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Third Evaluation Round

Second Compliance Report on France

"Incriminations (ETS 173 and 191, GPC 2)"

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"Transparency of Party Funding"

Adopted by GRECO
at its 59th Plenary Meeting
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I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken by the authorities of France since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report. It is recalled that the Third Evaluation Round covers two distinct themes, namely:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

2. The Third Round Evaluation Report on France was adopted at GRECO's 41st Plenary Meeting (19 February 2009) and made public on 12 March 2009, following authorisation by France (Greco Eval III Rep (2008) 5E, Theme I and Theme II). The subsequent Compliance Report (Greco RC-III (2011) 1E) was adopted at GRECO's 50th Plenary meeting (1 April 2011) and made public on 6 May 2011, following authorisation by France.

3. As required by GRECO's Rules of Procedure, the authorities of France submitted their Second Situation Report with additional information regarding the actions taken to implement those recommendations among which, according to the compliance report, only three of the seventeen recommendations had been implemented or dealt with in a satisfactory manner; the others had been partly or not implemented. The situation report was received on 30 November 2012 and served as a basis for the Second Compliance Report.

4. GRECO selected Albania and Belgium to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed[1] were Ms Helena PAPA, Inspector/Coordinator, Department of Internal Administrative Control and Anti-Corruption (DIACA), Council of Ministers (Albania) and Mr Guido HOSTYN, Secretary to the Control Board election expenses, Senate (Belgium). They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed 6 recommendations to France in respect of Theme I. After the adoption of the First Compliance Report, it was concluded that recommendation ii had been implemented satisfactorily and recommendation iv had been dealt with in a satisfactory manner. Recommendations i and vi had been partly implemented and recommendations iii and v had not been implemented; compliance with these recommendations is dealt with below.

[1] Replacing Mr Edmond DUNGA, Head of the Anti-Corruption Secretariat, Regional Anti-Corruption Initiative (RAI) in Sarajevo (Albania)

Recommendation i.

6. *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"*.

7. GRECO notes that the French authorities indicated that, in order to bring a prosecution for bribery or trading in influence, the existence of an agreement between the parties was not necessarily required; draft legislation had nonetheless been tabled to clarify certain aspects of the offences of bribery and trading in influence (in particular by clearly providing that offering or soliciting an advantage may take place before or after the public official concerned has taken the desired action or decision). Regarding the second point raised in the recommendation, the French authorities indicated that the offences of bribery and trading in influence were already sufficiently broad to cover, without any possible doubt, all the material elements of the offences of bribery and trading in influence included in the Criminal Law Convention on Corruption. They also stated that the position regarding these various points was already presented at training courses in which the Ministry of Justice and the Central Corruption Prevention Department participated and would be addressed in the training dispensed to (future) officials and judges. It would also be reiterated in a forthcoming circular. GRECO concluded that the measures taken and/or announced were insufficient to dispel any possible doubt among legal practitioners concerning these points and that this recommendation had been only partly implemented.

8. The French authorities now report that the proposed legislation has been adopted. Section 154 of the Act of 17 May 2011 to simplify and improve the quality of the law amended the offences of bribery and trading in influence[2] in such a way as to clarify and make perfectly apparent in the legislation that there was no longer a requirement that the act of requesting, agreeing to, offering, proposing or yielding to such a request must have taken place before the official took the action or decision in question. This therefore dispelled any ambiguity. As planned, this legislative change had been brought to the attention of staff of the prosecution services in a circular of 9 February 2012, which described the new criminal law provisions on corruption, in particular involving foreign public officials, and reiterated the crime policy objectives.[3]

9. The French authorities also reiterate that the offences of bribery and trading in influence, as currently worded, do not require any proof of an "agreement" between the parties. The notion of a "corrupt agreement" should apply only when the prosecution concerns both the active and the passive components of the offence. The term "corrupt agreement" is in fact sometimes used to refer merely to a situation where one party agrees to do something (or does it) in exchange for the thing promised (or delivered) by the other party. There is never any need to show that an agreement has been reached in order to establish the guilt of the individual initiating the transaction, whether they are the person offering or taking bribes. It is sufficient to show, for example, that the person concerned sought the payment of a sum of money in exchange for taking the action or decision in question. Whether the proposal was accepted or turned down is of no matter.

[2] It makes the necessary amendments to the provisions on both bribery and trading in influence in Articles 432-11, 433-1, 433-2, 434-9, 434-9-1, 445-1, 445-2, 435-1, 435-2, 435-3, 435-4, 435-7, 435-8, 435-9 and 435-10 of the Criminal Code.
[3] http://www.textes.justice.gouv.fr/art_pix/JUSD1204025C.pdf

10. This settled case-law concerning the response given to an offer indeed shows that, in such cases, it is irrelevant whether an agreement exists or not (decision Cass. Crim. of 16 October 1985). It is also for this reason that there is no offence of attempted bribery, since the acts that it could cover are already constituent elements of the offence of bribery itself, and prosecuted as such.

11. Lastly, concerning the final part of the recommendation, which is aimed at ensuring that the offences of bribery and trading in influence cover all the material elements required by the convention, including "receiving", the French authorities state that French law goes beyond the convention's requirements in this sphere. All the legislative instruments penalising bribery and trading in influence indeed refer to "requesting or agreeing to", which are terms that are broader in meaning than "receiving". Moreover, under the case-law even if the promised reward is not paid or delivered, and hence "received", the offence is established (Cass. Crim. 9 November 1995).

12. GRECO takes note of the fact that the amendments of May 2011 have clearly and definitively eliminated the antecedence requirement with regard to solicitation in the context of bribery and trading in influence. This is to be welcomed. The Evaluation Report indeed called on the French authorities to take this measure in view of the continuing doubts expressed by the legal practitioners with whom meetings took place during the visit.

13. However, this question, dealt with separately in the Evaluation Report (where it was the subject of an observation),[4] was not covered by recommendation i per se. The amendments announced by the French authorities in the first Compliance Report were therefore in the end confined to the "prior agreement" aspect alone, which inevitably reduces the relevance of the circular of February 2012 with regard to the recommendation. As GRECO has noted, this circular in no way addresses the two branches of recommendation i (it in fact refers to the evaluations performed by the OECD). This failure by the French authorities to take the recommendation into account logically also affects the relevance of the training efforts (whether effectively implemented or announced in the first Compliance Report). The French authorities themselves moreover make no mention of any relevant, tangible initiative that would be consistent with this recommendation.

