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Theme II

Third Evaluation Round

Evaluation Report on France Transparency of Party Funding

(Theme II)

Adopted by GRECO
at its 41st Plenary Meeting
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I. INTRODUCTION

1. France joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2000) 3F) at its 6th Plenary Meeting (10-14 September 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2003) 1F) at its 21st Plenary Meeting (29 November - 2 December 2004). These evaluation reports and the corresponding compliance reports are available on GRECO's web-site (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which visited France from 23/24 to 26 September 2008, was composed of Mr Guido HOSTYN, *Premier conseiller de direction*, Secretary to the Senate's Election Expenses Supervisory Committee (Belgium), and Mr Alex BODRY, President of the Socialist Party (LSAP), Member of Parliament and Mayor, lawyer, member of the Socialist Party Parliamentary Group (Luxembourg). The GET was assisted by Mr Christophe SPECKBACHER of the GRECO Secretariat. Prior to the visit the GET received replies to the evaluation questionnaire (Greco Eval III (2008) 4F, Theme II) and copies of relevant legislation.
4. The GET met representatives of the National Commission for Campaign Accounts and Political Funding (CNCCFP), of the Ministry of Justice (Directorate of Criminal Affairs and Pardons), of the justice system (judges and prosecutors), of the Ministry of the Interior and Regional Planning (Sub-Directorate for Political Affairs and Community Life, Central Anti-Corruption Brigade), of the Commission for Financial Transparency in Politics, of the *Cour des Comptes* (the French National Audit Office), of the Central Corruption Prevention Department and of the Constitutional Council. The GET also met representatives of political parties, of the High Council of the Association of Chartered Accountants (*Conseil Supérieur de l'Ordre des Experts Comptables*), of the National Auditors Association, of the Paris Bar and of the French section of Transparency International and university researchers.
5. The GET very much regrets that only two political parties and no media representative agreed to a meeting with it, despite the fact that the theme of political funding and its regulation has had an important place in public debate and the press for some years now.
6. The present report on Theme II of the GRECO Third Evaluation Round, concerning transparency of political party funding, has been 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 measures adopted by the French authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation followed by 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.

7. The report on Theme I – Incriminations - is set out in document Greco Eval III Rep (2008) 5E, Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

8. France is a unitary state which has adopted a mixed public-private model for the funding of parties and election campaigns. Regulations were issued in 1988, along with supervisory arrangements, in response to the need to end the significant number of politico-financial scandals and cases of embezzlement of public funds and corruption involving elected representatives (according to certain estimates, more than 600 scandals had occurred up to the mid-1990s). The discussions held during the on-site visit showed that numerous methods of secret party funding had been used without there always being a very clear dividing line between party funding and personal enrichment or corruption of elected representatives.¹
9. The following elections are held in France: municipal elections (held every six years), cantonal elections (held every six years to elect the members of the General Council at *département* level, who in turn elect a President for a three-year term of office), regional elections (held every six years to elect the regional councillors, who in turn elect the President of the Regional Council for a six-year term of office), legislative elections (held every five years - unless Parliament is dissolved by the President of the Republic and early elections take place – to elect the 577 members of the National Assembly), elections to the Senate (held every six years to elect the 330 senators), presidential elections (held every five years), and European elections (held every five years to elect France's 72 representatives within the European Parliament in Strasbourg – the current life-span of Parliament).

Definition of a political party

10. Under Article 4 of the Constitution of 4 October 1958 "Political parties and groups shall be instrumental to the exercise of suffrage. Their formation and the performance of their activities shall be free. They shall observe the principles of national sovereignty and democracy." Parliament gave a more specific definition of a political party in Law No. 88-227 of 11 March 1988 on financial transparency of politics. Recalling the principles of freedom of formation and of activity, Section 7 of this law also provides "Political parties and groups shall have legal personality" and "shall be entitled to bring legal proceedings" and "to acquire moveable or immovable property free of charge or for a consideration." Failing any other legislative definition it follows: a) that any entity instrumental to the exercise of suffrage qualifies as a political party; b) that there is no mandatory legal form for political parties, which are therefore not required to set themselves up as associations² although, according to some estimates, 98 to 99% of parties in practice do so; c) that the only constitutional requirements imposed on parties consist in observance of the principles of national sovereignty, democracy and gender parity. In addition, the legislation on transparency and funding of politics approaches the concept of a party on the

¹ Payments received by elected representatives or party secretaries for facilitating the award of public procurement contracts (often with overcharging), fake jobs within public authorities and services, pointless, albeit excessively costly, studies commissioned by local or central government bodies, unjustified claims for refunding of personal expenses lodged by elected representatives, and so on.

² In France associations are subject to the liberal rules of a law of 1901, which provides that they cannot have a profit-making aim. In eastern France, three *départements* (Moselle, Haut-Rhin, Bas-Rhin) have specific legislation on associations, a legacy of the German law in force in 1908 (enabling them to pursue a profit-making aim but imposing more stringent rules).

basis of accounting and financial criteria. For instance, Section 11 of Law No. 88-227 provides "political parties and the regional or specialist organisations they designate to this end shall gather funds through a named agent." According to the replies to the questionnaire, any organisation which failed to obtain its funds through the intermediary of a financial agent could not qualify as a "political party" under this law, even if it had a political aim. On the other hand, under the case-law of the Constitutional Council and the *Conseil d'Etat* a "political party" is any private law entity with political aims which receives public funding or has regularly appointed a financial agent (with a view to collecting donations) and if it has submitted accounts, certified by statutory auditors, to the CNCCFP. Lastly, express provision is made for political parties to have legal personality (Section 7 of Law No. 88-227).

Formation and registration

11. Under Article 4 of the Constitution, as previously cited, the formation of political parties and groups and the performance of their activities is free. This therefore means that there is no recognition and/or registration requirement, even - as already mentioned - as an association. Without a registration requirement it is difficult to give an exact figure for the number of political parties in France. On the basis of the above-mentioned accounting and financial criteria, the National Commission for Campaign Accounts and Political Funding in 2007 (with reference to 2006) recorded the existence of 271 political parties required to file their accounts for 2006 and in 2008, 296 required to file their accounts for 2007.

Participation in elections, representation of parties in Parliament

12. From a legal standpoint it is not parties which participate in elections, but citizens. All eligible citizens, that is to say satisfying the age requirements to be a candidate and in possession of their civil and political rights, can stand for election, whether or not they belong to a political party. Under Article 4 of the Constitution, as previously cited, the parties are merely instrumental to the exercise of suffrage. An incomplete list of parties having participated in legislative elections can be drawn up on the basis of Decree No. 2008-465 of 15 May 2008 implementing Sections 9 and 9-1 of Law No. 88-227 of 11 March 1988 on financial transparency of politics. This instrument sets out the distribution of public funding among the political parties following the legislative elections of 2007. It lists 49 eligible parties, including 14 in metropolitan France and 35 in the overseas *départements* and territories. At present, 21 political parties are represented in the National Assembly and the Senate.³

³ l'Union pour un mouvement populaire (317 National Assembly members and 164 senators); Parti socialiste (191 National Assembly members and 89 senators); Parti communiste français (18 National Assembly members and 22 senators); l'Union pour la démocratie française – Mouvement démocrate (3 National Assembly members and 26 senators); Fétia Api (18 National Assembly members and 5 senators); Parti radical de gauche (7 National Assembly members and 6 senators); Les Verts (4 National Assembly members and 5 senators); Le Mouvement pour la France (3 National Assembly members and 3 senators); Démocratie et République – formerly Metz pour tous (3 senators); Tahoeraa Huiraatira (2 National Assembly members and 1 senator); Le Rassemblement pour la Calédonie (2 National Assembly members and 1 senator); Parti communiste réunionnais (1 National Assembly member and 1 senator); Guadeloupe unie, socialisme et réalités (1 National Assembly member and 1 senator); Archipel demain (1 senator); Mouvement indépendantiste martiniquais (1 National Assembly member); Rassemblement démocratique pour la Martinique (1 senator); Parti socialiste guyanais (1 National Assembly member); Parti progressiste martiniquais (1 National Assembly member); Parti communiste guadeloupéen (1 National Assembly member); Cap sur l'avenir (1 National Assembly member); La Relève (1 senator).

Political financing system

Legislation

13. To meet the need for precise rules to ensure the financial transparency of French politics, the Organic Law No. 88-226 and Law No. 88-227 of 11 March 1988 on financial transparency of politics were the first legal instruments to establish a framework of standards governing the funding of political parties and election campaigns. They establish five main principles: 1) holders of certain posts or elected offices are required to file a statement of their assets,⁴ 2) limitation of campaign spending (for candidates in legislative and presidential elections), 3) an upper limit on donations to candidates and parties, 4) financial participation by the state (funding of parties and reimbursement of campaign expenses), subject to accounting supervision, and 5) the introduction of sanctions. Specific rules apply to referendum campaigns⁵ (referendums are rarely held in France). Subsequent legislation amended these laws and/or tightened the rules on political funding. For instance, since the passing of Law No. 90-55 of 15 January 1990 public funding has been divided into two instalments, paid separately. Law No. 95-65 of 19 January 1995 on the funding of politics banned donations by foreign states and French or foreign legal persons, whether private or public law in nature, except for donations by political parties. Since Law No. 2000-493 of 6 June 2000 fostering equal access to elected office for women and men, public funding for parties has been conditional on their compliance with the rules aimed at promoting gender parity in politics. Law No. 2003-327 of 11 April 2003 on election of members of the General Councils and of the European Parliament and on public funding for political parties and Order No. 2003-1165 of 8 December 2003 introducing administrative simplifications in electoral matters amended the rules on the allocation of public funding applicable for the 2007-2012 Parliament.

Public funding of political parties

14. The following are eligible for public funding: 1) metropolitan France: political parties and groups which, in the most recent elections to the National Assembly, put forward candidates who each scored at least 1% of the vote in at least 50 constituencies; b) overseas: political parties and groups which, in the most recent elections to the National Assembly, put forward candidates solely in one or more overseas *départements* or in Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia or Wallis and Futuna, whose candidates scored at least 1% of the vote in all the constituencies where they were standing for election.
15. Public funding is split into two instalments. The first instalment is distributed in proportion to the number of votes scored in the most recent elections to the National Assembly by candidates claiming to represent the parties concerned, provided they have not been declared ineligible under Article L.O. 128 of the Electoral Code. This instalment is paid subject to the condition that the party put forward candidates who each scored at least 1% of the vote in at least 50 constituencies (specific provisions are in place for parties which only present candidates overseas). With a view to the distribution of this first instalment, candidates for the National Assembly specify, in their statement of candidature, the party or political group with which they are affiliated, where applicable. This party or political group may be chosen from a list drawn up by order of the Minister of the Interior, setting out all the political parties and groups which lodged

⁴ For further information, see paragraph 75.

⁵ It is the executive which determines the amount of funding and its distribution. Public funding is usually distributed on the basis of political parties' or groups' representativeness (number of elected representatives). In other countries, the government ensures equal distribution of public funding between the "yes" and "no" camps.

a request to receive the first instalment of public funding with the ministry by no later than 6 pm on the sixth Friday before polling day. This list is published in the official gazette (*Journal officiel*) no later than the fifth Friday before the first round of voting. The administrative authorities are bound by the information provided by a candidate in his/her statement of candidature. The results of a by-election to the National Assembly are not taken into account in calculating the first instalment of public funding. Votes scored by candidates declared ineligible by the Constitutional Council under Article L.O. 128 of the Electoral Code are not taken into account for calculating the distribution of the first instalment of public funding.

16. Full payment of the first instalment of public funding is conditional on compliance with the principle of gender parity (Section 9-1 of the Law of 11 March 1988). Where, for a given political party or group, the difference in the number of candidates of each gender having declared an affiliation with the party or political group for the last general election to the National Assembly exceeds 2% of the total number of such candidates, the amount of the first instalment allocated to that party or group is reduced by a percentage corresponding to half this difference in proportion to the total number of candidates. As a result of the application of these rules, between 2003 and 2007 a total of € 7 million remained undistributed in respect of the first instalment.
17. The second instalment of public funding is allocated to the political parties and groups which received the first instalment, in proportion to the number of National Assembly members and senators having declared to the Bureau of their respective chamber in November each year that they belong, or are affiliated, to that party or group. Each Member of Parliament can claim to belong or be affiliated to only one party or group. Where the National Assembly has been dissolved and has not yet reconvened, members must submit their declarations within one month of the second Thursday following its election.
18. The public funding made available, in 2009, under the current five-year budget envelope totals € 75 million. This significant amount has helped to bring about a sharp rise in the number of parties, of which there are presently over 270, about 20% of which have received this funding. Some overseas parties are formed just for one election, which sometimes poses problems regarding the funding's allocation and supervision. According to some estimates this public funding paid to the parties constitutes approximately 60% of their resources, not counting funding of parliamentary groups, any grants to associations or foundations linked to parties, financial support for the press, and so on.

