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First Evaluation Round

Compliance Report on France

Adopted by GRECO
At its 15th Plenary Meeting
(Strasbourg, 13-17 October 2003)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on France at its 6th plenary meeting (12-14 September 2001). This report (Greco Eval I Rep (2000) 4E) was made public by GRECO following authorisation by the French authorities on 2 October 2001.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the French authorities submitted their Situation Report (RS-Report) on the measures taken to follow up the recommendations and observations on 25 April 2003. Further information was supplied after that date at the request of the Rapporteurs.
3. In accordance with Rule 31.1 of its Rules of Procedure, at its 13th plenary meeting (24-28 March 2003), GRECO selected Luxembourg and, at its 14th plenary meeting, Belgium, to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Jean BOUR on behalf of Luxembourg, and Mr Jean-Marie LEQUESNE on behalf of Belgium. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of its Rules of Procedure, at its 15th Plenary Meeting (13-17 October 2003).
5. Under Article 15, paragraph 6, of GRECO's Statute and Rule 30.2 of its Rules of Procedure, the purpose of the Compliance Report is to evaluate the measures taken by the French authorities and, as far as possible, to assess their effectiveness from the point of view of compliance with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. In its Evaluation Report GRECO addressed 10 recommendations to France. Compliance of measures taken by France with those recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended that France support more actively, notably with the help of the SCPC, private initiatives, by strengthening the links between government preventive activities and such initiatives.*
8. The French authorities have stated the following:
 - The Service Central de prevention de la Corruption (SCPC – Central Department for the Prevention of Corruption) has been chosen as the main agency for supporting private initiatives and is an appropriate intermediary for the dissemination of official anti-corruption policies in civil society.
 - SCPC action is based principally on awareness-raising, transmission of knowledge and the development of operational tools for professional bodies and groupings and some twenty private enterprises. It has made contact with a number of professional groupings and bodies and also with a large number of enterprises specifically targeted because they are active in sectors designated “at risk” of corruption or having international interests.
 - Some professional bodies, such as the *Association Française des Entreprises Privées* (AFEP) (French Association of Private Enterprises), the *Association des Chambres Françaises de Commerce et d'Industrie* (Association of French Chambers of Commerce and Industry) and

both the national and Paris *Mouvement des Entreprises de France* (MEDEF – the employers' federation), have agreed to inform their members of the SCPC's activities. Numerous enterprises have concluded or wish to conclude partnership agreements with the SCPC.

9. GRECO took note of the measures reported by the French authorities to support private anti-corruption initiatives and forge close links between them and official anti-corruption initiatives. It particularly welcomed the "partnership agreements" concluded between the SCPC and private companies which set out the form of their co-operation with regard to prevention, training and investigation initiatives to guard against corruption. The commitments made by professional bodies need to be implemented in practice and such initiatives should be encouraged.
10. GRECO concluded that recommendation i. had been satisfactorily implemented.

Recommendation ii.

11. *GRECO recommended that France 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 inter-ministerial dialogue, nurture communal discussions and develop the emergence of summaries of the various experiences.*
12. The French authorities have stated the following:
 - The powers of the former Sub-directorate for Economic and Financial Affairs (SDAEF) are now exercised by the new Sub-directorate of Specialised Criminal Justice (SDJPS), a multidisciplinary body that brings together judges, tax and customs officials, and gendarmerie, police and co-ordination officers (Decree of 10 October 2001 reorganising the Directorate of Criminal Affairs and Pardons, see Appendix I, doc. Greco RC-1 (2003) 10F Appendices).
 - The Minister of Justice ensures that criminal law is consistently applied throughout French territory. He or she therefore has to be informed of criminal proceedings in progress so as to be able, with full knowledge of the facts, either to set out the general directions of criminal policy or recommend amendments to legislation or regulations or, to a far lesser extent and in accordance with Article 36 of the Code of Criminal Procedure, to issue instructions in writing to institute proceedings. The prosecuting authorities do not inform the Ministry of all criminal proceedings in progress, but only of cases which are high profile (in particular because of the standing of the accused - elected representatives, public officials), concern the exercise of regulated professions (bailiffs, notaries, etc), raise difficulties with respect to application of the law, enable a previously defined criminal policy to be assessed, or which involve a new offence (for example, corruption by a foreign public official).
 - The SDJPS co-ordinated the drafting of the circular of 18 December 2002 on criminal justice policy regarding protection of the European Union's financial interests.
 - The SDJPS has contributed to furthering the dialogue between the various administrative departments: meetings between the prosecution service of the Court of Audit and representatives of the SDJPS which, in particular, resulted in the formalisation of a circular on information exchange between the judicial authorities and the financial courts dated 11 June 2003; the head of the SCPC took part in the prosecutors' conference and a conference representative to the SCPC standing liaison committee was appointed.
 - In 2002, the SDJPS organised four meetings with the public prosecution departments and the investigating judges assigned to the economic and financial units of Marseille, Lyon and Paris,