14. GRECO points out that the information gathered by the evaluation team during the visit showed that the jurisprudential principle of a "corrupt agreement", which does not distinguish between active and passive bribery as required under Convention ETS 173, is - to say the least - overrated in practice. This causes practitioners to resort to other charges, such as misappropriation, which are easier to prosecute, but which do not have the same legal and social consequences. Accordingly, apart from in extremely simple cases (such as the 1985 precedent cited by the French authorities),[5] the impression too often prevails that, to prosecute cases of corruption, proof of an agreement between the parties is required. However, agreements are kept secret and are thus impossible to prove or they are quite simply based solely on an understanding and there is no material evidence of their existence. The successive reports by the OECD have also shown the real problems that this restrictive case-law can pose in practice: "For instance, in a case tried by the Cour de Cassation, a person who had agreed to give some money to his defence lawyer

[4] "With a view to increasing consistency and legal security, the French authorities may wish to take the necessary measures such as circulars and training to make it clear, in the country's internal legal order, that prior agreement between the parties is no longer necessary for the purposes of prosecuting bribery and trading in influence offences, in accordance with the law of 2000 and the Convention ETS 173." (paragraph 79 of the report)

[5] According to the information in GRECO's possession, this case concerned active bribery by a law student, who was found guilty of having sent a cheque (for which he had insufficient funds) to an examiner marking one of his papers along with a letter requesting that he be given a mark of 13/20.

so that he could bribe a public official was found not guilty on the charge of active bribery because the lawyer had not in fact managed to convince the public official to commit the act sought by the offer of a bribe; in this specific instance, the Appeals Court considered that the existence of a corruption pact had not been proved (Cass. Crim., 30 June 1999, Housse Avia). The offence was then redefined as fraud on the part of the lawyer. According to the French authorities, this acquittal for active bribery was based on an error of law in holding that it was necessary to prove the existence of a corruption pact."[6] GRECO also underlines that expressions such as "the offence of bribery, which is completed as soon as the agreement is concluded between the bribe giver and the bribe taker" or "bribery is an offence committed in a single act that is completed when the agreement is concluded between the two parties", often utilised in judgments, can but help to perpetuate the notion that, apart from cases where solicitation is unsuccessful, there must indeed be a criminal intent on the part of both the bribe giver and the bribe taker. Under the Criminal Law Convention, however, it must in principle be possible to prosecute the bribe giver or the bribe taker on the basis of his or her acts and behaviour alone, regardless of the criminal conduct or intent of the other party. GRECO accordingly regrets that France has so far taken no relevant measure in these matters.

15. Concerning the second point raised in the recommendation (which is not unconnected with the first), no further mention is made of relevant training or circulars, as announced in the first Compliance Report. At present France merely reiterates the argument that "receiving" is a material element already covered by "requesting or agreeing to", without providing any further explanations or really relevant information. GRECO's position is therefore unchanged.[7] GRECO takes this opportunity to repeat that any undue advantage (received or given) should normally arouse the greatest suspicion and should give rise to prosecution where it is not an advantage that would normally be covered by the rules and guidelines concerning gifts. That is why such rules and guidelines are useful as a supplementary, preventive measure, as GRECO has constantly underlined.

16. In conclusion, no significant or tangible initiative has in the end been taken with regard to the two branches of the recommendation. During the discussion of the present report, the French authorities stressed that the amendments of May 2011 had broader consequences for the jurisprudential theory of the corruption pact as such, and that these would go in the direction of the present recommendation[8]. GRECO thus maintains its earlier conclusion and urges the French authorities to resume their consideration of the present recommendation as a whole, with a view to harmonise the reading of the incriminations and their implications for all the practitioners.

17. GRECO accordingly concludes that recommendation i remains partly implemented.

[6] Cited in the Phase 2 report of January 2004, paragraph 109; see also the Phase 3 report of October 2012.

[7] At the very most, "receiving" could come under the concept of "agreeing to" (but certainly not that of requesting), but that would amount to reinstating the "corrupt agreement" requirement. GRECO again reiterates that the notion of "receiving" (like that of "giving") is intended to facilitate prosecution and it is of no importance that there has been a prior request or formal acceptance. As stated in the explanatory report to the Criminal Law Convention, "the word "receipt" means keeping the advantage or gift at least for some time so that the official who, having not requested it, immediately returns the gift to the sender would not be committing an offence under Article 3."

[8] Since May 2011, two or three convictions have been passed which, reportedly, do not contain any reference to the jurisprudence on the corruption pact. These convictions are not final, for the time being.

Recommendation iii.

18. *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).*

19. GRECO notes that the first Compliance Report concluded that this recommendation had not been implemented, as the French authorities had a) stated that they wished to retain the reservation for the time being and b) reiterated the argument already advanced in the Evaluation Report and a number of considerations relating to the dual criminality requirement[9] (which GRECO has in point of fact sought to reform in respect of bribery and trading of influence offences in the context of the Third Cycle). A study of comparative law was nonetheless to be launched so as to carry out the review recommended by GRECO.

20. The authorities provide no new information. They merely state that a number of countries have still not criminalised trading in influence and that they therefore wish to maintain the reservation for the moment. However, as they wish to continue to reflect on GRECO's recommendation, the French authorities will be launching inter-ministerial discussions with a view to considering the case for criminalising international trading in influence, as can be seen from a public statement by the Ministry of Justice dated 24 October 2012 concerning the publication of the most recent evaluation report by the OECD's Working Group on Bribery.[10] Depending on the progress of this interministerial work a draft document could be brought out in 2013.

21. GRECO regrets that the study of comparative law announced in early 2011 has not materialised. It takes note of the public commitment now entered into by France to conduct inter-ministerial discussions on this question. It wishes to point out that very few of the 43 countries that have ratified the Criminal Law Convention to date continue to maintain a reservation in principle regarding the criminalisation of trading in influence (no more than four countries at present, the number having declined considerably over time). As far as GRECO can tell, France is the only

[9] The French authorities indicated, in particular, that they still have doubts in view of the fact that trading in influence is not an offence in a number of countries and they consider it 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.

