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Second Interim Report

Third Evaluation Round

Second *Interim Compliance Report* on France

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

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"Transparency of party funding"

Adopted by GRECO
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I. INTRODUCTION

1. The Third Round Evaluation Report on France was adopted at GRECO's 41st 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).

2. As required by GRECO's Rules of Procedure, the French authorities have submitted a situation report on measures taken to implement the recommendations. GRECO selected Albania and Belgium to appoint Rapporteurs for the compliance procedure.

3. According to the First Compliance Report, adopted by GRECO at its 50th Plenary Meeting (1 April 2011), France had satisfactorily implemented or dealt with three of the seventeen recommendations contained in the Third Round Evaluation Report. GRECO considered at the time that, in the light of the reforms under way, there was the potential to achieve an acceptable level of compliance and the then low level of compliance with the recommendations was not "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. It invited the head of the French delegation to submit further information on the implementation of the recommendations pending.

4. In the Second Compliance Report, adopted at its 59th Plenary Meeting (22 March 2013), GRECO concluded that, as compared with the situation assessed in the First Compliance Report almost two years previously, despite some advances France had in the end made no decisive progress, in the implementation of the recommendations concerning Themes I and II, as might have been hoped. The number of recommendations implemented therefore remained very low and no additional progress was expected in the near future. As a result the situation was considered "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO therefore decided to apply Rule 32 in respect of members not in compliance with the recommendations contained in the mutual evaluation report and asked 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 to vii and ix to xi (Theme II – Transparency of Party Funding) by 30 September 2013 at the latest.

5. In the First Interim Compliance Report, adopted at its 62nd Plenary Meeting (6 December 2013), GRECO noted that no progress had been made on Theme I – Incriminations, and that decisive progress had been made on only one of the recommendations under Theme II – Transparency of Party Funding. France had so far implemented satisfactorily, or dealt with in a satisfactory manner, only four of the seventeen recommendations contained in the Third Round Evaluation Report. Ten other recommendations remained partly implemented, and three not implemented. GRECO consequently concluded that the level of implementation of the recommendations remained "globally unsatisfactory" and asked the head of the French delegation to provide a new report on the measures taken to implement the recommendations still pending, namely recommendations i, iii, v and vi for Theme I and recommendations i, ii, iii, iv, v, vii, ix, x and xi for Theme II by 30 September 2014 at the latest. In accordance with Rule 32, paragraph 2, sub-paragraph (ii.a), GRECO instructed its President to send a letter – with a copy to the President of the Statutory Committee – to the head of the French delegation, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible. Information on the current situation was provided by France on 26 September 2014.

6. This Second Interim Compliance Report – prepared by Mr Olivier GONIN, scientific officer at the Federal Office of Justice (Switzerland) and Mr Guido HOSTYN, Secretary to the Electoral Expenses Supervisory Board of the Belgian Senate, with the assistance of the GRECO secretariat – assesses progress in implementing the recommendations pending since the adoption of the first interim report and gives an overall evaluation of the level of compliance with the recommendations.

II. ANALYSIS

Theme I: Incriminations

7. It is recalled that, in its Evaluation Report, GRECO addressed six recommendations to France in respect of Theme I and that, to date, recommendations ii and iv have been implemented or dealt with in a satisfactory manner, recommendations i and vi have been partly implemented and recommendations iii and v have not been implemented. Compliance with these pending recommendations is discussed below.

Recommendation i.

8. *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 "*.

9. GRECO notes that it has so far agreed to consider this recommendation as partly implemented. Legislative work under way in April 2011 had been announced as being aimed at amending the definitions of offences in line with GRECO's expectations. The amendments finally adopted in May 2011 (which solely eliminated any doubt concerning the lifting of the requirement that the act of soliciting, agreeing to, offering, proposing or yielding to a solicitation must have taken place before the bribe taker's action/inaction) were nonetheless a response not to the recommendation under consideration here, but merely to a separate observation also included in the Evaluation Report (since the Criminal Law Convention makes no mention of an offence of *a posteriori* bribery). GRECO agreed to maintain a "partly implemented" conclusion in the Second Compliance Report given that the French authorities had indicated that the amendments of May 2011 had broader consequences for the jurisprudential theory of the "corruption pact" as such, which went in the direction of the present recommendation; in particular, mention was made of two or three not yet final court decisions which did not contain any reference to the pact concept. The various other measures cited by the French authorities did not concern this recommendation or GRECO's work.[1] Furthermore, the case-law and the specialist literature still make abundant reference to this concept as an important condition for a successful prosecution in most cases of bribery, apart from simple cases where the solicitation is ineffectual.[2] For the same reasons, and