and with those from the specialised court of Nanterre, in order to develop comprehensive approaches drawing on the experiences of the various parties (e.g., handling by the judicial system of economic and financial offences, the use of police officers in customs cases).

13. GRECO took note of the measures adopted for the overall strengthening of the co-ordinating task of the new Sub-directorate of Specialised Criminal Justice (SDJPS), which has replaced the Sub-directorate for Economic and Financial Affairs (SDAEF). In view of the fact that it is new, the French authorities are urged to strengthen and consolidate the visibility of the SDJPS. GRECO observed, however, that the SDJPS had already begun to strengthen dialogue with other institutions and has held a number of co-ordination meetings. The objectives mentioned in the recommendation have, in general terms, been taken over by the new body.
14. GRECO concluded that recommendation ii. had been dealt with satisfactorily.

Recommendation iii.

15. *GRECO recommended that France enact legislation confirming the commitments of the current Minister of Justice and her predecessor not to interfere in individual cases.*
16. The French authorities have stated the following:
 - The principle of 'non-interference' in individual cases intended directly or indirectly to obstruct the commencement of criminal proceedings is already defined in law: Article 36 of the Code of Criminal Procedure introduced by Act 93-1013 of 24 August 1993 (Appendix II).
 - The obligation placed on the Minister of Justice to intervene by instructions in writing and included in the case file ensures transparency. The present Government does not intend to repeal Article 36 under which the Minister may direct the Principal State Prosecutor "by written instructions which are attached to the case file to initiate or have initiated a prosecution and to refer to the competent court such written submissions as the minister deems appropriate".
 - Prohibiting intervention by the Minister of Justice in the course of criminal proceedings would cause a shift in the existing constitutional balance. It might necessitate a concomitant redrafting of the Code of Criminal Procedure in several areas (relations between public prosecutors and the Principal State Prosecutor; appeals against a decision not to proceed with a case, etc) and increased accountability of judges.
 - In its activity report for 2001, the *Conseil supérieur de la magistrature* (Judicial Services Commission) emphasised that "individual written instructions may be useful in certain civil, commercial and criminal cases ... facilitating consistency in the application of the law and improving the effectiveness of the fight against crime with regard, for example, to white collar crime, trafficking in human beings, international drug-trafficking, etc (...)".
 - Section 17 of the Bill adapting the justice system to trends in crime¹ lays down the role of the Minister of Justice with regard to criminal policy: "The Garde des Sceaux, Minister of Justice, shall ensure that criminal law is applied consistently throughout the territory of the Republic".
 - Section 18 of the Bill sets out the role of the prosecution service with regard to criminal policy by strengthening existing practices. It includes a provision on "upward transmission of information". In addition to their annual report on the Public Prosecutor's Office for which they are responsible, prosecutors also draft special reports, either on their own initiative or at the request of the Principal State Prosecutor.

¹ The Bill adapting the justice system to changing trends in crime was passed at first reading in the National Assembly on 23 May 2003 (Appendix III) and in the Senate for its first reading there on 7 October 2003. The numbering and final drafting of the articles are likely to evolve, as the text has to undergo a second reading.

