Persons found guilty of criminal offences may be prohibited by the courts from exercising certain occupations, as either a substitute (Articles 131-6 and 131-7 of the Criminal Code) or an additional (Articles 131-27 to 131-29) penalty. Certain special professional disqualifications also apply even in the absence of criminal convictions. Moreover, local elected representatives who exercise authority over local mixed economy companies of which they are the main shareholders may not hold certain other positions. Certain abuses in the past have persuaded the French authorities to clarify the status of local elected representatives and the offences for which they may be prosecuted (circular of 12 February 2003 on principal offences likely to be committed in local mixed economy companies).

##### Liability of legal persons

64. Under Article 121-2 sub-paragraph 1 of the Criminal Code, any public or private law legal person other than the state,<sup>11</sup> whether or not profit making or of French nationality, may be held criminally liable for active corruption (giving bribes), trading in influence or money laundering. Such criminal liability does not require the legal person concerned to have profited from the offence or for the individual perpetrator to have been identified. Legal persons are criminally liable for offences committed on their behalf, by organs or individuals who legally represent them. Liability may also extend to persons to whom the legal person's organs have given general powers or authority to manage or represent it (Cass. Crim 26 June 2001, Bull. crim no. 161). According to the French authorities, in cases where the absence of supervision or control by a

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<sup>11</sup> For the purposes of application of Article 121-2 CC, public international organisations are assimilated with the State.



person exercising a leading position within the legal person would result in the commission of corruption offences, the responsibility of a legal person may be established through criminal and/or civil proceedings. However, the criminal liability of local and regional authorities and their groupings only applies to offences committed as part of an activity to which a public service delegation (delegation of public service to a public or private operator) could apply. Invoking a legal person's liability does not exclude individual perpetrators or accomplices from also being held liable.

65. Legal persons found guilty of active corruption or trading in influence are liable to a fine<sup>12</sup> (Article 131-38) and confiscation (Article 131-21) and may be prohibited from exercising their occupation or trade for a maximum period of five years (Article 433-25 and 435-6 of the Criminal Code). Convictions also result in legal persons' formal notification to the criminal records office (Article 768-1 of the Criminal Code). Those guilty of laundering are also liable to other penalties and additional measures, such as placement under judicial surveillance, exclusion from public tendering procedures and winding up (Article 435-6 of the Criminal Code). Under the rule that penalties shall only apply to the offender, no sentence can be imposed on legal persons that were wound up before conviction (Cass. crim 20 June 2000: Bull. crim no. 237), but where they are absorbed into another company prior to conviction the absorbing company may be charged with the offence of handling stolen goods. Similarly, penalties cannot be imposed on legal persons that are wound up after their conviction. However, to ensure that such penalties remain effective, fines and confiscations are still enforceable. French parent companies may also be held liable if it can be shown that they have authorised, encouraged or ordered foreign subsidiaries to act corruptly. But despite this range of provisions, no legal person has been convicted of corruption. This is mainly because of the difficulties of bringing charges against a legal person in corruption matters. However, several company managers, accountants and lawyers have been convicted.
66. Legal persons may also be held civily liable for corruption or trading in influence under Article 1382 of the Civil Code, if the complainant can establish detriment, fault and a causal link between the two.

#### Accounting obligations

67. All traders, whether individuals or legal persons, are required under French law to retain accounting and supporting documentation for 10 years (Article L.132-22 of the Commercial Code). This responsibility is vested in their managing directors. There are no general accounting rules governing non-commercial private law legal persons unless they have an economic activity in excess of the limits laid down in decree no. 85-295 of 1 March 1985. They may also be subject to accounting obligations if they voluntarily appoint an auditor. Regarding other legal persons, accounts must be kept by associations with public funding, political parties and foundations.
68. Breaches of accounting law are liable to severe criminal sanctions. The principal penalty for natural persons guilty of forgery and using forged documents is imprisonment and a fine, and additional penalties are specified in Article 131-39 of the Criminal Code. Other measures or penalties are also stipulated in the 1966 Companies Act and the Judicial Insolvency and Liquidation Act of 25 January 1985. Finally, the destruction or concealment of accounts is punishable by criminal, property-related and personal penalties. The courts have found managers guilty of forgery and using forged documents intended to conceal the destination of funds used to bribe public officials.

