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Second Evaluation Round

Compliance Report on France

Adopted by GRECO
at its 32nd Plenary Meeting
(Strasbourg, 19-23 March 2007)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on France at its 21st Plenary meeting (2 December 2004). This report (Greco Eval II Rep (2004) 5E) was made public by GRECO following the authorisation of the French authorities, on 18 January 2005.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, on 14 November 2006 the French authorities presented their Situation Report (RS-report) on the measures taken to implement the recommendations of the Second Round Evaluation Report. Additional information was provided on 14 March 2007.
3. At its 26th Plenary meeting (5-9 December 2005), pursuant to Rule 31.1 of its Rules of Procedure, GRECO selected Belgium and Romania to appoint rapporteurs for the compliance procedure. The rapporteurs appointed were Ms Claire Huberts on behalf of Belgium and Ms Laura Stefan on behalf of Romania. The rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the French authorities to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. In its Evaluation Report GRECO addressed 6 recommendations to France. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended to pursue the existing activities within the police in order to make asset investigations more effective.*
7. The French authorities report in respect of the law that law No. 2006-64 of 23 January 2006 on the fight against terrorism generalised the offence of "non-justification of income", which already existed for certain specific forms of crime: henceforth it is possible under this law to prosecute any person who is unable to justify income in keeping with their lifestyle and who habitually frequents people who commit crimes or offences punishable by at least five years' imprisonment (including certain corruption offences) from which they profit directly or indirectly. In addition to a 3-year prison sentence and a € 75 000 fine, persons found guilty of this offence are liable to have their property confiscated if they cannot justify how it was acquired.
8. On the structural level a national service specialised in the detection and confiscation of assets of criminal origin (the "Platform for the Identification of Criminal Assets" - PIAC) was established on 1 September 2005 in the Major Financial Crime Office (OCRGDF)¹. The inter-ministerial PIAC has an 11-strong staff at present, but should receive reinforcements in the near future. Its task is fourfold: 1) investigation, to identify and seize criminal assets, based on the legal notion of non-justification of income. The unit is currently conducting about fifty such investigations. Two corruption-related files have been dealt with, one dealing with favouritism and trading in influence, and one dealing with embezzlement; 2) an advisory and motivational role on these subjects vis-à-

¹ Under Article 2 of the decree of 1990 instituting the OCRGDF, "this body shall deal with offences of an economic, commercial and financial nature linked to professional or organised crime, including grand larceny, terrorism or drug trafficking."

vis the local and regional police and gendarmerie investigation departments, with the help of local correspondents in those departments; 3) a quarterly statistical fact-finding mission on the type and financial value of the property seized at the national level; 4) and at the international level the PIAC is a member of the CARIN network [Camden Asset Recovery Inter-agency Network]² set up by EUROPOL and will provide its general secretariat in 2008.

9. Concerning training, the National Gendarmerie General Directorate (DGGN) has set up a training course on economic and financial crime fighting in partnership with the University of Strasbourg. The course is for investigators in units all over the country and comprises two levels: a university diploma in "economic and financial judicial investigations" and a Master's degree in "combating organised crime in its economic and financial dimensions". Both devote a lot of time to asset investigation methods. A special training course on asset investigation should also be set up in 2006/2007 at the National Gendarmerie Police Training Centre (CNFPJ). Finally, a detailed guide to asset investigation, prepared by the DGGN police office, has been circulated to all units. The aim of the guide is to help investigators to identify and evaluate assets in order to facilitate the seizure of criminal assets.
10. GRECO takes note of the major advances made in asset investigation in France. It particularly welcomes the establishment of the PIAC (including its special responsibility for collecting statistical data, something which was lacking at the time of the second round visit). GRECO also welcomes the various new training efforts concerning the proceeds of crime and the introduction of a wider offence of non-justification of income (Article 321-6 of the Criminal Code). GRECO notes that the combination of these different measures should have a positive effect on the approach and the work culture consisting in targeting the proceeds of corruption, and effectively help to increase the efficacy of asset investigations. It will be interesting to follow the practical implementation of Article 321-6 in the field of corruption.
11. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

12. *GRECO recommended to actively pursue the existing initiatives to establish guidelines on and typologies of operations that might involve corruption for persons and institutions with a duty to report suspect transactions.*
13. The French authorities explain the general thinking behind the arrangements for reporting suspect transactions (which rely solely on the co-operation of the bodies subject to the obligation), the work done by the financial intelligence unit (FIU) to inform and encourage those bodies (this includes issues relating to the laundering of the proceeds of corruption) and that of the Liaison Committee on laundering the proceeds of crime, set up in 2001 (dialogue and consultation on the implementation of the measures in place, including the application of FATF Recommendation 6 on politically exposed persons, transposed by the European Union's 3rd anti-laundering Directive, which has been in force since November 2005).