[10] GRECO notes that this statement has been published on line:
"Combating corruption in France – Statement by the Ministry of Justice – Paris, 24 October 2012
On 12 October 2012 the OECD Working Group on Bribery concluded its examination of the evaluation report on France's policy to combat bribery of foreign public officials. This detailed and particularly rigorous report includes a number of recommendations addressed to France.
It highlights a number of strengths. Throughout the evaluation, the working group expressed satisfaction with France's commitment and with the standard of co-operation with the French authorities. The OECD notes in particular that the two recent circulars from the Minister of Justice, which are intended to guarantee the independence of investigations particularly by ending the practice of addressing individual instructions to prosecutors, mark a significant evolution in French crime policy.
The French authorities are determined to reinforce the effectiveness of the fight against transnational bribery and to study wide-ranging reforms in response to the OECD's recommendations, in particular so as to enable civil parties to bring complaints in such cases, to eliminate the requirement that the victim must first lay a complaint before the public prosecutor or there must be an official report by the authorities of the foreign public official's country, and to criminalise international trading in influence.
The report also draws attention to France's good practices in combating money-laundering, preventing and detecting bribery and building awareness among public and private sector undertakings of the efforts to combat transnational bribery.
This review is an opportunity to reiterate France's resolve to play a leading role in this sector and to continue to work actively to make the fight against corruption a global governance issue, particularly within the G20 and at the level of the European Union, as can be seen, for example, from France's determination to secure the adoption of an ambitious directive to promote greater transparency in the resource extraction sector."
(Source: Ministry of Justice website)

country to reserve the right to differentiate foreign public officials and elected representatives from national ones when dealing with trading in influence. The Evaluation Report's conclusions moreover indicated "France has severely restricted its jurisdiction and its ability to prosecute cases with an international dimension, which given the country's importance in the international economy and the scale of many of its companies is very regrettable." As it stands, the information provided concerns mere declarations of intent, and the situation is therefore unchanged since the previous compliance report.

22. GRECO therefore concludes that recommendation iii has still not been implemented.

Recommendation v.

23. *GRECO recommended to extend the limitation period for bribery and trading in influence offences, as planned.*

24. GRECO notes that the French authorities again referred to the contribution that the case-law had made to introducing greater flexibility in the method of calculating the three-year limitation period for bribery and trading in influence offences (including the fact that, since 2008-2009, it has been possible to defer the starting point of the limitation period from the time of the offence's commission to that of its discovery, which was formerly only possible in cases of misuse of company property, and hence in the presence of a company offering bribes). The authorities also mentioned draft legislation concerning the entire criminal procedure, which would make it possible to embody the case-law precedents in the Code of Criminal Procedure. GRECO nonetheless maintained its position that the three year limitation period for bribery and trading in influence offences was insufficient, particularly given the specific difficulties encountered in establishing proof of (and detecting) these offences. It also noted the lack of any further tangible progress concerning the proposal, already mentioned in the Evaluation Report, to extend the limitation period from 3 to 7 years for offences punishable with more than three years' imprisonment, and from 3 to 5 years for those punishable with less than 3 years' imprisonment. It concluded that this recommendation had not been implemented.

25. In the new information they have submitted, the French authorities principally reiterate the developments in the Court of Cassation's case-law, including those of 2008 and 2009, which GRECO has already noted (and welcomed). To illustrate the French system's flexibility in these matters, they cite the fact that, since the entry into force of the law establishing this offence in 2000, no proceedings for bribery of foreign public officials have been discontinued or dismissed on the ground that the prosecution is time-barred.

26. The French authorities accordingly maintain that, in view of the continued and undisputed extension in practice of the limitation period for prosecution, its duration can be considered appropriate and does not constitute an obstacle to bringing charges. The French authorities consider in addition that this case-law in the end creates a more favourable context for prosecution than the legislative reform initially envisaged, which would simply have lengthened the limitation period for prosecution.

27. GRECO takes note of the lack of progress and of the fact that any proposed change of legislation to extend the limitation period - including that announced in the Evaluation Report – has clearly been dropped. GRECO is not persuaded that the lack of problems – due to the limitation period – in international corruption cases, to which the French authorities refer, is a wholly convincing

argument, since this is a field where the criminal law response is of scant or no effectiveness[11] and comes up against significant impediments, which recommendations iii and vi, for example, seek to overcome (see paragraphs 18 to 22 and 29 to 34 of this report). GRECO also points out that the legislation being evaluated has a broader scope than bribery of foreign public officials alone (with which the OECD is concerned) and, in this general context, French anti-corruption specialists themselves continue to underline the inadequacy of the three year limitation period and of the current state of the law, despite the case-law's contributions.[12] In its reports the OECD echoes the practitioners' concerns to a large extent. Lastly, GRECO cannot see why case-law developments concerning calculation of the limitation period could not continue to be relied on in future in combination with a possible extension of the time-limit. This would give practitioners even more effective legal tools for combating corruption. GRECO accordingly once again calls on the French authorities to redouble their efforts.

28. GRECO concludes that recommendation v has still not been implemented.

Recommendation vi.

29. *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).*

30. GRECO notes that, at the May 2010 plenary meeting of the OECD Working Group on Bribery in International Business Transactions, the French authorities officially announced that they were willing to amend the Criminal Code concerning the first point raised in the recommendation. The Ministry of Justice undertook to ask parliament to approve legislation. Concerning the second point, the French authorities indicated (after raising a number of technical objections) that a study of comparative law had been launched so as to consider how this issue might be dealt with. Lastly, as regards the third point, at an interministerial meeting held on 23 March 2011 it was decided that France's reservation to Article 17, paragraphs 1b and 1c of the Criminal Law Convention should be maintained for the time being. GRECO considered that the last part of the recommendation had been taken into account and therefore concluded that recommendation vi had been partly implemented.

31. In the new information they provide, as regards the first point raised in the recommendation, the French authorities make no mention of the adoption of draft amendments to the legislation, as previously announced. They now state that interministerial discussions will be initiated with a view to examining the advisability of a legislative reform, as transpires from the previously cited public

[11] See paragraphs 76 and 97 of the Evaluation Report: "there have been no convictions so far for bribing foreign public officials, despite the fact that France is a major commercial and industrial power" (situation in February 2009). A similar finding is made in the reports published by the OECD's Working Group on Bribery, which nonetheless notes a few recent convictions in its phase 3 evaluation report published in 2012.

[12] See the Central Corruption Prevention Department (SCPC) report to the Prime Minister and the Minister of Justice for 2010, Paris, 2011: "However, since a corrupt agreement is usually secret, many offences are covered by the statute of limitations at the time of their discovery" and, reflecting the comments made by GRECO and the OECD, "the three year limitation period is insufficient to be effective in combating bribery, given the difficulties in detecting this offence and producing evidence of it." (page 95 of the report. In the subsequent report, that for 2011, the SCPC moreover implies that the solution consisting in having the limitation period run from the discovery of the offence is not risk-free in terms of legal certainty on account of the ultimately indefinite nature of a period calculated in this way.

statement made by the Ministry of Justice on 24 October 2012 [concerning the response to the OECD's most recent evaluation report].