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<sup>12</sup> The maximum fine applicable to legal persons is five times the one applicable to individuals under the same legislation. In the case of serious offences for which no fines are applicable to individuals, legal persons are liable to a fine of € 1 000 000.

### Tax deductibility

69. The GET was informed that the relevant provisions of the OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials are incorporated into domestic law in Article 39-2 bis of the General Tax Code. As a result, sums paid or other benefits granted, directly or indirectly, to foreign public officials may not be offset against taxes. The exclusion of these deductions is general in scope and applies irrespective of the value of the benefit, its results or uses or the degree of tolerance of the local authorities<sup>13</sup>. In addition, presentations to a tax agent of any documents attesting the payment of bribes to a national public official with the objective of obtaining tax deduction would result in the application of Article 40 of the CCP by the tax agent, with the reporting of this offence to the prosecution service. Therefore, in practice, facilitation payments are not tax-deductible.

### Tax authorities

70. Tax officials who are aware of an offence are required to inform the state prosecutor and forward all the necessary information (Article 40 paragraph 2 of the Code of Criminal Procedure). Moreover, officials of the directorate general for public accounts<sup>14</sup> responsible for customs, direct taxes, competition and frauds may not invoke professional confidentiality to refuse requests for information from police officials in their fight against undeclared profitable activities, which infringe public order and public security (Article L 135 L of the tax procedures code). Finally, if the state prosecutor, investigating judge or court dealing with a particular case requires any relevant information this overrides any confidentiality requirements.

### Role of accountants and auditors

71. Unlike accountants, auditors are required to satisfy themselves that the accounting documents they examine are fair and accurate. They are also obliged to report inaccuracies to the managers and boards of enterprises and offences that come to their attention to the state prosecutor. This latter legal obligation applies to all crimes and misdemeanours and failure to comply is a criminal offence. The Act no. 2003-706 of 1<sup>st</sup> August 2003 strengthened the independence of auditors by establishing, in particular, the Supervisory Authority for the Audit Profession responsible for monitoring the profession. This strengthening of independence should facilitate the detection of offences and enforce the obligation to declare suspicions. Finally, financial sections of the state prosecutor's department, particularly the Paris one, are hoping to develop an automatic system to advise regional audit commissions of any abuses so that they can take disciplinary measures against any of their members who fail in their duty to disclose such information.

#### **b. Analysis**

72. A detailed preventive and enforcement system has been established to ensure that legal persons are neither the victims nor the perpetrators of corruption, trading in influence or laundering. These provisions are reinforced by strict regulations governing accounting offences and manipulations,

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<sup>13</sup> In the directives to company auditors, the instruction relating to departments (4 C-1-00, no 205 of 14 November 2000) stipulates that the rejection of deductible charges must automatically be notified to the state prosecutor, pursuant to Article 40 of the Criminal Code. However, it appears that the non-deductibility of bribes for tax purposes is not guaranteed in certain French overseas territories and other territories with autonomous fiscal status.

<sup>14</sup> The directorate general for public accounts is responsible for the financial and accounting procedures of the state, local authorities and local public institutions. It informs the relevant authorities of the rules governing the implementation of finance and local budget acts. It also directs the various elements of the public treasury network.

effective co-operation between enforcement agencies and the tax authorities and an expanded role for auditors.

