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## **Third Evaluation Round**

### **Compliance report on France**

#### **“Incriminations (ETS 173 and 191, GPC 2)”**

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#### **“Transparency of Party Funding”**

Adopted by GRECO  
at its 50<sup>th</sup> Plenary Meeting  
(Strasbourg, 28 March – 1 April 2011)

## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the French authorities to implement the 17 recommendations in the Third Round Evaluation Report on France (see paragraph 2), which covers two themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2 to 12, 15 to 17 and 19.1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1 to 6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (incrimination of corruption).
  - **Theme II - Transparency of Party Funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns and – more generally – Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 41<sup>st</sup> Plenary Meeting (19 February 2009) and was made public on 12 March 2009, following authorisation from France (Greco Eval III Rep (2008) 5E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the French authorities have submitted a Situation Report on measures taken to implement the recommendations. The report, received on 19 October 2010, has formed the basis for the Compliance Report.
4. GRECO selected Albania and Belgium to appoint Rapporteurs for the compliance procedure. The appointed Rapporteurs were Mr Edmond DUNGA, Head of the Anti-Corruption Secretariat, Regional Anti-Corruption Initiative (RAI) in Sarajevo (Albania), and Mr Guido HOSTYN, Senior Adviser, Secretariat of the Senate electoral expenses monitoring commission (Belgium). They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and provides an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a situation report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

6. In its Evaluation Report, GRECO addressed 6 recommendations to France concerning Theme I. Compliance with these recommendations is dealt with below.

#### **Recommendation i.**

7. *GRECO recommended to take the necessary measures, such as circulars, training or, if necessary, amendments to legislation, in order to i) make it clear to or remind those concerned, as necessary, that the offences of bribery and trading in influence do not necessarily require an agreement between the parties; ii) ensure that the various offences of passive bribery and trading*

*in influence cover all the material elements included in the Criminal Law Convention on Corruption (ETS 173), including that of "receiving".*

8. Regarding the first point, the French authorities state that the notion of a "corrupt agreement" only applies when the prosecution concerns both the active and the passive components of the offence. It is not, however, necessary to show that an agreement has been reached to establish the guilt of the individual, whether the active or the passive briber, initiating the transaction. According to the authorities, this is why there is no offence of attempted bribery. They state that this is the position taken by the courts (as shown in paragraph 13 of the Evaluation Report)<sup>1</sup> and legal theorists, and is also taught by the Central Corruption Prevention Department (SCPC) in the continuing training it provides for officials, future officials and judges at university, the *Ecole Nationale d'Administration* (college for senior civil servants), the *Ecole Nationale de la Magistrature* (legal service training college), at other *Grandes Ecoles* and within local and regional authorities.
9. Regarding the second point, the authorities state that it is already generally accepted that the offences of passive bribery and trading in influence cover all the material elements included in the Criminal Law Convention on Corruption (ETS 173), including that of "receiving", which would automatically be included in the notion of agreeing to (in French *agréer*).
10. They add that the Ministry of Justice has stressed these points in the judicial training courses to which it contributed in 2010 and that it undertakes to refer to them in a forthcoming circular of the Department of Criminal Affairs and Reprieves, which will deal with the issue of integrity in general. However, it has been decided to postpone the drafting of this circular in order to include other information relating to the government's proposed legislation on this subject. The authorities also report that draft legislation approved by the National Assembly was sent to the Senate for a second reading on 9 February 2011. It would clarify the offences of bribery and trading in influence. In particular, it would make it clear that the acts of offering or soliciting a benefit may take place before or after the public official concerned has taken the action or decision sought. This aspect has already been raised in 2010 training sessions for judges at the *Ecole Nationale de la Magistrature*.
11. GRECO notes the authorities' position that the offences of bribery and trading in influence are sufficiently broad to cover, without any possible doubt, all the material elements included in the Criminal Law Convention on Corruption. This will be made clear in training for present and future officials and judges and in a forthcoming circular, all of which is to be welcomed. Finally, GRECO notes that draft legislation that would clarify certain aspects of the offences of bribery and trading in influence, in particular making it clear that the acts of offering or soliciting a benefit may take place before or after the public official concerned has taken the action or decision sought, is currently under examination. However, while welcoming the authorities' assurances, GRECO regrets that the measures taken and/or communicated to it are not sufficiently complete to dispel all possible doubt among legal practitioners concerning the law on this subject. It therefore calls on the authorities to pursue their efforts with regard to training and to publish the announced circular and give it the widest possible circulation.
12. GRECO concludes that recommendation i has been partly implemented.

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<sup>1</sup> In particular, decision Cass. Crim. 16 October 1985 Gaz Pal 1986 1 152.