- Section 19 of the Bill sets out the ways in which the Principal State Prosecutor may, in his or her quality as hierarchical superior to public prosecutors, intervene in the handling of cases falling within his or her jurisdiction.
 - Section 4 of the Bill makes it an offence to reveal “*directly or indirectly*” information arising from an investigation to persons likely to be implicated as authors, co-authors, accomplices or receivers, in the commission of those offences “*where doing so could impede the investigation or the establishment of the facts.*” The penalty for doing so is now five years’ imprisonment and a fine of €75,000, which seems more commensurate with the gravity of the consequences of divulging such information.
17. GRECO took note of the information provided by the French authorities. It welcomed the progress introduced in the draft law which strengthens the safeguards offered to citizens and, where appropriate, to any natural or legal person that has been a victim of corruption, in the event of a decision not to proceed with a case. Section 19² of the Bill now provides that, “*The Principal State Prosecutor may in particular direct a public prosecutor to initiate proceedings following an appeal lodged by the victim against a decision not to proceed with a case. If he considers the appeal to be groundless, he shall inform the complainant of his decision*”. Section 21³ provides that, “*Where the offender has been identified but the Principal State Prosecutor decides not to proceed with the case, he shall inform them [complainants and victims] of his decision which must include the reasons for that decision*”. The corollary of this notification procedure is the possibility of contesting the decision not to proceed with the case, before the Principal State Prosecutor and, where appropriate, having it overturned.
18. Moreover, a positive interference by the Minister of Justice when general interest so requires, is precisely the exception generally acceptable with regard to the principle of non-interference in the prosecution process when criminal proceedings should have, but have not, been opened. . GRECO noted that according to the French Delegation, Article 36 of the Code of Criminal Procedure shall be interpreted as excluding any interference in order not to proceed with a case.
19. Finally, GRECO does not intend to interfere in domestic debates on the constitutional balance within member states. However, with regard to the role of the political authorities in the exercise of the public prosecution service’s prerogatives and the independence of the judiciary, it hopes that that debate will continue on the specific matter of combating corruption. It points out that in the words of the Evaluation Report, “the judiciary is viewed very unfavourably by the public as regards its independence of economic and financial circles, and of the political authorities”⁴. The relations between the political authorities and the prosecution service⁵ allowing privileged access to investigation information or case files have been criticised. The report mentioned the drafting of a Bill on public prosecution in criminal proceedings, modifying the Criminal Procedure Code, passed on first reading by the National Assembly, to clarify the relations between the Ministry of Justice and the hierarchical structure of the public prosecutor’s department⁶ and to strengthen the safeguards available to citizens in the event of a decision not to proceed with a case⁷. The Bill has been partially shelved and it is not planned to make any

² See footnote 1

³ See footnote 1.

⁴ Greco Eval I Rep (2001) 4E Final, paragraph 10.

⁵ Greco Eval I Rep (2001) 4E Final, paragraphs 61-65 and 121.

⁶ Prohibition on giving instructions in individual cases and of any instructions given by the Principal State Prosecutor likely to hinder the initiation of a prosecution in individual cases.

⁷ Legal and practical grounds will now have to be given for decisions not to prosecute, which may be subject to appeals to the Principal State Prosecutor in the first instance, and then to an appeals board composed of judges.

other commitment with respect to prohibiting instructions in individual cases. Nevertheless, the new Bill on adapting the justice system to trends in crime clarifies the relations between the *Garde des Sceaux* and the Principal State Prosecutor's department and strengthens the safeguards offered to victims of corruption in the event of a decision not to proceed with a case, when the perpetrator has been identified. GRECO consequently invited France to provide further information concerning the increased safeguards to proscribe any undue interference by the political authorities in individual cases of corruption dealt with by the judicial system.

20. GRECO concluded that recommendation iii. had been partly implemented.

Recommendation iv.