Public funding of election campaigns

19. Under French law there are two procedures for reimbursing election expenses. The first procedure concerns the official campaign. Each candidate or list of candidates can request the assistance of a "Propaganda Committee" with a view to sending out a leaflet (known as the "*profession de foi*") and a ballot paper. To this end, the candidate or the list must provide the Chair of the committee with printed copies of the leaflet and a quantity of ballot papers at least equivalent to twice the number of registered voters by a date set by order of the Prefect for each round of voting.
20. Propaganda Committees are set up by no later than the date of the opening of the election campaign in all constituencies. They are chaired by a member of the national legal service. They are responsible for sending to all voters within the constituency, by no later than the Wednesday before the first round of voting, a single sealed envelope containing a leaflet ("*profession de foi*") and a ballot paper for each candidate or list and for distributing to each mayor's office in the

constituency, by no later than the Wednesday before the first round of voting, a quantity of ballot papers for each candidate or list at least equivalent to the number of registered voters.

21. Candidates who scored at least 5% of the vote (3% in elections to the European Parliament) are reimbursed by the state for the cost of the paper and printing of their ballot papers, posters and leaflets, and the cost of displaying posters. The amount refunded takes into account, firstly, a maximum number of documents determined by the Propaganda Committee and, secondly, maximum printing and display charges determined by order of the Prefect. Printing or copying expenses are refunded solely on submission of supporting documents and only for leaflets and ballot papers produced using ecological paper.
22. The second procedure concerns the refunding of election expenses recorded in the campaign accounts, which is confined to candidates having scored at least 5% of the vote (3% in elections to the European Parliament) whose campaign accounts have been approved by the CNCCFP (possibly following their revision); the CNCCFP determines the amount refunded after examining the accounts. The refund is restricted to 50% of the spending limit article L52-11 of the Electoral Code) and cannot exceed the amount of expenses paid with the candidate's personal contribution.

Other forms of public funding

23. The replies to the questionnaire say nothing about indirect funding of political parties or candidates standing for election. The GET noted during the on-site visit that the indirect funding could take on different forms, notably tax deductibility of donations, broadcasting time, in-kind services provided by local authorities (supply of staff and premises, opinion columns in local newspapers), funding of political newspapers with little advertising revenue and help for parliamentary groups.

Private funding of political parties

24. Private funding of political parties is governed by Sections 11 to 11-8 of the law of 11 March 1988. Under these rules donations cannot be paid directly to a party, but must go through its financial agent (which may be an individual or an association authorised as a fundraising association for the relevant party). The authorisation is given by the CNCCFP.
25. The following rules apply: a) donations by legal persons are prohibited, including in the form of goods, services or other direct or indirect benefits supplied at a discount; b) donations by another party or political group (Section 11-4), or a fundraising association of candidates standing in a French election and loans are, however, permitted; c) contributions or in-kind support by foreign states or a foreign political party are also prohibited (Section 11-4), which does not rule out donations by foreign individuals; d) donations in excess of € 150 to parties and political groups (by individuals) must be paid by cheque, bank transfer, direct debit or bank card; e) there is a ceiling of € 7,500 per year for all donations paid by individuals to the same political party or the regional or specialist entities attached to it, and the donor must be identified. (role of the financial agent)
26. A subscription to a political party does not count as a donation, for which the donor receives no consideration in return. A party is free to determine the amount of subscriptions, which can accordingly be differentiated according to the category of member concerned, in particular for an elected representative (elected representatives sometimes contribute part of the indemnities and

allowances relating to their office in the form of a subscription). There is no limit on subscriptions. However, a subscription paid under the conditions determined by the party must be consistent with the subscription laid down in the party's Statutes or a decision of the party's General Assembly. Where a subscription exceeds the subscription called up, the difference must be regarded as a donation and, in this case, counts toward the € 7,500 limit. A subscription moreover confers entitlement to the tax reduction provided for in Article 200 of the General Tax Code only if it has been paid directly to the financial agent.

27. In France, subject to the limits and conditions laid down by law, payments to parties are deductible for personal income tax purposes in accordance with Article 200 of the General Tax Code (cf. paragraph 30).
28. The replies to the questionnaire did not say which other sources of private funding exist. The GET learned during the on-site visit that parties can in practice have a variety of funding sources (income from property, legacies/donations, sale of publications, sale of services such as training, and so on).

Private funding of election campaigns

29. Law No. 95-65 of 19 January 1995 (concerning the prohibition of donations by foreign states and legal persons, apart from donations by political parties) also applies to payments to candidates. At the same time, donations by individuals for the funding of election campaigns are limited to € 4,600 per election. A candidate must not receive cash donations representing more than 20% of the permitted total campaign spending, where this amount is greater than or equal to € 15,000.
30. Under Article 200 of the General Tax Code the donations covered by Article L.52-8 of the Electoral Code, paid to an electoral fundraising association or a financial agent, as provided for in Article L. 52-4 of the same code, confer entitlement to a personal income tax reduction equivalent to 66% of the amount donated, within a limit of 20% of taxable income, where they are made on a non-repayable basis and for no consideration, paid by cheque, bank transfer, direct debit or bank card and mentioned in the supporting documents of the candidate's or list's campaign accounts. The same applies to the donations referred to in Section 11-4 of Law No. 88-227 of 11 March 1988 on financial transparency in politics, as amended, and to subscriptions paid to parties and political groups through their financial agents – an individual registered with the “Préfecture” or a financial agent registered with the CNCCFP. During the on-site visit the GET was unable to determine the various forms taken by donations in practice.

Expenditure

31. Because of the constitutional right of political freedom, there are no particular provisions establishing limits on parties' expenditure with regard to their activities.
32. As regards election expenses, limits have existed since the legislation passed in 1988. The law of 15 January 1990 on limitation of electoral expenditure and clarification of the funding of political activities extended the principle of spending restrictions to all elections taking place under universal suffrage in constituencies with over 9,000 inhabitants, the limits being determined according to the type of election. For example, the limits for the presidential and the legislative elections held in 2002 (the figures available at the time of the visit ⁶) were respectively

⁶ The figures in respect of the 2007 presidential elections: €16.166 million for the first round and 21.594 for the second round. For the 2007 parliamentary elections, a coefficient of 1,18 has been applied (Decree no. 2005-1014).

€ 14.796 million and € 19.764 million for the presidential elections and, for the legislative elections, ranged from € 20,331 (Wallis and Futuna) to € 74,178 (2nd constituency of Val d'Oise), with an average of € 60,000. Candidates in an election subject to a limit, qualifying to have their expenses reimbursed, receive a refund of 50% of the spending limit, confined to expenses they have effectively incurred in a personal capacity (their personal contribution). Limits apply to campaign spending incurred by candidates or heads of lists for the following elections: a) municipal elections in municipalities with over 9,000 inhabitants; b) cantonal elections in cantons with over 9,000 inhabitants; c) legislative elections; d) regional elections; e) elections to the European Parliament; f) presidential elections.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

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

Accounts

Political parties

33. Section 11-7 of Law No. 88-227, as amended, requires political parties to keep books and establish annual accounts (balance sheet and profit and loss account with annexes), which are to be certified by two auditors and submitted to the CNCCFP. These are consolidated accounts incorporating the accounts of political parties or groups and all organisations or entities in which the political group has more than half of the authorised capital, holds seats in the managing body, or within which it exercises deciding decision-making or managing authority and prepared under accounting methods defined by the National Accounting Board (*Conseil National de la Comptabilité*). There is no obligation to append the entities' individual accounts. It is for the political party or group to determine, in accordance with law, the entities whose accounts must be included in the consolidated accounts provided for under Section 11-7, in line with an Opinion (No. 95-02) issued by the National Accounting Board (*Conseil National de la Comptabilité*):. The scope of the consolidation therefore includes: a) the party or group's head office or national centre; b) financial agents covered by Section 11 of the law of 11 March 1988 (fundraising associations or individuals), who unquestionably come within the scope of consolidation defined by law; c) local organisations, such as federations, subject to duly justified exceptions. As regards other entities, especially those where the objective criteria relating to holding of half the share capital or half the seats in the management body are not met, it is for the political party or group to determine whether it exercises preponderant decision-making or managerial authority within them, such as to necessitate their inclusion in the consolidated accounts.
34. All donations and subscriptions and, in general, all of the party's sources of funds must be mentioned, as must contributions received from other political parties; the only exception is in-kind contributions (even in the form of evaluations). The notes to the accounts can give details of the persons or entities which have made loans to the party, but this is not obligatory.
35. A balance sheet and profit and loss statement is published in the official journal by the CNCCFP. On the basis of the model accounts (which are provided for by specific texts), the main heads of expenditure include: a) propaganda and communication; b) financial support for candidates' election campaigns; c) other financial support (for political parties or groups or other bodies); d) purchases of consumables; e) other external expenses; f) taxation; g) staff expenses; h) other operating expenses; i) interest expenses and bank charges; j) extraordinary expenses; k) depreciation and amortisation. These are aggregates that can, inter alia, be used to distinguish a

party's political activities. In the publications and the statements it issues to parties the CNCCFP stresses that careful accounting allocation and grouping of items in the correct aggregates is essential for transparency.

36. In accordance with the size of the constituency, the type of support for candidates must be mentioned. Furthermore, possible amounts invoiced by the political parties for services provided to the candidates will – if the case arises - have to be registered as "income". These headings in theory make it possible to link the parties' accounts and candidates' campaign accounts. However, no distinction is drawn in the parties' accounts between income/expenses for different types of election campaigns and the parties' accounts cover a calendar year from 1 January to 31 December, whereas candidates' campaign accounts can bridge two calendar years. Debts are recorded as liabilities in the balance sheet, if the case arises, under "loans and debts to credit establishments", "miscellaneous loans and debts", "accounts payable to suppliers and related accounts", "debts relating to tax and social security liabilities" or "other debts". An unpaid debt corresponds to a profit, which is comparable to a donation and must be regarded as such.
37. All donations must compulsorily be received through a financial agent; in practice, for parties this is in most cases an association. Conversely, for subscriptions parties can choose between collecting them directly (with no specific registration obligation nor any possibility of a tax reduction) or through an agent. Other types of income need not be received through the agent. Agents must file annual accounts showing donations and subscriptions received, with appended a detailed register of donors' and members' identities (names and addresses, amounts, payment method, date of payment). The standard accounting plan of the political parties does not provide for a registration of in-kind contributions by individuals (valuation of voluntary work).
38. As already mentioned, donations by individuals are subject to a limit of € 7,500 per year and per party for the same individual. This is normally verified by the agent, although parties may also perform checks where they have several agents, and subsequently by the auditors. Contributions from foreign individuals are permitted and registered in the same way as contributions from within France, without any special processing or registration procedure. Contributions by foreign legal persons - including foreign political parties - are not permitted, unless in the form of loans and under the same conditions as apply to legal persons established under French law.
39. The CNCCFP exercises supervision in these matters, although the volume of donation receipts issued sometimes makes this a difficult task. An experiment with a partly paperless system of donation receipts run in 2007 showed that this was a feasible way of carrying out genuine supervision subject to an improvement in parties' internal control procedures, and those of their agents, and to validation of the supporting documents by the Commission before the receipts were issued. Whereas the position of the natural person and the identity of the person are subject to registration and a double check by the agent and the CNCCFP, the origins of funds donated by individuals are on the other hand not verified.

Election campaigns

40. There are no party campaign accounts. The sole exception concerned the eight parties selected (in accordance with eligibility criteria laid down by decree No. 2005-238) to have their campaign expenditure refunded, subject to a € 800,000 limit, for the referendum on the "Treaty establishing a Constitution for Europe", which were required to file a statement of expenses and supporting documents with the CNCCFP.