### **Recommendation ii.**

13. *GRECO recommended to consider, in any future reform of the Criminal Code, whether it would be appropriate to bring the offence in Article 441-8 of the Criminal Code - bribery to secure a declaration or certificate containing incorrect information – into line with the other bribery offences, if that offence still serves any useful purpose, given its very specific subject matter.*
14. The authorities state that they agree with the recommendation's aim of ensuring consistency and with GRECO's analysis of Article 441-8 of the Criminal Code. More specifically, the new general provisions on bribery in the private sector (Articles 445-1 and 445-2 of the Code) introduced in 2005 were intended to replace all the specific offences of private sector bribery that formerly appeared in the Labour Code and the Criminal Code, which meant that Article 441-8 of the Criminal Code making it an offence to secure a declaration or certificate containing incorrect information had become obsolete. The authorities have therefore decided that, to comply with this recommendation, rather than bringing the offence in Article 441-8 of the Criminal Code into line with the other bribery offences they will repeal this provision, together with articles 717-1 and 727-1 of the Criminal Code, concerning the bribery of employees in, respectively, the country's overseas territories and Mayotte. The authorities state that these amendments were included in Bill 1890 "simplification and improvements in the quality of the law", which was approved by the National Assembly on first reading and was sent to the Senate for a second reading on 9 February 2011.
15. GRECO notes that Article 441-8 of the Criminal Code – together with articles 717-1 and 727-1 – has become obsolete and will therefore be repealed. GRECO welcomes the fact that the stated goal of the recommendation – which merely called for an examination of the matter – namely, greater consistency, has been taken into account and invites the authorities to enact the proposed legislation as rapidly as possible.
16. GRECO concludes that recommendation ii has been implemented satisfactorily.

### **Recommendation iii.**

17. *GRECO recommended to consider criminalising trading in influence in connection with foreign public officials or members of foreign public assemblies and thus withdrawing or not renewing the reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173).*
18. The authorities state that, for the time being, they wish to retain the reservation to Article 12 of the Criminal Law Convention regarding foreign public officials or members of foreign public assemblies for the reasons cited at the time of the evaluation. They consider that since trading in influence is not an offence in a certain number of countries, it is difficult to imagine a French court convicting a foreign public official of passive trading in influence if that official's action is not an offence in his or her own country.
19. They add that they have launched a study that will provide further information on the extent to which other countries make it an offence to trade in influence with foreign public officials, as a prelude to determining whether such conduct should be made an offence.
20. GRECO regrets that so far there are no plans to criminalise trading in influence in connection with foreign public officials or members of foreign public assemblies, or to withdraw or not renew the reservation relating to Article 12 of the Criminal Law Convention on Corruption. Nor does there

appear to have been any more detailed consideration of the desirability of such measures, since the authorities have simply reiterated the argument cited in the Evaluation Report, namely that certain countries do not make trading in influence an offence, and have simply launched a study of the relevant legislation of other countries, so that the matter can be considered in more detail at a later date. GRECO wishes to stress that the Criminal Law Convention on Corruption is designed to offer maximum protection against all forms of corruption and its effectiveness depends on the efforts of each of its parties, irrespective of other countries' state of progress. Besides, a considerable, and constantly growing, number of GRECO member countries have criminalised trading in influence, including that in connection with foreign public officials or members of foreign public assemblies. GRECO wishes to draw attention to the risks of confusion between the perpetrators of active or passive trading in influence (the influence peddler) and the targets of that influence in relation to decision-making (the recommendation calls for the list of "targeted" persons to be extended). It urges the French authorities to consider the matter in more detail, in accordance with the requirements of the recommendation.

21. GRECO concludes that recommendation iii has not been implemented.

**Recommendation iv.**

22. *GRECO recommended to take all necessary steps, in consultation with the institutions concerned, to ensure that the penalties imposed are properly enforced as regards corruption and trading in influence.*
23. The authorities state first that in the past fines for certain offences could be deemed to be ineffective, on the grounds that it was very difficult to enforce them. With some offences this may still be the case but apparently it no longer applies to convictions for bribery or trading in influence. Following the efforts that have been made to improve the flow of information from the justice ministry to the treasury authorities and thus raise the rate of recovery of fines, and particularly since the establishment in 2004 of execution of sentences offices, the recovery rate for bribery and trading in influence offences has risen steadily and is now at a particularly high level. In 2008, for example, the rates were 89.79% for bribery and 91% for trading in influence. The authorities add that the (low) percentage of non-recovered fines is accounted for by difficulties such as changes of address or insolvency and that the treasury authorities continue to seek the recovery of all fines that are not time-barred.
24. With regard to the lightness of the sentences and the small number of additional penalties imposed, the authorities emphasise firstly that it is for the independent trial judges to hand down the sentences that they consider appropriate, given the facts of the case and the individuals concerned. Nevertheless, following a Constitutional Council decision of 7 June 2010 declaring Article L.7 of the Electoral Code on electoral disqualification unconstitutional, the Ministry of Justice sent a note to all prosecuting authorities reminding them of the importance of asking the court to order the loss of civic, civil or family rights, in accordance with Article 131-26 of the Criminal Code, whenever the seriousness of the case or the circumstances of the perpetrators appeared to warrant this. In addition, the ministry and its Department of Criminal Affairs and Reprieves again intend to stress the need for prosecutors to ask for significant sentences and additional penalties, particularly that of ineligibility, in the future circular on integrity.
25. GRECO notes the information supplied, which indicates that the rate of recovery of fines for bribery and trading in influence offences has risen steadily in recent years. It is well aware of the difficulties that arise in practice and would have appreciated information on any steps taken to

overcome the issues of insolvency and changes of address, not least with regard to the major cases referred to in the Evaluation Report, which may have involved very large sums. Nevertheless, the recovery rates quoted, at least for 2008, are fairly eloquent and suggest that the problem is less serious than the on-site discussions initially led it to believe. GRECO encourages the authorities to continue their efforts with regard to the object of this recommendation but considers that, for the purposes of this report, it is unnecessary to continue its examination of the matter.

26. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

**Recommendation v.**

27. *GRECO recommended to extend the limitation period for bribery and trading in influence offences, as planned.*
28. The authorities recall the various ways in which the constraints of the limitation period – three years for bribery and trading in influence – may be eased. In particular, any investigative measures or steps in the proceedings interrupt the limitation period and establish a new deadline<sup>2</sup> and the courts have ruled that any action in execution of the agreement between the two parties restarts the limitation period. The starting point for the limitation period is deferred until the date of the final payment or receipt of the items promised or of the action or failure to act of the bribed public official. Similarly, when successive agreements between the corrupt parties concern successive contracts as part of a single collusive agreement, the deferral of the starting point of the limitation period to the date of the final delivery of the items promised in connection with the most recent contract also applies to the first contract. The authorities add that the Court of Cassation's decision that moved the starting point of the limitation period in the case of misuse of company property from when the offence was committed to when it was discovered has gradually been extended to bribery and trading in influence offences<sup>3</sup>.
29. The authorities also refer in this context to draft legislation on the entire criminal procedure, in which the government proposes to extend the aforementioned case-law of the Court of Cassation to all offences, including therefore bribery and trading in influence, and to embody this in the Code of Criminal Procedure. The bill has already been submitted to the *Conseil d'Etat*, but the recent Constitutional Council decision that the provisions of the Code of Criminal Procedure relating to police custody are incompatible with the Constitution has caused the government to revise its legislative timetable to give first priority to the reform of police custody.
30. GRECO notes the information supplied, which essentially repeats the arguments already presented in the Evaluation Report that there are several ways in which the French criminal procedure system reduces the constraints of the limitation period. It welcomes the fact that this flexibility has been taken further by the Court of Cassation and notes with interest that it is planned to embody this case-law in the Code of Criminal Procedure. However it maintains its stance that the three year limitation period for cases of bribery and trading in influence is insufficient, particularly given the special difficulties encountered in detecting and establishing proof of these offences, as noted in the Evaluation Report. As matters stand, GRECO notes an absence of any further practical progress on the proposal, already mentioned in the Evaluation

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<sup>2</sup> Articles 7 and 8 of the Code of Criminal Procedure.

<sup>3</sup> The authorities refer to two recent decisions of the criminal division of the Court of Cassation, on 19 March 2008 (concerning trading in influence) and 6 May 2009 (which makes more general reference to offences of bribery and misuse of company property).

Report, to extend the limitation period from 3 to 7 years for offences punishable by over three years' imprisonment and from 3 to 5 years for those punishable by under three years. It hopes that this matter can be restored to the government's agenda.

31. GRECO concludes that recommendation v has not been implemented.

**Recommendation vi.**

32. *GRECO recommended i) to abolish the condition that the prosecution of acts of corruption committed abroad by French nationals must be preceded by a complaint or an official report (Article 113-8 Criminal Code); ii) to abolish the condition that the principal offence committed abroad must have been established by a final decision of the foreign courts (Article 113-5 Criminal Code) and iii) to consider withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173).*

33. Concerning the first point, the condition that the prosecution of acts of corruption committed abroad by French nationals must be preceded by a complaint or an official report, the authorities officially announced in May 2010 at a plenary meeting of the OECD Working group on Bribery in International Business Transactions that the Criminal Code would be amended accordingly. The Ministry of Justice has undertaken to ask parliament to approve legislation to introduce into the Code an exception to the general principle in Article 113-8 of the Code, with regard to the bribery of or trading in influence with foreign or international public officials. The authorities are currently seeking the most suitable legislative vehicle for securing these changes.

34. Concerning the second point, the condition that for French courts to have jurisdiction to hear cases of complicity in a principal offence committed abroad the latter must have been established by a final decision in the foreign courts, the authorities state that this rule simply reflects the courts' interpretation of the notion of complicity, which presupposes a principal offence that has been fully established. They argue that to convict a person for complicity without awaiting final judgment on the principal charges would constitute interference in the judicial process of the country where the offence was committed. Nevertheless, the authorities state that they have launched a study to see whether and how other countries have dealt with this issue.

35. On the third point, the authorities report that a global analysis is currently being carried out on breaches of integrity. Consequently, the interministerial meeting of 23 March 2011 which decided on France's priorities concerning the current Compliance Report concluded that France's reservation on this point should be maintained.

36. GRECO notes with satisfaction the authorities' announced intention to abolish the condition that the prosecution of acts of corruption committed abroad by French nationals must be preceded by a complaint or an official report, but in the absence of more concrete information or action at the present time it must conclude that this part of the recommendation has not even been partly implemented. With regard to jurisdiction to hear cases of complicity, GRECO maintains the position expressed in the Evaluation Report that the requirement that the principal offence committed abroad must have been established by a final decision in the foreign courts makes it very difficult to prosecute acts of complicity – committed in France – in offences committed abroad by French individuals or legal persons. GRECO does not see why the establishment of the constituent elements of the principal offence by a French court would constitute interference in the judicial process of the country where the offence was committed, since the French court would only be giving final judgment on the charge of complicity. It therefore invites the authorities

to continue its examination of the issue – for example on the basis of the study of other countries' legislation – with a view to implementing this part of the recommendation. Finally, as concerns the reservation relating to Article 17 of the Criminal Law Convention on Corruption, GRECO notes that the authorities have engaged in a reflection process but do not, at the moment, plan to withdraw or not renew it. It does not question France's right to maintain this reservation, but it does wish to point out that the Convention's authors provided for contracting parties to enter reservations that would "allow [them] to bring their anti-corruption legislation progressively in line with the requirements of the Convention"<sup>4</sup>. GRECO, while acknowledging the examination carried out by France in compliance with the recommendation, therefore invites the French authorities to pursue its reflection on this matter..