32. Concerning the second point, the French authorities mainly reiterate their earlier arguments to the effect that: a) the provisions of Article 113-5 of the Criminal Code are but a logical consequence of the dual criminality requirement, in respect of which France has made a reservation; b) convicting someone of complicity without waiting for the final judgment on the principal offence would constitute interference in the judicial process of the country where the offence was committed. This would amount to prejudging the existence of the principal offence, instead of leaving that to the courts of the country concerned, whereas the French courts have no competence to make such a finding concerning an offence perpetrated abroad by a non-French national. The French authorities also refer to the flexible possibilities for prosecuting an accomplice.

33. GRECO takes note of the information provided. Concerning the first point raised in the recommendation, it notes that there have been no tangible developments apart from the statements of May 2010 and, more recently, 24 October 2012. Regarding the second point, the study of comparative law announced in the first Compliance Report has clearly not been implemented (or completed), and GRECO had already examined the French authorities' arguments as reiterated here. GRECO accordingly urges France, once again, to intensify its efforts to take into account the first two parts of the recommendation.

34. GRECO concludes that recommendation vi remains partly implemented.

Theme II - Transparency of Political Party Funding

35. It is recalled that GRECO addressed in its Evaluation Report, 11 recommendations to France with respect to Theme II. After the adoption of the First Compliance Report, it was concluded that recommendation viii had been implemented satisfactorily. Recommendations i, ii, iv, v, vi, vii, ix, x and xi had been partly implemented and recommendation iii had not been implemented; compliance with these recommendations is dealt with below.

36. It can be recalled that the introductory part of the Compliance Report adopted in April 2011 read: "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)[13], 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[14] and elected members all subscribe." The authorities pointed out that, although presidential and parliamentary elections would be taking place in 2012 and traditionally no changes are made to the Electoral Code in the year preceding elections, the situation had been deemed urgent and three items of draft legislation were before Parliament, namely a bill to simplify the Electoral Code and improve financial transparency in politics, draft institutional legislation on the election of members of the lower house and a bill to ratify Order No. 2009-936 of 29 July 2009 on the election of members of parliament by French nationals living abroad.

[13] 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.

[14] This working group was chaired by Mr Jean-Jacques Hyest; its report, no. 186 of 15 December 2010, has been made public.

37. In the new information provided, the authorities state first that France has made many efforts to comply with GRECO's recommendations. The three above-mentioned items of draft legislation resulted in the adoption of Laws Nos. 2011-410, 2011-411 and 2011-412 of 14 April 2011 (promulgated on 19 April 2011).

38. The authorities nonetheless point that the situation has not been easy on account of the elections falling due in 2011 (cantonal and senatorial) and 2012 (presidential and parliamentary) and that traditionally no changes are made to the Electoral Code before or during an election period. GRECO notes that this position is inconsistent with that adopted by France in 2011, as referred to above.

Recommendation i.

39. *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.*

40. GRECO points out that, with regard to the first point, the French authorities raised an objection to the recommendation, underlining that for declared candidates who ultimately decide not to stand the Electoral Code provides that electoral fundraising associations which have supported such candidates shall be dissolved. GRECO could not see how this resolved the problem raised by the Evaluation Report, namely that such candidates were not covered by the 1988 regulations on financial transparency in politics. It concluded that no progress had been made on this part of the recommendation. Concerning the second point, consultations had been launched and a number of legislative proposals were being enacted, providing inter alia for application of the campaign funding regulations to senatorial elections. GRECO accordingly encouraged the authorities to secure the proposals' adoption and concluded that the recommendation as a whole had been partly implemented.

41. Concerning the first point, the French authorities state that this concerns an insignificant not to say minuscule number of candidates and repeat their previous comments, with certain clarifications, with a view to demonstrate that the liquidation of the net assets corresponding to the sums collected by such candidates is subject to precise rules and limits.[15]

42. Concerning the second point, the authorities indicate that the provisions were extended to elections to the Senate by Law No. 2011-412 of 14 April 2011 simplifying the Electoral Code and

[15] 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 automatically dissolved when the deadline expires. This provision does not result in the liquidation of the association's assets, nor does it encourage the establishment of "phantom" associations whose purpose is solely to raise funds without participating in the election campaign for lack of a candidate. Indeed, the last sub-paragraph of Article L. 52-5 § 5 provides that the distribution of an association's net assets, on which it must take a decision within three months of its dissolution, shall be carried out in accordance with the previous paragraph. The wording of §4 of Article L. 52-5 governing this dissolution is in fact very clear: "The association may raise funds only during the period laid down in the second paragraph of Article L. 52-4. It shall be dissolved automatically three months after the filing of the candidate's campaign accounts. Before the expiry of this time-limit, it shall be required to decide the use to be made of its net assets that do not result from the candidate's own contribution. The remaining assets shall be allocated either to a party funding association or to one or more organisations recognised as being in the public interest. In the event of failure to take a decision in accordance with the above conditions and time-limits, at the request of the Prefect of the county (*department)* within which the electoral fundraising association has its seat, the public prosecutor shall refer the case to the President of the Tribunal de Grande Instance, who shall decide to which organisation(s) in the public interest the assets shall be allocated. The same shall apply in cases where the transfer of assets is turned down."

improving financial transparency in politics (JORF No. 0092 of 19 April 2011, p. 6831). GRECO understands that candidates for the Senate must now abide by the election campaign funding rules, including not only the spending limit but also the appointment of a financial agent, opening of a bank or post office account reserved for the campaign, submission of the accounts to the CNCCFP and their auditing and publication, with application of the relevant penalties for non-compliance (under the standards on funding of political parties and election campaigns). This legislation will apply with effect from the senatorial elections of September 2014. This is an important development since the cost of a campaign for a senatorial election can be as high as for the election of assembly representatives.

43. GRECO notes the information provided. It welcomes the implementation of the second part of the recommendation, while regretting that no follow-up has been given to the first part. GRECO is not in a position to assess the quantitative importance of the phenomenon of candidates who ultimately withdraw from elections (and whether this is indeed a marginal phenomenon, or not). This being said, it would appear that in certain cases, it can lead to public controversies, as happened recently for instance during the last 2012 presidential election, in relation to financially negotiated withdrawals[16]. This has in fact led to public speculations as to whether similar agreements had been made in connection with other candidates who had stepped back. The safeguards contained in the Electoral Code do not appear to be sufficient to address such situations. GRECO accordingly invites the authorities to resume consideration of the issue addressed in the first part of the recommendation.

