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Group of States against corruption

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Evaluation Report on France

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I. INTRODUCTION

1. France was the tenth member of GRECO (and the last in Group A) to be examined in the first evaluation round. The GRECO Evaluation Team (hereafter GET) was composed of Professor Hans-Jörg Albrecht, Co-Director of the Max-Planck Institute of International and Comparative Criminal Law in Freiburg (Germany, general policy expert), Mrs Nastja Franko, Public Prosecutor's Department (Slovenia, criminal procedure expert) and Mr Jean-Marie Lequesne, Divisional Commissioner, Director of the Central Office for Combating Corruption (Belgium, law enforcement expert). The team, accompanied by two members of the secretariat, visited Paris from 30 January to 2 February 2001. Prior to the visit, the experts had been supplied with detailed information from the replies to the evaluation questionnaire (GRECO Eval I (2000) 24F) and its numerous appendices. A great deal of additional documentation - draft legislation, reports of the *Cour des Comptes (*Court of Audit), presentations and so on - was made available during the visit.

2. The GET appreciated the French authorities' hospitality, the standard of the French participants and the level of co-operation, which enabled it to meet officials from the following authorities and institutions: the Central Corruption Prevention Department, the Directorate of Legal Affairs of the Ministry of Foreign Affairs, the secretariats of the presidencies of the National Assembly and Senate, the Directorate General of the National Gendarmerie (Ministry of Defence), the Central Directorate of the Criminal Police - Sub-Directorate of Economic and Financial Affairs (Ministry of the Interior), the Court of Audit, Inspectorate General of Finances, the Paris Regional Court - economic and financial section (judges and public prosecutors), Ministry of Justice - European and International Affairs Department and Directorate of Criminal Affairs and Pardons, the Interministerial committee of inquiry into public contracts (at the evaluators' request) and the *Ecole Nationale de la Magistrature* (magistrates' training college). The programme drawn up by the French authorities also enabled the GET to meet non-governmental representatives: the national association of chartered accountants, the *Mouvement des Entreprises de France* (MEDEF - the employers' federation), and the French section of Transparency International. A list of persons met appears in Appendix II.

3. The meetings took place in the offices of the authorities mentioned and generally lasted between one and two hours. They were held in an atmosphere of co-operation and confidence, which facilitated discussion and provided information additional to that included in the institutions' official reports. A summing-up meeting, chaired by Ambassador Charasse, responsible for questions relating to combating organised crime and corruption, provided an opportunity to resume discussions at the end of the visit.

4. At its second plenary meeting (December 1999), GRECO decided that the first evaluation round would be from 1 January 2000 to 31 December 2001 and that, pursuant to Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:

   - Guiding principle 3: those in charge of the prevention, investigation, prosecution and adjudication of corruption offences: legal status, powers, means of securing evidence, independence and autonomy;
   - Guiding principle 7: specialisation of persons or bodies in charge of fighting corruption: means at their disposal;
   - Guiding principle 6: immunity from investigation, prosecution or adjudication of corruption offences.

5. The evaluation of France, originally scheduled for 2000, was deferred to January 2001 on account of the workload created by the Presidency of the European Union.

6. The main objective of this report is to assess the measures adopted by the French authorities, and where possible their effectiveness, in terms of their compatibility with guiding principles 3, 6 and 7. The first part of the report describes the state of corruption in France, the general anti-corruption policy, the institutions and authorities responsible for combating it - operating methods, organisation, powers, responsibilities, resources and specialisation - and the immunities system preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation and examines in particular whether the current system is fully compatible with the commitments arising from guiding principles 3, 6 and 7. Finally, the report presents a list of recommendations to the French authorities to help the country improve its compliance with the relevant guiding principles.

II. GENERAL DESCRIPTION OF THE SITUATION

a. The phenomenon of corruption and how it is perceived in France

7. France is a relatively large country (550 000 km²) in the west of Europe. Its neighbours are Belgium to the north, Luxembourg, Germany and Switzerland to the east, and Italy and Spain to the south. Its administrative structure includes a number of territories in addition to mainland France[1]. Its economy is both rural and industrial. The population is estimated at a little over 60 million and its per-capita GDP of about 27 118 € is high.

i. Trends in and perceptions of crime and corruption

8. Empirical research into corruption is hard to find in France. The main reason is that until now quantitative criminological research has not been conducted on a large scale. Official French judicial and police statistics do not provide full data on corruption.

9. Regarding general crime trends as revealed by police statistics, France does not show any distinctive features compared with other European countries.

10. The findings of a survey realised in 1997[2] on public attitudes to the courts and the judiciary show that confidence in judicial independence is close to that observed in the Eurobarometer surveys for political institutions as a whole. Besides, the judiciary is viewed very unfavourably by the public as regards its independence of economic and financial circles, and of the political authorities. The aforementioned survey also shows that 40% of those interviewed thought that the ties between the public prosecutor's department and the political authorities should be completely cut to foster justice in France.

11. Transparency International, on the basis of subjective empirical data, draws up corruption indices which, since 1995, have been put on a systematic footing and been published annually[3]. The

[1] The French Republic comprises metropolitan France - divided into 22 regions and 96 *départements*, together with 4 overseas *départements* (DOM): Guadeloupe, Martinique, Guyane, La Réunion; plus 4 overseas territories (TOM) - French Polynesia, New Caledonia, Wallis and Futuna, the French Southern and Antarctic Territories, and two territorial authorities with a special status: Mayotte and Saint-Pierre-et-Miquelon.

[2] Source : "L'Opinion des Français sur la Justice "; carried out in 1997 by the CSA Institute on the request of the « Mission de Recherche, Droit et Justice »

[3] Source: Transparency International; http://www.gwdg.de/~uwvw/icr.htm See also Lambsdorff, J. Graf (1999), "The Transparency International Corruption Perceptions Index. 1st edition 1995" Transparency International (TI) Report 1996, 51-

findings of these studies appear in graph 1[4]. According to these findings, France is close to the average of a certain number of west European countries and that it seems impossible to identify any significant increase or decline in the second half of the 1990s. In the 2000 corruption index, France is in 22nd position, with a score of 6.6 out of 10. It comes in 11th place of the 15 European Union countries[5].

12. The replies to the questionnaire sent out by the GET show that the French authorities' position is mainly based on official data from court databases. Graph 2 (see Appendix 1) therefore gives information on criminal convictions for various corruption offences for the period 1994-1998. These data do not permit a satisfactory analysis, as would in contrast comparative data on the number of offences recorded by the police and other authorities, prosecutions under relevant charges launched or dealt with by the public prosecutor and the courts, withdrawn or discontinued proceedings, charges altered in the course of proceedings, persons found guilty and sentenced, nature and scale of the penalties and so on.

13. The data on criminal convictions supplied by the French authorities does allow for a number of comments to be made. There has been a slight rise in the overall number of convictions, while the number of cases of "traditional" corruption (generally difficult to prove) and trading in influence (the first two lines) were gradually being caught up by other forms of corruption, in particular illegal interests. The number of convictions for favouritism may seem low considering that this charge is the main legal weapon against corruption in public contracts, that the French state is still an important customer and, finally, that the French representatives the GET met said that public contracts were a risk sector. This remark should be counterbalanced by the knowledge that the offence of favouritism only exists since 1991, its field of application having been extended in 1995. It should also be noted that there has not been a single conviction for corrupting judges or jurors over the period concerned.

ii. Causes of corruption

14. Empirical research has pointed to certain conditions that encourage corruption and are particular to France. Among them, it would be important to mention the concentration of political power in the hands of the executive, the emergence of a relationship between elected members and officials based on personal rather than institutional loyalty, the persistence of certain forms of trading favours for votes, inadequate monitoring procedures, a ramshackle system for financing political parties and election campaigns (during the 1980s, reformed by the laws of 1908, 1990, 1995)[6], and the absence – at certain moments – of a clear political consensus on the need to react firmly against these practices, and finally, the abusive use of Law 1901 – type associations (not subject to strict public administration and accounting rules). The GET also thinks that the complexity of administrative regulations could go some way to explaining the extent to which these rules are broken, particularly those relating to public contracts[7].

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53. "2nd edition 1996", Transparency International (TI), Report 1997, 61-66. "3rd Edition 1997", Transparency International (TI) Newsletter, September 1997. "4th Edition", September 1998. "5th edition", October 1999.

[4] For a discussion of the reliability and validity of such information, see Graf Lambsdorff, J.: Korruption im Ländervergleich. In: Pieth, M., Eigen, P. (Eds.): Korruption im internationalen Geschäftsverkehr. Bestandsaufnahme, Bekämpfung, Prävention. Luchterhand: Neuwied 1999, pp. 169-197.

[5] http://www.transparency.de/documents/cpi/2000/cpi2000.html

[6] Mény, Y.: France: The End of the Republican Ethic? In: Della Porta, D., Mény, Y. (Eds.): Democracy and Corruption in Europe. Pinter: London, Washington 1997, pp. 7-21, pp. 15-18.

[7] See Transparency Letter, No 4 2000: the views expressed by Mr. Jean PUECH, President of the Assembly of French *Départements*, and by Mr. Michel LAPEYRE, Director of the National Federation of Concession-Granting Local Authorities and Utilities. Both emphasise the important part played by non- intentional offences in the granting of public contracts as a

15. According to the members of the Central Corruption Prevention Department (SCPC) to whom the GET spoke, links between corruption and organised crime cannot be excluded but the latter is a relatively marginal phenomenon in France. On the other hand, corruption often seems linked to fraud, hence the importance ascribed by the department to informal procedures for collecting sensitive information.

16. Briefly, the GET considers that France is barely distinguishable from other comparable countries with regard to the existence of corruption. However, it does have certain distinctive features in that country which reflect serious problems, such as those illustrated above, leading to a mistrust of institutions.

iii. The law on corruption[8]

17. The GET notes that France has a very developed body of legislation on corruption.[9] It covers not only traditional corruption offences, such as bribes and backhanders, but also situations that may be described as "precursors" to corruption. The French Criminal Code, revised in 1994, includes the criminal offences of active (giving bribes) and passive (receiving bribes) corruption of persons exercising public authority, responsible for public utilities, or holding an electoral mandate in France (Articles 433-1 and 432-11), active and passive corruption of Community officials, national officials of other member states and members of Community institutions (Articles 435-2 and 435-1), and active corruption of foreign public officials in international commercial transactions (Articles 435-3 and 435-4), active (Articles 433-1 and 433-2) and passive (Articles 432-11 and 432-2) trading in influence, active and passive corruption of judges, jurors, arbitrators, conciliators, etc (Article 434-9), and the subornation of witnesses, experts and interpreters (Article 434-15-19-21). Other offences in the French Criminal Code include extortion by public officials (Article 432-10) [10], illegal interests (Arts 432-12 and 13)[11], and the granting of unjustified benefits (or favouritism - Article 432-14). The Customs Code includes special provisions concerning the corruption of customs officials (Article 59). The Labour Code makes the active or passive corruption of a private sector manager or employee an offence (Article L 152-6). The Public Health Code penalises corrupt practices between pharmacists and pharmaceutical laboratories (Articles L 365-1, L 376-3, L 549, L 510-9-2 and 9-4). Two further weapons in the anti-corruption armoury appear in the Construction Code, which makes it a criminal offence for public housing administrators or employees to receive bribes (Article 423-11) and the Companies Act (No 66-537 of 24 July 1966), under which misuse of the company's property or credit is an offence (Sections 425-4, 437-3, 460, 464, 488-1).

18. Legal persons (other than the state) may be held criminally liable. Criminal association is distinct from the principal offence and may therefore justify proceedings other than for corruption. Moreover, the commission of certain offences - particularly laundering - by an organised gang constitutes an aggravating circumstance.

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result of the complexity of the rules in force. Concerning this matter, the GET notes the adoption, in 2001, of a new Code of Public Contracts, which greatly simplifies the rules applicable in this area.

[8] See Appendix III reproducing the text of the main provisions on corruption.

[9] French legislation makes a distinction between *"crimes", "délits" et "contraventions"*. Thus, corruption offences belong to the first two groups.

[10] It is an offence for a person vested with public authority or assigned a public-service role to receive, demand or order the collection of fees, contributions or taxes which he knows not to be due or to exceed what is due.

[11] This article penalises failure to comply with Section 25 of Chapter 1 of the Civil Service Act, and with three other statutes (of 1984 and 1986) governing the conduct of state, local and regional government and public hospital officials. It prohibits certain direct and indirect interests in private activities during and after the period of public service.

19. France has ratified and implemented the 1997 anti-corruption conventions of the European Union and OECD and the 1990 Convention implementing the Schengen Agreement. It has signed the Council of Europe's criminal and civil law conventions on corruption and is currently looking into their incorporation into domestic law. It has also concluded many bilateral agreements with other countries, particularly on extradition. Finally, in order to facilitate relations with its principal partners and increase efficiency in judicial co-operation, France has, for a number of years now, favoured the exchange of liaison judges, whose actions contribute, by direct contact and permanently established relations, to improving the treatment of aid requests, whether civil or criminal, between the two countries.

20. Under French legislation, the laundering of the proceeds of any crime or lesser offence is a criminal offence (Article 324-1 of the Criminal Code), and is distinct from the main offence. It is of little relevance whether a corruption offence has been committed abroad or whether or not the French courts have jurisdiction. It is sufficient for the authorities to adduce evidence that the accused was aware of the fraudulent origins of the funds, without having to establish precise knowledge of the nature, time, place and execution of the prior offence. Simple laundering is liable to five years' imprisonment and a fine of FRF 2 500 000 (higher sentences may be imposed in certain circumstances, such as regular laundering or where an organised gang is concerned). Legal persons may be criminally liable for laundering offences (with specific penalties). The machinery for preventing and detecting laundering is based on a number of obligations that are placed on financial bodies and other persons, such as solicitors, valuers and auctioneers, bailiffs, auditors, legal advisers, estate agents, jewellers and antiquarians, who in the course of their occupation, carry out, oversee or recommend operations entailing movements of capital. They include the obligation to identify clients when accounts are opened, report suspicions and offences to a specialist department (TRACFIN - see below - in the case of financial bodies and the public prosecutor for the various professions referred to above), examine and record in writing any significant transactions, and register operations and retain any relevant documentation for five years. Under a statute of 31 December 1971 and a decree of 27 November 1991, lawyers are subject to a special system of oversight that requires them to deposit funds, bills and securities received on their clients' behalf with the Lawyers' Financial Settlements Offices (CARPA). These deposits are subject to inspection.