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

## **Theme II: Transparency of Party Funding**

38. In its Evaluation Report, GRECO addressed 11 recommendations to France concerning Theme II. Compliance with these recommendations is dealt with below.
39. As a general comment the French authorities state that there is a political consensus on numerous points in the evaluation report, to which the Constitutional Council (in its observations on the 2007 elections),<sup>5</sup> the National Commission for Campaign Accounts and Political Funding (CNCCFP), a working group on the subject commissioned by the President of the National Assembly and chaired by a former president of the Constitutional Council (hereafter the Mazeaud Committee), another working group of the Senate's legislation committee<sup>6</sup> and elected members all subscribe. The authorities state that presidential and parliamentary elections are scheduled for 2012 and traditionally no changes are made to the Electoral Code in the year preceding elections. However, the situation has been deemed urgent and three items of draft legislation are currently before Parliament, namely a bill to simplify the Electoral Code and improve financial transparency in political life, draft institutional legislation on the election of members of the lower house and a bill to ratify order 2009-936 of 29 July 2009 on the election of members of parliament by French nationals living outside of France.

### **Recommendation i.**

40. *GRECO recommended to extend the provisions on party and campaign funding to take into account: i) candidates who campaign but ultimately decide not to stand; ii) elections to the Senate.*
41. In connection with the first point, namely declared candidates who ultimately decide not to stand, the authorities refer to Article L 52-5 §5 of the Electoral Code, which states that if candidates supported by an electoral fundraising association have not submitted their nomination forms within the deadline set, the association shall be legally dissolved when the deadline expires.
42. On the second point, the authorities state that consideration is now being given to whether it is legitimate to exclude senatorial elections from the scope of campaign finance legislation. In particular, as the Mazeaud Committee report notes, extending party and campaign funding

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<sup>4</sup> See the explanatory report to the Criminal Law Convention on Corruption, paragraph 142.

<sup>5</sup> It should be noted that, before they are published, the Constitutional Council's observations are submitted to the French President and Prime Minister and serve as a basis for the drafting of relevant legal provisions.

<sup>6</sup> This working group was chaired by Mr Jean-Jacques Hiest; its report, no. 186 of 15 December 2010, has been made public.



provisions to Senate elections would rectify the inequality between candidates performing executive functions in *départements* and those who do not. In parallel with these National Assembly activities, the Senate has produced legislative proposals relating to both ordinary and institutional legislation, part of which (the legislative package referred to in paragraph 38) is currently being enacted by the two assemblies. Following its adoption by the National Assembly, the package was approved by the Senate at first reading on 2 March 2011. The authorities state that an amendment to the bill to simplify the Electoral Code and improve financial transparency in political life would make the regulations on campaign accounts applicable to senatorial elections, with the authorised levels of expenditure adjusted to reflect the specific nature of these elections.

43. GRECO notes the information provided. It welcomes the debate on the exclusion of senatorial elections from the scope of campaign finance legislation and the preparation, by the Senate, of several legislative proposals currently awaiting Senate and National Assembly approval that would, *inter alia*, make the regulations on campaign accounts applicable to elections to the Senate. GRECO encourages the French authorities to continue their efforts, with a view to the earliest possible adoption of such regulations. In the case of declared candidates who ultimately decide not to stand, GRECO fails to see how the provision of the Electoral Code dissolving fundraising associations that have supported such candidates would resolve the problem raised by the Evaluation Report, namely that such candidates are not covered by the 1988 regulations on financial transparency in politics. Therefore it cannot report any progress on the second element of this recommendation.

44. GRECO concludes that recommendation i has been partly implemented.

**Recommendation ii.**

45. *GRECO recommended i) to introduce criteria to extend more systematically the scope of the consolidated accounts of parties and political groups to include associated structures, in particular the party's regional sections, and in parallel to identify the material means of parliamentary groups and ii) to hold consultations on whether or not regulations should be introduced to take account of the activities of third parties, depending on their significance in practice.*
46. Regarding the first point, concerning the scope of parties' and political groups' accounts, the authorities state that according to the case-law of the Constitutional Council<sup>7</sup> local sections are simply the local representatives of parties and must be treated equally. Territorial sections should, therefore, come within the scope of parties' accounts, but the authorities acknowledge that, in practice, for essentially pragmatic reasons parties enjoy a certain freedom to decide themselves how far certification requirements extend. The authorities also note that parliamentary groups are not legal persons and have no legal personality. Nor are they able to hold assets.
47. Turning to the second point, the authorities state that Article L 52-12 of the Electoral Code already requires candidates to include in their campaign accounts election expenditure on their behalf to which they have given their agreement. They argue that to go beyond this legislation would effectively legitimise contributions from legal persons, which have been generally banned since 1995, other than contributions from parties and political groups, whose accounts are transparent, monitored and published. Recognising third parties would be incompatible with one of the tenets of French legislation and its general principles, which are designed to prevent business exercising influence over the political process. Nevertheless, the authorities also report that, according to the Mazeaud Committee, the inclusion of third parties would make it possible

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<sup>7</sup> Decisions 97-2201/2220 AN of 13 February 1998 and 2002-2651/2655/2887 AN of 30 January 2003.

for the legislation to take account of sources of electoral funding that have hitherto been excluded from the scope of the law but may become increasingly significant, having regard to civil society's growing role in the electoral debate, through contributions from associations and non-governmental and professional organisations.