41. As regards candidates' campaign accounts, each candidate is required to file such accounts. Candidates may or may not be affiliated to a party. The campaign accounts must be submitted by an accountant registered with the Association of Chartered Accountants. Accountants need not be approved by the CNCCFP, which merely verifies that they are registered with the Association. The CNCCFP has, however, drawn up specific model accounts, which record income and expenses.
42. With regard to income, the accounts include: a) donations by individuals; b) candidates' personal contributions (and those of other candidates on the same list for elections held under the list voting system); c) bank loans taken out by the candidate; d) borrowings from political parties and groups; e) borrowings from individuals; f) non-refundable payments by political parties; g) expenses paid directly by political parties; h) in-kind contributions by the candidate, political parties or groups or individuals; i) miscellaneous income; j) interest income. A list of in-kind contributions must be provided, giving the name of the contributor, the nature and date of the contribution and an evaluation of the amount. Contributions must be registered individually and as a whole. The accounts include full information on donors: surnames, first names, addresses (the Commission also requires copies of cheques made out for amounts in excess of € 150). No other information is required. The limit of € 4,600 (per donor and per election) can be verified by the CNCCP for the same candidate and possibly the same constituency. However, systematic verification at national level is very difficult and requires considerable resources (optical scanning of receipt stubs and compiling a database in connection with the "Gardons" data processing project authorised by the Commission Nationale Informatique et Libertés (CNIL, the French data protection authority)). Loans are registered individually; they may be repaid after the campaign accounts have been filed. The Commission reserves the right to request subsequent proof of repayment, primarily where the lender is a legal person or an individual exceeding the limit on donations.
43. In principle, all donations are taken into account as long as they come within the context of the campaign, which runs for one year prior to the election month. This also applies to legacies, which must be recorded by political parties. Concerning individual candidates, legacies are regulated by civil law outside the context of campaigns.
44. With regard to expenditure, the campaign accounts include all items of expenditure regarded as electoral in nature, that is to say committed or incurred so as to win votes. This functional definition has been clarified by the courts on a case by case basis (for example, some restaurant bills do not come within the definition). Expenses must be supported by detailed invoices and proof of payment.
45. In the constituencies of more than 9000 inhabitants, all candidates in an election, whether European, presidential, legislative, regional or cantonal, are required to appoint a financial agent - an individual or an electoral financial association - by no later than the date of registration of their candidature. For example, for legislative elections the time-limit is 6 pm on the fourth Friday before polling day. The agent's task is to collect the campaign funds over the year preceding the first day of the month in which the election takes place and up to the date of filing of the candidate's campaign accounts. The agent settles expenses incurred in connection with the election prior to the date of the round of voting in which its outcome is settled, with the exception of expenses borne by a party or a political group. Expenses incurred directly by the candidate or on his/her behalf before the agent's appointment are reimbursed by the agent and appear in his/her post office or bank account. Agents are required to open a single post office or bank account to be used for all the transactions they handle.

Donors

46. Donors having the status of a "legal person": As already mentioned, the principle is that legal persons are prohibited from participating in political funding, with the exception of donations by political parties (which are subject to the law on financial transparency of politics and must have complied with their accounting obligations, that is to say have filed consolidated accounts certified by two auditors within the statutory time-limit). Information on payments between political parties and groups is set out in the notes to the accounts, and the origin of the funds is verified as part of the auditing procedures.
47. Donors having the status of a "private individual": These may be donors proper or (subscription-paying) members; the latter may be elected representatives, in which case they can pay in part of the indemnities and allowances relating to their office as a specific "elected representative's subscription". The principle governing donations or subscriptions paid by individuals to political parties or candidates is preservation of anonymity in respect of third parties, including the tax authorities (an exception to the tax authorities' right to information), unless the donation exceeds € 3,000. Donors may enclose a receipt serving as proof of payment for the tax authorities when filing their tax return, but below the € 3,000 threshold this receipt enabling the donor to obtain a personal income tax reduction does not mention the agent's details or indicate the candidate or political party receiving the funds. Individuals are under no obligation to declare their donations or subscriptions to any other authority.
48. The need to verify both the origins of funds (natural persons) and compliance with the limit on donations led Parliament to pass legislation requiring financial agents to register donors and subscribers and to issue receipts irrespective of the amount received. The CNCCFP is responsible for producing and authenticating these receipts, which are made available in the form of books of numbered vouchers or forms, of which the agents can obtain as many as they need. The CNCCFP then recovers the stubs of these receipts.

Other reporting requirements

49. Political parties and individuals funding political parties or candidates have no additional, more specific reporting requirements, as such. Under Section 11-7 of the law of 11 March 1988 political parties must file their certified annual accounts. Individuals who have received a fiscal receipt may include them in their income tax return.
50. However, certain elected representatives and political officials are required to file a statement of their assets with the Commission for Financial Transparency in Politics, including members of the Government; members of the National Assembly; senators; France's representatives in the European Parliament; Presidents of Regional Councils; the Presidents of the Corsican Assembly and of the Executive Council of Corsica; Presidents of overseas territorial assemblies; mayors of municipalities with over 30,000 inhabitants, and so on (see the list in paragraph 75). The information supplied to this Commission is kept confidential.

Requirements concerning filing and publication of accounts

51. As already mentioned, certain elected representatives and political officials are required to file a statement of their assets with the Commission for Financial Transparency in Politics.

52. Political parties are not required to make their financial records public and have free choice as to whether they communicate on the subject. It is the CNCCFP which is responsible for publishing the accounts of both political parties and candidates in an election. A simplified version of political parties' accounts is published in the French official gazette (*Journal officiel de la République française*) in the form of an annual notice by the CNCCFP (accounts for year n filed in June of year n+1 and publication target December n+1 or January n+2). They are made available in both paper and electronic form. The information published includes the consolidated balance sheet and profit and loss account with a description of the scope of consolidation of the certified accounts (list of aggregated or consolidated entities). The information can also be accessed on the CNCCFP web-site.
53. There are no specific provisions on access to political parties' detailed financial records by the general public or the media.
54. Candidates' campaign accounts are published after each election by the CNCCFP in the administrative documents collection of the official gazette. They are published in condensed, simplified form (saying more about income than expenses), and the Commission's decision regarding the accounts is also specified. For presidential elections, the initial accounts are published in the official gazette, followed by the Commission's decision concerning the accounts.
55. Consultation of campaign accounts and political parties' accounts filed with the CNCCFP is governed by the Law on Access to Administrative Documents. Following a number of opinions issued by the Commission on Access to Administrative Documents (CADA), these documents can be consulted on condition that personalised data (lists of donors for example) is concealed.

Third Parties

56. During the on-site visit, the GET was informed that the question of third parties, which is mostly considered in France to be an Anglo-Saxon concept, had not been dealt with in the regulations so far.

Retention of documents

57. Candidates' campaign accounts and political parties' annual accounts, as filed with the CNCCFP, are kept by this Commission for some time before being transferred to the national archives. The donation receipt stubs (records of individuals' donations) and the related information or supporting documents are retained for three years by the Commission - the period during which they may be called into question by the tax authorities and the judicial authorities (upon the tax services' or CNCCFP's initiative) - then destroyed. There are no specific provisions concerning a retention period for political parties or related entities' financial records, concerning which the ordinary rules apply (depending on the legal nature and/or economic activity of the body concerned).⁷

⁷ As a general rule, the tax regulations require books, registers and other records to be retained for six years, during which the tax authorities may exercise their rights of information, investigation and inspection. The Commercial Code requires commercial companies to retain their financial records and supporting documents for ten years.

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

a) Internal controls

58. The legislation provides solely for external controls. There are no specific internal auditing or control requirements incumbent on the entities and persons concerned (parties, entities related directly or indirectly to parties, affiliated organisations, candidates, etc.). Under both the legislation on funding of politics and the law of associations the principle of freedom of organisation and management applies to political parties and their related entities, whether closely linked or not. However, the external supervisory authorities (statutory auditors, CNCCFP) may encourage the adoption of internal audit and control measures, notably by issuing recommendations in these matters. The discussions held with the representatives of two political parties showed that they had not introduced specific rules of ethics or internal control regulations.

b) Certification of the accounts by statutory auditors (political parties) and presentation of accounts by professional accountants (candidates)

59. The accounts which parties file each year with the CNCCFP must have been certified beforehand by two statutory auditors. The latter must be registered with a professional organisation (Regional Association of Auditors) and apply the professional standards in force. They are not "approved" by the Commission. There is a specific professional standard governing the auditing of political parties' accounts (Standard No. 7-103 on certification of the accounts of political parties and groups). The auditors are required to certify that the accounts have been drawn up in accordance with the legislation in these matters and the applicable accounting standards and accordingly to implement auditing methods appropriate to the entity being audited and necessary to provide reasonable assurance that these requirements have been met: a) verifying that the accounts give a true and fair view on the basis of all the relevant documents; b) checking the lawfulness of the party's funding. They issue an audit report, which may contain qualifications and/or observations, and can withhold certification if they note any irregularity or are unable properly to perform their audit (for example, in one case, concerning the 2005 accounts, the auditors deemed that they had not had sufficient time to carry out their procedures). Any observation or qualification issued by the auditors is published by the CNCCFP along with the parties' accounts. In case they uncover an irregularity, auditors must inform the managing body of the party. The auditors' procedures include verifying compliance with the rules on collection of funds by financial agents. Standard 7-103 dates from 2003 and has not been revised since. Its implementation is facilitated by the certification of the general standards of the profession and by the application of the code of conduct of the profession, which was approved by decree n° 2005-1412 of 16 November 2005⁸.

60. Auditors are also subject to a reporting requirement under criminal law, reiterated in standard 7-103, which is very clear in this respect: "Reporting of offences to the public prosecutor: a) If, while performing their assignment, the auditors become aware of acts likely to constitute an offence, they shall disclose the relevant information to the public prosecutor pursuant to Article L. 225-240 (by reference of Article L. 820-1 of the Commercial Code). The disclosure requirement incumbent on auditors of political parties or groups encompasses offences which come to their knowledge, irrespective of the status or office of the persons to which they can be attributed, and whatever the entity or structure within which they are committed, whose accounts are included in

⁸ The code of conduct lays down certain principles: the auditors must be independent of each other, they must not render services to the political party or group in the capacity of accountant or financial agent, nor must they hold a managerial position within the party or group or a political mandate within a local authority. The auditor's term of office cover six financial years and can be renewed.

the political party or group consolidated accounts. Auditors are required to disclose acts that come to their knowledge in so far as they are significant and deliberate; b) If the entity within which the offences were committed has its own auditor, the auditors of the political party or group shall enter into contact with this fellow auditor so as to discuss the nature and the significance of the acts noted. They shall keep each other informed of their respective decisions with regard to the disclosure requirement imposed on them."