21. France provides for confiscation of the proceeds of crime, particularly when they are the subject of laundering attempts or result from corruption (Articles 324-2 and 433-23 of the Criminal Code).

b. Organisations and institutions responsible for combating corruption

22. French anti-corruption policies were fuelled by various corruption scandals in the 1980s and - as already noted - important problems arising from political party financing. The results of these policies are reflected firstly in Act No 93-122 of 29 January 1993, concerned with reinforcing the prevention of corruption and introducing transparency into economic and political activities. However, the French response to corruption since the 1980s has not been confined to enforcement and prevention based solely on criminal law and the existence of monitoring authorities. In the course of its examination the GET encountered both formal and informal machinery, and traditional and other more imaginative methods of fighting corruption, resulting in a varied arsenal of measures:

– the development of ethical principles in both government and the private sector;

- administrative checks nationally (ministerial inspectorates) and at the decentralised level (*département* services responsible to the prefect);
- review of public spending by the courts of audit (the Court of Audit and regional audit chambers (CRCs);
- company audits by outside auditors;
- the possibility for every taxpayer from a municipality, department or region to challenge, with the authorisation of the administrative tribunal, the acts of the municipality, department or region;
- the establishment of special institutions designed to ensure accountability and respect for the law in public life, such as the National Authority for Campaign Accounts and Political Financing, which monitors the financing of election campaigns and political parties, the Authority for Financial Accountability in the Political Sphere, which records declarations of assets by certain elected representatives, and the Professional Ethics Authority, which is consulted on civil servants moving to the private sector;
- three special units, one of which is interministerial: the Central Corruption Prevention Unit, the Interministerial Taskforce for Investigating Public Works and Supply Contracts and Delegated Public Services, and the Unit for Intelligence Processing and Action against Secret Financial Channels (TRACFIN);
- comprehensive criminal legislation making various forms of corruption offences under the Criminal Code or other codes (such as the Commercial, Employment and Electoral Codes), with provision in some cases for the criminal liability of corporate bodies;
- the requirement for government departments to report offences that come to their knowledge to the prosecuting authorities under Article 40 of the Code of Criminal Procedure;
- special tribunals applying multidisciplinary approaches within the economic and financial sections of regional courts;
- special efforts to strengthen judicial independence.

b1. The police

i. Police and gendarmerie: general

23. There are two national law enforcement agencies in France, the police and the gendarmerie, responsible respectively to the Ministry of the Interior and the Ministry of Defence. However, both undertake police functions and are required to operate under the direction of the State Counsel's Office (or an investigating judge who has issued appropriate instructions) in criminal cases.

24. The Police Force is answerable to the Director General of Police who is appointed by the Council of Ministers. It comprises 11 directorates and departments and 8 bodies attached directly to the Director General. One of the former is the Central Judicial Police Directorate (DCPJ), which includes departments located in the Ministry of the Interior and 20 administratively decentralised departments, representing a total of 7 800 officials. This directorate is answerable to a Central Director, who undertakes the functions of chief of staff, personnel management and liaison with the gendarmerie, via specialist departments.

25. Unlike their opposite numbers in other departments, police officers' geographical remit is not confined to the jurisdiction of one court but extends over either several court jurisdictions or the whole country. One of the sub-directorates is responsible for economic and financial affairs. It includes a number of divisions.

26. The 8th division[12] investigates breaches of company law. It has units specialising in tax fraud and public corruption. One of them, the National Economic Investigations Brigade, is made up of finance officials charged with looking into financial and tax offences, by assisting police officers of the DCPJ. Logistical support is provided by other departments of this sub-directorate or of the DCPJ: the operational logistics division (responsible for co-ordination, assistance and training), the central criminal documentation department (which sends out requests for information to police and gendarmerie units), the criminal records office, the central police laboratories and so on. There is also a sub-directorate for external relations, comprising four divisions with cross-the-board responsibilities: training and communication, technical monitoring, research and planning (this division draws up legal files and assembles and processes the police/gendarmerie crime statistics that provide the authorities with monthly crime trends throughout the country), and, finally, international relations, which deals with the operation tools of international co-operation: Interpol, Schengen and Europol.

27. The 9th division[13] comprises the Central Office for Fighting Major Financial Crime (OCRGDF). This office is concerned with money laundering, fraud and computer fraud[14].

28. A regional police directorate is responsible for policing the capital. Within the City of Paris proper it deals with all offences. Outside of Paris, the country is divided into 19 regional police departments. The regional departments all co-operate in the national system for combating organised or specialised crime. Each regional headquarters has specialist sections relating to the various police responsibilities. These include economic and finance sections, composed of specialist groups, equivalent to those in the central directorate.

29. The other central directorates include the security branch (*Renseignements généraux*), in which all relevant information not related to specific cases, particularly on individuals and networks, is centralised, and which includes a financial directorate particularly noted for its data collection activities.

30. The National Gendarmerie is answerable to the Minister of Defence and is a military force that undertakes police duties. It operates throughout the country and serves various ministries. It has public safety responsibilities over 95% of the country and its organisation, which is highly structured, is based on France's administrative divisions.

31. Gendarmerie brigades receive complaints, carry out orders issued by judges, intervene in emergencies, receive reports of accidents and burglaries and so on. They also undertake judicial investigations through investigation teams, brigades and sections attached to companies, groups and legions, which are exclusively concerned with police activities. They assist brigades with important judicial investigations and are allocated cases requiring a long-term commitment. They operate in military uniform or in plain clothes when so ordered or for specific tasks, and have specialist equipment such as marked and unmarked vehicles, radio and computer equipment and so on.

32. On account of its military connections, the gendarmerie is subject to special rules regarding discipline, confidentiality and hierarchy, which may be useful in the case of specific inquiries. The

[12] At the time of the writing of the report, this division changed its name: the National Division for Financial Investigations.
[13] At the time of drafting the report, this division changes its name: the National Division for the repression of fraud and technological fraud.
[14] After the visit, computer fraud was brought within the competence of the Central Office for the fight against criminality related to information and communication technology.

Judicial Police is also regulated by similar rules according to the Code of Criminal Procedure and the Code of Ethics applicable to its members. The ordinary courts are empowered to judge any offences committed by gendarmes or police officers. The gendarmerie and the police have their own control bodies, the former the "Contrôle Général des Armées" and the latter the National Police Inspectorate (see below) and the General Services' Inspectorate.

33. Co-operation between the police and gendarmerie seems to have improved, particularly in terms of information exchanges, with both forces enjoying access to each other's databases. Joint investigation teams may also be set up.

ii. Specialisation and investigations

34. Both the police and the gendarmerie receive training in fighting economic and financial crime, particularly corruption.

35. According to the replies to the questionnaire, this impressive and highly developed institutional structure has no specific section for investigating corruption, with responsibility devolving on all police and gendarmerie sections - a finding that was substantially confirmed during the visit. The GET thinks that there is somewhat inconsistent with the organisation chart of the police, based on information publicly available on the Internet, which gives the impression that the 8th division of the Sub-Directorate of Economic and Financial Affairs specialises to a certain extent in corruption, even though this sub-directorate does not have an office specifically devoted to corruption cases.

36. Corruption inquiries are rarely initiated by the police. The initiative usually comes from a judge, following information received from financial courts, particularly the Court of Audit, government departments, auditors, specialist departments, such as the Central Corruption Prevention Department, tax payers or other citizens. The judge then orders a police inquiry, referring the matter to the police or gendarmerie for investigation. Since public contracts are a high-risk sector, competitors whose tenders are not accepted when contracts are awarded are also an important source of information.

37. Because of its historical and political tradition, France is reluctant to have systemised or formalised policies of incitement to denouncement, preferring to rely on the mechanisms of co-operation between the citizens and the judicial system. The French legal system also provides means for ensuring the co-operation of a witness, if necessary with the help of the police. However, France has not yet developed any specific mechanism for witness protection.

38. In carrying out their inquiries, police officers may only receive or seek instructions from the judicial authority to which they are answerable (Article R1 of the Code of Criminal Procedure). Nevertheless, they are still responsible to their hierarchical superiors. Police representatives - Ministry of the Interior and gendarmerie - indicated that there had been a definite improvement in recent years in their degree of independence: no more delocalisation of cases, no more political obstruction or interference from superiors, fewer problems of co-operation with other departments, etc. The hierarchy was kept informed of the progress of inquiries, which was not seen to cause problems. All the regional police departments have had to deal with cases involving leading political figures.

39. In corruption inquiries, investigators may use searches, bugging of private and public premises and interception of telecommunications. Using controlled delivery in corruption cases is

theoretically possible but is rarely used in France. Moreover, French legislation permits the use of undercover operations, which have had very positive results in other countries, only in cases of drug trafficking and related money laundering. Police officers operating under the expedited procedure, as part of a preliminary inquiry or under the instructions of an investigation judge, have extended search powers[15]. Under this procedure, searches are possible not only of a suspected person's home but also in the premises of anyone who may possess documents or objects relating to the suspected offence. Such searches do not require the agreement of the person concerned (Article 56 of the Code of Criminal Procedure). Similarly, investigating judges or police officers acting under their instructions may carry out searches in any premises which might contain objects whose discovery would help to establish the truth (Article 94 of the Code of Criminal Procedure).

40. Article 100 of the Code of Criminal Procedure grants investigating judges sole power to order the interception, recording and transcription of correspondence by means of telecommunications in criminal cases, if the offence is liable to two or more years' imprisonment (which includes corruption cases). Entering the scope of this text, one can include interceptions of correspondence issued or received on equipment such as telephones, fax, minitel, telex and e-mail. These operations are carried out under the supervision and authority of an investigating judge. Investigating judges authorised telephone taps in about 9 300 cases in 1998, though it is impossible to know how many related to corruption (the number of administrative phone taps has increased in recent years to 4 800 in 1998). The decision to intercept correspondence taken by a judge must be in writing and may not exceed four months. It can be renewed. It may be ordered against any person who appears to have taken part in events that are the object of a judicial investigation or likely to hold information relating to these events. The Court of Cassation has ruled that under these powers of investigation, investigating judges can order the interception, transmission and recording of private conversations other than telephone calls, so long as these measures are supervised by a judge and do not infringe the rights of the defence.

41. Moreover, by law (Section 57 of the Banking Act of 24 January 1984 and article 132-22 of the Criminal Code), public prosecutors, investigating judges or courts may require the parties, any government department or agency, any financial establishment or any individual holding funds belonging to an accused to communicate any relevant financial or tax information, and this cannot be challenged on grounds of confidentiality.

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[15] The police's criminal investigation functions differ according to whether or not a judicial investigation has been opened.
Before the opening of a judicial investigation: the recording of breaches of the criminal law is a specific police responsibility, exercised through the receipt of complaints and reported offences, as provided for in the Code of Criminal Procedure, but also through other means such as the surveillance of known criminals or places likely to be the scene of crimes. The collection of evidence requires investigation powers that the Code of Criminal Procedure confers on the police (inspection and sealing off of the site, collection of evidence, searches and seizures, examination of witnesses, checking identities, arrests, police custody, requisitioning qualified persons to undertake technical or scientific examinations). Actions connected with expedited or preliminary inquiries affecting the freedom of the individual are carried out under the authority of the public prosecutor.
After the opening of a judicial investigation: Once an offence is deemed to be sufficiently serious, the public prosecutor initiates a judicial investigation, which results in the inquiries being handed over to a judge. The latter has full powers to conduct the investigation. Police officers thereafter carry out the investigating judge's instructions. The latter may formally request police officers to undertake one or more steps in the investigation in his place. However, certain actions cannot be delegated to police officers: questioning and confrontation of the person under investigation, questioning of the party claiming damages or any person expressly identified in a complaint associated with an action for damages, unless the person requests to the contrary, appointment of experts, issuing of warrants. In this stage of an investigation, the degree of operational autonomy enjoyed by the police depends on the extensiveness of the powers conferred on them by the investigating judge.

42. The intimidation of witnesses, judges, jurors or any other person involved in proceedings is a criminal offence. France has not established a witness protection programme or agency. This does not preclude the police from granting such protection but the GET was unable to establish the precise nature of such measures, aside from physical protection and housing someone in a police or gendarmerie station during judicial proceedings. It emerged from discussions though that intermediate measures, such as the partial concealment of a witness's identity during proceedings or giving evidence as X, could usefully be applied in certain cases. Currently, it was not possible to maintain the anonymity of an individual co-operating with the judicial authorities throughout the entire proceedings, since identity must be revealed in cross-examination, or beyond them. Turning to other forms of encouragement to co-operate with the authorities, there was no support for 24 hour a day phone lines, on the grounds that the information they produced was of little value.

43. The GET also encountered strong scepticism, if not opposition, to the use of certain working methods, such as whistleblowers, collaborators of justice ("pentiti") and under-cover activities, which were deemed to be contrary to the French tradition of human rights protection or unacceptable - as in the case of whistleblowers - on historical grounds.

44. The case-law traditionally insisted on proof of a prior agreement of corruption. A recent jurisprudence accepts that evidence of repeated payments would suffice to establish a strong legal presumption of the existence of a corruption agreement, which would facilitate the prosecution of this type of case. Furthermore, the Law of 30 June 2000 changed the constituent elements of the corruption offence, by indicating that the advantage may be granted, promised or offered "at any time". Nevertheless, the GET noted that there was some disagreement among the persons it interviewed on the need to prove the "prior" character of a corruption agreement.

45. The GET noted that criminal prosecutions in France are subject to the following time-bars: one year for minor offences, three years for lesser indictable offences and ten years for serious indictable offences. Acts of corruption - or assimilated acts - are lesser indictable offences and thus subject to the three-year time-bar. The clock starts ticking on the day of the last payment and is stopped by each act of prosecution. Several of the French representatives the GET met said that this period was relatively short and could make it difficult to bring corruption investigations to a successful conclusion. As the facts of corruption often emerge late in the proceedings, or are anyway difficult to prove, it often happens that a criminal action is brought for misuse of company property – the latter being an offence which does not pose problems of time-bar and is easier to prove but which the public sees in a different light.

iii. TRACFIN (Secret financial channels monitoring and action unit)

46. TRACFIN is an administrative unit answerable to the Ministry of Economic Affairs, Finance and Industry and attached to the State Secretariat of the Budget. It was established by a decree of 9 May 1990 and it became fully operational in February 1991. The unit comprises a total of 35 staff, of whom 20 investigators and analysts form the core of the operation. The staff are all government officials from various financial departments, such as the Customs and the external services of the Treasury. The unit is organised and managed by a Secretary General and Deputy Secretary General, assisted by a judge, a director of operational services and two other officials.

47. TRACFIN acts as a clearing house for information on secret financial channels and offers expert advice on anti-laundering measures. It has two main functions: 1. gathering, processing and disseminating information on secret financial channels and laundering with the Ministry of

Economic Affairs, Finance and Industry and co-ordinating the Ministry's activities in this field; 2. receiving and investigating accusations - statements of suspicion - levelled at financial organisations and property companies, in other words gathering and collating any information likely to reveal the origin of suspect funds or the nature of the operations concerned.

48. TRACFIN must report to the Public Prosecutor all criminal acts that come to its attention and are not covered by its mandate (the laundering of proceeds of drug trafficking or of activities of criminal organisations).

b2. The courts

i. General considerations

49. The French judicial system makes a distinction between administrative and ordinary courts. The administrative courts (administrative first-instance court, administrative court of appeal and *Conseil d'Etat*) rule on the legality of administrative acts and decisions and the validity of public contracts, for example those awarded by tender. They are thus involved, to a certain extent, in monitoring corruption. The non-administrative courts of first instance are general (regional courts – *tribunaux de grande instance)* or specialised (commercial, consumer-rights or social security courts etc.). Corruption and related offences are lesser indictable offences (*délits*), liable in most cases to up to 10 years' imprisonment (2 years in the case of private sector corruption). These offences are therefore dealt with at first instance by the criminal courts (within the 181 regional courts – *tribunaux de grande instance*), while less serious offences are heard in the police courts (punished by a fine) and the most serious ones (those liable for up to life imprisonment), by the assize courts, before a jury. The non administrative courts of second instance are the 35 courts of appeal. Their decisions are then examined by the Court of Cassation, which only rules on whether the law has been correctly applied. Since 15 June 2000, the verdicts of assize courts are re-examined on appeal by another assize court. The Constitutional Court rules on the compatibility of legislation with all the rules and principles with constitutional status and takes certain decisions, such as those relating to the ineligibility of members of parliament. It does not have any hierarchical relationship with the administrative or other courts and is not therefore a supreme court.