44. GRECO concludes that recommendation i remains 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. GRECO notes that, as regards the first part of the recommendation, the Evaluation Report was particularly concerned with the need for objective criteria for the preparation of consolidated 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 concluded that, in the light of the information provided, the issue had not been dealt with, and nor had that of the support given in practice by parliamentary groups, drawing on their own funds and the material resources allocated to them by Parliament. Regarding the second part of the recommendation, GRECO noted the authorities' contention that support from third parties seemed to be covered already by the Electoral Code, insofar as candidates for election are obliged to include in their accounts election expenditure incurred on their behalf that they have

[16] During the 2012 presidential election, 10 official candidates participated actually in the election, and 5 or 6 additional candidates of a certain importance eventually withdrew after having announced their participation. One of the candidates, a party leader, indicated that she had spent several hundreds of thousands of euros in her campaign, and that her withdrawal 8 months after declaring her candidacy, had been negotiated with one of the top candidates. In exchange for her withdrawal, the party of the top leader would have paid after the election, an amount of 800,000 euros (corresponding to the amount of money reimbursed as public support that she could have probably be entitled to after the election). The controversy arose in the media in connection with her difficulties to obtain the whole of the above 800,000 euros, which were meant to be paid back to her party.

approved. GRECO nonetheless referred to the concerns raised 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. It further pointed out that, in connection with the general consultations on the reform of political financing legislation, the Mazeaud Committee had also recognised the need for the legislation to take more account of third parties. Consultations on transposing these recommendations into law had been initiated but had not yet brought results, and GRECO therefore considered that the recommendation had been partly implemented.

47. Regarding the first point, the French authorities mainly reiterate their earlier arguments challenging the recommendation's relevance (in particular the fact that parties' freedom of organisation, and hence their freedom to determine the scope of their accounts, derives from the Constitution). Regarding parliamentary groups, the French authorities now state that, although they have no assets, their operating grants or allowances are duly identified and disclosed in the annual financial reports of the houses of parliament, which are accessible inter alia on the Internet. In 2011 they represented an amount of €9.21 million for the parliamentary groups of the National Assembly and €10.504 million for those of the Senate.

48. In respect of the second point, they also repeat their earlier position. Candidates must include in their campaign accounts the election expenditure incurred on their behalf to which they have given their agreement. Third parties are a concept alien to the logic of the French system, since legal persons are prohibited from making donations of any kind (the sole exception being contributions by other parties or political groups whose accounts have themselves been audited and published). Adopting a different approach would entail disorganising the entire system and would be incompatible with the objective of preventing businesses from exercising influence over participants in the political process. It should be noted that a similar ban on contributions by legal persons exists in Belgium, Portugal and Poland.

49. GRECO takes note of the information provided. Concerning the first part of the recommendation, it notes that the amounts allocated to the groups are now disclosed, but there is still no information as to how the groups' general resources (in particular human resources) benefit the parties, which would make it possible to form a better idea of any potential issue arising here, since these resources are in principle intended for parliamentary work (not for party activities). GRECO notes above all that no progress has been made in determining objective criteria, common to all parties, for the preparation of consolidated accounts capable of giving a reliable, and comparable, picture of the finances of all political parties. This part of the recommendation has not been given any tangible follow-up to date.

50. With regard to the second part, GRECO notes that the feasibility study has been completed, although it can be regretted that no inference has been drawn from the findings of the Mazeaud Committee, which seemed to have reached a different conclusion concerning the situation regarding third parties: "the inclusion of third parties would make it possible 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." As a result of the lack of consolidation criteria for distinguishing the political parties' entities from third party bodies, the issue of relations between political parties and certain bodies will therefore remain vague and lacking in transparency. The French authorities should remain vigilant in this area, even though, on a formal level, this part of the recommendation has been implemented.

51. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

52. *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.*

53. GRECO refers to its earlier recognition that the current arrangements are based on the distinction drawn between election campaign funding and the financing of political parties and that parties are not obliged to report specifically on their campaign activities, nor to have these audited. It had drawn attention to the concerns raised 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." Noting that no measures to rectify the situation had been reported, it considered that the recommendation had not been implemented and underlined that further transparency measures, such as required in the recommendation, could easily be introduced without causing upheaval to the current system.

54. 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 sanctions available in the event of breaches of the rules. It should nonetheless be reiterated that political parties are the only legal persons authorised to contribute to candidates' electoral campaigns. In this connection, the political parties' final contributions to election campaign funding are appended to the campaign accounts of candidates standing on their behalf. Information on political parties' contributions to candidates' election campaigns is therefore available to the CNCCFP and the electoral court. Such contributions are legal only if the political party complies with Law No. 88-227 of 11 March 1988. To this end, its resources must come from state grants and/or funds raised solely through an agent, and it must also have its accounts audited by two statutory auditors and file them with the CNCCFP by no later than 30 June of the following year. If a party fulfilling the above criteria has local party bodies, only those audited are authorised to contribute to election campaign funding. In the event of receipt of a financial contribution from a federation or a branch of a party, candidates must ensure that the accounts of that local party body are indeed included in the scope of the party's consolidated accounts. Otherwise, the campaign accounts could be rejected by reason of their financing by an unauthorised legal person.

55. Concerning the second part of the recommendation, the authorities indicate that candidates submit their campaign accounts, which have been signed off by their accountants before being audited by the CNCCFP, and parties are required to file accounts audited by two statutory auditors with the CNCCFP each year before 30 June, followed by their publication in the Official Journal. The legislation has moreover defined and broadened the role to be played by accountants. Campaign accounts are to be presented by a member of the association of chartered accountants (Ordre des Experts Comptables), who duly draws up the accounts and ensures that the required supporting documents are present (Article L. 52-12 of the Electoral Code, as amended).

56. GRECO notes the information provided and regrets that this recommendation has still not been implemented. The fact that information on parties' contributions is appended solely to candidates'

accounts represents an only partial and, in any case, unsatisfactory alternative from the standpoint of political parties' transparency for the general public. In GRECO's view, this issue remains even more crucial since recent developments debated in public have pointed to problems increasingly generated by the usage made by political figures of so-called "micro-parties", which are still not well known to the broader public. The reform initiated by the 2013 Budget Act (see recommendation vii) reduces the risks, but does not solve all the fundamental problems that led to this recommendation.

57. GRECO concludes that recommendation iii has still not been implemented.

Recommendation iv.