² CARIN is an informal network of contact points and services specialised in the identification and confiscation of financial assets of criminal origin. Its role is the exchange of information, to identify the type of assistance needed, take the necessary steps and draw up the letters rogatory. CARIN, which comprises a large number of European agencies – seventeen to date – specialised in tracking down the proceeds of crime, contributes to the international pooling of know-how, providing a methodological reference for tracking down criminal assets in each European Union member state.

14. GRECO notes that there is no report of new practical initiatives at the national level, which the information contained in the second round report suggested there might be: TRACFIN, the French FIU, was considering producing guidelines – or indicators - and typologies concerning laundering related to corruption, in consultation with various players, including the Central Corruption Prevention Department (SCPC). From the additional information provided, GRECO understood that this work was in fact delayed for two reasons. On the one hand, TRACFIN underwent a reorganisation, in accordance with decree n° 2006-1541 and a government act of 6 December 2006. This reorganisation, which implies a development of the institution, should enable it in the future to also conduct horizontal studies, notably on money laundering typologies. On the other hand, although the duty to report suspicious transactions was expanded to possible corruption cases in 2004, the first such reports were received in 2006; therefore, TRACFIN prefers that these files be studied first before elaborating any general characteristics. For the moment, relations between the SCPC and TRACFIN have been intensified; this should allow to increase the knowledge of the *modus operandi* related to this type of case, which will be useful for the drafting of typologies and, as GRECO hopes, guidelines (to complement the awareness-raising measures already in place) to assist the obliged entities in their detection work. Thus, it would appear that new promising bases are in place at present and it will be interesting to learn more about the first concrete results aimed at in the recommendation.

15. GRECO concludes that recommendation ii has not yet been implemented.

Recommendation iii.

16. *GRECO recommended that consideration be given to strengthening the existing internal and external control systems in public departments and agencies, accompanied by the integrated management of the risks of corruption and ethical breaches and the establishment of an appropriate organisational ethic.*

17. The French authorities recall the various measures taken to promote ethics and limit the risk of malfunctions and fraud, and of corruption in general:

- i. taking ethical issues into account in public administration schools (particularly those training civil servants for supervisory and management positions);
- ii. existence – in several ministries – of ethics units and/or correspondents (in particular the Infrastructure and Finance Ministries);
- iii. existence of numerous inspection authorities (inspectorate general of National Education, inspectorate general of Social Affairs, General Armed Forces Directorate, etc.) generally composed of highly competent or experienced officials, responsible under their minister for supervising the proper functioning of the ministerial departments;
- iv. internal financial control mechanisms, based on the separation of commitments officers and accountants, and – thanks to efforts made since 2001 – internal controls carried out on these officials, to improve the quality of public accounting, etc.

18. The French authorities also report various new trends and future projects:

- i. the gradual generalisation of codes of conduct and best practices;
- ii. the prospect of the general certification of administrative accounts in order better to control fraud and abuse (including in the social security system), in particular by the Court of Audit since the laws of August 2001 and August 2005;

- iii. the recent strengthening, by a law of July 2006, of the organic and financial independence of the Court of Audit ³.
19. GRECO takes note of this information. It notes that there have been few new initiatives aimed at a more integrated and specific approach to corruption issues. It nevertheless welcomed the increased attention gradually being paid to ethical questions and the strengthening of financial control and anti-fraud mechanisms, which could certainly help to limit the risk of corruption. This goes in the general direction of the recommendation, which simply invited the authorities to give consideration to such measures.
20. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