50. Altogether, there are 7 000 judges and prosecutors in France and 22 000 court registry staff, to which should be added the judicial auxiliaries: non-professional judges, lawyers and barristers, court ushers and bailiffs and judicial experts, such as architects, doctors and engineers.

ii. Specialisation in corruption cases

51. Article 704 of the Code of Criminal Procedure authorises special economic and financial courts to initiate proceedings against, investigate and try corruption offences in cases that are or appear to be highly complex.

52. The principle that certain courts should specialise in economic and financial offences stems from the Act of 6 August 1975. The Act of 1 February 1994 on the prosecution, investigation and hearing of economic and financial cases reformed the current system and extended it to other offences, including corruption, and made the special courts responsible for the early stages of inquiries, and not just the judicial investigation and the hearing. There is currently one specialist

court[16] per court of appeal. In addition, the Paris court has been given statutory jurisdiction for the whole country in active corruption cases in foreign international trade. The Paris special court deals with some 16 000 cases per year. These special courts' jurisdiction is optional and overlaps with that of the relevant geographically competent courts.

53. The establishment, in 1999, of economic and financial units was a particularly significant development. The units, soon to be twelve, were set up in response to the increasing number and complexity of economic and financial cases, including corruption. The aim was to handle more swiftly and efficiently economic and financial delinquency (including corruption) thanks to a concentration of human and other means, and to increase the skills of magistrates. These units also have provided an opportunity for specialisation and a multidisciplinary approach by providing public prosecutor's departments and the investigating judges of the relevant courts with specialists from the Bank of France and government departments: taxation, customs, competition, consumer affairs and fraud units. About twenty specialist assistants are currently assigned to the economic and financial units, half of them in the capital.

b3. The magistrates

i. General

54. France has the institution of the investigating judge, to whom the public prosecutor must refer complex criminal cases and all serious offences. Investigating judges are specialist regional court judges appointed by the relevant president of the court for each case, with the task of undertaking an impartial investigation (that is, not favouring either party) in order to establish the facts of the case. With the entry into force of the Presumption of Innocence Act of 15 June 2000, since 1 January 2001, there has been a new type of judge, the liberties and detention judge, responsible for deciding on the loss of liberty of those under investigation.

55. Another principle that applies in France is the unity of the national judicial service, which means that judges and prosecutors form part of the same single body of officials, with a common career structure. As magistrates, they are subject to the rules set out in an order of 22 December 1958 and to the principle of independence, which is laid down in the Constitution (Article 64). However, the principle of security of office applies to judges but not to prosecutors, the latter being under the direction and supervision of their hierarchical superiors and the authority of the Minister of Justice.

56. Following recruitment by competition, judges and prosecutors are trained at the National Magistrates Training College, in Bordeaux. The college provides initial and continuing training in all disciplines. Judges and prosecutors are supervised by a judicial service commission, which gives an opinion - binding for judges, advisory for prosecutors - on their appointments. In principle, judges and prosecutors are appointed by the President of the Republic on a proposal of the Minister of Justice. The commission is also consulted on disciplinary proceedings initiated against judges or prosecutors by their superiors. When they take up their posts, judges and prosecutors take an oath to perform their duties faithfully, and with dignity and loyalty, and scrupulously to maintain the confidentiality of their deliberations.

57. The status of judges and prosecutors has been modified several times in recent years. The need for further guarantees of their independence is still the subject of debate.

[16] Except for the Courts of Appeal of Aix-en-Provence and Rennes, which have two.

ii. Hierarchical relationships and judicial autonomy

58. French criminal procedure follows the inquisitorial model and gives judges a greater role than parties in the conduct of proceedings. It is also based on the principle of discretionary prosecution. Under Article 40, para. 1 of the Code of Criminal Procedure, public prosecutors decide how to respond to complaints and to other reports and opinions received according to law. The reasons justifying the closing of a particular file are expressly set out in a document, which allows for an effective supervision of the discretionary power of the Public Prosecutor's Office.

59. This discretionary principle only applies to the initial launching of criminal proceedings. Once they are underway, it is no longer applicable. For example, the public prosecutor's department can no longer remove cases from investigating judges or courts by abandoning proceedings. Nor can it make submissions calling for the termination of proceedings or acquittals on grounds of expediency. Once prosecutions are initiated, their conduct is governed solely by strictly legal considerations.

60. The principle of discretionary prosecution is subject to three safeguards. The first stems from the hierarchical oversight to which public prosecutors are subject. If a prosecution decision to terminate proceedings is deemed not to be in the public interest, the chief public prosecutor can require the prosecutor to commence a prosecution (Article 37 of the Code of Criminal Procedure). The second safeguard is based on the right of any individual with evidence of actual, personal, direct loss to initiate a prosecution by lodging a complaint and a claim for damages with the Criminal Court.[17] Lastly, in accordance with Articles 202 and 204 of the Code of Criminal Procedure, if, in a given case, the public prosecutor has excluded certain people or acts from a prosecution he or she has instigated, the Investigative Chamber can order, even on its own initiative, that all counts arising from the case against people under investigation who are referred to it be further investigated or order investigation, on the same counts, of people who are not referred to it.

61. In the 1980s, a number of cases, mainly relating to the financing of political parties, highlighted the problem of public prosecutors' accountability to the political system, and in particular the Minister of Justice.[18] As noted above, the French prosecution service has a hierarchical organisation with the Minister of Justice at the top, in accordance with Article 5 of the order of 1958. Article 36 of the Code of Criminal Procedure expressly provides that the Minister of Justice must report to the Public Prosecutor all breaches of the criminal law known to him and enjoin him, by a written note that is included in the case file, to start proceedings or to defer to the competent court such requests. As has been mentioned in a written answer, Article 36 of the Code of Criminal Procedure prohibits the Minister from giving instructions that a file should be

[17] In the case of corruption, the Court of Cassation has allowed actions for damages to brought by:
- a local authority against one of its members who, as Chair of the Tenders Committee, had made the renewal of a public contract conditional on the payment of commissions, thereby fraudulently raising the cost of the contract (Cass crim 30 May 1994, no. 93 83 410);
- an individual who was the victim of passive corruption by a tax collector (DP June 1993, p. 7).

[18] Verrest, P.: The French Public Prosecution Service. European Journal of Crime, Criminal Law and Criminal Justice 8(2000), pp. 210-244.

closed. However, the question of whether the Minister of Justice[19] may instruct not to prosecute or to terminate proceedings have been the subject to discussions[20] until recently.

62. Bill No. 470 amending the Code of Criminal Procedure in respect of prosecutions in criminal matters, which had its first reading in the National Assembly on 29 June 1999, aims to clarify the relationship between the Minister of Justice and the hierarchical structure of the public prosecutor's department[21], and to strengthen the safeguards available to citizens in the event that a case is dropped[22].

63. Pending the final enactment of this legislation, like her predecessor the current Minister of Justice has undertaken not to issue any more hierarchical instructions in individual cases. The Minister can therefore now only issue general instructions through circulars (or general guidelines on penal policy).

64. The removal of law officers from cases or their transfer (prosecutors do not benefit from security of office) do not currently appear to be a source of major controversy or malfunctioning in France.

65. However, according to some of those whom the GET met, the former practice and culture of instructions is still reflected in a certain wait and see attitude on the part of prosecutors, who in some "sensitive" cases apparently try to gauge the views of their superiors as to the advisability of prosecution.

66. The GET has not identified any particular problems concerning judges' independence. France has made considerable efforts in recent years to make the submission of a case to a particular judge more objective, in order to avoid problems encountered in the past, for example the "orientated submission of a case". Cases are now normally referred to investigating judges according to criteria of efficiency, ability or workload. In addition, the former system of an automatic on-call rota has been abolished on account of its adverse effects[23]. Besides, the courts' excessive workload means that the public prosecutor refers a case to an investigating judge only where the latter's intervention is necessary.

67. The GET took note of the provisions of the French Criminal Code making it an offence to impede the work of the judicial system where an offence has been committed (Articles 434-4 ff).

68. The police are answerable to the judge responsible for an investigation. However, certain judges whom the GET met said that police co-operation with investigating judges could be inadequate, particularly in the case of searches, on account of the hierarchical relationship between the police and the Ministry of the Interior. In practice, while judges can instruct the police to carry out certain tasks in the course of investigations they do not control the resources needed to implement these instructions. It was said that this risk is now a theoretical one. Those concerned noted that members of the judiciary have long advocated that the police should be placed under the control of the Ministry of Justice.

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[19] Instructions in individual cases must be in writing and placed in the case file. Prosecutors who receive such instructions must abide by them but are entitled to express their disagreement in the proceedings.

[20] Verrest, P.: op. cit. 2000, p. 216.

[21] Prohibition on giving instructions in individual cases, and of any instructions by the Principal State Counsel likely to hinder the initiation of a prosecution in individual cases.

[22] Legal and practical grounds will now have to be given for decisions not to prosecute, which may be subject to appeals to the chief public prosecutor in the first instance and then to an appeal committee made up of three judges.

[23] It enabled prosecutors or the police to await the on-call day of the investigating judge sought (perhaps the least fitted) before referring the case.

b4. Confidentiality of investigations

69. Article 11 of the Code of Criminal Procedure establishes the principle of confidential inquiries and investigations. This applies to judges and prosecutors, court officials such as registrars and bailiffs, police officers and members of police forces, experts, welfare officers giving character reports, interpreters and so on, but does not include defendants, parties claiming damages, suspects and witnesses. The press may therefore use statements and information obtained solely from such persons, so long as it is done lawfully. Investigating judges and prosecutors may authorise the press to disclose certain information. Prosecutors may also issue press releases.

70. The attention of the GET was drawn to the fact that there existed a long-standing distrust between investigative judges and the Public Prosecutor's Office, because information on the progress of an inquiry sent to the Public Prosecutor's Office often reached via the hierarchical route the Minister of Justice, even in highly sensitive cases. According to the GET, this situation seems to have considerably improved within the economic and financial unit of Paris.

b5. Internal supervision

71. Most ministries have internal inspectorates, which may detect acts of corruption in the course of their duties. Three examples may be given, the first two of which were described in the answers to the questionnaire.

i. General Finance Inspectorate

72. The General Finance Inspectorate (IGF) was formed by the merger in 1816 of various supervisory bodies within the Ministry of Finance and the Treasury. The current regulations governing it are laid down in a decree of 14 March 1973. The inspectorate is responsible to the Minister for Economic Affairs and Finance, its main task being to monitor the use of public funds, which enables it to uncover cases of corruption. The inspectorate conducts checks, investigations and audits, which give rise to reports forwarded to the relevant ministers and their departments so that they can identify the operational implications of the investigations carried out. Under Article 40, paragraph 2 of the Code of Criminal Procedure, any acts discovered that might be classified as criminal are referred to the judicial authorities. Traditionally, the IGF has conducted checks of departments in the Ministry of Economic Affairs and Finance: correct application of the regulations, standard of departmental management and ethical checks. These checks are extended to authorising officers for the national budget and all bodies - public, semi-public and private - receiving public funding. It also conducts surveys and audits on topical issues. However, the GET noted that at present, certain banks and public enterprises fall in part outside its remit. Despite his/her administrative dependency on the Minister, the Head of the IGF rigorously applies the rules of the Code of Criminal Procedure by notifying the Public Prosecutors' Offices of cases of suspicion of criminal offences, without having to ask the authorisation of the Minister or his/her Cabinet.

73. The senior management comprises three members: the head of the inspectorate, his or her deputy and a technical adviser. There are about thirty senior inspectors and thirty inspectors. Most control operations are conducted on the spot, within the bodies concerned. All documentation must be supplied to inspectors on request. Inspections are adversarial. Any official whose management is challenged may respond to the inspector's comments.

ii. General Judicial Inspectorate

74. The General Judicial Inspectorate, governed by the decrees of 1964 and 1965, conducts checks on all the departments responsible to the Minister for Justice. The inspector-general, a high-ranking judge or law officer, is assisted by two deputy inspectors-general and 16 inspectors, all of whom are magistrates (1999 staffing budget).

75. The inspectorate has various duties: overseeing the operation of the courts and of departments attached to the Ministry of Justice (its main function), inspections of courts or other departments in accordance with instructions from the Minister for Justice (such inspections may follow notification from a head of court of problems warranting particular attention), administrative inquiries into the professional or personal conduct of judges, law officers or civil servants, and special investigations ordered by the Minister for Justice.

iii. The National Police Inspectorate

76. The Inspectorate supervises police compliance with the law and regulations, and with the national police code of ethics. It undertakes inquiries relating to its responsibilities assigned to it by the administrative and judicial authorities. It also carries out studies and submits proposals for improving police functioning.

b6. Other authorities, institutions and machinery

i. General administrative machinery

77. The prefects are appointed by presidential decree approved by the Council of Ministers, on the proposal of the Prime Minister and Minister of the Interior. They are attached to the Ministry of the Interior and represent it and the other ministries in the *départements* and regions. They are responsible for applying the law, co-ordinating government activities and so on. The prefects can notify the administrative court if they think that actions of a local authority are against the law.

78. The answers to the questionnaire refer to other national and local administrative bodies that may be involved in supervising procedures, particularly public contracts: the competition, consumer affairs and fraud and the urban and rural development directorates, which exist in each *département*.

79. All public servants have specified interests that are incompatible with their duties. Any potential conflict of interest must be examined by one of three consultative committees, depending on the branch of public service to which the official concerned belongs.

80. Finally, Article 40, paragraph 2 of the Code of Criminal Procedure places a general obligation on all public officials to inform the public prosecutor of any offence discovered in the course of his or her duties. The officials who fail to provide such information can be subjected to disciplinary measures, and not to criminal sanctions, unless he/she is considered an accomplice. There does not seem to exist any specific measures of protection for an official who would report such an offence. According to the information gathered by the GET, in practice, Article 40 of the Code of Criminal Procedure tends to be applied differently within different administrative bodies and its operation has been modified as a result of the application of internal procedures for keeping one's superiors informed. Multi-member authorities meet in groups of colleagues before any

decision (joint rather than individual) is taken on whether to refer the matter to the public prosecutor.

ii. The Sub-Directorate of Economic and Financial Affairs of the Directorate of Criminal Affairs and Pardons of the Ministry of Justice (SDAEF)

81. Pursuant to the Law of 1 February 1994, the Decree of 20 July 1994 set up a Sub-Division of Economic and Financial Affairs (SDAEF) within the Ministry of Justice, the purpose of which is to deal with all forms of economic and financial fraud. The SDAEF has a multidisciplinary structure. Representatives of the various administrative authorities dealing with the fight against corruption (General Tax Directorate, General Directorate of Customs and Excise and Directorate for Fair Trade, Consumer Affairs and Repression of Fraud) work full-time within the SDAEF, which is also assisted by representatives of the Police and "Gendarmerie" posted to the Division for Criminal Affairs and Pardons. The presence of these representatives within the SDAEF constitutes a tool for inter-departmental cooperation (cross-analysis of specific cases of corruption – a structural link to their administrative authorities – participation in training activities both within the courts and their administrative authorities – drawing up of partnership circulars).