58. *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.*

59. GRECO notes that the Mazeaud Committee apparently considered only the second part of the recommendation, after the Constitutional Council had also recommended taking steps to ensure that an agent was appointed as soon as possible. This was therefore taken into account in the bill to simplify the Electoral Code and improve financial transparency in politics, which was then before Parliament. Concerning the first point, the authorities merely indicated that the agent's role was to serve as sole intermediary with regard to campaign financing. GRECO therefore invited France to continue its efforts to secure the earliest possible adoption of such regulations, while pointing out that the draft legislation concerned dealt only partially with the problem raised in the Evaluation Report, since only part of parties' income passes through their financial agents. The recommendation was considered to have been partly implemented.

60. The authorities now state that, as noted by both the CNCCFP and the working group chaired by the former President of the Constitutional Council (the Mazeaud Committee), certain agents were encountering difficulties in having banks agree to open a bank account. This was very detrimental to candidates' interests, as an excessive delay in opening a campaign account blocked spending on the campaign and could oblige them to make direct payments without going through the agent. Such direct payments could result in subsequent rejection of the campaign accounts. Articles L. 52-5 and L.52-6 of the Electoral Code, introduced by Law No. 2011-412 of 14 April 2011, have therefore been amended: henceforth the candidate's obligation to open a bank account to be used for all financial transactions is matched by a requirement that any bank chosen by an agent must open a bank account and make available the necessary means of payment within one week of the agent's request. This has therefore done away with a gap in the Electoral Code, which undermined transparency with regard to candidates' means of funding and the role of their agents, namely the lack of a precise deadline for opening the agent's account. Article L. 52-6 moreover provides "Agents are required to open a single post office or bank account to be used for all the transactions they handle. The account's title shall show that the holder is acting as financial agent for the duly named candidate." Lastly, Article 52.4 of the Electoral Code, as amended by Law No. 2011-412 of 14 April 2011, provides "All candidates in an election shall declare an agent. (…) The agent shall collect the campaign funds over the year preceding the first day of the month in which the election takes place and up to the date of filing of the candidate's campaign accounts."

61. The French authorities consider that the agent is therefore indeed the sole intermediary with regard to campaign financing. Similar provisions apply to fundraising associations appointed as

agents, which constitute an alternative to appointing a natural person to receive the funds and settle campaign expenditure.

62. The French authorities indicate that Article L. 52-6 provides that the agent shall obligatorily be "declared" to the Prefecture (it no longer uses the term "appointed", as in the amended Article L. 52-4 of the Electoral Code). The prefectural receipt must be submitted by the candidate along with the statement of candidature for the first round. Declaration of an agent now compulsorily takes place concurrently with the registration of the candidature by the Prefecture, thereby making this formality a condition for the admissibility of candidatures. Article L. 52-4, as amended in 2011, provides: "All candidates in an election shall declare an agent in accordance with Articles L. 52.5 and L. 52-6 by no later than the date of registration of their candidature." Lastly, it should also be noted that this general legislation henceforth applies to the election of senators (see paragraphs 39 et seq.). The above rules are also applicable to the context of presidential elections (article 3 paragraph II of the Law of 6 November 1962 concerning the election of the President of the Republic refers back to the applicability of articles L.52.4 to 52-11, among other provisions).

63. GRECO notes the information provided. Improvements have been made in respect of both parts of the recommendation, but they seem to still be "partial", since they do not affect political parties' agents/fundraising associations. GRECO recalls that in the Evaluation Report, it was mentioned that "*The GET was unable to determine the exact role of these agents; in the case of campaigns, they collect all the incomings and outgoings (except for petty expenditure), but in the case of parties, they are responsible solely for collecting donations from individuals and issuing receipts. It was confirmed to the GET that in practice donations and other forms of support or funds filter up from the local sections and other entities directly or indirectly linked to parties. As a result, only a part of the parties' receipts goes through the financial agent which makes it difficult, if not impossible, to monitor all the funds received by parties. To remedy this, the Association of Chartered Accountants is calling for all incoming funds to be channelled via the party's agent, taking the compulsory form of a fundraising association.*" The first part of the recommendation thus calls for additional action from France.

64. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

65. *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.*

66. GRECO notes that, during their consultations, the authorities appeared 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. GRECO nonetheless pointed out that the recommendation viewed improvements to the public availability of accounts and the procedure before the electoral court in broader terms and that it called for a more active search for solutions. It accordingly concluded that this recommendation had been only partly implemented.

67. The authorities indicate that they have considered the advisability and feasibility of the points raised. Regarding the first point, the authorities conclude that, as already stated, the publication of interim campaign accounts would create confusion and legal uncertainty, by giving the impression that these were final accounts.

68. Concerning the second point, the authorities reiterate that the Mazeaud Committee already dismissed the option of allowing applicants challenging elections in the electoral court to consult candidates' campaign accounts, on the ground that "such a broadening of disputes would add an additional element of complexity to electoral law". There would be a risk that they would ask to see all the campaign accounts. However, access to the accounts must be possible only in the event of a complaint concerning the election itself.

69. Concerning the last point, the authorities indicate that the system for enforcing electoral law was reinforced by the Institutional Act of 14 April 2011, section 136-1 of which provides: "the Constitutional Council, ruling on an electoral challenge (…) may declare ineligible a candidate whose campaign accounts, possibly after revision, show that the limit on election expenses has been exceeded. Ruling in the same circumstances, the Constitutional Council may declare ineligible a candidate who failed to file campaign accounts in accordance with the required conditions and time-limits. (...)" The same section adds that the Council shall also declare ineligible a candidate whose accounts have been rejected on grounds of fraud or of a serious breach of the campaign financing rules. This ineligibility lasts for three years and applies to all elections. If an ineligible candidate has been elected, the election is cancelled or the candidate is automatically considered to have resigned. The above applies to the election of members of the national assembly, county and municipal councils (in accordance with article LO 136-1 of the Electoral Code) and Senators (given that article LO 296 of the Code makes a cross-reference to the provisions on the general eligibility/ineligibility of national assembly members).

70. GRECO takes note of the information provided and of the progress made concerning the last part of the recommendation. It regrets that no consideration was given to the effectiveness of the control in respect of the financing of presidential campaigns but overall, GRECO considers this last part of the recommendation as implemented. It can, however, but reiterate its call for a more active search for solutions with a view to facilitating the consultation of campaign accounts: the publication of simplified accounts (following their auditing) takes more than one year and no deadline is foreseen for the publication. Moreover, the consultation of accounts as soon as they are filed - before they are audited – is still possible only at the CNCCFP's headquarters in Paris, which further limits, in practice, access of the general public to adequate political financing information. GRECO considers that the first two parts of the recommendation cannot be regarded as fully implemented.

71. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

72. *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.*

73. GRECO notes that the authorities have recognised the problem discussed in the recommendation but consider that limiting subscriptions would infringe the constitutional principle

of political parties' freedom of organisation. However, GRECO had pointed 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 regard, the authorities merely referred to a proposal by the CNCCFP, already mentioned in the Evaluation Report, that of introducing a celling – for tax deduction purposes - on donations and subscriptions combined. The recommendation was accordingly considered to have been partly implemented.

74. The authorities again state that, after studying this matter, they consider that legislating to limit subscriptions would infringe the principle of political parties' freedom of organisation, as enshrined in Article 4 of the French Constitution. However, the CNCCFP proposal referred to above has been taken into account and, to offset that freedom, a limit on the tax deductibility of donations and subscriptions has been introduced. Since the entry into force of section 19 of the Budget (Amendment) Act for 2011 (Law No. 2011-1978 of 28 December 2011), the General Tax Code (Article 200, para. 3) has included a €15 000 limit per household on donations and subscriptions to political parties that may give rise to a tax reduction (resulting in a maximum tax advantage of €9 900). This limit was introduced for donations and subscriptions paid as from 1 January 2012.

75. GRECO takes note of the above. The consideration given to this matter has remained focused on the idea of introducing a limit, and GRECO can but reiterate – once again – that that was not the aim of the recommendation, which was merely concerned with taking broader action to remedy the inconsistencies of the current situation. A study could have been made as to whether a party member can make both a donation and a subscription corresponding, in each case, to the maximum limit on donations or whether all subscriptions should be treated as donations beyond a given amount, since it seems that, in practice, certain parties themselves consider that subscriptions should be limited to the ceiling for donations. This problem, together with the fact that the identities of major donors are not disclosed (see recommendation vii below), results in a lack of transparency, particularly from the standpoint of public information. GRECO accordingly invites the French authorities to give further consideration to the matters raised in this recommendation.

76. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

77. *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.*

78. GRECO notes that the authorities examined the issue raised in the first part of the recommendation, but that the call for disclosure of the identities of major donors clearly did not receive any attention. GRECO noted that information on donors' identities is available solely to the supervisory body (but not to the public) and underlined that this was an important element of any policy on the transparency of party and election campaign funding. GRECO invited the French authorities to give further consideration to this issue and concluded that the recommendation had been partly implemented.

79. The authorities now report a recent development concerning the issue addressed in the first part of the recommendation. Until recently, the legislation did not prohibit circumvention strategies, in particular the establishment of micro-parties, which could simply be offshoots of the larger parties (according to the CNCCFP, the number of parties rose from 23 to 280 between the 1990s and 2012). To remedy this situation, the 2013 Budget Act includes a section 4 quinquies, which replaces the words "of the same political party" in the first paragraph of section 11-4 of Law No. 88-227 of 11 March 1988 on financial transparency of politics with the words "or several parties". A natural person can now make only one donation of €7 500 to a single party. This change is also taken into account in the second sub-paragraph of paragraph 3 of Article 200 of the General Tax Code concerning the tax deductibility of donations to political parties or agents.

80. Concerning the second part of the recommendation, the French authorities underline that the right to privacy prohibits the disclosure of certain items of personal data; it is for this reason that French law does not require the disclosure of donors' identities.

81. GRECO notes the information provided. It welcomes the fact that the specific problems associated with "micro-parties", whether created by political parties or by political figures, which have caused growing controversy in the last few years, have been taken into consideration in the legislation, as described above, and it considers that this part of the recommendation has been duly acted upon. It regrets, however, that no further consideration has been given to the need to disclose the identities of donors to parties or candidates above a given threshold. While guaranteeing respect for privacy, many other GRECO member states now have this kind of rule, in accordance with Article 13b of Recommendation Rec(2003)4. France should therefore intensify its compliance efforts in this respect. The resulting lack of transparency indeed opens the door to public speculation, as was again apparent from the media coverage of the most recent presidential elections in France.

82. GRECO concludes that recommendation vii remains partly implemented.

Recommendation ix.

83. *GRECO recommended to enhance the supervisory functions of the CNCCFP in respect of political parties.*

84. GRECO notes that, at the time of the first Compliance Report, the need to enhance the supervisory functions of the CNCCFP was largely recognised in France. A legislative proposal under study was designed to strengthen the CNCCFP's role by a) 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 and b) reducing the deadline for checking accounts to six months. GRECO welcomed the process's existence, but considered that the proposals remained inadequate, while drawing the French authorities' attention to the need to include in the discussions other points raised in the Evaluation Report, such as the fact that the CNCCFP a) did not have access to all documentation relating to party accounts, b) did not review parties' expenses, c) could not demand the submission of certain documents and did not have the authority to verify supporting documents or conduct on-site checks, and d) could not call on the assistance of the judicial investigation services if it had any serious doubts. In view of the existence of a reform process, it considered that the recommendation had been partly implemented.

85. The authorities now state that, so as to reinforce the CNCCFP's supervisory functions, the legislation has given it greater discretion. Under the new Article L 52-11-1, as supplemented, it may "modulate" its decisions: "To sanction one or more irregularities that do not result in rejection of the accounts, it may reduce the amount of the flat-rate reimbursement depending on these irregularities' number and seriousness." The CNCCFP referred questions relating to the auditing of political parties' accounts to the High Council for Statutory Audits (H3C). On 28 November 2011 the H3C decided to issue an opinion No. 2011-21 dealing with three issues linked to the statutory auditors' role. These were the extent of their legal obligations, the applicable accounting standards and the application of certain legislative provisions.

86. GRECO takes note of this new information concerning the measures finally taken to enhance the CNCCFP's supervisory functions. It notes that, despite broad recognition of the need to reinforce supervision - including in France itself, as the authorities underlined - the reported developments are in the end not directly connected with recommendation ix (they concern other aspects, such as the points raised in recommendation xi on sanctions). It can therefore hardly be considered that the recommendation has been implemented, even in part, and GRECO can but maintain its previous conclusion.

87. GRECO concludes that recommendation ix has not been implemented.

Recommendation x.

88. *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.*

89. GRECO notes that concrete legislative proposals, in line with this recommendation, were being discussed. GRECO considered that the proposals met the recommendations' main objectives and encouraged the French authorities to take into account other ways of making the arrangements for the declaration of elected representatives' assets more effective, in particular by increasing the resources of the Commission for Financial Transparency in Politics – CTFVP (as suggested in the Evaluation Report). It considered that the recommendation had been partly implemented.