21. *GRECO recommended that all public officials receive adequate training in ethical issues and the risks of corruption, if necessary, with the support of the central corruption prevention department (SCPC).*
22. The French authorities recall that the 1945 general statute of the civil service applies to all civil servants of public agencies at the national, regional and local levels, as well as public hospitals. They indicated that all new civil servants are informed in their initial training of the rights and obligations of civil servants, including rules of ethics designed to prevent corruption situations. The French authorities state that schools of administration also organise in-service training sessions for civil servants and concrete examples were given of sessions that deal with ethical rules, deontology and/or professionalism (national police, gendarmerie, municipal police), the rights and duties of civil servants (in the framework of in-service training provided to general civil servants notably by regional institutes of administration). Corruption as a specific topic is dealt with in particular in the framework of the in-service training proposed by the national school of penitentiary administration (in cooperation with the SCPC), and of the initial training provided by the Institute of public management and economic development of the Ministry of economy, finance and industry (by the schools of each of the network-type Directorates) to staff entering the career and on the occasion of appointment to a higher grade (C to B, B to A). Furthermore, in the framework of the Territorial Civil Service reform and the law of 19 February 2007, ethics training for all managerial staff will be set in place together with the SCPC before the end of the year, starting with training instructors.
23. GRECO takes note of the information provided. Paragraph 58 of its report noted that “certain areas and staff, including non-established staff, have still not been introduced to the risks involved. Nor have the longest-serving staff always had their original training updated. Finally, the training not provided under SCPC auspices does not always lay sufficient emphasis on threats to ethical standards and the risks of corruption. GRECO welcomes the fact that in-service training initiatives are putting emphasis on such issues as deontology and the rights and obligations of civil servants in a non negligible (and apparently increasing) number of sectors of the

³ Several measures have been introduced recently to guarantee its independence in practice. First, its budgetary means were transferred from the Ministry of Finance to the Ministry of Relations with Parliament. Furthermore, a law of 1 July 2006 introduced new statutory measures concerning Court of Audit officers. In particular these measures included strengthening the legal independence of the Court's officers (in particular in recruitment and also by establishing a supervisory body similar to the Judicial Service Commission) and disconnecting the budget of the audit courts from those of the other ministerial departments (the transfer, under the Finance Act, of responsibility for the budget of the Court of Audit and its regional branches to the Ministry of Relations with Parliament now makes it possible for the First President of the Court of Audit to discuss the Court's budget with the Minister of Finance without being in a position of dependence).

administration. It also welcomes the fact that new in-service training schemes are envisaged for local and regional civil servants, in co-operation with the SCPC, which confirms that corruption as such will be addressed as a subject. This should help to fill in some of the gaps found in the evaluation report. By training trainers the SCPC should maximise the impact of these initiatives. It is also conceivable that by aiming at managerial staff a large proportion of long-serving staff will be affected (which will help to update their training), and that this will have a more general “snowball” effect and improve the service culture.

24. GRECO considers that, overall, the efforts accomplished go in the right direction and should be pursued, with emphasis more specifically on questions of corruption in the framework of training provided to already serving staff (in-service training) and to officials who are not civil servants. This is an important issue given the size of the public sector in France⁴. GRECO encourages the French authorities to identify, together with the SCPC where relevant, the training needs regarding risks of corruption, and to prepare training material such as pedagogical notes, best practices, computerised self-training etc. to be used by the schools and administrations identified.
25. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

26. *GRECO recommended that consideration be given to extending the area of responsibility of the professional ethics commission.*
27. The French authorities recall the existing rules in respect of public officials who are available for service or on leave or who have left the service (decree of 17 February 1995 concerning private activities undertaken by such officials, law No. 94-530 of 28 June 1994 on “private activities which may not be undertaken by public officials who are available for service or on leave or who have left the service”).
28. They also specify that increasing numbers of cases have been brought before the State Civil Service Ethics Commission recently on the strength of these provisions⁵. In 2005 it issued 980 opinions, 15.7% more than in 2004. In almost three quarters of the cases the Commission considered the desired private sector activity compatible with the post previously held in the public service. In almost 20% of the cases (19.4% in 2005 to be precise) this compatibility opinion was subject to reservations. In very few cases (3.1%) did it find the posts incompatible, and those concerned public servants who had awarded contracts, or supervised or issued opinions on contracts, concerning the firm they wished to join. In accordance with the legislation, a civil servant whose activity is considered incompatible with a move to the private sector is barred from engaging in the private activity for five years.
29. The French authorities also report on the adoption of the law n° 2007-148 of 18 February 2007 on the modernisation of civil service; it provides notably for a ban of three years (instead of five years previously) applicable to incompatibilities, in line with practice in a large majority of OECD countries (this reduction was decided following a fact-finding mission assigned to a Court of Audit section president). Moreover, Art. 18 of law n° 2007-148 has extended the scope of the

⁴ The State public service comprises approximately 2,5 million civil servants, and the public service as whole approximately 5 million civil servants.