82. The task of the SDAEF is to collect information (from reports by the prosecution service on a specific case, or annual reports on the principal difficulties encountered in the fight against economic and financial crime, as well as from indications provided by the MIEM, SCPC, IGF and the Court of Audit), to analyse such information in a thematic and multidisciplinary manner, using, where necessary, a combination of expertise from the legal and administrative representatives within the SDAEF, and on this basis to coordinate public action, and to set up both preventive and repressive criminal policies through the drafting of thematic reports with a strong emphasis on a multidisciplinary approach, or the drawing up of legislation or regulations aimed at addressing the concrete difficulties met by practitioners in dealing with economic and financial crime.

83. In addition to this necessary coordination at national level, the SDAEF carries out coordination efforts at local level, notably through the organisation of regular working sessions, held at Appeal Courts and lasting one day on the following themes "taxation", "customs" or "fair trade". The aim of such sessions is to provide an opportunity for an exchange of professional cultures, to raise awareness among the officials of relevant administrative authorities with regard to detecting acts of a criminal nature and to define coherently with national policy, methods for collaborating with legal authorities locally and finally, to draw up guidelines on the basis of clearly defined criteria for both national, centralised and local, decentralised authorities. Lastly, with regard to international coordination, the SDAEF provides technical expertise to the European and International Affairs Department of the Ministry of Justice which has the task of supporting the Ministry of Foreign Affairs in the definition of the position defended by France within the framework of the negotiations on international instruments related to corruption.

iii. The Central Corruption Prevention Department (SCPC)

84. The SCPC is one of the three specialist departments concerned with fighting corruption. Set up in 1993 under Act 93-122 on preventing corruption and transparency in business and government, this department with an interministerial structure attached to the Ministry of Justice is headed by a senior judge and made up of judicial and administrative specialists. All the members are required to maintain professional confidentiality. The Department has the following responsibilities:

85. - centralising the necessary information in order to detect and prevent acts of active or passive corruption, influence peddling by people holding public office or by individuals, extortion by public officials, illegal interest and violations of the principle of freedom and equality among applicants for public works and supply contracts. In practical terms, this consists in analysing those sectors in which corruption flourishes and drawing up recommendations to prevent it. To date, the unit has looked at public works and supply contracts, sport, public health, information technology, hypermarkets, sects, derivative products, advertising, international commercial transactions and the role of advisers and intermediaries. Drawing on the knowledge thus acquired, the unit organises or sponsors education and training for officials exposed to the risk of corruption (in public works and supply contracts and public health, for instance), those who conduct checks (within a prefecture or in competition, consumer affairs and anti-fraud departments) and those who conduct investigations (police, gendarmerie and the courts). Those concerned are supplied with relevant documentation, such as handbooks and checklists, based primarily on auditing methods;

86. - advising on specific problems relating to the prevention of corruption, at the request of government departments, the heads of a limited number of bodies, such as the Securities and Investment Board, the Competition Council, the Interministerial Taskforce for Investigations into Public Works and Supply Contracts and the financial courts, or local officials such as mayors. In practice, such opinions are sometimes requested by government departments or the financial courts, but above all by mayors of small local authorities (1500 to 20 000 inhabitants), who lack legal services or accredited advisers; opinions are given only to the authorities requesting them, which are not allowed to disclose them;

87. - co-operating with the courts by informing the public prosecutor of any acts of corruption that may come to its attention or securing technical and legal assistance from a specialised unit should the courts so request. Once a judicial investigation into corruption has been opened, the SCPC ceases to be involved.

88. Following a constitutional decision, the SCPC was not granted the investigative powers for which provision had been made in the original text of the law. The SCPC is therefore not an operational investigation department but a multidisciplinary specialised unit for analysing corruption, education and training on corruption, advising public authorities and assisting the courts. It submits annual reports to the Prime Minister and the Minister for Justice, in which it describes its activities, publishes its latest analyses and makes recommendations to the government. These annual reports are published to coincide with meetings of the standing liaison committee, whose membership, which is not restricted, includes the members of the SCPC and the directors of all the government departments involved in combating corruption, irrespective of whether or not they are represented in the unit. The purpose of these annual meetings is to present the unit's work to government departments and generate discussion with a view to drawing up the work programme for the following year, to which the government departments are invited to contribute. The SCPC also contributes to the anti-corruption activities of international organisations.

89. At the moment, the department is made up of a small but highly competent staff, with experienced specialists from the various sectors dealing with problems of corruption. Its budget is considered to be adequate for its existing responsibilities.

iii. The Interministerial Task Force for Investigations into Public Works and Supply Contracts and Delegated Public Services (MIEM)

90. The MIEM was established in 1991 at the same time as the offence of favouritism to undertake inquiries into the lawfulness and impartiality of the preparation, award and implementation of public works and supply contracts and agreements to delegate public services of the state, local authorities, other public bodies and semi-public companies. The task force theoretically has six members and may call on ad hoc advisers for specific cases. When the GET was in Paris only four of the six posts were filled. It operates with seconded staff and does not have its own budget, which is managed by the Ministry of Finance. It can only respond to cases referred to it: by prefects for their geographical areas, ministers for their areas of responsibility and the Minister for Finance, Prime Minister and Court of Audit for all areas of activity. A point worth mentioning is that elected officials and other persons concerned generally keep a very close eye on the progress of inquiries. It has thus sometimes happened that they have tried to find out which authority is involved in the follow-up of the case. This is perhaps not unconnected with certain decisions not to initiate or to abandon criminal proceedings that have been taken precisely after the MIEM had been asked to give technical advice; there is currently no legal guarantee that an authority that has referred a set of facts (presented anonymously) to the MIEM for technical advice, would lodge a criminal complain if the MIEM concluded that there had been embezzlement.

91. The MIEM has certain investigation powers and may order searches, under judicial supervision. As well as acting as an inter-ministerial co-ordinator, the task force often advises regional police departments, the Court of Audit and other agencies on "identikit cases" and detection methods (as does the SCPC). It is impeded by problems of a legal nature of excessive legalism and procedure, to which it referred in its 1999 annual report (pp. 79-84). In particular, it thinks that its remit should extend to contracts that the regulations require to be publicised and opened to competition and that it should be able to launch investigations of its own motion.

iv. The Transparency in Public Life Commission

92. The independence of members of parliament and other political decision makers is generally a function of the extent to which their assets and their relations with the business world are open to public scrutiny. In this respect, French legislation has opted for a mechanism of incompatibility of duties and control by the Transparency in Public Life Commission, which is chaired by the Vice-President of the *Conseil d'Etat* and composed of judges of the *Conseil d'Etat*, the Court of Cassation and the Court of Audit.

93. The Commission also scrutinises the assets and incomes of members of the government, members of Parliament (including the European one), the presidents and councillors of regional and *département* councils, mayors of local authorities with more than 30 000 population and deputy mayors of large towns and cities, and the chairmen and managing directors of large national enterprises and various other public bodies. Reports of the Commission's activities are published at least every three months in the country's official gazette[24]. The declaration of assets of the candidate to the presidency of the Republic is published in the Official Journal along with the results of the presidential election.

94. The Commission faces a number of problems, which it has already referred to in its 1999 report[25].

[24] See, for example the official gazette (*Journal Officiel de la République française)*, 7 April 2000, pp. 5342-5345.

[25] *Journal Officiel* of 7 April 2000, p. 5342 ff: even if the Court of Audit produces a report every time it seems necessary, it has no investigative powers as such (hence the impossibility to investigate the substance of declarations), and exercises its

95. The financing of political parties is governed by laws enacted in 1988, 1990 and 1995, in response to the problems that arose in this field. A mechanism for the public financing of election campaigns and a special supervisory machinery were set up. They complete the previous arrangement.

v. The Court of Audit and regional audit chambers

96. In France, various methods are used to check the illegal use of public funds: accounting officers, administrative and parliamentary controls, and finally the control carried out by the financial courts: the Court of Audit and regional audit chambers.

97. The Court of Audit exercises oversight of state activities, other national public bodies, public enterprises and social security. In each case, its involvement is statutory and therefore automatic. It also exercises optional oversight of private law bodies receiving public funds, charitable bodies relying on public donations and organisations receiving financial support from the European Union. The Court is headed by the President, who is appointed by decree. Its administrative services are directed by a Secretary General, a judge, assisted by two deputies, who are also judges, under the authority of the President. Like any court, it is assisted by a state counsel's department headed by a principal state counsel, appointed by decree in the Council of Ministers. He acts as the Court's legal adviser and serves as a liasing officer between the government and the Court.

98. The Court's independence is safeguarded by its judicial status, the security of office of its members, who have the status of judges, and its freedom to draw up its own audit programme[26].

99. The Court has seven divisions, each with about thirty judges and rapporteurs, officials (civil administrators and engineers) who have been seconded or are between posts, answerable to the President. The divisions are the Court's deliberative bodies. They audit the various ministries and sectors of activity falling within the Court's jurisdiction, each specialising in a particular area.

100. The Court performs its tasks in conjunction with four associated bodies, including the Budget and Finance Disciplinary Court. It has been reported about the latter, that local authorities' and public bodies' accounts often arrive late, thus restricting the scope of Disciplinary Court audits, on account of the time limit for prosecutions. One problem that arises here is that the Budget and Finance Disciplinary Court, which has judicial powers and is closely associated with the Court of Audit, has no authority to hear cases involving local elected representatives, which removes much of the impact that it could have in terms of correcting unlawful management practices[27].

101. The regional audit chambers were established in 1982 to coincide with decentralisation. The members are judges with security of office. These regional chambers examine the accounts presented by public accounting officers of local authorities and their public bodies and review the management of these authorities and of bodies directly or indirectly answerable to them, or which they support financially. They also issue opinions, proposals and official notices.

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control over directors of national enterprises and joint economy bodies with great difficulty. The control over the truthfulness of property declarations is also extremely difficult.

[26] Each year, the President lays down the divisions' work programme for the next twelve months. It is based in particular on when the previous checks took place, the objective being to ensure that all the bodies coming within the Court's jurisdiction are audited on average every four to five years.

[27] "The higher monitoring institutions", presentation by Mrs H Gisserot at a conference, undated.

102. The Court of Audit publishes an annual report. It appears to be aware of certain weaknesses in terms of working methods and its analysis of information since it has requested - an initiative that the GET deems exemplary - an appraisal by the Netherlands Court of Audit, which started in January 2000[28].

vi. The Ministry of Foreign Affairs' role in anti-corruption policies

103. The Ministry of Foreign Affairs became involved in fighting crime, and in particular corruption, on 10 February 2000 when it gave one its ambassadors, Mr Pierre Charasse, the following tasks: 1) complete the analysis of the main aspects of major international crime and corruption likely to pose a serious threat to countries, including France; 2) contributing to the definition of the positions to be defended by France, particularly relating to corruption, and to define, with the help of the various departments concerned, a coherent body of principles for improving the international fight against corruption and proposing initiatives that France could take; 3) examining the way that France's main partners organise themselves to deal with these new challenges; 4) bring support to the definition of the guidelines for technical co-operation.

vii. The role of civil society and the private sector

104. The GET had the opportunity to meet representatives of two important civil society and private sector initiatives: the French section of Transparency International and the French Employers' Federation (MEDEF). The French section of Transparency International was founded in 1995 and has the same objectives as the parent organisation, but at the national level: educating the public and so on. It has 110 members, 16 of which are organisations, mainly in Paris. It also publishes a quarterly newsletter which reports on anti-corruption initiatives throughout the world, with occasionally a specific article on France. MEDEF is the organisation of French employers, whose interests it organises, represents and defends. However, it has also committed itself to raising business standards and has declared itself to be resolutely opposed to all corruption and intends to do all in its power to fight this scourge and preserve fair competition[29]. Leaflets produced by industrial groups provide evidence of their efforts to make their staff aware of the new anti-corruption rules imposed by OECD on international transactions. It appears from conversations, however, that corruption in the private sector (between firms) is not granted any special attention.

viii. The role of chartered accountants and auditors

105. Chartered accountants and auditors are two distinct professions, regulated and represented by different professional organisations. The former have a contractual duty, to provide services to businesses (establishment of accounts and, possibly, certificate under a contract). The latter are given a mandate for 6 years by the general Assembly of the partners of the public company, to check and certify the accounts. The professionals concerned are thus not employees of these businesses. They are theoretically in a position to help detect business crimes and financial offences, and thus corruption. This particularly applies to the auditors of large firms, who are required to report offences identified in the exercise of their duties, In so far, as the chartered accountants are concerned, representatives met by the GET stressed that in practice it was difficult to determine from the crude data at their disposal whether it was justifiable to suspect corruption. The GET was also told that it was currently difficult to reconcile the duties of

[28] 1999 report of the Court of Audit, p.22.

[29] See the speech by the Chair of MEDEF, Mr Ernest-Antoine Seillière, at the General Assembly of 16 January 2001.

chartered accountants with a detection role as their functions are based on a relationship of trust. Besides, as things stand, the training of chartered accountants is considered insufficient (absence of interest among persons being trained in questions of responsibility, no training in how to detect offences and fraud, and so on). The GET also noted that France was favourable to the extension of the declaration of suspicion under the Community Directive of 10 June 1991, to accountants legal professionals, subject to the rights of the defence.

c. Immunities from investigation and prosecution for corruption offences

106. The President of the Republic enjoys immunity from criminal prosecution, which is strictly limited to actions performed in the exercise of his office, other than in the case of high treason[30]. The notion of "high treason", which does not equate with any specific category of criminal offence, refers to the actions of a head of state who, in bad faith, hinders the lawful operation of institutions, prevents the implementation of constitutional provisions and thereby breaches his or her duties. The President of the Republic is consequently answerable for criminal offences that have no bearing on the discharge of his or her duties. In a decision of 22 January 1999, the Constitutional Council explained the rules governing the responsibility of the President of the Republic. The President is criminally liable for offences he or she commits, whether or not during his or her term of office, provided that those offences are not actions performed in the course of his or her duties. Moreover, the President can be prosecuted, even during his or her term of office, but enjoys exemption from jurisdiction insofar as his or her criminal liability can only be invoked before the High Court of Justice.

107. Members of parliament (the National Assembly and the Senate) are not criminally liable for acts committed "in respect of opinions expressed or votes cast in the exercise of [their] duties" (Article 26.1 of the Constitution). This exemption from liability is permanent (that is, it continues to apply even when they no longer have a seat in parliament) and concerns all actions performed by parliamentarians in the exercise of their mandates, provided they have a direct bearing on the latter. This exemption does not apply to acts of corruption committed by a parliamentarian on the occasion of a vote or participation in a debate (subject to the court's interpretation).