21. *GRECO recommended that France 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.*

22. The French authorities have stated the following:

- A Bill (No 784) on adapting the justice system to trends in crime was submitted to parliament and debated on 21 May 2003 (Appendix III). At least seven new courts specialising in economic and financial matters are to be created, but with a broader, inter-regional jurisdiction and situated in the major crime areas. These courts will be the natural points of contact for the inter-regional police directorates currently being set up.
- The economic and financial units differ from the inter-regional economic and financial courts in their substantive and territorial scope: (1) at substantive level: under Article 704 of the Code of Criminal Procedure, the economic and financial units have jurisdiction “over cases which are or appear to be of great complexity”, the inter-regional courts hear “cases which are or appear to be of very great complexity”. Section 7 of the Bill states that this notion of “very great complexity” has to be assessed in relation, amongst other things, to “the large number of offenders, accomplices or victims or to the geographical jurisdiction over which they extend.” (2) at territorial level: while the economic and financial units operate within the jurisdiction of a single court of appeal, the inter-regional courts operate within the jurisdictions of several courts of appeal.
- This will clarify the mechanism for transferring cases from the jurisdiction of the ordinary courts to the special courts which should help to rationalise and lighten their workload. The status of the specialist assistants there to help the judges of these courts has been improved.
- In January 2003 a study was begun with a view to drawing up reliable activity management charts for the economic and financial units which will, where necessary, result in the allocation of a budget to enable further resources to be granted and additional specialist assistants to be recruited.

23. GRECO took note of the information provided and the effort made to rationalise the activities and use of the resources of the specialised courts, responsible *inter alia* for combating corruption. It noted that the aim of the Bill on adapting the justice system to trends in crime is to reorganise those services through the creation of inter-regional courts competent in economic and financial affairs, without awaiting the results of the study aimed at assessing the activity of the economic and financial units so that conclusions may be drawn from it. GRECO further noted that the economic and financial units can handle cases of corruption of judges (Article 434-9 of the Criminal Code and Article 704 of the Code of Criminal Procedure). Similarly, in

cases of active corruption by a foreign public official in international commercial transactions (Articles 435-3 and 435-4 of the Criminal Code), Paris has optional national and concurrent jurisdiction (Article 706-1 of the Code of Criminal Procedure). The distinction between different courts in respect of cases of great or very great complexity has been clarified by the French authorities. The financial units will probably continue to deal with many “complex” cases according to the resources allocated to them. France might wish to send to GRECO further information on how the economic and financial units and the inter-regional courts fit into the overall picture, particularly with regard to highly complex cases involving judges as well as with regard to the results of the study under way to assess the activity of the economic and financial units so that conclusions may be drawn from it.

24. GRECO concluded that recommendation iv. had been dealt with satisfactorily.

Recommendation v.

25. *GRECO recommended that consideration be given to the need to legislate in order to allow the use of infiltration in corruption cases.*

26. The French authorities have stated the following:

- The Bill adapting the justice system to trends in crime amends legislation on infiltration operations (cf. Articles 706-81 to 706-87 of the Code of Criminal Procedure inserted by Section 1 of the Bill) and allows such operations for the most serious offences and forms of crime, but not for corruption.
- Ultimately, once the new system has been assessed, “the use of infiltration operations may be authorised for corruption offences committed by organised gangs”. Article 132-71 of the Criminal Code defines an organised gang as follows: “*An organised gang, within the meaning of the law, is any group formed or association established with a view to the preparation of one or more criminal offences, such preparation being established by one or more material facts*”. However, positive law as yet contains no aggravating circumstance with regard to an organised gang being linked to corruption.

27. GRECO took note of the fact that the appropriateness of legislating in order to allow the use of infiltration in corruption cases was now under examination. It noted the progress made in extending the use of infiltration to the most serious offences, in accordance with the case-law of the European Court of Human Rights. It noted that corruption had yet to be included in the list of such offences but was confident that continued examination of this issue may result in the solutions advocated in recommendation v. For example, infiltration operations should be authorised at least in respect of corruption committed by an organised gang. France might wish to send to GRECO further information on strengthening investigatory measures to combat corruption effectively.

28. GRECO concluded that recommendation v. had been dealt with satisfactorily.

Recommendation vi.

29. *GRECO recommended that France 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.