61. As regards candidates (and their agents), campaign accounts are not subject to any audit or certification by statutory auditors. They are presented by a professional accountant following an examination of all the supporting documents.
62. As already mentioned, non-profit associations (which may be linked to a party without the latter exerting any decision-making or managerial power that would imply their integration into the certified accounts of the party) are not subject to any supervision by auditors or state authorities, except where they have received private donations or public grants in excess of € 153,000. The GET was informed that legislation should come into force in 2009 aimed at reinforcing the rules governing such associations where they hold significant funds (publication of the accounts in the official gazette, certification by a professional auditor, but not necessarily one independent of the association). Foundations are already subject to this kind of supervision where they have been declared to be in the public interest (and therefore receive public funding).

c) Supervision exercised by the National Commission for Campaign Accounts and Political Funding (CNCCFP)

63. The CNCCFP has a key supervisory role. It was established under Law No. 90-55 of 15 January 1990 on limitation of electoral expenditure and clarification of political funding, and was set up on 19 June 1990. The law of 15 January 1990 defines it as a collegial body. The Constitutional Council has added that the Commission is an "administrative authority not a court" (decision 91-1141 of 31 July 1991). In its 2001 public report the *Conseil d'État* included the Commission in the category of independent administrative authorities, a status which was legalised by Order No. 2003-1165 of 8 December 2003 concerning administrative simplifications in electoral matters. Decisions of the CNCCFP can be challenged before the *Conseil d'État* according to general law.
64. The CNCCFP's nine members are senior members of the national legal service and are appointed for a renewable five-year term under a decree issued by the Prime Minister: three members are appointed on a proposal by the Vice-President of the *Conseil d'État*, three on a proposal by the First President of the Court of Cassation and three on a proposal by the First President of the *Cour des comptes*. They elect their President, who designates a Vice-President. They cannot be removed from office (early termination is possible only on their resignation or death). The appropriations and uses of funds necessary to the Commission's functioning are recorded in the state's general budget (Ministry of the Interior and Regional Planning). The law of 10 August 1922 on organisation of the supervision of expenditure commitments does not apply to the Commission's expenditure. It is subject to the judicial supervision of the *Cour des comptes* (the French National Audit Office).
65. The Commission has a secretariat of about thirty civil servants and staff on contracts of limited duration. The civil servants, most of whom come from the Ministries of Justice, Finance and the Interior, are seconded to the Commission under a renewable three-year contract. During the period when the accounts are being checked the secretariat needs additional back-up staff (15 in 2008) who are employed under short-term contracts for a number of months. The Commission's

budget for 2008 totalled € 4.5 million. With a view to checking campaign accounts, the Commission uses the services of rapporteurs (some 200 in 2008, principally civil servants and members of the judiciary or the prosecution service, still in active service or retired) who are responsible for performing an initial examination of the files. This is because of the very high number of accounts submitted for a general election and the short time-limits in which the Commission has to take its decision: two months for the accounts of candidates in an election which resulted in the filing of a complaint with the court having jurisdiction, and six months for the accounts which have triggered no dispute. Upon expiry of the 6 month limit, the accounts are deemed to have been approved (art. 52-15).

66. The CNCCFP has a dual role: supervising compliance with political parties' accounting and financial obligations and checking candidates' campaign accounts. In case the CNCCFP does not approve campaign accounts or the latter were not submitted within the deadlines, it refers the matter to the court with jurisdiction for the election, which rules on candidates' ineligibility, on their good faith (which would trigger only pecuniary sanctions), or on the validity of the CNCCFP's decision. If the latter happens, a candidate would have to ask the CNCCFP make a new decision in his/her matter in order to determine the amount of the reimbursement to be paid by the State. The decisions rendered by the CNCCFP on the political parties' accounts can be challenged administratively with the CNCCFP itself or taken to court (the *Conseil d'Etat*).
67. With regard to supervision of compliance with political parties' accounting and financial obligations, the CNCCFP - because of the constitutional freedom of political parties - only performs a review of lawfulness, and not expediency. This therefore does not concern parties' expenditure, but solely their resources. The CNCCFP has the following tasks: a) verifying parties' compliance with their accounting and financial obligations and sending the government an annual list of parties having failed to comply, in which case they lose their public funding for the following year; b) publishing a condensed version of parties' accounts in the official gazette; c) giving or withdrawing approval of parties' fundraising associations; d) managing the donation receipts request forms; e) when examining donation receipt stubs, verifying compliance with the law of 11 March 1988; f) supervising compliance with the specific requirements incumbent on financial agents (individuals or fundraising associations) and sanctioning any failure to comply by withholding distribution of the donation receipt vouchers; g) reporting to the public prosecutor any act possibly constituting a criminal offence which comes to its knowledge.
68. The CNCCFP verifies political parties' compliance with their accounting obligations following the filing of consolidated accounts certified by two statutory auditors but does not have access to all the supporting documents; this consists in verifying compliance with essential formalities and reviewing the accounts' general consistency (recording of public funding, cross-funding between political parties and reconciliation with the funds received by financial agents for which receipts have been issued). The Commission can consider that a party which filed its certified accounts within the statutory time-limit has nonetheless failed to comply with its legal obligations if the documents in its possession show inconsistencies (one occurrence in respect of the 2006 accounts, for example). Where a party has failed to comply with its accounting obligations, it no longer benefits from the exemptions provided for in Section 10 of the Law on Financial Transparency in Politics. In this case a party which has benefited from public funding can be subject to the supervision exercised by the *Cour des comptes* and loses its entitlement to such public funding.
69. The CNCCFP is not empowered to verify supporting documents or perform on-site control procedures, and parties' auditors can refuse its requests on grounds of professional

confidentiality. The CNCCFP is not authorised to require parties or their agents to provide accounting records or other financial and bank documents. Nor can it request any information concerning suppliers of goods or services.

70. In connection with the investigations they perform by law (tax inspections, judicial investigations, etc.) the police, judicial and tax authorities can obtain access to parties' accounting records by implementing their usual procedures in such matters. In the case of the tax authorities, specific rules govern enforcement of their right to information in the case of donation receipts: it is the CNCCFP which authenticates such receipts on their behalf and reports any that should be annulled. In performing this task, the CNCCFP exercises tangible supervision. Financial agents must provide it with copies of supporting documentation for their incoming funds (bank statements, cheque deposit slips, detailed listings).
71. As regards supervision of campaign accounts, candidates' accounts, presented by an accountant, must be filed with the CNCCFP by no later than 6 pm on the ninth Friday following the round of voting in which the election's outcome is settled. The CNCCFP then has six months to approve the campaign accounts or, following an inter partes procedure, reject or revise them.
72. In the case of campaign accounts the CNCCFP's tasks pursuant to the Electoral Code are as follows: a) verifying the campaign accounts of candidates in presidential, European, legislative, regional, cantonal, municipal, territorial and provincial (overseas) elections in constituencies with over 9,000 inhabitants; b) requesting the police to perform any investigation deemed necessary to the performance of the CNCCFP's role (Article L. 52-14); c) approving, revising or rejecting the accounts following an inter partes procedure and noting cases where candidates have failed to file accounts or filed them beyond the time-limit; d) referring to the court with jurisdiction for the election any cases of rejection of campaign accounts, failure to file campaign accounts, late filing of campaign accounts or where, after their revision, the accounts show that the limit on election expenses has been exceeded (Article L.118-3); e) referring to the relevant public prosecutor any case in respect of which irregularities that may constitute breaches of Articles L.52-4 to L.52-13 and L.52-16 of the Electoral Code have been found (in particular breaches with regard to donations and expenses that may qualify as "vote buying" for which a sentence of up to two years' imprisonment may be incurred (Articles L.106 and L.108)); f) determining the amount of the flat-rate reimbursement due by the state; g) determining, in all cases where the Commission has given a decision finding that the election expenses limit has been overrun, the sum equivalent to the amount by which the limit has been exceeded which the candidate is required to pay to the French Treasury (Article L.52-15); h) filing with the Bureau of the Chambers of Parliament, within one year of the general election to which the provisions of Article L.52-4 apply, a report taking stock of its activities and setting out all its observations (Article L.52-18); i) publishing a simplified version of the campaign accounts in the official gazette (Article L.52-12 paragraph 4).
73. As with political parties' accounts, the CNCCFP is required to inform the tax authorities of any breaches of the legislation on deductibility of donations that come to its knowledge in the light of its examination of the donation receipt stubs.
74. The CNCCFP is provided with full supporting documentation (originals) for all income and expense items so as to verify their lawfulness and determine the amount to be refunded by the state. It may approve, revise or reject the accounts. It does not perform any on-site control procedures and the inter partes examination is conducted by written procedure. As already mentioned, the CNCCFP may request the assistance of the police (Article L.52.14 of the Electoral

Code), in particular to cross-check the information contained in the candidates' campaign accounts.

d) The role of the Commission for Financial Transparency in Politics (CTFVP)

75. Certain elected representatives and political officials are required to file a statement of their assets with the Commission for Financial Transparency in Politics (CTFVP), which was set up in 1988 with the adoption of the legislation on political funding. All candidates for the office of President of the Republic are required to submit a statement of their assets to the President of the Constitutional Council, in a sealed envelope. A second statement is drawn up before the end of the elected President's term of office. Statements of the assets of the President of the Republic are published in the official gazette (*Journal officiel*). Similarly, on taking up and leaving their duties, or at the beginning and end of their term of office, the following elected representatives must submit a statement of their assets to the President of the Commission for Financial Transparency in Politics: 1) members of the Government; 2) members of the Senate; 3) members of the National Assembly; 4) France's representatives in the European Parliament; 5) Presidents of Regional Councils; 6) Presidents of General Councils; 7) the Presidents of the Corsican Assembly and of the Executive Council of Corsica; 8) Mayors of municipalities with over 30,000 inhabitants or the Presidents of groups of municipalities empowered to levy their own taxes with over 30,000 inhabitants; 9) members of the Regional Councils, the Executive Council of Corsica, the General Councils and Deputy Mayors, where they have been delegated signature authority respectively by the President of the Regional Council, the President of the Executive Council, the President of the General Council or the Mayor; 10) the President and the members of the governments of New Caledonia and French Polynesia; 11) the Presidents of the General Council of Mayotte or the Territorial Councils of Saint-Barthélemy, Saint-Martin and Saint-Pierre-et-Miquelon, the Presidents and Vice-Presidents of the Provincial Assemblies of New Caledonia; 12) the members of the General Council of Mayotte, of the Territorial Councils of Saint-Barthélemy, Saint-Martin and Saint-Pierre-et-Miquelon, members of the Assembly of French Polynesia, the President and Members of the Congress of New Caledonia. The CTFVP verifies that the individuals concerned have not benefited from any abnormal personal gain by virtue of their office or their duties. To this end, they are required to file an initial statement of their assets within two months of their appointment or of taking office, and a second within two months of the end of their appointment or term of office. While holding office or performing their duties, they also inform the Commission of any substantial change in their assets, whenever they deem necessary. This procedure currently concerns about 6,000 people, namely members of the government, members of the National Assembly, senators, France's representatives in the European Parliament, local elected representatives, elected representatives in French Polynesia and New Caledonia and senior managers of public sector organisations.
76. The CTFVP is also categorised as an independent administrative authority. It has three ex officio members, namely the Vice-President of the *Conseil d'État*, who chairs the Commission, the First President of the Court of Cassation and the First President of the *Cour des comptes*, and six other full members and six substitute members, all of whom are members of the judiciary, either in active service or on an honorary basis, originating from the *Conseil d'État*, the Court of Cassation and the *Cour des comptes*. They are appointed for a four-year term, which can be renewed once. The Commission has a secretariat of six full-time staff members and is currently being assisted by nine rapporteurs.⁹

⁹ Appointed by the Vice-President of the *Conseil d'État*, the First President of the Court of Cassation and the First President of the *Cour des comptes* among judges of these three branches of the courts.

77. The Commission's role consists in assessing changes in the assets of the persons concerned as reflected in the statements and observations they have transmitted to it. Should the Commission note a change in their assets that remains unexplained after the person concerned has been offered an opportunity to submit observations, it refers the case to the public prosecutor's office. The Commission is not empowered to impose sanctions. The statements filed and any observations lodged by the persons concerned with regard to changes in their assets are confidential. They can be disclosed only at the express request of the person concerned or his/her dependants, or at the request of the judicial authorities where their disclosure is necessary to the resolution of proceedings or to discovery of the truth. The members of the CTFVP are subject to very stringent confidentiality requirements and any disclosure of information apart from in the above cases carries a penalty of one year's imprisonment and/or a fine of € 45,000 (Section 4 of Law No. 88-227 by reference to Article 226-1 of the Criminal Code on infringement of another person's privacy).
78. Since 1988 the Commission has had to contend with a significant increase in its workload. This is a result, firstly, of Law No. 95-126 of 8 February 1995, which extended the reporting obligation to members of Regional Councils and General Councils and to deputy mayors of municipalities with over 100,000 inhabitants, where they have been delegated signature authority, and, secondly, the strong growth, following the elections of 2001 and 2004, in the number of persons delegated signature authority by Presidents of Regional Councils and General Councils and by mayors. According to its own estimates the Commission will have to deal with some 8,000 case-files between 2008 and 2012, of which 4,000 will concern elected representatives.

e) Other forms of supervision

79. Anyone can challenge an election's validity, including on grounds of failure to comply with the rules on campaign financing. The time-limit for lodging a complaint varies depending on the type of election concerned but is usually less than or equal to ten days after the declaration of the results. For example, Article LO 180 of the Electoral Code provides "As stated in Article 33 of Order No. 58-1067 of 7 November 1958, the election of a member of the National Assembly may be challenged before the Constitutional Council within ten days of the declaration of the results of the election." Under Article LO 182 of the same code the complainant is required to stipulate the grounds for annulling the election that are being invoked.
80. The Ministry of the Interior and the state prefectures at local level participate to some extent in the supervision of election expenses since it is for them to verify that indirect state support in the form of refunding of expenditure on electoral propaganda is consistent with the expenses actually incurred. The prefectures are also responsible for re-allocating possible amounts that would exceed campaign accounts.
81. As a general rule, the *Cour des comptes* exercises supervision over the use of public funds paid to associations. However, this does not apply to political parties, apart from in cases where a party is expressly made subject to its supervision where the CNCCFP's examination revealed that a party has committed an infringement (last para. of article 11-7 of the law of 1988, as amended).
82. The Central Corruption Prevention Department (SCPC), which is an independent administrative authority with inter-ministerial composition but without means of investigation or supervision, can notify the public prosecutor where the information which it routinely centralises brings to light

possible breaches of the law.¹⁰ Its representative nonetheless indicated that the SCPC had not had occasion to report suspicions linked to political funding, since it in practice did not play an intelligence role.