108. Under Article 26, sub-paragraphs 2 and 3, of the Constitution, members of parliament may not be arrested or detained in police custody, or be subject to an arrest warrant, a warrant to bring them before an investigating judge immediately, a committal warrant or judicial supervision, regardless of the nature and degree of coercion, without the authorisation of the Bureau of the Assembly of which they are members. Such authorisation is not required, however, in the event of major offences committed in flagrante delicto, or final sentences. Such authorisation is mandatory, even in recess periods. The detention, subjection to custodial or semi-custodial measures, or prosecution of members of parliament shall be suspended for the duration of the session if the assembly of which they are members so requires.

109. Members of the government are tried by a special court for actions performed in the course of their duties. Under Article 68-1 of the Constitution, "members of the Government shall be criminally liable for acts performed in the exercise of their duties and classified as *"crimes"* or *"délits"*[31] at the time they were committed. They shall be tried by the Court of Justice of the Republic." The Court of Justice comprises 12 members of parliament, elected in equal numbers

[30] "The President of the Republic shall not be held accountable for actions performed in the exercise of his office except in the case of high treason. He may be indicted only by the two Assemblies ruling by identical vote in open balloting and by an absolute majority of their members. He shall be tried by the High Court of Justice." (Article 68 of the Constitution).
[31] See note 9.

by the National Assembly and the Senate, and three judges from the Court of Cassation. According to the Court of Cassation, acts committed by ministers in the course of their duties are ones that have a direct bearing on the conduct of government affairs for which they are responsible, and exclude behaviour relating to their private lives or local electoral mandates.

110. France is a party to the Vienna Convention of 18 April 1961 on Diplomatic Relations and the Convention of 24 April 1963 on Consular Relations. It is these that are immediately applicable. The French replies indicate that there is no precedent for a foreign state requesting the lifting of the immunity of a French diplomat or consular official pending prosecution for corruption. If immunity is not lifted, the competent judicial authorities can commence a prosecution in France[32]. French courts have jurisdiction to judge offences committed by French nationals outside the territory of the Republic, provided that the acts in question are offences under the legislation of the country in which they are committed. Prosecutions can only be brought for such offences at the request of the public prosecutor's department and must be preceded by a complaint by the victim or by a person entitled through the victim, or an official complaint by the authorities of the country in which the offence was committed. In the absence of any official complaint from a foreign state, prosecutions can also be commenced in France at the instigation of the public prosecutor's department, which may be informed of an offence by the government (the Ministry of Foreign Affairs) under Article 40 of the Code of Criminal Procedure (see above).

III. ANALYSIS

a. A policy to prevent and combat corruption

111. The GET noted with satisfaction that France has a well-developed arsenal of anti-corruption measures and lays great stress on interministerial and multidisciplinary approaches, in which the expertise of different departments and units can be exploited. It was also pleased to note that the institutional response to corruption in France takes account of the fact that particular sectors or forms of conduct are likely to generate corruption. The traditional involvement of the state and civil service in the economy, even though this has substantially diminished in recent years as a result of numerous privatisations, makes these efforts all the more important.

112. The GET particularly appreciated the steps taken to involve the Ministry of Foreign Affairs in the analysis of the international dimension of corruption (including its relationship to other forms of serious crime), a novel and promising approach that takes proper account of this dimension, the need for adequate legislation to deal with it and the benefits of shared information and experience and mutual assistance.

113. It also noted with satisfaction that codes of ethics have been drawn up in France to clarify the duties and obligations of various groups of state employees, such as the customs and police, and various other professions. This approach is of great value since it strengthens informal anti-corruption machinery and complements the general principle of recruitment of public officials by open competition. The various ministries also have internal inspectorates and there are rules making official duties incompatible with certain paid activities.

114. It was satisfying to note the growing involvement of French business interests in the fight against corruption. The French employers' federation, MEDEF, has expressed its opposition to all forms of corruption, and its commitment to a properly functioning market and the introduction of codes

[32] Articles 113-6 and 113-8 of the Criminal Code, and Article 689 of the Code of Criminal Procedure.

of conduct and internal monitoring machinery by French firms, thereby distancing itself from the notion of necessary and enforced corruption described in December 1992 in the Corruption Prevention Commission's Bouchery Report. Such attempts to clean up commercial transactions, including international trade, must be supported and encouraged. If they devote sufficient resources to this effort and are prepared to turn words into action, French employers could become an effective partner in fighting corruption. Nevertheless, the representatives to whom the GET spoke (like many others it met) expressed hostility to the notion of informing - or whistle-blowing - to the authorities, as being incompatible with national culture, tradition and beliefs.

115. The GET also welcomed the emergence in France of non-governmental organisations, such as the French chapter of Transparency International, which is active in fighting corruption and whose task is one of education, prevention and assessing the impact of corruption on institutions. Despite a certain lack of resources, a still inadequate level of research and its relatively weak roots in French civil society, the GET believes that the non-governmental sector will gradually become a source of strength for French anti-corruption policies.

116. It therefore recommended the French authorities to support more actively, notably with the help of the SCPC, private initiatives, by strengthening the links between government preventive activities and such initiatives.

117. The GET noted with great interest the co-ordination role, in the field of criminal politics carried out by the sub-directorate of the Economic and Financial Affairs (SDAEF, Directorate of Criminal Affairs and Pardons) of the Ministry of Justice. The relationship of various participants within this sub-directorate led to the creation of a multidisciplinary body, where the points of view and expertise of the courts, the police, and financial and administrative authorities could usefully be brought together. The analyses and proposals of coordinated initiatives which could result from this work are of great importance for a coherent approach involving various French institutions in the fight against financial delinquency and corruption. But the GET is of the opinion that the co-ordination and analyses efforts made by the SDAEF is not sufficiently visible, given recognition and/or exploited. The work accomplished by the SDAEF was not sufficiently mentioned during the GET's interviews and the GET noted that the representatives it met tended to be more concerned with maintaining their respective organisations' independence than with seeking to create necessary links or really exploiting those that already existed.

118. Some authorities are already seeking to develop their analytical capacity, exchange views and develop new typologies and working methods, including the gendarmerie, SCPC and MIEM and, according to the GET, to a lesser extent, the judicial Police, which resorts to other techniques. Such efforts should be extended and supported by the SDAEF, within the framework of an overall and co-ordinated anti-corruption policy (which should also serve as a basis for strategic and analytical studies and the introduction of sector-based or general prevention programmes, the reinforcement of training, which - despite its quality - is still too focused on criminal law and - to a lesser extent – criminology.

119. It is therefore recommended to reinforce the visibility of the SDAEF and its overall co-ordination role of anti-corruption activities, by drawing in officials from the various ministries and departments concerned to encourage genuine dialogue, stimulate joint discussion and develop common approaches based on their respective experience (notably those met by GET) to enhance the interministerial dialogue, nurture communal discussions and develop the emergence of summaries of the various experiences made.

b. The judicial authorities

120. The GET welcomed the efforts made in France in recent years to give the courts the necessary expertise to deal with complex cases linked to various forms of corruption. It also welcomed the steps taken or in the pipeline to increase the independence of public prosecutors and judges, which were strongly supported by the officials concerned whom it spoke to. Nevertheless, the GET drew attention in this context to the need for the criminal justice system to develop modern methods of management and observation[33].

121. The GET believed that strengthening judicial independence should make a major contribution to restoring public confidence in and the image of the public prosecutor's department and the courts. As regards the current Minister of Justice's commitment to cease issuing hierarchical instructions, thus confirming her predecessor's position, the GET expressed its hope that this is a new practice which also binds the chief public prosecutor and the lower levels of the hierarchy[34]. The GET therefore recommended that the French authorities enact legislation confirming the commitments of the current Minister of Justice and her predecessor not to interfere in individual cases.

122. Although legislation is not the subject of this evaluation round, the GET noted with interest new legislative provisions which would remove the obligation to establish the existence of a prior agreement, thus facilitating the prosecution of corruption. The GET noted, however, that the complex procedural rules can make the investigation of cases linked with these offences more difficult. The GET believed that consideration might also usefully be given to simplifying the criminal court system to reduce the risks of procedural errors, subject to the respect of the rights of the defence.

123. The GET was particularly interested in the recently introduced economic and financial sections, which offer the expertise and resources necessary for complex investigations of financial crime linked to corruption. This development facilitates the smooth running of the judicial system and the quality and effectiveness of its response to this type of offence. Five such sections have already been set up. While it recognises the difficulties of extending them to all the French judicial districts, the GET hopes that it will be possible to extend them rapidly to all the most important courts. It also thinks that to ensure that cases emerging from the newly created economic and financial sections continue to be dealt with effectively, the judges hearing such cases in the courts of appeal should also be given more resources.

124. The GET therefore recommended that steps be taken, subject to existing budgetary constraints, to establish economic and financial sections in the most important courts, while at the same time strengthening the resources available to the economic and financial sections at the courts of appeal.

125. The GET has noted the optimism of the representatives of the economic and financial Unit of Paris concerning the improvement in the relations between judges, the Public Prosecutor's Office

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[33] See, in particular, Committee of Ministers Recommendation No. R (95) 12 and its appendix: "Regular and on-going monitoring procedures should be in place, designed to appraise the functioning of criminal justice agencies, to evaluate their efficiency and effectiveness and to promote useful improvements. Progress in these respects might be achieved either by developing an internal consultancy function or by recourse to external consultants" (paragraph II.3)

[34] See also the ambiguous wording of Article 37 of the Code of Criminal Procedure ("the chief public prosecutor exercises authority over all the public prosecutors within the jurisdiction of the Court of Appeal. He enjoys the same prerogatives, vis-à-vis judges, as those granted to the Minister of Justice in the previous article").

and the Police. The GET's discussions were not sufficiently representative - quantitatively or qualitatively - for it to do more than repeat the long-standing demand of the judiciary for the police to be placed under the control of the Ministry of Justice, to avoid the current problem of double loyalty and reduce the risk of leaks arising from requests for information from higher up the line that are impossible to resist. The GET was told by the above-mentioned representatives that the current situation had led to a sense of malaise, but also to increased awareness and finally, the press supported the magistrates in charge of certain inquiries involving celebrities

c. Investigation methods and information sources

126. The GET noted that the police and gendarmerie enjoy a high standard of training. Over the last few years, the gendarmerie in particular have made a major effort to professionalise their skills in business and financial techniques. The GET welcomed the advent of new working methods such as crime analysis (by the gendarmerie) and specialisation of police investigators. However, it cannot escape the impression that both police and gendarmerie still have a somewhat reactive approach to corruption offences. Cases mainly come to light in response to complaints or when other cases - particularly connected to economic or financial crime - reveal the existence of corruption. The fact that numerous specialists in the field of prevention and detection of economic/financial and corruption offences (SCPC, MIEM, IGF, Court of Audit, TRACFIN etc.) may discourage the police from adopting a more proactive approach, for fear of straying into these authorities' spheres of competence.

127. The GET therefore recommended that consideration be given to the need to legislate in order to allow the use of infiltration in corruption cases.

128. The three-year time limit for prosecuting corruption and related offences poses problems on account of the hidden nature of this type of offence and the difficulties in detecting them within the time span. The GET noted that, in corruption cases, charges are often pressed for misuse of company property, when proof is difficult to establish or when the corruption facts appeared too late in the proceedings. While this solution allows to limit the risk of impunity, it is not perfect as misuse of company property is perceived by the public less negatively than corruption per se, and the penalties are obviously less severe, even though there has been a tendency in recent years to impose harsher sentences[35]. In these conditions, the GET observed that France should reconsider the question of time-bars in corruption cases in the light of a study.

129. The GET also noted that despite the difficulties experienced in unmasking cases of corruption, which presumably take place in secret, there is still some opposition in France to the use of other working methods: plea-bargaining, partial reversal of the burden of proof[36] and the use of informers or whistle-blowers.

130. The GET is aware of the historical and cultural factors that impede the adoption of some of these measures. However, it recommended that the French authorities consider the development of new enforcement methods and at least ensure that there is a procedure for interviewing whistle-blowers and other witnesses who choose to remain anonymous or whose identity is known only to the competent magistrate and otherwise remains secret. Persons who agree to co-operate with the judicial authorities should also be entitled to specific forms of protection.

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[35] "The average sentence, which has certainly tended to increase in recent years, a point noted by the press, was formerly quite out of step with both the seriousness of the offence and the size of the illegal profits made" (SCPC annual report 1997, p. 38 (translation))

[36] Only in certain cases, such as exceptional benefits, a point already made by the SCPC in its 1997 report (p. 38).

131. Furthermore, the GET noted with interest the existence and usefulness of Article 40, paragraph 2 of the Code of Criminal Procedure, in conjunction with a mechanism of disciplinary sanctions aimed at public officials who do not inform the public prosecutor's department of offences which came to their attention in the discharge of their duties. The GET noted that the application of this principle varied, that it had been subjected to changes in practice, notably owing to the collective decision-making mechanisms of the multi-member authorities..

132. The GET reminded that it is not up to the relevant body or the official to decide whether it is appropriate to inform the prosecutor of facts that amount to a criminal offence. It therefore recommended that government departments and all other public agencies be reminded of the existence and content of Article 40, paragraph 2 of the Code of Criminal Procedure to facilitate its use without hindrance in corruption cases.

133. The GET also observed that the 8th division of the Central Police Directorate's sub-directorate for economic and financial affairs (and thus the corresponding departments of the 19 police regions) has developed a certain level of specialisation in corruption inquiries, even though this has not been explicitly recognised. However, the 8th division is not alone in investigating corruption cases since a certain number of police and gendarmerie officers are aware of the need to look out for corruption in financial investigations. Police and gendarmerie therefore complement each other effectively, both geographically and functionally, particularly since co-operation between them has improved in recent years, above all regarding the exchange of information. Nevertheless, the GET noted that in their investigations, both forces generally rely on the expertise immediately available and rarely resort to multidisciplinary investigation teams.

134. The GET recommended to assert the specialised and multidisciplinary nature of the Central Police Directorate's sub-directorate for economic and financial affairs as a body specialising in cases connected with economic criminal law. Within this multidisciplinary division, to create an investigative structure, to fight corruption and related offences, which would, apart from the police, include gendarmes and civil servants from the Ministry of the Economy and Finance, in order to respond to the needs of the judicial authorities, and in particular to those of the economic and the financial poles. The GET further considered that the setting up of ad hoc multidisciplinary investigation teams should be encouraged (including in particular, police officers, gendarmes and civil servants who are specialised in financial matters) for the investigation of cases to be handled by the economic and financial units.

d. Other anti-corruption institutions and machinery

135. The Central Corruption Prevention Department (SCPC) plays an important and - in the GET's view - poorly understood role, even though it represents a novel approach with great potential. The SCPC draws institutions' attention to at-risk areas and contributes to the in-service training of the government officials concerned. Its current independence gives it strong legitimacy. However, the GET believes that this body could also play a more significant role in empirical research and analysis of corruption. The SCPC's responsibility, laid down in its Statute, for centralising all relevant information should enable it to be more active in processing and analysing this information and to undertake systematic operational and strategic studies. Although its representatives to whom the GET spoke expressed satisfaction about the resources made available to it, it might be necessary to reconsider this aspect if its analytical role were to be expanded. For instance, the SCPC has not been dealing in an exhaustive way with the phenomenon of corruption within the police and justice system. Finally, the GET observed that

the SCPC would deserve to be reasserted as the central body for the prevention of corruption, with an enhanced dialogue with and training within the private sector, the granting of the power to decide whether to publish its reports and of the right to remain informed of the outcome of a file handed over to the courts.