30. The French authorities have stated the following:

- Law No. 2001-1062 of 15 November 2001, supplemented by Law No. 2002-307 of 4 March 2002 made it possible in France to take statements from persons, whom there were no plausible reasons for suspecting of having committed or having attempted to commit an offence, without their identity appearing in the case file. Articles 706-58 to 706-62 of the Code of Criminal Procedure govern this specific procedure (Appendix IV).
- The above-mentioned Bill No. 784 provides for the insertion into the Criminal Code of a system for waiving or reducing sentences for persons who, either having attempted to commit an offence, have subsequently informed the administrative or judicial authorities before any proceedings have been initiated and have thereby avoided the commission of the offence, or who, having committed an offence, have informed the administrative or judicial authorities before any proceedings have been initiated and have thereby made it possible to bring the offence to an end, prevent consequential damage or identify the other guilty parties (cf. Section 3 of the Bill). After their conviction, such persons may also, where appropriate, be allowed to make use of an assumed name (new Article 132-8 introduced into the Criminal Code by Section 3 of the Bill). As it stands, this is limited to the most serious crimes against persons and to acts of terrorism. Once the effectiveness of the system is assessed, the possibility to extend it to cases of corruption will be considered.

31. GRECO took note of the information provided by the French authorities. It welcomed the steps France has taken to examine this question and the results obtained enabling statements to be taken from persons who wish to preserve their anonymity in the circumstances provided for by the law. It noted the progress made towards extending specific protection measures to persons who agree to co-operate with the authorities in order to inform it of the preparation or commission of a particularly serious offence or to identify other offenders. It noted that corruption was still not included in the list of such offences but was confident that continued examination of this question may result in the solutions advocated in recommendation vi. GRECO also took note of the fact that the National Assembly wished to settle the question of the remuneration of police informers. France may wish to transmit further information to GRECO in order that it may verify that the planned measures are successful and strengthen still further the means of investigation for combating corruption effectively.

32. GRECO concluded that recommendation vi. had been satisfactorily implemented.

Recommendation vii.

33. *GRECO recommended that France 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.*

34. The French authorities have stated the following:

At national level

- Several initiatives have been taken to draw attention to the importance of the duty to report crime stipulated in Article 40 (2) of the Code of Criminal Procedure (Appendix V), and to its

implementing requirements, particularly the fact that the official superior's consent need not be obtained. Specific examples are:

- the circular of 4 March 2002 concerning Decree 2001-210 containing the Code of Public Tenders (Appendix VI), for the particular attention of the General Directorate for Fair Trade, Consumer Affairs and Suppression of Fraud (DGCCRF);
 - the circular of 12 February 2003 (Appendix VII) setting out the main offences likely to be committed in local semi-public corporations, with regard in particular to directors of such corporations, prefects, paymasters-general and the tax authorities;
 - the circular from the Ministry of Defence Directorate General for Armaments which is in the process of being signed;
 - diplomatic telegrams from the Ministry of Foreign Affairs dated 17 May 2000, 6 December 2001 and 27 March 2003.
- A study conducted in 2001 for the Ministry of the Economy and Finance confirmed that the duty to report crime was not subject to receiving permission from or informing a superior. Officials of government departments occupying posts abroad (Ministry of the Economy and Finance – Directorate for Foreign Economic Relations, Ministry of Defence – Directorate General for Armaments, Ministry of Foreign Affairs) likely to be in contact with companies have been made aware of the issues relating to combating corruption in international commercial transactions and have received instructions. More generally, an inter-ministerial circular is in the process of being drafted.
- The Bill adapting the justice system contains a section which makes reference to the duty of mayors to report instances of corruption, set out in the General Code on Local and Regional Authorities.

At local level

- Under the partnership policies developed with the decentralised tiers of State authorities (customs, taxation and the Directorate for Fair Trade, Consumer Affairs and Suppression of Fraud, in particular), the public prosecution authorities organise regular meetings bringing together representatives of the departments concerned and members of the judicial service in order to impress upon them the machinery and implementing conditions of Article 40 (2) of the Code of Criminal Procedure.
- Lastly, the formal post-recess hearings of the various courts held annually in the presence of the local administrative and military authorities give the representatives of the public prosecution service very frequent opportunity to refer to the provisions of Article 40 of the Code of Criminal Procedure. The presence of the press at these events helps ensure that the statements made are widely disseminated.
35. GRECO took note of the information provided by the French authorities. It welcomed the steps taken by the French authorities to implement recommendation vii. When it has been adopted, the French authorities might wish to inform GRECO as to the substance of the inter-ministerial circular (at present being drafted) facilitating the exercise without hindrance of the duty to report cases of corruption.
36. GRECO concluded that recommendation vii. had been satisfactorily implemented.