[1] The French authorities had also announced that a circular relevant to this recommendation was under preparation, but following its adoption GRECO noted that it concerned the work of the OECD and information on the 2011 reforms, in particular; cf. http://www.textes.justice.gouv.fr/art_pix/JUSD1204025C.pdf

[2] The case-law supplied by France in support of its position has been confined to the Court of Cassation's decision of 16 October 1985, already considered irrelevant in paragraph 10 of the Second Compliance Report (case of a student prosecuted for having sent a cheque to an examiner along with a request that he be awarded a certain mark).

since the notion of "receiving" is not included in the definitions of the offences, GRECO was awaiting more proactive measures in that area too (second item of the recommendation).

10. The French authorities specify, concerning the first part of the recommendation, that the notion of a "corruption pact" should be utilised only when the aim is to prosecute both the active and the passive components of the offence of bribery. The term "corruption pact" 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 a pact has been concluded 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. This settled case-law concerning the response given to an offer indeed shows that, in such cases, it is irrelevant whether a pact 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. Concerning the measures taken to comply with this recommendation, the authorities state that the Minister of Justice already clarified this point in a note of 22 June 2011 on the promulgation of Law No. 2011-525 of 17 May 2011 aimed at simplifying and improving the quality of the law. This note stipulates "Article 154 [of the law in question] amends the Criminal Code so as to bring our legislation into line with one of the recommendations made by GRECO [in point of fact recommendation 1] to the effect that 'the French authorities may wish to take the necessary measures … to make it clear … that prior agreement between the parties is no longer necessary for the purpose of prosecuting …'. GRECO had indeed noted a lack of consensus among legal writers as to the need to establish the pre-existence of a pact. Article 154 therefore sets out to clarify, by making it perfectly apparent in the legislation, that there is 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, an amendment introduced by the law of 30 June 2000 relating to corruption, but in a manner perceived as ambiguous by legal writers. This is therefore merely a clarification." This clarification was moreover reiterated in the circular of 9 February 2012 dealing with corruption of foreign public officials, which states "Article 154 of Law No. 2011-525 of 17 May 2011 aimed at simplifying and improving the quality of the law … has made it possible to clarify, by making it perfectly apparent in the legislation, that there is 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, an amendment introduced by Law No. 2000-595 of 30 June 2000 relating to corruption, but in a manner perceived as ambiguous by certain legal writers."

12. These elements concerning the "corruption pact" were also mentioned during various training sessions. A multi-annual training scheme has been launched to raise awareness among those involved in combating corruption at local level. Organised jointly by the Ecole Nationale de la Magistrature (legal service training college) and the Central Corruption Prevention Department (SCPC), this scheme is intended to cover all appeal courts throughout France. It is open to members of the judiciary, and also to investigators in the law enforcement services (police and gendarmerie). Members of the Regional Courts of Auditors can also participate. To date, the training has been dispensed in nine Courts of Appeal. The SCPC also repeated all these clarifications in 2013 in the context of a specialist training course on economic and financial questions run by the ENM as part of judges' in-service training. Similarly, the key concepts inherent in the offences of bribery and trading in influence were explained to the investigators of

the General Inspectorate of the National Police Force during a series of training courses on the theme of breaches of integrity dispensed by members of the SCPC during the first half of 2014.

13. Lastly, in its Annual Report for 2013, published at the end of June 2014, the SCPC pointed out that the concept of a "corruption pact" might cause confusion, since prosecution and conviction on charges of active bribery were possible without an offence of passive bribery being established (pages 106 and 107 of the report) and the payment of the person proposing the bribe could take place at any time. Initially addressed to all the ordinary courts in France, this report can be consulted by all judges and prosecutors on the Intranet site of the Ministry of Justice and has, since 3 July 2014, been made publicly available free of charge on the publisher's website.[3] The French authorities add that the SCPC also invites at present the practitioners, notably during training events organised jointly with the national school of magistracy, to abandon the use of this terminology given the confusions that it generates. They also object to the fact that GRECO does not refer to any case illustrating difficulties of substantiating a pact in practice.