136. The GET considered that, even though it was not set up for that purpose, the Interministerial Task Force for Investigations into Public Works and Supply Contracts and Delegated Public Services (MIEM) plays an important part in combating corruption, not only because it is multidisciplinary, and therefore an effective means of countering this complex phenomenon, but also because it is able to subject contracts entered into "routinely" by local authorities and other bodies to detailed scrutiny. Furthermore, the French authorities frequently stressed that public contracts and procurement remained particularly vulnerable to corruption. The GET considered that with seven budgeted posts, of which only four were filled at the time of the visit[37], the MIEM lacks adequate resources to carry out the numerous and important responsibilities assigned to it. It also thinks that there should be more guarantees that a file - which was examined on the basis of a request for technical opinion – indicating that the rules have been breached will be forwarded to the prosecutor.

137. The GET therefore recommended to allocate more staff resources to the MIEM, and to strengthen the guarantees that when a case is taken up for technical advice (presented anonymously to the MIEM), it would be reported to the Prosecutor's Office by the requesting body if the MIEM concluded that there had been embezzlement. It also recommends to grant the MIEM the power to decide on its own whether to investigate a case, as it requested in its 1999 report. The GET noted that other requests made in this report - in particular the extension of its monitoring powers to public contracts - should also be taken into consideration.

138. The GET underlined the key role played by the regional audit chambers and the Court of Audit in uncovering corruption (both practical cases and as a phenomenon) in the use of public funds. The Court of Audit is a prestigious institution which does not seem to lack human or material resources while its judicial status, as in other countries, helps to guarantee its independence. Part of its annual report, which is of a high standard despite its imposing size, is published each year and is available on the Internet[38]. The GET noted that the number of referrals by the Court to the public prosecutor's department has increased considerably from about ten per year before 1993 to about 80 in recent years. The current number of proceedings initiated by the Court of Audit is probably more realistic than in the past. As matters stand, the supervision of the accounts of public authorities and other public bodies is not as effective as it might be because of delays in transmitting documents. These delays, together with the time the Court of Audit and the regional chambers take to consider financial documents, almost certainly increases the problems already created by the very constricting time limits on bringing prosecutions. Furthermore, the Budget and Finance Disciplinary Court has no jurisdiction over local elected representatives and cannot, as a consequence, sanction formal breaches of regulations.

139. In consequence, the GET underlined that the Budget and Finance Disciplinary Court could represent a useful alternative to the penal judge for the sanctioning of non-compliance with the formal rules applicable to public tenders. This would provide effective support to the work of the Court of Audit and the regional audit chambers, deterring hereby formal breaches of regulations by local elected representatives.

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[37] To give some idea of the size of the task, a recent inquiry into contracts entered into by a hospital required the full-time involvement of all four members.

[38] http://www.ccomptes.fr/

140. Given its fairly broad-ranging powers of financial control, the General Finance Inspectorate (IGF) could play a key part in uncovering corruption. The GET considered though that it lacks human and legal resources. A strengthening of its independence in terms of commencement of proceedings would ensure that serious cases were treated in the correct way. Its current lack of independence in the programming of controls – even if its independence is secured when it comes to drafting - may seem surprising in such an ancient and prestigious body as the Inspectorate. Moreover, bearing in mind yet again the close ties between the state and the economic sphere in France, the GET would consider as a positive measure, if the IGF could decide on its own to start investigations in certain fields outside the Ministry of Economy and Finance.

141. The GET therefore recommended to empower the IGF to carry out investigations and inspections in addition to those ordered by the Minister.

142. The Transparency in Public Life Commission also has an important part to play. It combats corruption by overseeing the finances of political figures, which to be fully effective would require it to have powers of investigation. The GET did not meet representatives of the Commission during its visit. However, in view of the fact that the financing of political parties remains an at-risk sector, the GET underlined that the proposals for improving its activities made by the Commission in its 1999 report deserve being consideration (giving it the means to conduct its own investigations and extending its powers of oversight to managers and directors of public enterprises and semi-public companies).

143. As far as the chartered accountants – who are responsible for the establishing of companies' accounts - are concerned, the GET had the impression that the policy adopted by certain representatives of this profession is to consider that accountants are not concerned by the problem of corruption. According to them, accountants are not in the best place to uncover corruption and their professional culture leads them to have confidence in the managers of the firms to which they give their services. The GET could not fail to compare this attitude with that of MEDEF, the employers' organisation, which has made ethics and anti-corruption measures one of its priorities, and conclude that there is a lack of consistency between the two.

144. On the other hand, auditors - who certify the correctness of companies' annual accounts and who enjoy investigative powers and a strong independence to carry out their tasks – are obliged to reveal criminal behaviours. The GET observed that this profession is in a position to significantly contribute to the fight against corruption and the disclosure of crimes which affect the public and private sectors. It would be desirable to raise awareness among auditors about their obligation to reveal crimes.

e. The system of immunities

145. The GET is of the view that the immunities and related procedures for certain officials in France do not constitute an unacceptable obstacle to the country's capacity to effectively prosecute corruption.

IV. CONCLUSIONS

146. The GET was favourably impressed by the highly developed law-enforcement system for controlling corruption in France. It covers the important areas of risk. In addition, the authorities

can rely increasingly on the support of the private sector, particularly the French employers' organisation. The GET also considers that the significant number of "affairs" (often involving politicians) that are the subject of judicial proceedings could indicate that the anti-corruption machinery in France is working properly.

147. On the other hand, the GET thinks that a number of steps could still be taken to improve the situation. The French institutional system is currently very sophisticated, on account of the large number of authorities with their own area of responsibility. The diversity of mechanisms and actors involved might result in a lack of coherence of anti-corruption machinery. Rationalisation and clarification of responsibilities would allow for some fine-tuning of this machinery. Efforts should also be made to introduce working methods that have proved their worth. These would facilitate the circulation, gathering and analysis of information on corruption, thereby increasing the authorities' ability to detect and deal with the relevant offences and put up stronger defences against the problem. The persons whom the GET met were generally of a high standard and were ready to learn from other European countries' experience. They deserve an appropriate organisational structure.

148. In view of the above, GRECO addressed the following recommendations to France:

i. to support more actively, notably with the help of the SCPC, private initiatives, by strengthening the links between government preventive activities and such initiatives;

ii. to reinforce the visibility of the SDAEF and its overall co-ordination role of anti-corruption activities, by drawing in officials from the various ministries and departments concerned to encourage genuine dialogue, stimulate joint discussion and develop common approaches based on their respective experience (notably those met by GET) to enhance the interministerial dialogue, nurture communal discussions and develop the emergence of summaries of the various experiences made;

iii. to enact legislation confirming the commitments of the current Minister of Justice and her predecessor not to interfere in individual cases;

iv. to take steps, subject to existing budgetary constraints, to establish economic and financial sections in the most important courts, while at the same time strengthening the resources available to the economic and financial sections at the courts of appeal;

v. that consideration be given to the need to legislate in order to allow the use of infiltration in corruption cases;

vi. to consider the development of new enforcement methods and at least ensure that there is a procedure for interviewing whistle-blowers and other witnesses who choose to remain anonymous or whose identity is known only to the competent magistrate and otherwise remains secret. Persons who agree to co-operate with the judicial authorities should also be entitled to specific forms of protection;

vii. to remind government departments and all other public agencies of the existence and content of Article 40, paragraph 2 of the Code of Criminal Procedure and take steps to facilitate its use without hindrance in corruption cases;

viii. to assert the specialised and multidisciplinary nature of the Central Police Directorate's sub-directorate for economic and financial affairs as a body specialising in cases connected with economic criminal law. Within this multidisciplinary division, to create an investigative structure, to fight corruption and related offences, which would, apart from the police, include gendarmes and civil servants from the Ministry of the Economy and Finance, in order to respond to the needs of the judicial authorities, and in particular to those of the economic and the financial poles. The GET further considered that the setting up of ad hoc multidisciplinary investigation teams should be encouraged (including in particular, police officers, gendarmes and civil servants who are specialised in financial matters) for the investigation of cases to be handled by the economic and financial units;

ix. to allocate more staff resources to the MIEM, and to strengthen the guarantees that when a case is taken up for technical advice (presented anonymously to the MIEM), it would be reported to the Prosecutor's Office by the requesting body if the MIEM concluded that there had been embezzlement and to grant the MIEM the power to decide on its own whether to investigate a case, as it requested in its 1999 report;

x. to empower the IGF to carry out investigations and inspections in addition to those ordered by the Minister.

150. Moreover, the GRECO invites the authorities of France to take account of the observations made by the experts in the analytical part of this report.

151. Finally in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of France to present a report on the implementation of the above-mentioned recommendations before 31 December 2002.

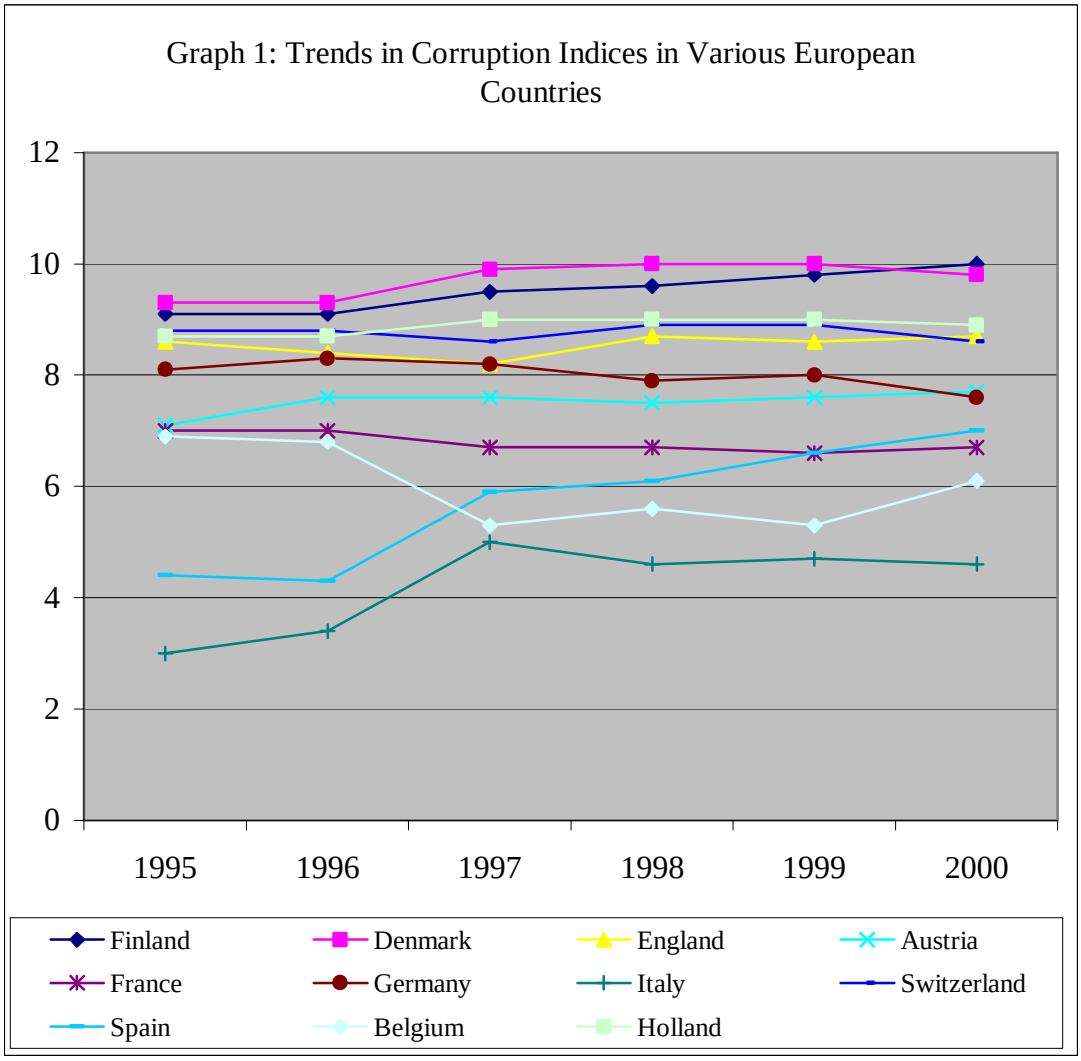
APPENDIX I

Tables

1. Tendencies of corruption in some European countries

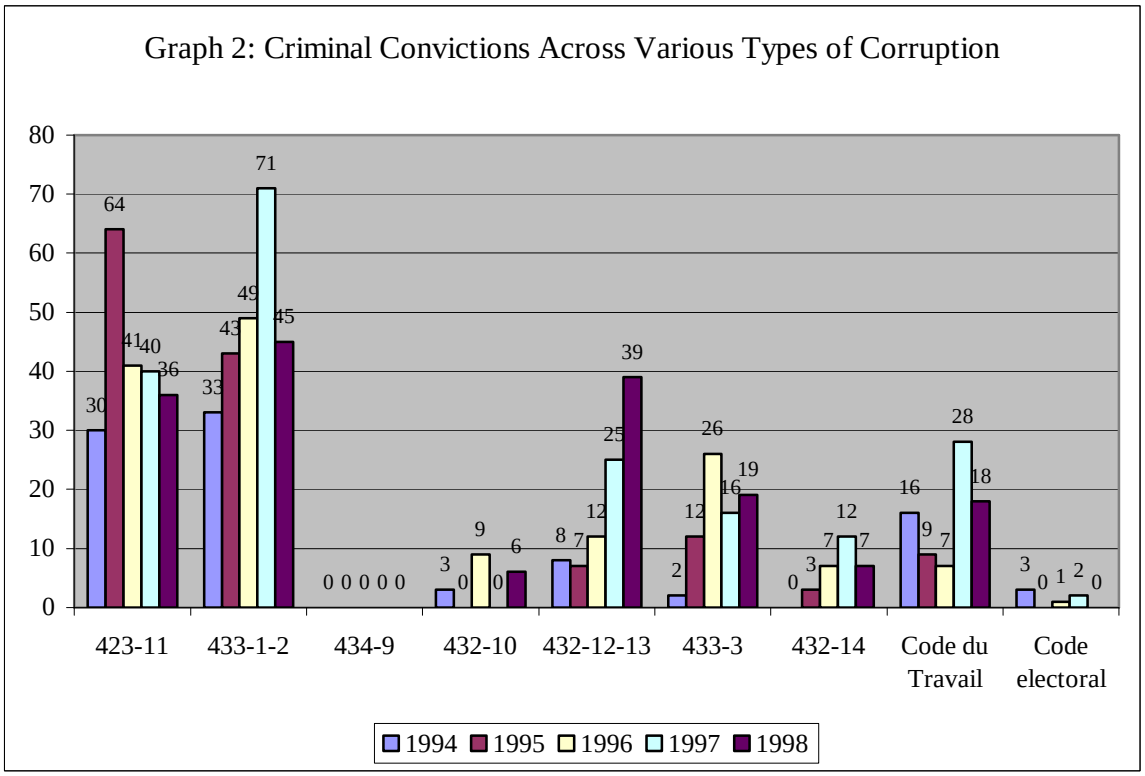
Source: Transparency International ; www.gwdg.de/~uwvw/icr.htm. Voir aussi Lambsdorff, J. Graf (1999), "The Transparency International Corruption Perceptions Index. 1. edition 1995" Transparency International (TI) Report 1996, 51-53. "2. edition 1996", Transparency International (TI), Report 1997,61-66. "3. Edition 1997",Transparency International (TI) Newsletter, September 1997. "4. Edition", September 1998. "5. edition", October 1999.