48. GRECO notes the information provided. Concerning the first part of the recommendation, the Evaluation Report was particularly concerned with the need for objective criteria for the preparation of accounts, rather than the theoretical principle of consolidation, because in practice parties apparently enjoy a significant margin of discretion in deciding which of the various sections, associations, foundations and other bodies have to be included in the consolidated accounts. It therefore appears that this issue has not been dealt with, and nor has that of the support given in practice by parliamentary groups, from their own financial and material resources provided by Parliament. Regarding the second part of the recommendation, support from third parties would appear to be already covered by the Electoral Code, insofar as candidates for election are obliged to include in their accounts election expenditure on their behalf that they have approved. However GRECO refers to the concerns expressed in the Evaluation Report about the failure to take account of various possible forms of positive or negative propaganda by third parties, outside of the rules laid down in the Electoral Code. The Mazeaud Committee has also recognised the need for the legislation to take more account of third parties, but the consultations on how such recommendations could be transposed into law have not yet led to results.
49. GRECO concludes that recommendation ii has been partly implemented.

**Recommendation iii.**

50. *GRECO recommended to take steps to ensure that i) political parties which have funded a candidate's election campaign or which have supported him or her via the media be required to submit to the CNCCFP, details of their involvement, financial or otherwise, during the campaign, and that ii) this statement be verified by the CNCCFP and made public.*
51. The authorities again state that French legislation has opted to treat the financing of election campaigns and that of political parties separately, with different arrangements governing reporting obligations, the system of oversight and the available sanctions if the rules are breached. Whereas election candidates lodge campaign accounts that are audited by accountants, parties are required to submit to the CNCCFP, by 30 June of the following year, annual accounts signed by statutory auditors and then certified by the CNCCFP. These are then published in the official journal. According to the authorities, any new attempt to link campaign and party accounts in the legislation would entail a radical upheaval of French legislation on political funding.
52. GRECO notes the information provided. It recognises that the current arrangements are based on the distinction made between election campaign funding and that of political parties and that parties are not obliged to report specifically on their campaign activities, nor to have these audited. However it wishes to draw attention to the concerns expressed in the Evaluation Report, namely that "neither the CNCCFP nor the general public have an overall view of the financial investment of political parties in election campaigns, which quite naturally limits the scope of the provisions relating to transparency". It notes that no measures to rectify the situation have been reported and considers that further transparency measures, such as required in the recommendation, could easily be introduced without causing upheaval to the current system.
53. GRECO concludes that recommendation iii has not been implemented.

#### **Recommendation iv.**

54. *GRECO recommended to take the appropriate measures to ensure that i) incoming funds are received as far as possible via the fundraising association/financial agent and that ii) candidates appoint their agent as early as possible.*
55. The authorities recall that under Article 52-4 of the Electoral Code, "candidates' agents have to collect the campaign funds" and are the sole intermediaries with regard to campaign financing. They also note that in its observations on the June 2007 parliamentary elections, the Constitutional Council proposes that the admissibility of candidatures be made conditional on the appointment of an agent and that such appointments be made as early as possible to ensure that candidates do not present themselves to the voters without having appointed a financial agent (which would in any case be in vain since such a failure would necessarily make them ineligible)<sup>8</sup>. The CNCCFP, the chartered accountants association and the Mazeaud Committee share these concerns and have proposed that articles L52-5 and L52-6 of the Electoral Code be amended. The authorities add that the aforementioned Constitutional Council recommendation is included in the draft legislation currently before Parliament. In particular, section 2 of the bill to simplify the Electoral Code and improve financial transparency in political life would establish strict conditions governing candidates' appointment of their financial agents.
56. GRECO notes from the information supplied that agents are the sole intermediaries with regard to campaign financing. The Constitutional Council has recommended the earliest possible appointment of agents, and this has been supported, among others, by the Mazeaud Committee and included in the bill to simplify the Electoral Code and improve financial transparency in political life, which is currently before Parliament. GRECO invites France to continue its efforts to secure the earliest possible adoption of such regulations but points out that the draft legislation concerned only deals partially with the problem raised in the Evaluation Report, since only part of parties' income passes through their financial agents.
57. GRECO concludes that recommendation iv has been partly implemented.

#### **Recommendation v.**

58. *GRECO recommended to consider the advisability and feasibility of i) improving the public availability and publication of campaign accounts, including on a regular basis in the course of the campaign, ii) including the conditions under which they may be consulted in the Electoral Code, and iii) making the procedure before the court with jurisdiction for the election more effective (for example by specifying a (new) time-frame for consultation and challenges after the submission of campaign accounts), without however affecting the necessary speed with which the case must be dealt.*
59. The authorities state that they have considered the advisability and feasibility of the different elements of this recommendation but that after examination by the relevant departments have concluded that there are insufficient grounds to justify any changes to the existing law. More specifically, regarding the first point they maintain that the publication of interim campaign accounts would create confusion and legal uncertainty, by giving the impression that these were final accounts. On the second point, they state that the Mazeaud Committee has dismissed the

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<sup>8</sup> Constitutional Council's observations on the June 2007 parliamentary elections (funding of election campaigns). Published in the Official Journal of 4 June 2008. P. 9205.

option of allowing applicants challenging elections in the electoral court to consult candidates' campaign accounts, on the grounds that such a broadening of disputes would add an additional element of complexity to electoral law that did not reflect parliament's objectives. Regarding the third point, the authorities state that the system for enforcing electoral law has proved itself effective and is not open to challenge, and that extending the consultation period would not be consistent with the purpose of the electoral court, which is to ensure as rapidly as possible that elections remain legally and politically sound.