73. During the visit, the GET met several representatives of the private sector, who spoke of large French firms' growing commitment to facing up to the threat of corruption. Some of these firms have drawn up codes of conduct for their employees and risk typologies, and have expanded their educational activities. Following a GRECO recommendation in the first evaluation round, several well-known firms have signed partnership agreements with the SCPC on information exchange, advice and training. The SCPC is regularly involved in training sessions for company auditors run by the institute for internal audit (IFACI). In addition, its reports have included several studies of the risks of corruption in and through the medium of business and other legal persons and of accounting manipulations. A significant part of the 2003 report is concerned with possible abuses connected with voluntary associations and the SCPC offers practical guidelines on how to reduce corruption, laundering, accounting manipulations and fraud. Moreover, in response to cases of employees' being punished by their employers for reporting irregularities, the employers' association (MEDEF) has started discussions on arrangements for reporting corruption offences committed in firms. The GET welcomes these initiatives and *observes that they should also include small and medium sized undertakings, which does not currently appear to be the case.*
74. The current arrangements for the establishment, registration and functioning of legal persons seem to be satisfactory. The internal and external control systems, often set up under the impetus of the justice ministry's civil affairs directorate, appear to be adequate. The public procurement authority set up by the Financial Security Act of 1 August 2003<sup>15</sup> helps to encourage correct business behaviour and increase transparency in tendering procedures and firms by identifying and punishing market rigging and insider dealing. The court of audit supervises public enterprises and the regional audit bodies supervise the local public-private commercial companies. A very small percentage (2%) of the cases it has reported to the judicial authorities concern corruption and trading in influence. Thirty one percent of its reports concern misuse of company property, misappropriation, favouritism and illegal acquisitions of interest.
75. The law provides for legal persons to be criminally liable for the offences of corruption, trading in influence and laundering committed on their behalf, by organs or individuals who legally represent them. This liability extends to all public or private law legal persons, other than the state but including trade unions and political parties, whether or not profit making or of French nationality.
76. The statutory sanctions appear to be sufficiently effective, proportionate and dissuasive. Legal persons' convictions are recorded in their criminal record. However, the GET was informed of the absence of cases of convictions of legal persons for corruption offences. Consequently, the GET was unable to establish whether the applied sanctions were efficient, proportionate and dissuasive. The provisions governing the criminal liability of legal persons appear to be rarely used in practice, although within the framework of the training programmes provided for judges/prosecutors this problem has been dealt with. According to persons spoken to, apart from the problems of adducing evidence, pecuniary sanctions against companies are only of value for those that have a real commercial activity. Front companies with no real financial or commercial strength are often used for the purposes of corruption. When dealing with such fictional bodies it is preferable to penalise the individual operators concerned, who are often the managers or directors of other real companies or organisations. Criminal sanctions, including financial

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<sup>15</sup> The public procurement authority was established as result of the merge of the following agencies: the Commission of Stock Exchange Operations, established in 1967, the Council for Financial Markets, established in 1996, and the Council for the Financial Management and Discipline, established in 1989.

penalties, imposed on front companies serve little purpose. It is better to punish the manager of the parent company. Nevertheless, the GET considers that criminal liability for legal persons is a key weapon in the fight against corruption, to complement the effective prosecution of the perpetrators and proceeds of corruption offences. This is reflected in the circular of 21 June 2004 by the Minister of Justice which draws the attention of the prosecutors to the necessity - in the light of the texts applicable and France's international commitments - to effectively raise the issue of legal person's liability when corruption has occurred and to apply for the imposition of effective, dissuasive and proportionate sanctions.