Recommendation viii.

37. GRECO recommended that France assert the specialised and multidisciplinary nature of the Central Police Directorate's sub-directorate for economic and financial affairs as a body specialising in cases connected with economic criminal law. Within this multidisciplinary division, it is recommended that it create an investigative structure, to fight corruption and related offences, which would, apart from the police, include gendarmes and civil servants from the Ministry of the Economy and Finance, in order to respond to the needs of the judicial authorities, and in particular to those of the economic and financial units. The GET further considered that the setting up of ad hoc multidisciplinary investigation teams should be encouraged (including in particular, police officers, gendarmes and civil servants who are specialised in financial matters) for the investigation of cases to be handled by the economic and financial units.
38. The French authorities have stated the following:
- In order to fulfil this recommendation, the Ministry of the Interior has approved the setting up, by the end of 2003, of a specialised body called the Central Anti-Corruption Squad (*Brigade centrale de lutte contre la corruption*) with a multidisciplinary make-up, as part of the Central Police Directorate, within the National Division of Financial Investigations (**Appendix VIII**), and inter-ministerial consultation is planned.
 - The provisions of the Code of Criminal Procedure allow the public prosecutor or investigating judge to set up an appropriate co-ordinating unit for a particular investigation (Article 28-1 II of the Code of Criminal Procedure authorises the setting up of temporary multidisciplinary units to investigate and ascertain certain offences including cases of corruption. Also relevant are Articles 41 and 151 with regard to police officers and gendarmes, Articles 60 and 77-1 with regard to "qualified individuals" and Article 77-1 with regard to tax inspectors).
 - The formation of Regional Task Forces under the terms of a circular dated 22 May 2002 reflects the wish to institutionalise in permanent units the necessary co-operation between the police, the gendarmerie and the main government departments. The Task Forces have specific competence to deal with the underground economy, irrespective of its origin, availing themselves of all possibilities for extended action in the customs and taxation fields. The methods used by the Regional Task Forces may soon be extended to combating corruption. In certain circumstances, confidentiality in tax matters may be waived to assist police officers in their enquiries.
39. GRECO took note of the information provided by the French authorities. The setting up of the multidisciplinary Central Anti-Corruption Squad as part of the Central Police Directorate and the use of temporary multidisciplinary units by the public prosecutor or investigating judge meet the recommendation's main objective. The implementation by the Regional Task Forces of their competency in corruption matters should also make it possible to make the co-ordinated activity of the police, gendarmerie and the main government departments more effective.
40. GRECO acknowledged that the measures in preparation, in particular the project to set up the Central Anti-Corruption Squad together with the creation of the Regional Task Forces, should enable France to comply with recommendation viii. For the time being, however, pending the launching of the activities of the Central Anti-Corruption Squad (*Brigade centrale de lutte contre la corruption*), it concluded that the recommendation had been partly implemented.

Recommendation ix.