83. Lastly, at a general level, tax inspectors and the judicial authorities may exercise supervision in the performance of their duties. In this connection, it can be noted that all authorities, public officials and civil servants are required to report offences that come to their knowledge to the public prosecutor (Article 40 of the Code of Criminal Procedure).

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

a) Administrative and criminal sanctions imposed in connection with the supervision exercised by the CNCCFP

84. The GET found the rules on sanctions complex to examine. Apart from various omissions (and sometimes obsolete information) in the replies to the questionnaire, the terms of Law No. 88-227 of 11 March 1988 are complicated, combining criminal and administrative sanctions without it always being clear for the reader to whom they apply.

Political parties

85. The table below, drawn up by the GET, attempts to give an overview:

Breach	Sanction	Person sanctioned
Party accounts not prepared / certified by the auditors / filed on time with the CNCCFP (Section 11-7, paragraph 2, Law 88-227)	- Loss of public funding under Law 88-227 for the subsequent year - Loss of exemption from supervision by the <i>Cour des comptes</i>	Party or political group
Donations by identified persons received without going through the financial agent or fundraising association (Section 11-8, Law 88-227)	- Loss of public funding under Law 88-227 for the subsequent year - Loss of exemption from supervision by the <i>Cour des comptes</i>	Party or political group
Donations by unidentified persons or exceeding the € 7,500 limit on donations by the same individual (Section 11-4, Law 88-227 and Art. R.39-1 of Decree n°90-606)	- € 3,750 fine and/or 1 year's imprisonment	Donor and/or beneficiary
Donations by legal persons, in any form, apart from the permitted cases (Section 11-4, Law 88-227)	- € 3,750 fine and/or 1 year's imprisonment	Donor and/or beneficiary
Fundraising association or agent fails to issue receipt or failure to comply with conditions of use of receipts (Section 11-4, Law 88-227)	- € 3,750 fine and/or 1 year's imprisonment	Donor and/or beneficiary
Cash donation of more than €150 (Section 11-4, Law 88-227)	- € 3,750 fine and/or 1 year's imprisonment	Donor and/or beneficiary
Contributions or material support received from a foreign state or a legal person established under foreign law (Section.11-4, Law 88-227)	- € 3,750 fine and/or 1 year's imprisonment	Donor and/or beneficiary
Non-compliance of documents calling for donations (Section 11-4, Law 88-227)	- € 3,750 fine and/or 1 year's imprisonment	Beneficiary
Non-compliance of documents calling for donations (Decree 90-606 by reference to the above Section)	- Class 4 offence fine (€ 750 under Article 131-13 of the Criminal Code)	Financial agent or fundraising association manager
Non-compliance with approval conditions or failure to open a single account for collection of donations (Section 11-6)	- Withdrawal of approval	Fundraising association manager

¹⁰ Section 2 of Law No. 93-122 of 29 January 1993 on prevention of corruption and transparency in business and public proceedings

86. The case-law has confirmed that a political party on which a sanction has been imposed is also no longer permitted to fund an election campaign or another political party which is subject to the provisions of the law on financial transparency. Failure to comply with fund collection procedures is also liable to result in withdrawal of a fundraising association's approval.

Election campaigns

87. The various sanctions applicable are laid down in the Electoral Code. The CNCCFP refers to the court with jurisdiction for the election any cases of rejection of campaign accounts, failure to file campaign accounts, late filing of campaign accounts or where, after their revision, the accounts show that the limit on election expenses has been exceeded (Article L.118-3). It is therefore this court which imposes, where applicable, the sanctions provided for in the Electoral Code. The courts with jurisdiction for elections are: (1) the Constitutional Council for presidential elections, elections to the National Assembly and the Senate and referendums, (2) the administrative courts and the *Conseil d'État*, as court of appeal, for municipal and cantonal elections and (3) the *Conseil d'État*, as court of first and last instance, for European Parliament, regional and local elections.
88. The CNCCFP can apply specific financial sanctions for breaches of the rules on campaign accounts: a) revision of the accounts, possibly reducing the amount of election expenses and hence their reimbursement; b) referral to the court with jurisdiction for the election in the event of rejection of the accounts; if the court upholds the Commission's decision the candidate will not anymore be entitled to the reimbursement (and can be declared ineligible or even be automatically considered to have resigned in the case of an elected representative); c) in all cases where a final decision has been given finding that the limit on election expenses has been exceeded the CNCCFP determines a sum equivalent to the amount by which the limit has been exceeded which the candidate is required to pay to the French Treasury.
89. If the CNCCFP considers that a criminal offence has been committed, it can also refer the matter directly to the public prosecutor's office, which will then decide whether to bring a prosecution. Article L. 113-1 of the Electoral Code (inserted by Law No. 90-55 of 15 January 1990) provides for a number of criminal offences, all sanctioned with a fine of € 3,750 and/or a prison sentence of at most one year. Some offences concern candidates.

Article L. 113-1 of the Electoral Code:

"A fine of € 3,750 and a one-year prison sentence, or only one of these two penalties, shall be incurred by any candidate, for an election held under the uninominal voting method, or any candidate heading a list, for an election held under the list voting method, who: 1. with a view to funding an election campaign, has collected funds in breach of Article L. 52-4; 2. has accepted funds in breach of Article L. 52-8 or L. 308-1; 3. has exceeded the limit on election expenses determined pursuant to Article L. 52-11; 4. has failed to comply with the rules governing the preparation of campaign accounts laid down in Articles L. 52-12 and L. 52-13; 5. has reported wittingly understated accounting information in the campaign accounts or the notes thereto; 6. has benefited, at his or her request or with his or her express approval, from the display of posters or from commercial advertising not in conformity with the provisions of Articles L. 51 and L. 52-1; 7. has benefited, at his or her request or with his or her express approval, from public dissemination of a free phone line or telematic service."

90. This legislation aims to punish all instances of breaches of the rules on campaign financing. Other offences concern donors. Section II of Article L. 113-1 provides "A fine of € 3,750 and a one-year

prison sentence, or only one of these two penalties, shall be incurred by anyone who, with a view to an election campaign, has made a donation in breach of Article L. 52-8. Where the donor is a legal person, the provisions of the above paragraph shall apply to its de jure or de facto managers." Lastly, section III of Article 113-1 of the Electoral Code provides "A fine of € 3,750 and a one-year prison sentence, or only one of these two penalties, shall be incurred by anyone who, on behalf of a candidate or a candidate heading a list, without acting at their request or obtaining their express approval, incurs expenditure as provided for in Article L. 52-12." The objective is to guarantee that candidates have control over expenditure incurred on their behalf. The legislation safeguards them against any expenses incurred without their knowledge or their express approval. Pursuant to the principle laid down in Article 121-3 of the Criminal Code, whereby "there is no offence in the absence of an intent to commit it", these various offences must be intentionally committed.

91. Article L. 168 of the Electoral Code also provides "A fine of € 3,750 and a three-month prison sentence, or only one of these two penalties, shall be incurred by anyone who breaches the provisions of Articles ... L. 164 to L. 167."
92. Article R. 94-1 of the Electoral Code, inserted by Decree No. 90-606 of 9 July 1990 implementing Law No. 90-55 of 15 January 1990 on limitation of electoral expenditure and clarification of the funding of political activities, provides "any manager of an electoral fundraising association or any financial agent who breaches Article L. 52-9 shall incur the fines laid down for class 4 offences."
93. Article L. 52-9 of the Electoral Code provides: "Certificates or documents issued by an electoral fundraising association or a financial agent and intended for third parties, in particular those used to call for donations, shall specify the candidate or list of candidates in receipt of the sums collected and the name of the association and the date on which it was declared or the name of the financial agent and the date on which he or she was appointed. They shall also state that the candidate can receive donations only through the intermediary of the said association or agent and shall reproduce the terms of the preceding Article."
94. As mentioned above with regard to the sanctions applicable to political parties, under Article 131-13 of the Criminal Code the amount of the fine incurred for class 4 offences is € 750

Common principles applicable to the funding of parties and election campaigns

95. With regard to the criminal sanctions, the offence is deemed to have been perpetrated only where there is a mental element. The offences concerned come within the category of "*délits*" (lesser indictable offences). The fine of € 3,750 can be multiplied by five in the case of a legal person, and this applies to parties as well as donors. Under the ordinarily applicable rules, breaches of the law resulting in the imposition of criminal law penalties can also lead to exclusion from public procurement processes.

b) Sanctions applied in connection with the procedure involving the Commission for Financial Transparency in Politics (CTFVP)

96. The sanction for failure to submit a statement of assets to the CTFVP is one year's ineligibility or, for a senior manager of a public body, cancellation of appointment.

Immunities, statute of limitations, other aspects

97. In matters of immunity from prosecution, the ordinary rules apply (see GRECO's First Round Evaluation Report). These rules are applicable to the President of the Republic and the members of both Chambers of Parliament. Members of the Government shall be criminally liable for acts performed in the exercise of their duties and classified as serious offences ("crimes") or lesser indictable offence ("délits") at the time they were committed, and they shall be tried by the Court of Justice of the Republic. On the other hand, the constitution provides that the President of the Republic enjoys total immunity and cannot be subject to an criminal proceedings. There are two exceptions to this presidential immunity: in case where the International Criminal Tribunal is involved or where the (newly introduced) impeachment procedure applies. The impeachment decision lies with the parliament seating as a High Court. The GET noted that the previous President, whose immunity has caused much debate in France, was in the end charged after having left office.¹¹
98. For a lesser indictable offence, the time-limit for bringing a prosecution is three years (Article 8 of the Code of Criminal Procedure). For a minor offence, it is one year (Article 9 of the Code of Criminal Procedure). In the case of lesser indictable offences the time-limit for enforcing the penalties themselves is five years from the date of the decision whereby the sentence became final (Article 133-3 of the Criminal Code). For minor offences, it is three years (Article 133-4 of the Criminal Code).

d) Statistics

99. The CNCCFP has no information on the possible reporting of offences to the public prosecutor by statutory auditors nor, for reasons of judicial secrecy, does it know in detail what follow-up the prosecutor's office has given to its own referrals. However, the follow-up action taken in response to referrals to the court having jurisdiction for an election is analysed in the CNCCFP's activity reports. For 1996 to 2006 the following statistics are available on convictions pronounced by the courts in respect of the offences provided for in the Electoral Code and the legislation on political funding:

Offence	Number of convictions
Direct collection of funds by a candidate to fund his or her election campaign (Article 113-1 I, 1 of the Electoral Code)	2000: 1 No convictions for the other years
Accepting a donation in excess of € 4,600 from an individual so as to fund an election campaign (Article 113-1 I, 2 of the Electoral Code)	2002: 1 No convictions for the other years
Candidate's failure to ensure that campaign accounts are prepared in conformity with the rules (Article 113-1 I, 4 of the Electoral Code)	1999: 1 2000: 4 2001: 2 2002: 2 2004: 2 No convictions for the other years
Donation of an amount in excess of € 4,600 by an individual to fund an election campaign (Article 113-1 II of the Electoral Code)	2001: 1 No convictions for the other years
Acceptance of donations without issuing receipts committed by a political party (Section 11-5 of Law No. 88-227 of 11 March 1988)	2004: 1 No convictions for the other years
Acceptance by a political party of a donation exceeding the annual limit of € 7,500 for an individual (Section 11-5 of Law No. 88-227 of 11 March 1988)	2004: 1 No convictions for the other years
Acceptance by a political party of a donation in excess of € 150 paid other than by cheque (Section 11-5 of Law No. 88-227 of 11 March 1988)	2004: 1 No convictions for the other years

¹¹ The charges were brought in November 2007 in connection with allegations concerning 35 fake jobs of adviser to the Paris municipal authority, which enabled the payment of salaries, inter alia, to persons performing political tasks on the ex-President's behalf.