Note: The index varies between 0 and 10; 0 indicating widespread corruption, 10 indicating a total absence of corruption.



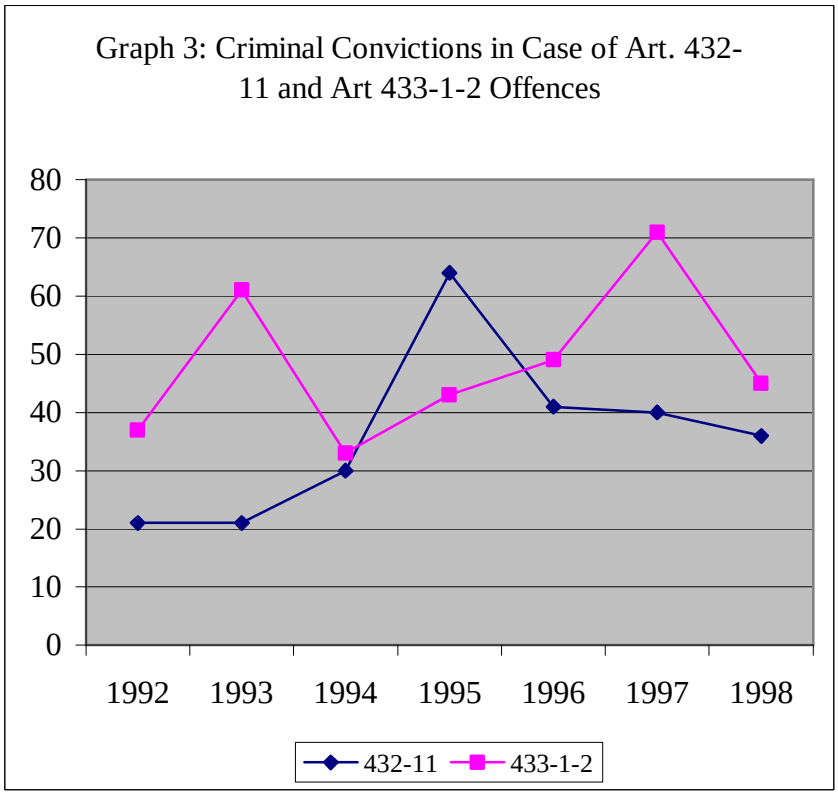
2. Criminal convictions across various types of corruption

Source : based on data taken from the criminal records database and provided by the French authorities in the replies to the questionnaire



3. Criminal convictions in case of Article 432-11 and 433-1-2 of the penal code

Source : same as for previous table



APPENDIX II

List of persons met by the GRECO Evaluation Team

The names of certain French representatives might have been forgotten due to the round tables and intensity of the programme. The GRECO Secretariat apologises for this.

Police	Mrs M. BALESTRAZZI
	Cdiv. COFFRE
	CPal. DUVAL
Gendarmerie	Cdt FERRY
	Lt BOLLE
	Lt TOURNIER
	Adj. Chef HEDEF
Justice (Ministry)	Mr DE BAYNAST
	Mr CHARPENEL
	Mrs P. LABROUSSE
	Mr LAGAUCHE
	Mr E. RUELLE
Justice (jurisdictions)	Mrs FONCELLE
	Mr MARIN
	Mrs BOIZETTE
Foreign Affairs	Ambassador M. CHARASSE
	Mr R. ABRAHAM
	Mrs C. JACOB
Inspection Générale des Finances	Mr BERT
Parliament	Mr BERGOUGNOUS
	Mr TOUCHARD
Court of Accounts	Mrs GISSEROT
	Mr POULY
SCPC	Mr P. MERAND
	Mr J.P. BUEB
	Mr B. BOUCHEZ
	Mrs. R. FERRARI
MIEM	Mr M. BERNARD
ENM	Mr DOUMENCQ
NGO	Mr DOMMEL (Transparency International)
Organisation of chartered Accountants	Mr F-X DONNADIEU
Private sector (MEDEF)	Mr J. MONVILLE
	Mr M. MAINDRAULT
	Mrs N. CHOLLET

APPENDIX III

Main provisions on corruption
(see also – in French - http://www.legifrance.gouv.fr)

FRENCH CRIMINAL CODE

Article 324-1

(Introduced by Law no. 96-392 of 13 May 1996 article 1 *Journal Officiel* of 14 May 1996)

Laundering is the act of facilitating, by any means, the fraudulent justification of the origin of assets or revenue of the perpetrator of an offence or crime, obtaining direct or indirect profit for that person. Providing assistance for a transaction to invest, dissimulate or convert the direct or indirect proceeds of an offence or crime also constitutes laundering. Laundering shall be punishable by five years' imprisonment and a fine of 2,500,000 francs.

Article 324-2

(Introduced by Law no. 96-392 of 13 May 1996 article 1 *Journal Officiel* of 14 May 1996)

Laundering shall be punishable by ten years' imprisonment and a fine of 5,000,000 francs:
1° in cases where it is committed habitually or via facilities accessed through the exercise of professional duties;
2° in cases where it is committed by an organised group.

Article 432-1

Acts committed by a person vested with public authority within the exercise of his duties with the intention of preventing the application of the law shall be punishable by five years' imprisonment and a fine of 500,000 francs.

Article 432-2

The offence provided for in Article 432-1 shall be punishable by ten years' imprisonment and a fine of 1,000,000 francs if it has been followed by effects.

Article 432-10

The act, by a person vested with public authority or a public service duty, of receiving, demanding or ordering collection, by way of fees or contributions, taxes or public duties, of a sum that he knows is not due, or exceeds that which is due, shall be punishable by five years' imprisonment and a fine of 500,000 francs.
The same punishment shall apply to the same individuals for the act of granting, in any form and on any grounds whatsoever, exemptions or franchise of fees, contributions, taxes or public duties in breach of legal or statutory texts.
Attempts to commit the offences provided for in the present article shall be liable to the same punishment.

Article 432-11

(Law no. 2000-595 of 30 June 2000 art. 1 *Journal Officiel* of 1 July 2000)

The act, by a person vested with public authority or a public service duty or a public electoral mandate, of requesting or receiving, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever
1° either to carry out or refrain from an act in accordance with his duties, function or office or facilitated by his duties, function or office;
2° or to abuse his real or imputed influence in order to secure, from a public authority or administration, preferential treatment, jobs, tenders or any other favourable decision,
shall be punishable by ten years' imprisonment and a fine of 1,000,000 francs.

Article 432-12

The act, by a person vested with public authority or a public service duty or a public electoral mandate, of acquiring, receiving or conserving, directly or through an intermediary, any interest whatsoever in a company or a transaction for which he, at the time of the act, in whole or in part, has responsibility for supervision, administration, liquidation or payment, shall be punishable by five years' imprisonment and a fine of 500,000 francs.
However, in municipalities of 3,500 or fewer inhabitants, the mayors, deputy mayors or municipal councillors delegated by or standing in for the mayor may each engage in transactions with the municipality for which they are elected in respect of the transfer of moveable or immoveable assets or the provision of services within an annual limit of 100,000 francs.
Moreover, in those municipalities the mayors, deputy mayors or municipal councillors delegated by or standing in for the mayor may acquire a plot of municipal land for the construction of their own dwelling or sign leasing agreements with the municipality for their own lodging.
Such acts must be authorised, following an evaluation of the assets concerned by the state property department, by a reasoned decision of the municipal council.
In those same municipalities, the same elected representatives may acquire property belonging to the municipality for the setting up or development of their professional activity. The purchase price may not be lower than the evaluation by the state property department. The act must be authorised, regardless of the value of the assets concerned, by a reasoned decision of the municipal council.
For the application of the three aforegoing paragraphs, the municipality shall be represented in the conditions set forth in Article L. 122-12 of the Municipalities Code, and the mayor, deputy mayor or municipal councillor concerned must abstain from participation in the deliberations of the municipal council regarding the conclusion or approval of the contract. Moreover, in derogation to the second paragraph of Article L. 121-15 of the Municipalities Code, the municipal council may not decide to meet *in camera*.

Article 432-13

The act, by a person instructed in his capacity of public official or representative or appointed by a public administration, on grounds of his function, either to monitor or supervise a private company or to conclude contracts of any kind with a private company or express his opinion on the operations carried out by a private company, of taking or receiving involvement, through work, consultancy or capital, in one of those companies within five years following the ceasing of that function, shall be punishable by two years' imprisonment and a fine of 200,000 francs.
The same sanctions shall be applicable to any involvement, through work, consultancy or capital, in a private company which holds at least 30% of the joint capital holding of, or has concluded a contract

concerning a *de jure* or *de facto* exclusivity with, one of the companies mentioned in the aforegoing paragraph. Within the meaning of the present article, any public corporation operating in a competitive sector and governed by private law shall be assimilated to a private company.
These provisions are applicable to the staff of public establishments, of nationalised companies or joint-stock companies in which the state or public authorities have a direct or indirect capital holding of over 50% and of the public operators provided for in Law no. 90-568 of 2 July 1990 on the organisation of the public post and telecommunications service.
The offence is not constituted by a capital holding in companies quoted on the stock exchange or in cases where capital is received by devolution of property.

Article 432-14

(Law no. 95-127 of 8 February 1995 art. 10 *Journal Officiel* of 9 February 1995)

The act, by a person vested with public authority or a public service duty or a public electoral mandate or exercising the functions of representative, administrator or agent of the state, local authorities, public establishments, national joint stock companies entrusted with a public service task or local joint stock companies or by any person acting on behalf of any of the aforementioned bodies, of obtaining or seeking to obtain for a third party an unjustified benefit through a breach of the legislative or statutory provisions guaranteeing freedom of access to and equal competition in public tenders and public service delegation, shall be punishable by two years' imprisonment and a fine of 200,000 francs.

Article 432-17

In the cases provided for in this chapter the following additional penalties may be imposed:

1. Deprivation of civil, civic and family rights, in accordance with Article 131-26;
2. Disqualification, in accordance with Article 131-27, from holding public office or carrying on the professional or social activity in the exercise or on the occasion of which the offence was committed;
3. Confiscation, in accordance with Article 131-21, of sums of money or objects unlawfully acquired by the perpetrator, with the exception of objects that lend themselves to restitution;
4. In the case provided for in Article 432-7, display or publication of the decision in accordance with Article 131-35.

Article 433-1

(Law no. 2000-595 of 30 June 2000 art. 1 *Journal Officiel* of 1 July 2000)

The act of proposing, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever as an incentive to a person vested with public authority or a public service duty or a public electoral mandate
1° either to carry out or refrain from an act in accordance with his duties, function or office or facilitated by his duties, function or office;
2° or to abuse his real or imputed influence in order to secure, from a public authority or administration, preferential treatment, jobs, tenders or any other favourable decision,
shall be punishable by ten years' imprisonment and a fine of 1,000,000 francs.

The same sanctions shall be applicable to the act of granting offers, promises, donations, gifts or any benefits whatsoever to any person vested with public authority or a public service duty or a public electoral mandate who solicits such undue benefits, at any time, directly or through an intermediary, to

carry out or refrain from an act referred to in 1° hereinabove or to abuse his influence in the terms set out in 2° hereinabove.

Article 433-2

The act, by any person, of requesting or receiving, directly or through an intermediary, offers, promises, donations, gifts or any benefits whatsoever to abuse his real or imputed influence in order to secure, from a public authority or administration, preferential treatment, jobs, tenders or any other favourable decision,
shall be punishable by five years' imprisonment and a fine of 500,000 francs.

The same sanctions shall be applicable to the act of granting the benefits solicited in the aforegoing paragraph or of proposing, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever, as an incentive to a person to abuse his real or imputed influence in order to secure, from a public authority or administration, preferential treatment, jobs, tenders or any other favourable decision.

Article 433-22

Individuals guilty of one of the offences provided for in this chapter shall also be liable to the following additional penalties:

1. Deprivation of civic, civil and family rights, in accordance with Article 131-26;
2. Disqualification, for not more than five years, from holding public office or carrying on the professional or social activity in the exercise or on the occasion of which the offence was committed;
3. Display or publication of the decision in accordance with Article 131-35.

Article 433-23

In the cases provided for in Articles 433-1, 433-2 and 433-4, the court may also decide to confiscate the amounts or items improperly received by the author of the offence, with the exception of those items that may be returned.

Article 433-25

Legal entities may be held criminally liable, in accordance with Article 121-2, for the offences defined in sections 1, 6, 7, 9 and 10 of this chapter. They shall incur the following penalties:
1. A fine in accordance with Article 131-38;
2. For not more than five years, the penalties mentioned in paragraphs 2, 3, 4, 5, 6 and 7 of Article 131-39;
3. Confiscation as provided for in Article 131-21;
4. Display or publication of the decision in accordance with Article 131-35.
The disqualification mentioned in paragraph 2 of Article 131-39 shall relate to the activity in the exercise or on the occasion of which the offence was committed.

Article 434-4

The act, committed to prevent discovery of the true facts, of:
1° modifying the scene of a crime or offence either by altering, falsifying or eliminating traces of evidence or by adding, moving or removing any items whatsoever;

2° destroying, removing, concealing or altering a public or private document or an item that might assist the detection of a crime or offence, the gathering of proof or the conviction of the guilty parties,
shall be punishable by three years' imprisonment and a fine of 300,000 francs.
In cases where the acts provided for in the present article are committed by an individual who, by virtue of his functions, has a duty to assist the establishment of the true facts, the sanction shall be increased to five years' imprisonment and a fine of 500,000 francs.

Article 434-9

(Law no. 2000-595 of 30 June 2000 art. 1 *Journal Officiel* of 1 July 2000)

The act, by a member of the judiciary, a juror or any other person sitting in a court, an arbiter or an expert appointed either by a court or by the parties, or a person assigned by the judicial authorities to the task of conciliation or mediation, of requesting or receiving, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever to act or refrain from acting in accordance with his duties, shall be punishable by ten years' imprisonment and a fine of 1,000,000 francs.
The same sanctions shall be applicable to the act of granting the benefits solicited in the aforegoing paragraph or of proposing offers, promises, donations, gifts or any benefits whatsoever, as an incentive to one of the said persons to act or refrain from acting in accordance with their duties.
In cases where the acts provided for in the first paragraph hereinabove are committed by a member of the judiciary to the advantage or detriment of a person standing prosecution, the sanction shall be increased to fifteen years' imprisonment and a fine of 1,500,000 francs.