60. GRECO notes the information provided. The authorities appear to have taken account of some parts of the recommendation, in particular the publication of interim campaign accounts and the right of inspection of applicants who challenge election results in the electoral court. Nevertheless GRECO wishes to stress that the recommendation viewed improvements to public access to accounts and the procedure before the electoral court in broader terms and would have expected the authorities to search actively for possible ways of achieving these objectives, while continuing to respect the requirements of the current arrangements, notably the concern to settle election disputes as rapidly as possible. Since the information supplied offers no evidence of such an approach, GRECO cannot consider the recommendation to have been implemented entirely satisfactorily.
61. GRECO concludes that recommendation v has been partly implemented.

**Recommendation vi.**

62. *GRECO recommended to consider possibilities for legislating in the subscriptions field so as to reinforce guarantees that the maximum amount of payments by individuals to political parties is not exceeded.*
63. The authorities state that they are conscious of the problem raised in the recommendation that there is no maximum limit to members' and elected representatives' political party subscriptions, which limits the CNCCFP's ability to control donations by individuals. The CNCCFP has proposed the introduction of a single ceiling for donations and subscriptions combined, which it believes would not impede political parties' freedom to determine the level of contributions. However, the French authorities consider that legislating to limit these subscriptions would infringe the principle of political parties' freedom of organisation, embodied in article 4 of the Constitution.
64. GRECO notes that the authorities have recognised the problem raised in the recommendation but consider that limiting subscriptions would infringe the constitutional principle of political parties' freedom of organisation. However GRECO points out that the recommendation was not confined to the option of a ceiling on subscriptions but instead, and more generally, asked the authorities to seek alternative ways of ensuring that the rules applicable to donations were not circumvented by means of members' and elected representatives' subscriptions. In this context, the authorities simply refer to a CNCCFP proposal that had already been mentioned in the Evaluation Report.
65. GRECO concludes that recommendation vi has been partly implemented.

**Recommendation vii.**

66. *GRECO recommended to examine i) the link between the two systems of donations applicable to the funding of parties and to the funding of campaigns, in particular the question of concurrent*

donations, and ii) ways of laying down an appropriate threshold above which the identity of the donor must be disclosed.

67. Regarding the first point, the authorities again state that French legislation has opted to treat the financing of election campaigns and that of political parties separately, with different arrangements. They argue that in principle the ceilings on donations to parties and candidates – respectively € 4600 and € 7500 – have not been altered for 15 years and are fairly modest. Nevertheless, they acknowledge that these sums, which make a varying contribution to party funds<sup>9</sup>, may be cumulative and make a significant financial contribution to candidates' election campaigns.
68. On the second point, the authorities state that French legislation has opted for constant transparency of donations by requiring information on the donor's or member's identity and fiscal domicile<sup>10</sup>. They also note that a receipt must be presented to accompany any declaration giving entitlement to a reduction in income tax and must include the name and address of the agent when the donation exceeds € 3 000.
69. GRECO notes from the information supplied that the problem raised in the first part of the recommendation – concurrent donations to parties and to candidates – has been examined. It regrets that the authorities do not appear to share the concerns expressed in the Evaluation Report concerning the identity of donors, information on whom is available to the supervisory body but not to the public. This is the subject of the second part of the recommendation and is an important element of any policy on the transparency of party and election campaign funding. The matter has clearly not received any attention. GRECO invites the French authorities to give further consideration to this issue.
70. GRECO concludes that recommendation vii has been partly implemented.

#### **Recommendation viii.**

71. *GRECO recommended to consider, in the context of the constitutional rules, laying down rules aimed at avoiding affiliations of members of parliament motivated by financial considerations.*
72. The authorities state that there are various legislative proposals to put an end to the practice of covert bargaining to obtain funding or secure arrangements whereby part of this funding is passed on to another party. One of these proposals, introduced in the name of the National Assembly's legislation committee in Report No. 304 on Bill No. 296 on pluralism and the independence of political parties, had received particular attention. The proposed legislation would have modified the rules governing eligibility for the first instalment of public funding so that this would be allocated not just – as hitherto – to parties that received at least 1% of the votes cast in at least 50 constituencies, but also, as an alternative, to ones to which at least fifteen members had declared themselves to be affiliated. Moreover, under this proposal, access to the first instalment would also permit access to the second. The authorities have subsequently indicated that the subject was raised during the National Assembly's first reading of the bill to simplify the Electoral Code and improve financial transparency in political life, but that for the time being it is no longer on the agenda because the system for awarding public assistance to parties

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<sup>9</sup> Examples are: UMP: 15%; PS: 1.2 %; PC: 16.4%; UDF: 2.6%; verts: 1.5%; Mouvement pour la Fr: 17.2 % LO: 15.1%. 2009 report CNCCFP.

<sup>10</sup> Article 11 Decree 90-106 of 9 July 1990.

has recently been amended<sup>11</sup> to link it, in part, to the number of votes received at elections for territorial councillors.

73. GRECO notes the information supplied, which refers to various legislative proposals to resolve the problem described in the recommendation. It appears that the recent amendments to the system for awarding public assistance to parties, linked to the election of territorial councillors, and other proposals in this area, could enable certain parties currently excluded from public funding to benefit from it. GRECO welcomes the steps that have been taken in line with the recommendation and invites the authorities to continue this reform process until a more complete and appropriate solution to the problem has been found.
74. GRECO concludes that recommendation viii has been implemented satisfactorily.