14. Concerning the second part of the recommendation, the French authorities repeat, as already mentioned previously, that the national legislation goes beyond the convention requirements because all the legislative instruments penalising bribery and trading in influence refer to "requesting or agreeing to", which are terms that are broader in meaning than "receiving". Under the case-law even if the promised reward is not paid or "received" the offence is established (Cass. Crim. 9 November 1995).

15. GRECO takes note of the above information. Concerning the first part of the recommendation, GRECO once again regrets the French authorities' confusion concerning the object of this recommendation. It does not concern the question of prior existence of a "corruption pact", which was raised specifically in a mere observation (and not a recommendation) contained in paragraph 79 of the Evaluation Report. Recommendation i concerns the issue of the "pact" itself, as discussed in paragraphs 80 to 84 of the Evaluation Report. The French authorities mainly reiterate their earlier observations, particularly regarding the 1985 precedent regarding a case of ineffectual solicitation. GRECO refers again to the Evaluation Report and the various explanations already given in the course of the compliance procedure. It reiterates that the problem is not so much unilateral solicitations (which are naturally already covered by French law) but cases in which the advantage has been remitted and/or the consideration has been supplied. In such cases, constituting the vast majority of criminal proceedings, the issue arises of the "corruption pact", which is still present to a large extent in the practice of the courts and the prosecution service, even in the latest case-law, with the problems that may arise as regards the degree of proof required in practice[4] and the effective distinction between active and passive bribery. It should also be recalled that the wording of the offence of passive bribery includes the terms "request ... or agree [*agréer*]" but not "receive" (see the analysis of the second part of the recommendation below). GRECO is pleased to note that the SCPC acknowledges that the "pact" theory in fact poses a problem and indicates that active and passive bribery are separate offences. The French authorities should draw all the relevant conclusions so as to establish, without any possible doubt, a clear-cut distinction between the offences of active and passive bribery.[5] Lastly, despite all the efforts made since February 2009, in the evaluation report and the

[3] http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000380/0000.pdf

[4] GRECO refers once again to the observations and information contained in its reports of the Third Evaluation Round (paragraphs 83 and also 72) but also that of the First Evaluation Round (paragraphs 45 and 128).

[5] GRECO would point out that a case decided in 2010 offers a good illustration of the problem as it stands at present: in this well-known case dating from April 2010 the Court of Justice of the Republic (CJR) convicted a former minister of certain offences, but acquitted him of the offence of passive bribery on the ground that there was no corruption pact. The bribe giver had been convicted of active bribery by the ordinary courts, which had found that there had been a pact, and subsequently

successive compliance reports, so as to make it clear that the French authorities must deal with a twofold issue (the antecedence requirement regarding the pact on one hand, and the pact itself on the other hand), it is surprising to read (on page 107 of the SCPC's report) that the confusion between the two questions is attributable to the OECD and GRECO.[6] The follow-up action given to this recommendation, in particular in the form of training sessions, primarily concerns the drafting amendments made in 2011 by the French parliament to clarify the question of antecedence. The invitations to practitioners, made in recent training events, to stop referring to a "pact" in order to avoid confusions, cannot be assessed against the above background and in the absence of more specific information. This remains plainly unsatisfactory as regards the implementation of this recommendation, which GRECO repeats does not concern the issue of the pact's antecedence. The Second Compliance Report of March 2013 referred to possible case-law developments that might result indirectly from the amendments of 2011, but the French authorities have in the meantime provided no confirmation that this has been the case.