41. *GRECO recommended that France allocate more staff resources to the MIEM (interministerial investigation mission on public procurement and public contracts), and strengthen the guarantees that, when asked for technical advice on a case (presented anonymously to the MIEM), it would be reported to the Prosecutor's Office by the requesting body if the MIEM concluded that there had been embezzlement, and grant the MIEM the power to decide on its own whether to investigate a case, as it requested in its 1999 report.*
42. The French authorities have stated the following:
- The Ministry of Justice Directorate of Judicial Services distributed in March 2003 a description of the post of judge within the MIEM.
 - The circular on the Code of Public Tenders dated 4 March 2002 provides that officials of the General Directorate for Fair Trade, Consumer Affairs and Suppression of Fraud shall report directly to the prosecution service with the relevant territorial jurisdiction any act likely to constitute favouritism under Article 40 of the Code of Criminal Procedure. Such exchange of information ensures that any act of favouritism will be referred to the judicial authority, whether or not the Prefect informs the MIEM.
 - The Prefect is free to refer cases to the MIEM in order to cast useful light on the facts. If the MIEM concludes that there has been favouritism, the Prefect has a duty under Article 40 of the Code of Criminal Procedure to inform the relevant prosecutor's office.
 - Section 2.1 of Law No. 91-3 of 3 January 1991 on the transparency and lawfulness of public tenders and making certain contracts subject to publication and competition provides that the head of the MIEM is empowered in his/her own right to broaden the field of investigation when the inquiry ordered into a contract or an agreement to delegate a public service "raises a presumption of improprieties in other contracts or agreements".
43. GRECO took note of the information transmitted by the French authorities. During the visit, four out of seven posts in the MIEM had been filled⁸. At present, there are still four permanent members. There are also 14 other members, who do not form part of the permanent staff. The reminder issued to officials of the General Directorate for Fair Trade, Consumer Affairs and Suppression of Fraud, with regard to their obligation to report any case of suspected favouritism directly to the prosecuting authorities, and the co-operation between that body and the MIEM should favour the reporting of favouritism to the judicial authorities. It has not, however, been confirmed that the MIEM can investigate cases of its own motion. GRECO invited France to submit further information in order to ascertain whether or not the means to conduct investigations into tenders and agreements to delegate public services have been strengthened.
44. GRECO considered that recommendation ix. had been partly implemented.

Recommendation x.

45. *GRECO recommended that France empower the IGF (general financial inspectorate) to carry out investigations and inspections in addition to those ordered by the Minister.*
46. The French authorities have stated the following:

⁸ Greco Eval I Rep (2001) Final, paragraph 136.

- The IGF has statutory independence in programming inspections or audits of all departments directly answerable to the Ministry of Economy, Finance and Industry, particularly in respect of the network of chartered accountants, the General Directorate of Taxation, General Directorate for Fair Trade, Consumer Affairs and Suppression of Fraud, and the network of customs services. The IGF is also vested by law with powers in its own right over a number of specific bodies such as the Chambers of Commerce and Industry and the universities.
- While according to custom, the exercise of the IGF's supervisory powers in respect of bodies receiving public funds and external to the Ministry of the Economy, Finance and Industry requires the granting of approval, even tacitly, by the parent ministry, the need for such approval is not a curb on the supervisory powers of the IGF since its effect is to make the actual use of those powers more effective as a result of the need to define priorities and make certain of the relevance of its action having regard to its own workload.
- The IGF cannot be regarded as potentially having a permanent role in combating corruption on the basis of regular inspections. Even were it to be given this responsibility, its resources – some 20 junior and around 30 senior inspectors – would not enable it to perform the task at national level.

47. GRECO took note of the reply by the French authorities. It noted the limited staff of this prestigious body and the existence of other competing structures responsible for detecting corruption. It also accepted that it may be customary to seek the, even tacit, agreement of the Minister for the IGF to exercise its powers. It noted, however, that, for the purposes of implementation of the recommendation, a minister's possible refusal to authorise the IGF to exercise its powers in a department or a particular service could be accompanied by further safeguards and allow some supervision where appropriate. These factors suggest that the IGF's power to instigate certain investigations or verifications of its own motion is on the whole recognised. It could be consolidated by clearly stating that power and by setting out clearer regulations governing instructions or possible cases of refusal by a minister to authorise an investigation. In order to perform its duties satisfactorily the IGF may require further resources. GRECO invited France to submit further information on the implementation of recommendation x.

48. GRECO concluded that recommendation x. had been partly implemented.

III. CONCLUSIONS

49. GRECO concluded that France had satisfactorily implemented or partly implemented all the recommendations contained in the First Round Evaluation Report.

50. Recommendations i., ii., iv., v., vi. and vii. have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations iii., viii., ix. and x. have been partly implemented.

51. GRECO invited the French authorities to submit to it additional information and, where appropriate, the supporting legislation related to the implementation of recommendations iii., viii., ix. and x.

52. Moreover, the French authorities might wish to send to GRECO the additional information mentioned in the parts of the report relating to recommendations iv., v., vi. and vii.

53. In view of the above, GRECO invited the Head of the French Delegation to submit an additional report on the information referred to in paragraph 51 by 31 March 2005.