#### **Recommendation ix.**

75. *GRECO recommended to enhance the supervisory functions of the CNCCFP in respect of political parties.*
76. The authorities consider that the CNCCFP performs to a very high standard and that the objectives set for it in the legislation are being achieved. Nevertheless, they acknowledge that its supervisory responsibilities should be strengthened still further and refer to two proposals currently under consideration. The first comes from the Mazeaud Committee, which wants to enlarge the CNCCFP by adding two former members of parliament to the nine senior judges. They would be appointed on the recommendation of the chairs of political groups. One would come from the majority and the other from the opposition. However, this proposal was not accepted by Parliament when it debated the bill to simplify the Electoral Code and improve financial transparency in political life. For example, the Senate considered that the CNCCFP should remain a largely technical body and should be composed entirely of judges, in order to retain its independence. The second proposal, of a technical nature, is designed to strengthen the CNCCFP's role, by basing the deadline for filing campaign accounts on the date of the first round of voting rather than, as hitherto, the date on which the election was decided. Finally, an amendment introduced in the Senate legislative committee would reduce the deadline for checking accounts to six months.
77. GRECO welcomes the fact that two proposals for strengthening the CNCCFP's supervisory functions, by extending its membership and amending the deadlines for checking accounts, are currently before Parliament. Nevertheless, GRECO invites the authorities to include in the current discussions other points raised in the Evaluation Report, such as the fact that the CNCCFP does not have access to all documentation relating to party accounts, does not review parties' expenses, cannot demand the submission of certain documents and does not have the authority to verify supporting documents or conduct on-site checks, and cannot call on the assistance of the judicial investigation services if it has any serious doubts. The Evaluation Report thus concluded that the CNCCFP had few legal resources. For these reasons, and because to date no concrete measures have been taken, France is not fully compliant with the recommendation.
78. GRECO concludes that recommendation ix has been partly implemented.

#### **Recommendation x.**

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<sup>11</sup> By the Act of 16 December 2010 to amend Act 88-227 of 11 March 1998, which will come into force on 1 March 2014.

79. *GRECO recommended to improve the effectiveness of the arrangements for the declaration of elected representatives' assets and in particular i) to enhance the supervisory functions of the Commission for Financial Transparency in Politics; ii) to broaden the type of information that has to be submitted; and iii) to introduce if necessary a mechanism for penalising untruthful declarations.*
80. The authorities note firstly that in its 14<sup>th</sup> report, published on 1 December 2009, the Commission for Financial Transparency in Politics (CTFVP) reiterated the concrete proposals referred to in the Evaluation Report, and also proposed new reforms that would extend the information supplied to the commission to include the incomes of those concerned and give the commission the means to collate the information at its disposal. For example, there should be penalties for individuals who refuse to supply the commission with any income tax or, where appropriate, wealth tax declarations it may have requested. The commission should also be authorised to request information on the assets of spouses whose property is deemed to be held separately, partners linked by a "civil solidarity pact", cohabitees and children whose assets are legally administered by the individual concerned or his or her spouse, partner or cohabitee.
81. Secondly, the authorities refer to two draft statutes and regulations corresponding to the CTFVP's proposed reforms. The first, which would make it a punishable offence to submit false declarations, had already been put forward by the CTFVP for the first time in 2002, and has been regularly repeated since, among others by the Mazeaud Committee. The authorities add that, in reply to a question from the CTFVP on what action he proposed to take on its proposed reforms, the Prime Minister stated on 30 July 2009 that he welcomed such a bill and favoured the idea of legislation making it an offence to submit false financial declarations to the commission. The second bill<sup>12</sup>, on the general reform that the CTFVP strongly supports, was tabled in parliament on 31 May 2010 and is currently being considered with a view to adoption by the National Assembly and the Senate. The bill would, among other things, require elected representatives and the heads of public bodies to declare not only their assets but also all income received during their term of office, establish penalties for false declarations<sup>13</sup>, authorise the commission to ask those concerned, and if necessary the tax authorities, to supply their income tax and wealth tax declarations and also authorise it to extend its financial investigations to the families of those concerned. The authorities also state that the CTFVP considers that the bill needs to be improved in a number of respects and that the rapporteur will be asked to include a number of modifications, so that there would be penalties for failure to submit income or wealth tax declarations to the commission and the commission's oversight of the heads of the branches of public bodies and enterprises would focus specifically on branches whose turnover justified such oversight. The authorities add that the Senate is currently debating an amendment that would establish a € 15 000 fine for failure to submit asset declarations to the commission.
82. GRECO notes that the CTFVP's proposals to make the system for elected representatives' asset declarations more effective have been reiterated and extended and that draft legislation to that effect is currently before parliament. The fact that the bill includes many of the suggestions made by the CTFVP and referred to in the Evaluation Report, including such key points as extending the scope of the information available to the commission and its means of collating the information that it has, and the introduction of sanctions for false asset declarations, is clearly to

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<sup>12</sup> Bill 2562 on simplifying the provisions of the Electoral Code and financial transparency in politics, tabled by Jean-Luc Warsmann and Charles de La Verpillière.