Article 434-15

The act of using promises, offers, gifts, pressure, threats, assault, deceit and trickery during a procedure or pending a court application or defence in order to persuade another person to either make or submit an untruthful statement, declaration or attestation or refrain from making or submitting a statement, declaration or attestation, shall be punishable by three years' imprisonment and a fine of 300,000 francs, even where subornation is not followed by effect.

Article 434-19

Subornation of an interpreter is punishable by the sanction provided for in Article 434-15.

Article 434-21

Subornation of an expert is punishable by the sanction provided for in Article 434-15.

Article 435-1

(introduced by Law no. 2000-595 of 30 June 2000 art. 2 *Journal Officiel* of 1 July 2000)

In application of the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union, drawn up in Brussels on 26 May 1997, the act by a Community official or a national official of another Member State of the European Union or by a member of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities, who, directly or through an intermediary, requests or receives offers, promises, donations, gifts or any benefits whatsoever, for

himself or for a third party, or accepts a promise of such a benefit, to carry out or refrain from an act in accordance with his duties, function or office or facilitated by his duties, function or office shall be punishable by ten years' imprisonment and a fine of 1,000,000 francs.

Article 435-2

(introduced by Law no. 2000-595 of 30 June 2000 art. 2 *Journal Officiel* of 1 July 2000)

In application of the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union, drawn up in Brussels on 26 May 1997, the act of proposing, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever, to a Community official or a national official of another Member State of the European Union or to a member of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities as an incentive to carry out or refrain from an act in accordance with his duties, function or office or facilitated by his duties, function or office shall be punishable by ten years' imprisonment and a fine of 1,000,000 francs.
The same sanctions shall be applicable to the act of granting to one of the individuals mentioned in the aforegoing paragraph who so requests, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever to carry out or refrain from an act referred to in that paragraph.

Article 435-3

(introduced by Law no. 2000-595 of 30 June 2000 art. 2 *Journal Officiel* of 1 July 2000)

In application of the Convention on combating bribery of foreign public officials in international business transactions, signed in Paris on 17 December 1997, the act of proposing, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever, as an incentive to a person vested with public authority or a public service duty or a public electoral mandate in a foreign state or within a public international organisation to carry out or refrain from an act in accordance with his duties, function or office or facilitated by his duties, function or office, in order to obtain or retain business or some other improper advantage in the conduct of international business, shall be punishable by ten years' imprisonment and a fine of 1,000,000 francs.
The same sanctions shall be applicable to the act of granting to one of the individuals mentioned in the aforegoing paragraph who so requests, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever to carry out or refrain from an act referred to in that paragraph.
The prosecution of the offences mentioned hereinabove may be pursued only at the request of the public prosecutor.

Article 435-4

(introduced by Law no. 2000-595 of 30 June 2000 art. 2 *Journal Officiel* of 1 July 2000)

In application of the Convention on combating bribery of foreign public officials in international business transactions, signed in Paris on 17 December 1997, the act of proposing, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever, as an incentive to a member of the judiciary, a juror or any other person sitting in a court, an arbiter or an expert appointed either by a court or by the parties, or a person assigned by the judicial authorities to

the task of conciliation or mediation in a foreign state or within a public international organisation to carry out or refrain from an act in accordance with his duties, function or office or facilitated by his duties, function or office, in order to obtain or retain business or some other improper advantage in the conduct of international business, shall be punishable by ten years' imprisonment and a fine of 1,000,000 francs.
The same sanctions shall be applicable to the act of granting to one of the individuals mentioned in the aforegoing paragraph who so requests, at any time, directly or through an intermediary, undue offers, promises, donations, gifts or any benefits whatsoever to carry out or refrain from an act referred to in that paragraph.
The prosecution of the offences mentioned hereinabove may be pursued only at the request of the public prosecutor.

Article 435-5

Individuals guilty of one of the offences provided for in this chapter shall also be liable to the following additional penalties:
1. Deprivation of civic, civil and family rights, in accordance with Article 131-26;
2. Disqualification, for not more than five years, from holding public office or carrying on the professional or social activity in the exercise or on the occasion of which the offence was committed;
3. Display or publication of the decision in accordance with Article 131-35.
4. Confiscation, in accordance with Article 131-21, of an object used or intended to be used in committing the offence or which constitutes the proceeds thereof, with the exception of objects that lend themselves to restitution.
Any foreigner guilty of one of the offences referred to in the first paragraph may also be made subject to an order excluding him or her from French territory, in accordance with Article 131-30, either permanently or for a period of not more than ten years.

Article 435-6

Legal entities may be held criminally liable, in accordance with Article 121-2, for the offences defined in Articles 435-2, 435-3 and 435-4. The penalties incurred by legal entities shall be:
1. A fine in accordance with Article 131-38;
2. For not more than five years:
- disqualification from directly or indirectly carrying on the professional or social activity in the course or on the occasion of which the offence was committed;
- placing under judicial supervision;
- closure of corporate premises used in committing the offence;
- exclusion from government procurement processes;
- prohibition from making public issues;
- prohibition from issuing cheques other than those enabling the drawer to withdraw funds deposited with the drawee or certified cheques or from making use of payment cards;
3. Confiscation, in accordance with Article 131-21, of an object used or intended to be used in committing the offence or which constitutes the proceeds thereof, with the exception of objects that lend themselves to restitution;
4. Display or publication of the decision in accordance with Article 131-35.

CUSTOMS CODE

Article 59

1. It is prohibited for customs officers to receive, directly or through an intermediary, any gratification, reward or gift. Those who do so shall be liable to the penalties provided for in the Criminal Code for passive corruption of public officials.
2. A guilty party reporting acts of corruption shall be exempted from penalties, fines and confiscation.

LABOUR CODE

Article L. 152-6

(introduced by Law no. 92-1336 of 16 December 1992 art. 236 *Journal Officiel* of 23 December 1992, entry into force on 1 March 1994)

The act, by any manager or employee, of requesting or receiving, directly or through an intermediary, without the knowledge or authorisation of his employer, offers, promises, donations, gifts, discounts or bonuses to carry out or refrain from an act in accordance with or facilitated by his function, shall be punishable by two years' imprisonment and a fine of 200,000 francs (1).
The same sanctions shall be applicable to the act of granting the benefits solicited in the aforegoing paragraph or of proposing them.
In the cases provided for in the present article, the court may also impose the additional sanction, for a maximum duration of five years, of the loss of civic, civil and family rights as provided for in Article 131-26 of the Criminal Code.
(1) Fine applicable since 1 March 1994.

PUBLIC HEALTH CODE

Article L. 4113-6 (former Article L.365-1)

Members of the medical professions mentioned in this Book shall be prohibited from receiving benefits in kind or pecuniary benefits, in any form whatsoever, directly or indirectly from companies supplying services or manufacturing or marketing products, where the cost of the services or products is reimbursed by compulsory social insurance schemes.
However, the above paragraph shall not apply to benefits covered by agreements concluded between the members of the said medical professions and companies, on condition that the express, real purpose of those agreements is the performance of research or scientific assessment activities, that they are submitted for opinion to the *département* council of the relevant professional association before being implemented, that they are notified to the head of any health establishment where the research or assessment activities are carried out, even in part, and that the remuneration is not calculated in proportion to the number of services or products prescribed, sold or provided.
Nor shall it apply to hospitality offered, directly or indirectly, at promotional events or events of an entirely professional or scientific nature, where covered by an agreement between the company and the health care professional, submitted for opinion to the *département* council of the relevant professional association before being implemented, and where that hospitality is of a reasonable level, remains accessory to the principal aim of the meeting and is not extended to persons other than the professionals directly concerned.
The agreements mentioned in the second and third paragraphs of this article shall be transmitted to the professional bodies concerned by the company. Where they are inter-*département* or national in scope,

they shall be submitted for opinion to the national council of the relevant professional association, instead of the *département* councils, before being implemented.
This article shall not have the effect of making normal working relations subject to agreement or of prohibiting the funding of further training in the medical sector.

Article L.4163-2 (former Article 376-3)

Members of the medical professions mentioned in the present Book who directly or indirectly receive benefits in kind or pecuniary benefits, in any form whatsoever, from companies supplying services or manufacturing or marketing products the cost of which is reimbursed by compulsory social insurance schemes shall be liable to two years' imprisonment and a fine of FRF 500,000.
In the event of a person's being sentenced, the courts may temporarily ban that person from practising the profession for a period of ten years in addition to the main penalty.
However, these provisions shall not apply to the benefits mentioned in the second and third paragraphs of Article L.4113-6.

Article L.4113-8 (former Article L. 549)

Except in the cases provided for in Articles L. 4211-3 and L. 5125-2, the practitioners mentioned in this Book shall be prohibited from directly or indirectly receiving, in any form whatsoever, interest payments or rebates proportional or not to the number of units prescribed or sold, whether of medicines, orthopaedic equipment or other items of any kind.
It shall be forbidden to form or run companies with the manifest aim of obtaining the above-defined interest payments or rebates, granted to individuals themselves or to a group established for that purpose, or to practise the profession of pharmacist, doctor dentist or midwife with the same aim in mind.
The sale of medicines exclusively reserved, in any form whatsoever, for doctors benefiting from the authorisation provided for in Article L.4211-3 shall also be prohibited.

Article L.4163-4 (former Articles L.550 and L.549)

A fine of FRF 30,000 or, for a repeat offence, six months' imprisonment and a fine of FRF 60,000 shall be incurred:

1. Except in the cases provided for in Articles L.4211-3 and L.5125-2, by anyone practising one of the medical professions mentioned in this Book, who directly or indirectly receives, in any form whatsoever, interest payments or rebates proportional or not to the number of units prescribed or sold, whether of medicines, orthopaedic equipment or other items of any kind.

2. For forming or running companies with the manifest aim of obtaining the above-defined interest payments or rebates, granted to individuals themselves or to a group established for that purpose, or practising the profession of pharmacist, doctor dentist or midwife with the same aim in mind.

3. For selling medicines exclusively reserved, in any form whatsoever, for doctors benefiting from the authorisation provided for in Article L.4211-3.

In addition to the main penalty the courts may order a temporary ban on practising the profession for a period of one to ten years.
Pharmacists co-principals in the commission of an offence shall incur the same penalties.

Article L.4311-28 (former Article L.510-9-2)

The provisions of Articles L.4113-5, L.4113-6 and L.4113-8 shall apply to the nursing profession.

Article L.4343-1 (former Article L.510-9-2)

The provisions of Articles L.4113-5, L.4113-6 and L.4113-8 shall apply to the professions of speech therapist and orthoptist.

Article L.4321-20 (former Article L.510-9-2)

The provisions of Articles L.4113-5, L.4113-6, L.4113-8 to L.4113-12, L.4122-2, L.4123-15, L.4123-16, L.4124-1 to L.4124-8, L.4125-1 to L.4125-4, L.4126-1 to L.4126-8, L.4132-6, L.4132-9, L.4132-10 except for the last two paragraphs, L.4152-9 and L.4152-10 shall apply to physiotherapists.

Article L.4314-6 (former Article L.510-9-4)

The offences mentioned in Articles L.4163-2, L.4163-3 and L.4163-4 shall apply to the nursing profession and shall carry a sentence of two years' imprisonment and a fine of FRF 500,000.
In the event of a person's being sentenced, the courts may temporarily ban that person from practising the profession for a period of ten years at most in addition to the main penalty.

Article L.4323-6 (former Article L.510-9-4)

The offences mentioned in Articles L.4163-2, L.4163-3 and L.4163-4 shall apply to physiotherapists and shall carry a sentence of two years' imprisonment and a fine of FRF 500,000.
In the event of a person's being sentenced, the courts may temporarily ban that person from practising the profession for a period of ten years at most in addition to the main penalty.

Article L.4344-3 (former Article L.510-9-4)

The offences mentioned in Articles L.4163-2, L.4163-3 and L.4163-4 shall apply to the professions of speech therapist and orthoptist and shall carry a sentence of two years' imprisonment and a fine of FRF 500,000.
In the event of a person's being sentenced, the courts may temporarily ban that person from practising the profession for a period of ten years at most in addition to the main penalty.

BUILDING AND HOUSING CODE

Article L. 423-11

Law no. 92-1336 of 16 December 1992 art. 322 *Journal Officiel* of 23 December 1992, entry into force on 1 March 1994)

It is prohibited for the administrators of social housing bodies and any individual employed by such bodies to receive, directly or through an intermediary and in whatever form, even through acquiring or conserving a stake in a company, any benefit whatsoever from the individuals involved in the sale or exchange of buildings constructed with the aforementioned bodies or with their clients, or from the

architects and entrepreneurs carrying out the works on behalf of those bodies or their clients and, in general, from any supplier.
Any breach of these prohibitions shall be punishable by a fine of 60,000 francs and three years' imprisonment. The sanction is doubled for a repeat offence.

COMMERCIAL CODE

Article L.241-3 (former section 425, paragraph 4 of Law No. 66-537 of 24/07/1966)

A penalty of five years' imprisonment and a fine of FRF 2,500,000 shall be incurred: (...)
4. Where managers, acting with criminal intent, use a company's assets or credit for a purpose which they know to be contrary to the company's interests, for their private aims or for the benefit of another company or undertaking in which they have a direct or indirect interest; (...)

Article L.242-6 (former section 435, paragraph 3 of Law No. 66-537 of 24/07/1966)

A penalty of five years' imprisonment and a fine of FRF 2,500,000 shall be incurred: (...)
3. Where the Chair, board members or managing directors of a limited company, acting with criminal intent, use the company's assets or credit for a purpose which they know to be contrary to the company's interests, for their private aims or for the benefit of another company or undertaking in which they have a direct or indirect interest; (...)

Article L.243-1 (former section 460 of Law No. 66-537 of 24/07/1966)

Articles L.242-1 to L.242-29 shall apply to partnerships limited by shares.
The penalties provided for in respect of Chairs, board members or managing directors of limited companies shall be applicable to managers of partnerships limited by shares, as regards their specific powers.

Article L.242-30 (former section 464 of Law No. 66-537 of 24/07/1966)

The penalties provided for in Articles L.242-6 to L.242-29 and L.246-1 for Chairs, managing directors and board members of limited companies shall be applicable, depending on their respective powers, to members of management boards and members of supervisory boards of limited companies governed by the provisions of Articles L.225-57 to L.225-93.
The provisions of Article L.246-2 shall in addition be applicable to limited companies governed by Articles L.225-57 to L.225-93.

Article L.247-8 (former section 488, paragraph 1 of Law No. 66-537 of 24/07/1966)

A penalty of five years' imprisonment and a fine of FRF 60,000 shall be incurred by a liquidator who, acting with criminal intent:

1. Uses the assets or credit of a company being liquidated for a purpose which he knows to be contrary to the company's interests, for his private aims or for the benefit of another company or undertaking in which he has a direct or indirect interest;
2. Sells all or part of the assets of a company being liquidated in breach of the provisions of Articles L.237-6 and L.237-7.