77. The tax authorities seem to be actively combating accounting offences. The representatives met by the GET were well aware of the problems of corruption. These departments supplied the GET not only with their own codes of good practice but also substantial documentation, in the form of extracts from legislation, tax briefings, instructions and other administrative documents, concerned with increasing awareness and improving the detection of corruption and accounting offences. These took account of the relevant international rules and standards, including the OECD handbook. The GET also received a technical file listing the numerous initial and in-service training activities for staff in this area. It is noteworthy in this respect that the SCPC's team comprises an inspector entrusted with liaising on a permanent basis with the tax authorities regarding the exchange of technical information, awareness raising and training in the field of corruption. When they identify criminal offences tax officials inform the prosecuting authorities under Article 40.2 CCP. The French authorities do not allow bribes to be offset against taxes. However those whom the GET spoke to called for more determined international action to combat this problem through measures such as support for good governance programmes.
78. In the interests of preventing, detecting and reporting risks, the Financial Security Act of 1 August 2003 and the February 2004 Laundering Act have increased the independence of auditors and their anti-corruption role. The representatives of the national audit association (CNCC) and the supervisory authority for the audit profession (HCCC), the latter newly established to oversee professional ethics and good practice, were particularly aware of the need to combat corruption and to comply with the obligation to report criminal offences to the state prosecutor. The HCCC provides advice to the Minister of Justice on standards of professional conduct, including standards to be adopted on fraud and reporting of criminal offences. In addition, it acts, in appeal, as the profession's disciplinary body for all kinds of misconduct, including cases of failure to report criminal offences. As yet, the HCCC has no central information system concerning disciplinary offences but it is about to develop a database on disciplinary sanctions; subject to the opinion of the CNIL. However, the audit representatives stressed that there were limits to their powers. One concerned the identification of unreasonable commissions or benefits. The other concerned the scope of auditors' control, which could not cover the whole range of operations, particularly complex ones that extended beyond the boundaries of the business. It may be very difficult to establish whether a study commissioned by an undertaking is real or fictitious. That said, the GET welcomes the initiatives taken or planned by the CNCC to draw up standards governing the detection of corruption cases and invites the accounting profession's representative bodies to do the same. **The GET recommends to support current initiatives regarding the detection of corruption and, subject to data protection requirements, to draw up a unified file of breaches of good conduct or ethics and disciplinary offences by auditors.**

## V. CONCLUSIONS

79. The French legal system has a powerful range of tools for detecting, seizing and confiscating the proceeds of corruption. However efforts are needed to ensure that the power to confiscate the proceeds of corruption and related offences, including confiscation of the equivalent value, is put into practice. Better information is also required to assist inquiries and seizures. Public authorities have a continuing commitment to ensuring the honesty and competence of their officials. However existing arrangements could be improved by better co-ordination of education and training activities concerned with the risk of corruption and professional ethics and good conduct. The arrangements for supervising legal persons and the contribution of the tax authorities and the audit and accounting professions also offer a number of very strong plus points. Moreover, France has introduced criminal penalties for offences committed on behalf of legal persons by organs or individuals who legally represent them. In all these areas, a number of adaptations such as the ones proposed in these recommendations, accompanied by more determined implementation, education and training and more detailed statistics, should help to achieve the desired results.
80. In the light of the foregoing, GRECO addresses the following recommendations to France:
- i. **to pursue the existing activities within the police in order to make asset investigations more effective** (paragraph 29);
  - ii. **to actively pursue the existing initiatives to establish guidelines on and typologies of operations that might involve corruption for persons and institutions with a duty to report suspect transactions** (paragraph 35);
  - iii. **that consideration be given to strengthening the existing internal and external control systems in public departments and agencies, accompanied by the integrated management of the risks of corruption and ethical breaches and the establishment of an appropriate organisational ethic** (paragraph 56);
  - iv. **that all public officials receive adequate training in ethical issues and the risks of corruption, if necessary, with the support of the central corruption prevention department (SCPC)** (paragraph 58);
  - v. **that consideration be given to extending the area of responsibility of the professional ethics commission** (paragraph 59);
  - vi. **to support current initiatives regarding the detection of corruption and, subject to data protection requirements, to draw up a unified file of breaches of good conduct or ethics and disciplinary offences by auditors** (paragraph 78).
81. Moreover, GRECO invites the French authorities to take account of the *observations* (paragraphs 27, 30, 32 and 73) in the analytical part of this report.
82. Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the French authorities to present a report on the implementation of the above-mentioned recommendations by 31 May 2006.