100. The following penalties were imposed with regard to the above criminal convictions (the only convictions taken into account are those relating solely to offences in matters of party funding and funding of election campaigns):

Suspended sentence imposing a fine	3
Unsuspending sentence imposing a fine	0
Suspended prison sentence	4
Unsuspending prison sentence	0
Discharge without a penalty	0

101. Where a party or a political group has breached the rules on filing of accounts, it is no longer permitted to fund election campaigns or other political parties. The table below shows that, between 2000 and 2006, the bulk of the accounts filed by parties were satisfactory, although in a not insignificant number of cases (about one quarter of accounts for the period 2004 to 2006) accounts were not in conformity, were filed late or were not filed at all.

Financial year	Number of parties required to file accounts	Accounts in conformity	Accounts not in conformity or filed late	Failure to file accounts
2000	208	180	6	22
2001	205	176	9	20
2002	231	190	7	34
2003	244	195	4	49
2004	255	191	15	49
2005	259	205	14	40
2006	274	209	9	56

102. Similar, albeit more detailed, statistics are available concerning the checking of campaign accounts:

Type of election	Date	Number of accounts examined	Simple approvals	Tacit approvals	Approval after revision	Failure to file accounts	Late filing of accounts	Rejected	Transmitted to public prosecutor	Referred to court with jurisdiction for the election	Referrals in relation to number of candidates (%)
Cantonal	03/1992	7326	6225	3	539	277	137	145	7	559	7.63%
Regional	03/1992	867	672	1	145	17	7	25	0	49	5.65%
Legislative	03/1993	5254	4018	0	582	141	403	110	1	654	12.45%
Cantonal	03/1994	6762	5746	0	717	85	40	174	0	299	4.42%
European	06/1994	20	6	0	10	0	0	4	0	4	20.00%
Municipal	06/1995	4110	2794	0	1001	53	17	245	8	315	7.66%
Legislative	06/1997	6359	4791	0	1294	89	49	136	8	274	4.31%
Cantonal	03/1998	7094	4303	0	2418	173	25	175	50	373	5.26%
Regional	06/1998	851	406	0	399	17	1	28	2	46	5.41%
European	06/1999	20	5	0	12	0	0	3	0	3	15.00%
Cantonal	03/2001	7605	6085	36	1033	182	33	236	0	451	5.93%
Municipal	03/2001	3963	2668	0	1026	76	12	140	0	228	5.75%
Legislative	06/2002	8444	6495	4	1346	254	37	308	1	599	7.09%
Cantonal	03/2004	8159	6273	11	1401	192	67	215	0	474	5.81%
Regional	03/2004	226	100	0	109	5	3	9	0	17	7.52%
European	06/2004	169	82	0	57	15	2	13	0	30	17.75%
Legislative	06/2007	7634	5618	0	1510	239	76	191	2	506	6.63%

103. The following statistics are available concerning withdrawals of approval of political parties' financial agents/fund-raising associations:

Number of approvals	Type of withdrawal ¹²			Total
	Other	Sanction	On request	
Year				
2000	1	11	5	17
2001		9	4	13
2002	1	8	3	12
2003	4	10	110	124
2004	1	14	1	16
2005	1	7	28	36
2006	5	9	11	25
2007	3		59	62

IV. ANALYSIS

General considerations

104. The party funding scandals which took place in France have shown that the dividing line between party funding and personal enrichment has often been difficult to draw, and France felt it prudent to focus supervision of party funding on both political activities and the personal assets of elected representatives and certain political decision-makers, which is to be welcomed. Furthermore, the French system of funding for political parties and election campaigns clearly takes these two areas on board, as one of the specific features of the country is that a candidate is not necessarily affiliated to a party but that there can nevertheless be links between the two (parties are the only legal persons authorised to fund a candidate and can make contributions in kind or extend loans).
105. The system pursues two goals: first, to reduce the importance of money in politics and the dependence of parties on private donations, and second, to limit spending on elections. This system appears to have produced the anticipated results and has led to party funding more compatible with the rule of law, democracy and moral standards; the parties have, however, become very dependent on public funding since there is no upper limit on the share of their funds that may be of public origin (75 million Euros for 2009). On the other hand, a wide range of people with whom the GET spoke pointed out that it nevertheless remained possible to circumvent the law by various means, and it is gratifying that a number of institutions, such as the National Commission for Campaign Accounts and Political Funding (CNCCFP), the Constitutional Council and certain professional organisations are quick to identify the weaknesses and

¹² "Other" mainly corresponds to withdrawal of approval in cases where the Commission has noted that a party or fundraising association has been dissolved.

"Sanction" may correspond to withdrawal of approval in the cases provided for by law on the ground that a fundraising association has defaulted on its own obligations, but, up to 2006, it mainly corresponds to a CNCCFP practice consisting in withdrawing approval from the fundraising association of a party that had itself failed to fulfil its accounting obligations. In 2007 the *Conseil d'État* held (CE No. 300606 of 6 July 2007, fundraising association of the FREE DOM political party) that this practice was not permitted by law.

The majority of withdrawals are made "on request" either in connection with the restructuring of the political party concerned (for example, in 2003 when the UMP chose not to keep the fundraising associations of the RPR federations on the occasion of the RPR's transformation into the UMP, or in 2007 when the Front National decided that all donations by individuals would be collected through its national financial agent), or when a party wishes no longer to be covered by the legislation on financial transparency of politics.

inconsistencies in the legislation and themselves put forward proposals, thereby opening the door to legislative reform. In particular, the formal legal requirements are regarded by the GET as very complex, and a large proportion of the breaches noted by the CNCCFP in recent years, which have sometimes been severely penalised by ineligibility, were the result of failures to observe the formal procedure and insufficient clarity in or understanding of the texts (for example, on the precise role of financial agents). Discussions are currently under way at several levels.¹³

Transparency

106. The GET notes that parties which do not fall within the definition given by case-law (an entity which pursues a political aim, receives public funding and has appointed a financial agent) are not bound by the 1988 regulations on the financial transparency of politics; this does not appear to cause a real problem in the case of France in view of the number of parties (almost 300) which ultimately are required to file their accounts. It might be helpful when the legislation is next amended to include the definition derived from case-law. However, there are other more significant sectors which are also not bound by the regulations; these are a) candidates running a campaign and collecting (or arranging for the collection of) funds who at the last minute decide not to stand; b) financing of campaigns for elections to the Senate (it being understood that the regularity of these elections as such, is supervised by the *Conseil Constitutionnel* (Constitutional Court), which are indirect elections; the GET was told that in the larger constituencies a great deal can be at stake in these elections. In the interests of consistency and to avoid any omissions, the GET recommends **to extend the provisions on party and campaign funding to take into account: i) candidates who campaign but ultimately decide not to stand; ii) elections to the Senate.**
107. Most parties today appear to observe the legal requirements. In order to ensure compliance with the accounting regulations and an appropriate level of transparency in party accounts, the CNCCFP offers assistance in the application of the law, sometimes in conjunction with the relevant organisations (for example, the National Auditors Association and the National Accounting Board, consulted in order to lay down common rules facilitating the preparation, clarity and supervision of party accounts). During its visit, the GET noted with satisfaction that the ministries' "special funds", traditionally used in part to finance political activities, have been eliminated.
108. Under Section 11-7 of the law of 11 March 1988, as amended, parties' financial records must not only set out the accounts of the party itself, but should also include the accounts of "all the organisations, companies or businesses in which the party or group holds half of the share capital or half of the seats on the management board or exercises preponderant decision-making or managerial authority". The ordinary rules relating to the consolidation of balance sheets are applied in this area. Contrary to the general standards applicable to auditors, standard 7-103 – because of its specific nature - has not yet been officially approved (which, ideally, it should be).
109. As the GET met only two parties, it was unable to gain a clear picture of the assets and sources of income available to political parties in practice, and of the extent to which the legislation and

¹³ a) in Parliament (general discussion on the system for regulating the funding of political parties and elections); the "Mazeaud" Committee's conclusions were due to be delivered in December 2008; b) at the *Conseil d'Etat* and the Ministry of the Interior and Regional Planning (on reorganising the whole of the legislative part of the Electoral Code in order to simplify and harmonise the legal provisions on the electoral system, disputes, and financial aspects concerning direct coverage of certain expenses by the state); c) in the Constitutional Council (on ways to resolve certain problems, such as the fact that the CNCCFP is snowed under at election time).

the accounting model used oblige parties to take into account all their assets, such as financial securities or revenue from property (including existing assets at the time the party was formed or when the 1988 law was introduced). The definition of the scope of party accounts – as in other countries – raises some questions. Apart from the objective criterion of holding half the capital, the margin of appreciation in assessing the authority held over another organisation is significant and it is for the political parties themselves to define their scope of influence and the scope of their consolidated accounts (depending on the organisational or financial link established with a foundation, company, local section or group of a given category of persons). This practice is unsatisfactory from the point of view of Article 11 (and its reference to Article 6) of Committee of Ministers' Recommendation Rec(2003)4 to member states on common rules against corruption in the funding of political parties and electoral campaigns, and there is a risk that the law could be circumvented¹⁴. The absence of a legal requirement for parties to include in their accounts in-kind support can also be a source of problems and this would require making additional provision without necessarily discouraging voluntary work within the parties. Questions also arise in respect of the links with parliamentary groups: the latter may not support parties and candidates financially but they may provide other forms of support and it would thus be desirable that the material means of parliamentary groups be identified. Moreover, the question of third parties remains open in France; in point of fact, it is not impossible for interest groups having no direct or indirect link with a party or candidate, not coming within the scope of a party's consolidated accounts, to be involved in the election campaign and incur expenses, for example for the distribution of leaflets or organising a meeting in order to draw the electorate's attention to their points of view: this could be seen by the political parties and candidates as positive or negative propaganda, as the case may be. Depending on the importance in practice of the third parties, it might prove necessary for their role to be clarified so that they do not serve as fronts for political parties and their candidates. In the light of the various considerations above, the GET recommends **i) to introduce criteria to extend more systematically the scope of the consolidated accounts of parties and political groups to include associated structures, in particular the party's regional sections, and in parallel to identify the material means of parliamentary groups and ii) to hold consultations on whether or not regulations should be introduced to take account of the activities of third parties, depending on their significance in practice.**

110. French legislation provides for no upper limit for political parties' electoral expenditure. All the expenses incurred by a party in an election campaign are charged to the candidate in the constituency where that campaign is being run. Accordingly, political parties are not required to file campaign accounts (except in referendums). As a result, neither the CNCCFP nor the general public have an overall view of the financial investment of political parties in election campaigns, which quite naturally limits the scope of the provisions relating to transparency (and supervision, since it is not possible to cross-check candidates' and parties' campaign accounts). The GET recommends **to take steps to ensure that i) political parties which have funded a candidate's election campaign or which have supported him or her via the media be required to submit to the CNCCFP, details of their involvement, financial or otherwise, during the campaign, and that ii) this statement be verified by the CNCCFP and made public.**
111. Parties' consolidated accounts are drawn up in accordance with an opinion of the National Accounting Board (CNC) dating from 1995; this opinion was based on a model general chart of accounts dating from 1982, which has since been modified on a number of occasions.

¹⁴ For example, when support or funding originates from affiliated entities not required themselves to keep exhaustive accounts and/or accounts subject to some form of supervision (as in the case of party sections).

Accountants with whom the GET spoke said that this model chart of accounts needs to be overhauled and brought into line with the general chart of accounts which is currently in the drafting stage.