16. Concerning the second point of the recommendation, the French authorities have still not reported any relevant initiative and reiterate their position that the word "agreeing" [*agréer*] of an undue advantage, which is lacking in the definition of the offence of passive bribery, is allegedly already covered by existing law (see the previous compliance procedure reports). Actually, what the French authorities are referring to are those situations in which receipt is part of an agreement or of its execution, as suggested by the notion of "agreeing". GRECO points out that the definition of passive bribery in the Criminal Law Convention includes "receipt" as a specific element of the offence, regardless of any agreement. For example, when a person receives a bribe and keeps it for a sufficient length of time – which allows to establish his/her criminal intent. French legislation goes beyond the Criminal Law Convention in other respects (for example, by covering "ex post bribery"), but not on this point. In their latest comments, the authorities also provide linguistic definitions to show that the concept of "*agréer*" does not involve the idea of an agreement or acceptance and that it also is a synonym for "receiving" but GRECO finds these definitions little convincing[7]. The French authorities must accordingly pursue their efforts to ensure that the notion

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lodged an application for review proceedings, seeking to benefit from the CJR's finding that no pact could be identified. The public prosecutor appealed on points of law against the partial acquittal of the minister, arguing (in July 2010) that "By failing to explain the factual circumstances on which it based its finding of guilt concerning the offence of active corruption, all the elements of which are applicable to the person accepting the bribe in respect of the same events since the bribed public official and the bribe giver form a pair whose guilt is inseparable, the judgment appealed against gave no grounds for the acquittal decision" and after pointing out that the antecedence requirement had been eliminated went on to indicate "The impugned judgment failed to explain, in its reasoning relating to the charge of passive corruption brought against the minister, the logical inconsistency between the final judgment against the bribe giver finding that a pact existed and the conclusion that no such finding could be made in respect of the bribe taker."
http://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/raysseguier_premier_17144.html
The Court of Cassation held "… whereas the court could not justifiably dismiss the charge of passive corruption against C… X… without explaining how this lack of a link between the proposal, the agreement and the payment could be compatible with the converse reasoning drawn from the final decision establishing the existence of the offence of active corruption for the same events (second branch)."
http://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/586_23_17125.html
Also see Cécile Guérin-Bargues: " Cour de Justice de la République : pour qui sonne le glas ?"
http://www.juspoliticum.com/IMG/pdf/Article_CJR_juillet_2013_PDF_-_17-03-14-3.pdf page 8

[6] "For this reason mention has often been made of the concept of a "corruption pact", a concept strongly criticised by the international organisations responsible for combating bribery (OECD, GRECO), which wrongly continue to consider that it prevents the prosecution of cases in which the payment of the bribe occurs subsequent to the action or decision sought from the person accepting the bribe."

[7] Definition of "agréer" in the Larousse Dictionary: "consenting to receive what is proposed or offered" [the full definition actually reads: "consenting to receive what is proposed or offered; accepting"]. Definition in the Robert Dictionary: "to welcome favourably".

of receipt is taken into account, a change also long called for by certain parties in France.[8] Introduction of the notion of receipt would help to modify the case-law regarding the issue of the corruption pact.

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

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, to date, this recommendation has not been implemented. Since April 2011, the date of the First Compliance Report, France has successively a) stated that it wished to keep the reservation; b) reiterated the argument it 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); c) announced the launch of a comparative law study in 2011, which in the end failed to materialise; d) stated that, since other countries had made reservations to the Convention, France also wished to maintain its own reservation, while nonetheless e) indicating that discussions were to take place with a view to issuing a government bill in this matter; f) reported that consultations[10] and an impact study[11] had taken place relating to the process that led to the adoption of Law No. 2013-1117 of 6 December 2013 on combating tax fraud and serious economic and financial crime, and lastly indicated that the discussions on this matter might be resumed in parliament at the end of 2013. However, the consultations and the impact study apparently had no direct relevance or consequence as regards this recommendation, and GRECO could not, yet again, accept a mere declaration of intent. So far, there has therefore been no proper examination of the advisability of adopting the criminalisation measure referred to in this recommendation.

20. The authorities now refer to the substance of their reservation[12] and state that the Ministry of Justice proposed that this offence be introduced in the Criminal Code during the discussions preceding the tabling in the National Assembly of the Bill on combating tax fraud and serious economic and financial crime. However, in view of the issues' complexity, the Government

[8] See, for example, the work done by the National Assembly in March 2000 under the aegis of the joint task force to investigate the obstacles to monitoring and combating financial crime and money laundering in Europe: http://www.assemblee-nationale.fr/11/pdf/rap-info/i2311-624.pdf (page 95): one of the judges interviewed considered that "The offence of bribery should also be simplified. The case-law has supplemented the text of the law with the concept of a prior pact; [and citing a report by the SCPC in 1997] if the offence simply consisted in a public official's receiving a reward from a person who benefited from a decision he/she had taken, the task of the prosecutors and the courts would be easier."