90. The authorities point out that the CTFVP requests information from those concerned in writing. In the event of failure to reply or submission of a reply that does not suffice to explain changes in an elected representative's assets, the CTFVP may ask the person concerned to appear before it. If no satisfactory explanation is still forthcoming, the file is referred to the public prosecution service.

91. The previously announced legislative proposals have been enacted. The Institutional Act No. 2011-410 and Law No. 2011-412 (promulgated on 19 April 2011) reinforced the CTFVP's powers in three respects: a) it can now require submission of the person concerned's tax returns and, in the event of non-compliance within two months, obtain these returns direct from the tax authorities; b) an elected representative who makes a false declaration is liable to a fine of €30 000 and, possibly, to loss of civic rights and a ban on holding public office; c) those who fail to submit a statement of assets on leaving office are liable to a fine of €15 000.

92. GRECO takes note of these advances, which help remedy the significant deficiencies in the CTFVP's arrangements for the declaration of assets, in particular by introducing penalties for false declarations. While the third part of the recommendation has clearly been taken into account, it can nonetheless be seen that the reform ultimately fell far short of the objectives mentioned in the first Compliance Report, since persons making declarations are still not required to declare all the offices and positions they hold, nor all their income (which affects the commission's assessment of their actual savings capacity). The fact that the commission is now guaranteed access to tax returns offsets this situation only in part, and the current arrangements still take no account of family members' situations (an aspect covered by one of the proposals). The CTFVP still does not have sufficient resources despite the high number of declarations, and its annual reports continue to mention a number of deficiencies to be rectified. GRECO encourages the French authorities actively to pursue the reform of the arrangements, so as to give full effect to points i and ii of the recommendation.

93. GRECO concludes that recommendation x remains partly implemented.

Recommendation xi.

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

95. GRECO notes that, before their adoption in April 2011, the legislative proposals sought to a) review the conditions for applying the sanction of ineligibility (making it automatic only in cases of bad faith and extending this principle to all elections, not just parliamentary elections alone); b) provide for the possibility of flexible fines, decided by the CNCCFP, in cases of irregularities of a minor nature. GRECO underlined the proposals' inadequacy and noted that, at a more general level, this recommendation concerned the development of a more coherent, flexible and proportionate range of penalties, having regard to the various shortcomings identified, in particular the existence of excessively low (€ 3 750 maximum) fines with little or no effect as a deterrent to unlawful funding on a large scale; the fact that there was no room for flexibility in withdrawing state grants; and so on. These penalties could also be accompanied by publication of the decisions in the press or by public notice. It considered that the recommendation had been partly implemented.

96. The French authorities state that the amendments of April 2011 now empower the CNCCFP to "modulate" its decisions: under Article L 52-11-1 of the Electoral Code, in the event of irregularities, it may reduce the amount of the flat-rate reimbursement depending on these irregularities' number and seriousness. The same discretion is granted to the court competent in electoral matters (the Administrative Court for local elections and the Constitutional Council for elections to the Chamber of Deputies and the Senate - under Article L 118-2, as supplemented). As for presidential elections, regulated by the Law of 6 November 1962, the possibility for the CNCCFP or the judge to modulate the flat-rate reimbursement existed already.

97. The French authorities point out that the penalty of ineligibility has indeed been retained on account of its highly deterrent effect. This penalty may be ordered by the court a) when the campaign accounts have been rejected on grounds of fraud or of a serious breach of the campaign financing rules (in which case it applies for a maximum of three years and to all elections, but without any impact on offices held as a result of previous elections); b) in the event of fraudulent acts having the aim or outcome of undermining the fairness of the elections (in which case it can be ordered for a maximum of three years).

98. GRECO takes note of the information provided. It notes that, while the proposals have finally been adopted and allow at present for the modulation of certain sanctions, the authorities have not seized this opportunity to give broader consideration to the gaps identified by GRECO in the Evaluation Report (in particular the impossibility to modulate the loss of public aid in respect of political parties), or reiterated in the first Compliance Report, including the need to improve the system for making decisions public.

99. GRECO concludes that recommendation xi remains partly implemented.

III. CONCLUSIONS

100. **In view of the conclusions contained in the Third Round Compliance Report on France and in view of the above, GRECO concludes that France has so far 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, recommendations i and vi remain partly implemented and recommendations iii and v have still not been implemented. Regarding Theme II – Transparency of Party Funding, recommendations i, ii, iv, v, vi, vii, x and xi remain partly implemented. Recommendations iii and ix have still not been implemented.

101. Concerning incriminations, GRECO regrets the fact that no progress has been made and that the measures announced by France in April 2011 have not materialised. The reform implemented in this area in May 2011 takes no account of any of the recommendations made in the Evaluation Report. The authorities apparently fail to differentiate between the evaluations made by the Council of Europe and by the OECD. Although the two mechanisms are similar in many ways, the fact remains that they have their own specificities. GRECO regrets that France missed the opportunity afforded to it in April 2011 to make more wide-ranging improvements to its anti-bribery legislation. Regarding any pending steps announced by the French authorities, they merely refer to consultations planned in future, and in respect of only one recommendation.

102. Concerning transparency of political funding, a number of the planned legislative amendments have finally materialised, but France did not utilise the additional time afforded by this Second Compliance Report to remedy weaknesses previously noted/recalled by GRECO. If these weaknesses had been addressed, the level of compliance with the report's recommendations would undoubtedly have been greater. France has so far implemented only one of the Theme II recommendations, and GRECO can but note, here too, that no real progress has been made since the First Compliance Report. This applies, in particular, to such essential measures as disclosing the identities of parties' or candidates' major donors or reinforcing supervision by the National Commission for Campaign Accounts and Political Funding (CNCCFP). No further measures are currently under way or in the pipeline.

103. In short, despite the introduction of various improvements, France has made no decisive progress concerning the implementation of recommendations on Themes I and II as compared with the situation assessed in the First Compliance Report almost two years ago. Four years after the adoption of the Evaluation Report, the number of recommendations implemented therefore remains very small and it appears that there is barely any additional progress expected in the near future. In these circumstances GRECO has no other alternative than to consider the situation "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decides to apply Rule 32 in respect of members not in compliance

with the recommendations contained in the mutual evaluation report and asks the Head of the French delegation to provide a report on progress in implementing recommendations i, iii, iv and v (Theme I – Incriminations) and recommendations i, ii, iii, iv, v, vi, vii, ix, x and xi (Theme II – Transparency of Party Funding), as soon as possible and by 30 September 2013 at the latest, in accordance with paragraph 2(i) of that rule.

104. Finally, GRECO invites the French authorities to authorise, as soon as possible, the publication of this report.