112. The law obliges parties in general and candidates to a political mandate to appoint a financial agent. As the GET learned during its visit, more often than not this is an association in the case of parties and an individual in the case of candidates. Obviously these are people that the party or candidate can trust. The GET was unable to determine the exact role of these agents; in the case of campaigns, they collect all the incomings and outgoings (except for petty expenditure), but in the case of parties, they are responsible solely for collecting donations from individuals and issuing receipts. It was confirmed to the GET that in practice donations and other forms of support or funds filter up from the local sections and other entities directly or indirectly linked to parties. As a result, only a part of the parties' receipts goes through the financial agent which makes it difficult, if not impossible, to monitor all the funds received by parties. To remedy this, the Association of Chartered Accountants is calling for all incoming funds to be channelled via the party's agent, taking the compulsory form of a fundraising association. Furthermore, in view of the financial agent's monopoly in the financial management of election campaigns (being the only point through which receipts and expenditure both pass), it has become general practice for candidates to wait as long as possible before appointing a financial agent so that they can settle their election expenses themselves. These expenses are then reimbursed by the agent. Nonetheless, this procedure is contrary to the objective of transparency pursued by Parliament in instituting the position of financial agent. There are numerous possible ways of rectifying this problem, such as making the appointment of an agent a condition for the admissibility of candidatures, obliging candidates to appoint a financial agent as soon as, for example, their election expenses exceed a given threshold, determined in relation to the maximum amount of election expenses applicable to them. The GET recommends **to take the appropriate measures to ensure that i) incoming funds are received as far as possible via the fundraising association/financial agent and that ii) candidates appoint their agent as early as possible.**
113. With regard to transparency, the regular publication of party accounts by the parties themselves is of particular importance and is a requirement of Article 13 of Recommendation Rec(2003)4. The parties met by the GET during the visit have no systematic practice or policy for publishing their accounts (publicly or internally) and are not required to do so. It is in fact the CNCCFP which systematically publishes party accounts, in the official gazette [*Journal Officiel*] (and the official gazettes of the different overseas political entities). The accounts are published in a condensed, simplified form. It has become customary for them to be published under different headings, depending on whether or not the parties' obligations have been met. The auditors' qualifications and observations are reproduced in full, as too are the related statements issued. Interpretation of the data published is not easy for the uninitiated. However, the CNCCFP subsequently publishes on its website (www.cnccfp.fr)¹⁵ an annual report with an overview of party accounts and its own general opinion. This is much more readable and online documents are up to date. Nonetheless, the French authorities might wish to encourage parties to publish their accounts themselves, regularly and within a reasonable time-frame.
114. The Electoral Code entrusts the CNCCFP with the task of publishing campaign accounts in a simplified form, though it does not specify a time-limit. The GET has noted that for the legislative elections of 1993, 1997 and 2002, the simplified accounts were published thirteen months after

¹⁵ Part of the reports (1990-2003) appears under the heading "statistics", the other part (2004-2007) under the heading "publication of political party accounts".

the elections.¹⁶ The length of the period between the date of the elections and the publication of the simplified accounts can be explained by the time required for the candidates and the CNCCFP to honour their obligations in respect of the filing and examination of campaign accounts. The campaign accounts submitted to the CNCCFP may be consulted by the public at the CNCCFP headquarters in Paris; because of the distances involved, there are considerable practical problems in exercising this right of consultation, in the absence of an online facility. There is a further problem: the time within which an election may be challenged. For a member of the National Assembly, this is 10 days. This means that a candidate is obliged to challenge the election without having been able to consult the other candidates' campaign accounts and the notes thereto, which must be submitted at the latest by 6 pm on the 9th Friday following the round of voting in which the outcome of the election was settled. Given that complainants must specify the grounds for annulment they are invoking, they have to resort to ingenious tactics to safeguard their rights. This being said, for the recent municipal elections of 2008, one quarter of the elections was challenged (267 out of 1073, that is 1215 accounts out of 4126). From the procedural point of view, and bearing in mind the experience of other countries that has shown that a good practice is for candidates to publish their accounts as the campaign progresses, the situation of France is quite particular from this point of view. The GET therefore recommends **to consider the advisability and feasibility of i) improving the public availability and publication of campaign accounts, including on a regular basis in the course of the campaign, ii) including the conditions under which they may be consulted in the Electoral Code, and iii) making the procedure before the court with jurisdiction for the election more effective (for example by specifying a (new) time-frame for consultation and challenges after the submission of campaign accounts), without however affecting the necessary speed with which the case must be dealt.**

115. The GET considers that particular attention should be paid to the arrangements applicable to private donations. The law does not provide that the names of donors must be published. Donations are grouped together and their total entered under a general heading in the parties' accounts. While French legislation fully prohibits donations from legal persons (with the exception of political parties), it has, with the passing of a law of 15 January 1990, placed an upper limit on donations from individuals (€ 7,500 per year to agents of the same political party or group and organisations dependent on it). The financial agent is required to issue a receipt (taken from the book of numbered vouchers) to any donor or subscription-paying member, regardless of the amount involved. Both the stub and the receipt indicate the nature of the payment (donation or subscription), the amount, the date of payment as well as the name and fiscal address of the donor or subscriber. Donations remain confidential *vis a vis* third persons and the receipts contain identification information about the financial agent where they exceed € 3,000. Donors giving € 150 or less may pay in cash but should, nonetheless, go through a financial agent and be given a receipt. Funds collected spontaneously during events may not be subject to these rules on the identification of donors, but the monies must be recorded in the general accounting documents.
116. In addition to donations, parties are also financed by subscriptions from their members and elected representatives. There is no upper limit to these subscriptions. However, they do give entitlement to tax reductions. Parties are free to set their own subscription rates and the CNCCFP seeks to ensure that subscriptions are not used to get round the prohibition of funding by legal persons other than parties. It has therefore been suggested that there be a single maximum

¹⁶ See, for example, the publication of the simplified accounts for the legislative elections held on 9 and 16 June 2002 / CNCCFP - Paris: Journal officiel, 2003. - J.O. of 26 July 2003. 589 p. (documents administratifs n° 20). The accounts for the legislative elections of 10 and 17 June 2007 were published on 10 June 2008 (CNCCFP - Paris: Journal officiel, 2008. - J.O. of 10 June 2008. 766 p. (documents administratifs n° 5))

amount for tax deduction, regardless of the nature of the payment (donation or subscription), which would help clarify the legal regime governing the subscriptions of elected representatives. This proposal should be supported. The GET therefore recommends **to consider possibilities for legislating in the subscriptions field so as to reinforce guarantees that the maximum amount of payments by individuals to political parties is not exceeded.**

117. Just as political parties can collect donations to finance their activities, candidates for elections can also finance their electoral campaign by means of donations. The same principles and arrangements apply, except that: a) donations from an individual duly identified for the funding of the campaign of one or more candidates in the same election may not exceed € 4,600; b) the total amount of cash donations to the candidate must not exceed 20% of the amount of authorised expenses where the latter is € 15,000 or more; c) candidates or lists of candidates may advertise in the press for donations. Such advertisements must contain no information other than what is required to enable donations to be paid. During its visit, the GET noted that it was not unusual for potential donors to be asked to give their donation to a political party as the upper limit for such donations was higher (€ 7,500 per year), with the party subsequently funding the candidates' election campaigns. It should be noted that French legislation does not specify an absolute ceiling as regards donations: a) an individual may make several annual donations of €7,500 to different political parties; b) when there are several elections in the same year, the individual may make several donations of € 4,600; c) in addition, both types of donations can be made concurrently. The fact that the tax reduction is limited to 66% of the amount donated within the limits of 20% of taxable income would appear to be the only restraint.
118. With regard to the funding of a candidate's election campaign, the legislation provides that the total amount of cash donations to a candidate may not be higher than 20% of the authorised amount of expenses where the latter is € 15,000 or more. As indicated above, it is not unusual for those donating to the funding of a candidate's campaign to be asked to give their donation to the political party as the ceiling for such donations was higher (€ 7,500 per year). Subsequently, the party contributed to the funding of the candidate's electoral campaign, which meant that the latter could benefit indirectly from sums originally paid in cash which were higher than the 20% ceiling. Moreover, the law does not require the identity of donors to be disclosed, and the possibility of making cash donations of €150 or less entails risks of anonymous donations and leaves the door potentially open to donations from legal persons. In order to limit the risks of circumventing the rules the GET recommends **to examine i) the link between the two systems of donations applicable to the funding of parties and to the funding of campaigns, in particular the question of concurrent donations, and ii) ways of laying down an appropriate threshold above which the identity of the donor must be disclosed.**
119. The rules governing public funding for political parties and groups are built on objective criteria which can be easily monitored and the system seems to work satisfactorily and transparently. Public funding is divided into two instalments, one which is allocated in accordance with the number of votes obtained by the candidates in the last elections to the National Assembly and the other in relation to the number of members of the National Assembly or of the Senate registered with or affiliated to the political parties and groups. This second allocation is reviewed annually in line with the declarations of registration or affiliation made to the Bureau of each assembly. The GET was informed during its visit that the affiliations of the members of the National Assembly can give rise to covert bargaining to enable parties to increase the funding they obtain or indeed to obtain any funding at all.¹⁷ At present there are no rules to address the problem of malpractices

¹⁷ For example, in the case of parties which – individually – do not fulfil the conditions for obtaining funding but one of which might manage to do so by means of such declarations of affiliation, subsequently passing on part of the funding to the other

in relation to declarations of affiliation primarily made for financial reasons. The GET recommends **to consider, in the context of the constitutional rules, laying down rules aimed at avoiding affiliations of members of parliament motivated by financial considerations.**

Supervision

120. It was occasionally pointed out during the visit that the majority of major affairs dealt with today, directly implicating parties or candidates in the way they are financed, concern events which took place prior to 1995. The extreme sensitivity of the party funding issue remains a reality and during the visit only two of the seven parties contacted agreed to take part in the talks.
121. At the same time, various people with whom the GET spoke voiced reservations concerning certain developments in recent years: the still insufficient reporting of suspicions of crimes (as required by Article 40 of the Code of Criminal Procedure); a significant reduction in reporting of incidents in the public procurement sector, despite the fact that this is a sector, in the view of several people with whom the GET spoke, in which malpractices continue including with respect to political funding (with more complex, transnational funding involving, for example, offshore zones, and the continuing practice of commissioning services which are not performed). In this connection, the GET learned that the reduced number of reports regarding public procurement contracts and the fall in the number of cases of corruption today (in politics) could in part be attributed to the fact that: 1) the representatives of the Directorate of Competition, Consumer Affairs and Fraud Prevention (who report any offences they become aware of to the prosecution service) are no longer ex officio members of the public procurement tenders boards; 2) the control of lawfulness has been abolished for contracts less than € 230,000; 3) it is claimed that the regional audit offices (*Chambres régionales des comptes*) currently feel threatened with curtailment of their jurisdiction by the National Audit Office and restrict their activities accordingly. The GET is well aware that the questions referred to above do not (any longer) really fall within the scope of the 3rd evaluation round; nonetheless the French authorities might wish to look again at these issues, in particular any additional measures that need to be taken to ensure the application of Article 40 of the Code of Criminal Procedure in the context of party funding (for example by including references thereto in the legislation on the funding of parties and election campaigns) and to be in a better position to detect any secret party funding resulting from any malpractice in the award of public contracts.
122. The CNCCFP was specifically recognised in 2003 as an independent administrative authority in order to give it greater financial and structural autonomy. Because of its composition, method of appointment and legal attributions, it would appear in practice to satisfy the criteria of an independent supervisory authority. Nonetheless, it is necessary to examine whether the supervisory means available to the CNCCFP are sufficient to exercise effective supervision of the funding of political parties and election campaigns. The interviews which took place during the visit confirmed that the situation is on the whole satisfactory regarding the funding of campaigns, especially in the smaller elections. The situation is regarded as more difficult for national elections in view of the issues at stake (involving greater risks) and the volume of information and documents to be processed (the CNCCFP receives all the accounts submitted to it in hard copy, which means that much effort has to be invested in entering the information in electronic form for subsequent processing). Nonetheless, the CNCCFP does have fairly complete accounting information for candidates and can, in relation to campaign funding, call on the judicial investigation services if it has any serious doubts; the accounts verification procedure is an *inter*

party; or a party which approaches independent candidates in order to get them to make a declaration of affiliation, providing them subsequently with logistic or other forms of support.

partes one and explanations may be requested. It is believed that discussions are currently in progress on the feasibility of filing accounts in a standard computerised format, which is to be welcomed.