⁵ Cf. Annual report of the State Public Service Ethics Commission, La Documentation française (www.ladocumentationfrancaise.fr)

Commission's control (Art. 87 of law n° 93-122 of 1993 on the prevention of corruption and transparency of the economy and public procedures).⁶

30. GRECO takes note of the information provided. It recalls that the second round report and the recommendation raised the question whether it might be appropriate to extend the commission's field of competence to cover other situations in which civil servants engage in private activities, including civil servants in active service (not only those available for service, on leave or who have left the service). In this respect, it appears that the scope is now much broader than it used to be and covers several types of officials and situations. Moreover, as stated in the second round evaluation report the mechanisms applicable to offences committed by officials in the performance of their duties are fairly sophisticated and the supervision of the Ethics Commission seems to work effectively in the light of the new information supplied.
31. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

32. *GRECO recommended to support current initiatives regarding the detection of corruption and, subject to data protection requirements, to draw up a unified file of breaches of good conduct or ethics and disciplinary offences by auditors.*
33. The French authorities report that decree No.2005-599 of 27 May 2005⁷ provides for the creation of a register, kept by the national audit association (CNCC) and transmitted to the supervisory authority for the audit profession (HCCC), comprising a list of sanctions (Article 106) in addition to information concerning registration and responsibilities (Articles 38 and 61). This instrument is currently in preparation, in close co-ordination with the CNIL national data protection watchdog.
34. It is further indicated that a Code of deontology, approved by the State Council (Conseil d'Etat), was adopted on 16 November 2005, after consultation of the HCCC. This document contains principles for behaviour, lists of prohibitions and incompatibilities aimed at strengthening the auditor's independence *vis a vis* the audited entities. Furthermore, the HCCC is about to finalise an opinion on a draft regulation dealing with the duty for auditors to take into account risks of fraud within the audited entity. This opinion will allow for the recognition of a standard which is very much awaited by the profession.
35. GRECO takes note of the adoption of this decree amending decree No. 69-810 of 12 August 1969. It notes that the register was in fact provided for in the original decree, before 2005, but had not yet been put into practice (according to the latest information provided by France, recent technical changes have further delayed this). Furthermore, the disciplinary and supervisory

⁶ "These provisions apply:

1° to civil servants who have left or are about to leave the civil service definitely, are available for service, have been seconded or detached, are above the grade scale or have been temporarily excluded from their functions;

2° to officials who are not under a public law employment relation with the state, a local authority or a public entity;

3° to members of a ministerial private office;

4° to members of local authorities' private office;

5° to staff employed under a public or private law contractual relationship with an entity mentioned under Article L. 1142-22, L. 1222-1, L. 1323-1, L. 1336-1, L. 1413-2, L. 1418-1 and L. 5311-1 of the public health Code;

6° to staff employed under a public or private law contractual relationship with an independent administrative agency.

These provisions apply to officials not subject to public law mentioned under lit. 2 and 6 above only insofar as they have been employed on a continuous basis for more than one year by the same public authority or entity".

⁷ <http://www.admi.net/jo/20050529/JUSC0520338D.html>

powers of the CNCC and the HCCC have been strengthened and specified. GRECO welcomes the fact that the latest amendments have introduced an obligation to keep the future register up to date, and that the information will henceforth be available to the HCCC, which is responsible for compliance with the profession's rules of ethics. These changes, as well as the adoption of a Code of conduct for the profession and above all the draft new standard on how to react in case of fraud, go in the direction suggested by the first part of the recommendation. The central register is not operational yet, however.

36. GRECO concludes that recommendation vi has been partly implemented.

III. CONCLUSIONS

37. **In view of the above, GRECO concludes that France has implemented satisfactorily or dealt in a satisfactory manner with half of the recommendations contained in the Second Round Evaluation Report.** Recommendations i and iii have been implemented satisfactorily. Recommendation v has been dealt with in a satisfactory manner. Recommendations iv and vi have been partly implemented and recommendation ii has not been implemented.
38. GRECO invites the Head of the French delegation to submit additional information regarding the implementation of recommendations ii, iv and vi by 30 September 2008.
39. Finally, GRECO invites the authorities of France to authorise, as soon as possible, the publication of the report.