<sup>13</sup> Section 6 of the bill would make it an offence, punishable by a fine of € 30 000 and, where appropriate, loss of civic rights, for persons specified in sections 1 and 2 to deliberately fail to declare a substantial part of their assets or provide a false estimate of them such as to prejudice the veracity of their declaration and the ability of the CTFVP to carry out its duties.

be welcomed. The bill currently under consideration appears to meet the recommendation's main objectives. GRECO therefore encourages France to continue its efforts to ensure that such legislation is enacted as rapidly as possible, and explore other possible ways of making the arrangements for the declaration of elected representatives' assets more effective, in particular increasing the commission's resources, as suggested in the Evaluation Report.

83. GRECO concludes that recommendation x has been partly implemented.

#### **Recommendation xi.**

84. *GRECO recommended to harmonise and to differentiate the penalties, without abolishing ineligibility, and improving the system of publication of decisions.*

85. The authorities state that following the Constitutional Council's observations on the 2007 parliamentary elections, the Mazeaud Committee has been looking at whether the sanction of ineligibility is proportional to the faults committed. It points out that since 1996 it has been possible to rely on good faith to circumvent the automatic nature of the sanction and regrets that this measure is only applicable to elections other than parliamentary ones. It therefore proposes to extend this provision to disputed parliamentary elections, by defining it in an organic law, in accordance with its generally accepted sense in law. Under this proposal, the elections court should take into consideration the seriousness of the fault and the circumstances of the case. Ineligibility would not be ordered if a candidate's good faith was demonstrated by the clear absence of fraud, serious breach of the rules of election campaign funding or interference with the outcome of the election. The authorities state that they are favourably disposed towards this proposal, which is currently under consideration in Parliament in the form of draft institutional legislation on the election of members of Parliament, which also foresees the introduction of – along with ineligibility sanctions for the most serious faults – flexible fines, to be decided upon by the CNCCFP, in cases of irregularities of a minor nature.

86. GRECO notes the information provided and that the recommendation was concerned with the overall development of a more coherent, flexible and proportionate range of penalties, having regard to the various shortcomings identified. These included excessively low (€ 3 750 maximum) fines with little or no disincentive effect to penalise significant unlawful funding, the loss of political funding with no room for flexibility and so on. The penalties might also involve publication of the decisions in the press or by public notice. These issues have been addressed – at least partially – by the parliamentary commission whose proposed legislative changes concerning the sanction of ineligibility and fines are currently being considered in Parliament. Greco encourages France to pursue its efforts up until the adoption – as soon as possible - of such a regulation, and also to explore other possible measures to strengthen the efficacy of the sanctions regime in the matter.

87. GRECO concludes that recommendation xi has been partly implemented.

### **III. CONCLUSIONS**

88. **In view of the above, GRECO concludes that France has implemented satisfactorily or dealt with in a satisfactory manner only three of the seventeen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation ii has been implemented satisfactorily and recommendation iv has been dealt with in a satisfactory manner, recommendations i and vi have been partly implemented and recommendations iii and v have not been implemented. With respect to Theme II - Transparency



of party funding, recommendation viii has been implemented satisfactorily, recommendations i, ii, iv, v, vi, vii, ix, x and xi have been partly implemented and recommendation iii has not been implemented.

89. In the case of incriminations, France has made some progress in implementing the recommendations. The only ones that have been implemented or dealt with satisfactorily are those concerned with greater consistency between the various provisions on corruption in the private sector and with the proper enforcement of penalties for bribery and trading in influence. GRECO recognises the efforts made to clarify the material elements of corruption offences, for example as part of the continuing training of officials and judges, but notes that more progress might be achieved as a result of current or announced draft legislation. However GRECO strongly regrets that other recommended improvements in the Evaluation Report, concerning in particular trading in influence, limitation periods and rules governing jurisdiction, have not been given sufficient attention.
90. Turning to transparency of party funding, GRECO welcomes the fact that there appears to be a political consensus in France on numerous points in the Evaluation Report, to which the Constitutional Council, the National Commission for Campaign Accounts and Political Funding (CNCCFP), a working group on the subject commissioned by the President of the National Assembly and chaired by a former president of the Constitutional Council (Mazeaud Committee), another working group of the Senate legislative committee and elected members all subscribe. These bodies and members of parliament have made a number of practical proposals, partly in the form of draft legislation, that would respond at least partially to the requirements of the recommendations concerned – for example, strengthening the CNCCFP's supervisory functions and making the system for elected members' asset declarations more effective. These activities have been complemented and reinforced by the Senate working group, culminating in draft legislation. Nevertheless, GRECO strongly regrets that the authorities appear not to share certain concerns in the Evaluation Report that have given rise to a whole series of recommendations. These include such matters as taking account of the activities of third parties, the transparency of political parties' financial information in election campaigns, the role of party agents and the rules governing party members' and elected representatives' subscriptions. GRECO invites the authorities to review their position on these issues and to make every effort to satisfy the recommendations that have not yet been implemented.
91. In view of the above, GRECO notes that France has been able to demonstrate that reforms with the potential of achieving an acceptable level of compliance with the pending recommendations, within the next 18 months, are underway and urges the authorities to vigorously pursue their efforts to address all recommendations. GRECO therefore concludes that the current low level of compliance with the recommendations is not “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO invites the head of the French delegation to submit a report on progress in implementing recommendations i, iii, v and vi of Theme I, and recommendations i to vii and ix to xi of Theme II not later than 31 October 2012.
92. Finally, GRECO invites the authorities of France to authorise, as soon as possible, the publication of the report.