123. The accounts of political parties are subject to a dual level of control (by two auditors and by the CNCCFP exercising its supervisory role). If any infringement of a legal prohibition is found to have occurred and is not corrected, this must be recorded in the auditors' report. Since the CNCCFP does not have all the accounting documentation relating to the parties' accounts, and since it does not perform a review of the parties' expenses, the scope of this supervision is obviously limited; the CNCCFP must rely heavily on the work of the auditors who themselves have to work to tight deadlines and are not always able to carry out a detailed or sufficiently extensive audit¹⁸ (for example, on donations from legal persons).¹⁹ The CNCCFP's supervision primarily concerns compliance with the formal requirements and enables it to detect only the most flagrant breaches of the law. In view of the large number of parties and files to verify and the need to submit conclusions within a reasonable time, it would be difficult for the CNCCFP to do any better with the resources available to it: it cannot demand the submission of certain documents and does not have the authority to verify supporting documents or conduct on-site checks, the auditors' duty of confidentiality cannot be waived for the CNCCFP, and it is unable to have recourse (unlike in the case of campaign accounts) to the judicial investigation services if it has any serious doubts. The GET therefore recommends **to enhance the supervisory functions of the CNCCFP in respect of political parties.**
124. As elections are the business of individual candidates funding their campaigns out of their personal assets, the introduction of a system of declaration of assets for elected representatives, entailing a process of supervision by the Commission for Financial Transparency in Politics (CTFVP), is a welcome initiative. This has led to the detection of a number of malpractices, but the results are modest and the CTFVP has pointed to the risk of inadequate follow-up action by the prosecution services. As the GET was able to see for itself during the visit, this system is broadly viewed – and also criticised – as ineffective. It is true that the CTFVP has to rely solely on the information submitted by the persons making the declarations and cannot demand the submission of items of information. The persons concerned are not obliged to declare all the offices and positions they hold nor their income (which affects the Commission's assessment of their actual savings capacity), the penalty of ineligibility can have little dissuasive effect on an outgoing elected representative who does not intend to stand again for election and who will prefer not to make his or her "after term" declaration; problems have arisen in practice because of the lack of penalties for untruthful declarations (the judicial authorities having refused to apply the regulations applying to the offence of "forgery of documents" or "false declaration", which nonetheless exist in French law); the CTFVP does not have sufficient resources despite the high number of declarations. The GET therefore recommends **to improve the effectiveness of the arrangements for the declaration of elected representatives' assets and in particular i) to enhance the supervisory functions of the Commission for Financial Transparency in Politics; ii) to broaden the type of information that has to be submitted; and iii) to introduce if necessary a mechanism for penalising untruthful declarations.**
125. The legislation does not address the question of the dissolution of parties and does not regulate the consequences of a dissolution, for example when a party has granted a loan to a candidate and is dissolved before the loan is repaid. Furthermore, candidates who undertake to repay out of their own resources a loan granted to them by their party may apply for reimbursement by the

¹⁸ As they themselves noted in the observations made in 2005.

¹⁹ The CNCCFP's 2003 report on party accounts.

state. However, no checks are currently made that the candidate has in practice repaid the loan to the party. The situations described above could lead to malpractices and it might be appropriate for the French authorities to look at these questions.

Sanctions

126. On the whole, with regard to both the funding of political parties and election campaigns, the texts provide for a range of administrative and criminal sanctions for failure to comply with the legislation. Having said that, the maximum fine (€ 3,750) may be of little effect in penalising a significant benefit, for example an unlawful donation of a large amount. In this connection, the talks held during the visit did not shed any light on whether the recipient of an unlawful donation may keep it. It is quite striking to note that the penalties applicable to the members of the CNTVP, a supervisory body, are significantly higher for disclosure of information (a one-year prison sentence and/or a fine of € 45,000). The French authorities confirmed after the visit that there is currently no legal possibility to confiscate illegal donations to political parties. They also indicated that the current legislation does not provide for the possibility to confiscate illegal donations made to political parties and that, in principle: auditors would require parties to sort out the situation (by giving back to a legal person any donation made by it or reimbursing the sums that would exceed the ceiling allowed for donations) or otherwise they would refuse to certify the accounts, leading to a number of consequences, notably in respect of the public funding; furthermore, the penal judge may impose the reimbursement of a donation in connection with a decision imposing a suspended sentence and probation, pronounced on the basis of article 132-45 of the criminal Code (para. 5 deals with the compensation for damages resulting from a criminal offence, even in the absence of a decision on a civil action). These matters do not appear to have raised any problems thus far.
127. On the other hand, the penalty of ineligibility is particularly controversial insofar as for certain elections it is an automatic penalty (and has been applied in practice)²⁰, including for minor procedural breaches in which the person concerned has not shown actual bad faith (for example, payment of petty expenses without these going through the agent). However, at the same time, ineligibility is not an available penalty for serious irregularities or fraud which have nothing at all to do with the legislation on party funding. The GET has also noted that the court with jurisdiction for the election may take into account the good faith of the candidates, except in the case of legislative elections, which is perhaps somewhat surprising. At the same time, there is a significant financial penalty for parties, namely the loss of funding for the following calendar year, which cannot be applied in terms of months. These relatively severe penalties sometimes prompt the CNCCFP, in its conclusions on the accounts, to use its discretion to place greater emphasis on regularisation rather than the penalty. The GET considers that it would be helpful to have a more consistent, flexible and proportionate range of penalties, which could also include publication of decisions in the press or by public display. Several possibilities have been put forward, in particular by the CNCCFP and the Constitutional Council. These could usefully be

²⁰ Following two high-profile cases in which the Constitutional Council declared ineligible candidates declared elected in the 2007 legislative elections, the Speaker of the National Assembly on 9 June 2009 set up a committee to assess the legislation on campaign accounts, chaired by Mr Pierre Mazeaud, former President of the Constitutional Council, former minister and former member of the Assembly. This committee was due to submit its report in December 2008. At the time of the visit, a number of suggestions had been put forward by both the CNCCFP and the Constitutional Council, for example, an extension of the good faith rule to legislative elections by means of an Organic Law; differentiation of the repayment of electoral expenses in accordance with the seriousness of the breaches committed by the candidate; by analogy with the margin of appreciation available to the court having jurisdiction for the election when the ceiling for electoral expenses has been exceeded, no automatic penalty of ineligibility following rejection of the campaign accounts (automatic imposition of the penalty would be reserved for violation of procedural formalities).

borne in mind by the French authorities, without, however, impacting on the penalty of ineligibility, on which the quality of the system for monitoring campaign funding is apparently founded. The GET recommends **to harmonise and to differentiate the penalties, without abolishing ineligibility, and improving the system of publication of decisions.**

128. The GET has sought to ascertain the importance and responsibility in practice of financial agents. The talks held during the visit confirmed that even though certain measures may be taken against them (withdrawal of approval, moderate fines), they are legally liable for nothing or almost nothing. Until 2006, the CNCCFP had a custom of withdrawing approval of a fundraising association of a party which had itself not satisfied its accounting obligations. The *Conseil d'État* criticised the Commission in 2007, holding that the law did not allow it to take such action. The result of this restrictive interpretation of the sanctions regime provided for by law is that parties guilty of breaches – and therefore excluded from direct public funding – may continue to receive indirect public aid in the form of tax concessions linked to donations and subscriptions. In its 2007 activity report, the CNCCFP expressed the hope that the law would be supplemented in order to rectify what it considered a paradox. The French authorities might wish to take up these proposals and perhaps clarify the agents' responsibilities.
129. As indicated in the other part of this evaluation report (on incriminations), amnesties (for example those traditionally granted when the President of the Republic is elected) will no longer exonerate civil servants and elected representatives prosecuted for politico-financial offences and corruption, as politically this would now be too risky. In contrast, the GET notes that classifying information as secret for national security reasons may pose an obstacle to obtaining decisive proof in politico-financial cases, even major ones.
130. In view of the statistics available on the penalties imposed in practice, it would appear that on the whole, compared with the number of cases instigated, very few penalties have been applied and often, they have been suspended. It was pointed out to the GET that in the light of this the criticisms of excessive severity levelled sometimes by politicians against the judicial authorities were unfounded.

V. CONCLUSIONS

131. In general, French legislation on political funding implements the main provisions of Committee of Ministers Recommendation (2003) 4. France has various rules to ensure a certain level of transparency in the funding of politics, which include arrangements for supervision and sanctions. No serious divergence between the applicable texts and political practice was noted. Nonetheless the system in place could be improved by a strengthening of the rules in force.
132. In particular, the legal provisions introduced in 1988 do not (yet) apply to certain fields, such as elections to the Senate and the funding of parliamentary groups. Parties also have significant room for manoeuvre in defining the scope of their accounts, and the monopoly of the political parties' financial agents could usefully be reinforced. As regards supervision, it is regrettable that France has put in place specialist supervisory bodies in the field of party funding and the fight against corruption, but has not always given them genuine powers. The system would be more effective if the National Commission for Campaign Accounts and Political Funding and the National Commission for Financial Transparency in Politics were given stronger verification powers. On the sanctions front, there is a range of administrative and criminal penalties for the vast majority of breaches, but there should ideally be a broader possibility of differentiating these penalties in line with the seriousness of the facts. The GET is not of the opinion that there should

be any immediate relaxation of the constraints placed on parties and candidates. It is important to maintain a system with effective sanctions exercising a dissuasive effect on the various players.

133. In the light of the above, GRECO addresses the following recommendations to France:

- i. **to extend the provisions on party and campaign funding to take into account: i) candidates who campaign but ultimately decide not to stand; ii) elections to the Senate** (paragraph 106);
- ii. **i) to introduce criteria to extend more systematically the scope of the consolidated accounts of parties and political groups to include associated structures, in particular the party's regional sections, and in parallel to identify the material means of parliamentary groups and ii) to hold consultations on whether or not regulations should be introduced to take account of the activities of third parties, depending on their significance in practice** (paragraph 109);
- iii. **to take steps to ensure that i) political parties which have funded a candidate's election campaign or which have supported him or her via the media be required to submit to the CNCCFP, details of their involvement, financial or otherwise, during the campaign, and that ii) this statement be verified by the CNCCFP and made public** (paragraph 110);
- iv. **to take the appropriate measures to ensure that i) incoming funds are received as far as possible via the fundraising association/financial agent and that ii) candidates appoint their agent as early as possible** (paragraph 112);
- v. **to consider the advisability and feasibility of i) improving the public availability and publication of campaign accounts, including on a regular basis in the course of the campaign, ii) including the conditions under which they may be consulted in the Electoral Code, and iii) making the procedure before the court with jurisdiction for the election more effective (for example by specifying a (new) time-frame for consultation and challenges after the submission of campaign accounts), without however affecting the necessary speed with which the case must be dealt** (paragraph 114);
- vi. **to consider possibilities for legislating in the subscriptions field so as to reinforce guarantees that the maximum amount of payments by individuals to political parties is not exceeded** (paragraph 116);
- vii. **to examine i) the link between the two systems of donations applicable to the funding of parties and to the funding of campaigns, in particular the question of concurrent donations, and ii) ways of laying down an appropriate threshold above which the identity of the donor must be disclosed** (paragraph 118);
- viii. **to consider, in the context of the constitutional rules, laying down rules aimed at avoiding affiliations of members of parliament motivated by financial considerations** (paragraph 119);
- ix. **to enhance the supervisory functions of the CNCCFP in respect of political parties** (paragraph 123);

- x. **to improve the effectiveness of the arrangements for the declaration of elected representatives' assets and in particular i) to enhance the supervisory functions of the Commission for Financial Transparency in Politics; ii) to broaden the type of information that has to be submitted; and iii) to introduce if necessary a mechanism for penalising untruthful declarations** (paragraph 124);
 - xi. **to harmonise and to differentiate the penalties, without abolishing ineligibility, and improving the system of publication of decisions** (paragraph 127).
134. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the French authorities to submit a report on implementation of the above recommendations by 31 August 2010.
135. Finally, GRECO invites the French authorities to authorise, at the earliest opportunity, publication of this report.