[9] The French authorities indicated, in particular, that they still had doubts in view of the fact that trading in influence was not an offence in a number of countries and they considered it difficult to imagine a French court convicting a foreign public official of passive trading in influence if that official's action was not an offence in his or her own country.

[10] At the time of the Second Compliance Report of 22 March 2013, the French authorities announced that they intended to conduct inter-ministerial discussions; since the bill debated in Parliament was first dated 23 April, the discussions must have taken place within this one-month period.

[11] Link to the relevant page on the website Légifrance

[12] "In accordance with Article 37, paragraph 1, of the Convention, the French Republic reserves the right not to establish as a criminal offence the conduct of trading in influence defined in Article 12 of the Convention, in order to exert an influence, as defined by the said Article, over the decision-making of a foreign public official or a member of a foreign public assembly, referred to in Articles 5 and 6 of the Convention."

proposed that this question should be "debated in a more global context". No further developments are therefore envisaged in the immediate future.

21. GRECO takes note of the lack of any relevant new developments. It points out that the legislative work of 2013 referred to above clearly did not address this recommendation and that, in the end, this matter was also not taken up again in the related parliamentary debate. GRECO regrets that, despite the many declarations made since 2011, no follow-up has ultimately been given to this recommendation.

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 recalls that this recommendation has been considered unimplemented to date. As indicated in the previous interim report "although the Bill envisaged at one stage has not been adopted,[13] the French authorities consider that the judicial precedents established introduce greater flexibility into the method of calculating the three-year limitation period for offences of bribery and trading in influence including, since 2008 and 2009, the possibility of postponing the starting point of the limitation period from the time of the offence's commission to that of its discovery, which was previously permissible only in cases of misuse of company assets – and hence where a company had been offering bribes. GRECO has so far maintained its position that, despite some additional flexibility in the calculation method, the three-year limitation period for bribery and trading in influence offences is insufficient (the reasons have already been set out in detail in the previous report (specific difficulties in proving the offence and the issue of the legal uncertainty that could arise from unlimited flexibility))."

25. The French authorities again reiterate the explanations given since the First Compliance Report, in April 2011, concerning the introduction of greater flexibility in the method of calculating the limitation period as a result of the case-law. In their latest comments, they indicate that the Cassation Court has recently confirmed in judgement n°613 of 7 November 2014 rendered in a case involving infanticides[14], the principle of postponing the starting point of the limitation period from the time of the offence's commission to that of its discovery when it comes to serious offences ("crimes"). They indicate that this jurisprudence also concerns all hidden offences categorised as lesser offenses ("délits") which is the case of nearly all acts of bribery and trading in influence and that since this was a plenary decision of the court, it is binding on all courts.

26. GRECO takes note of the latest jurisprudential confirmations of November 2014 issued by the highest French criminal court, which confirm the practice of postponing the starting point of the limitation period to the time of discovery in cases involving hidden serious offences ("crimes"). This decision seems to confirm the jurisprudence already applicable concerning corruption-related offences and GRECO accepts that this jurisprudential confirmation partly addresses the underlying concerns of this recommendation. That said, GRECO had already considered, notably in its Second Compliance Report, that this jurisprudence was not sufficient to implement the

[13] As already mentioned in the Evaluation Report, the proposal was 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 three years' imprisonment.

[14] https://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/613_14_30461.html

recommendation. It considers preferable to clarify the situation with all the legal security needed, for instance by consecrating the jurisprudential evolution in legislation.

27. GRECO thus concludes that recommendation v has been partly implemented.

Recommendation vi.

28. *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).*

29. GRECO recalls that this recommendation has been considered partly implemented. As indicated in the previous interim report "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 had committed itself to proposing that Parliament approve legislation, but this clearly brought no result since the French authorities subsequently indicated that amendments had been introduced by the Law of 6 December 2013 (see paragraph 19), but these amendments, namely the repeal of Articles 435-6 and 435-11 of the Criminal Code concerning the prosecution service's monopoly on initiating proceedings relating to certain offences of bribery in certain specific circumstances, had no direct link with the present recommendation. Concerning the second point, the French authorities had initially 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, but this study then apparently came to nothing. Lastly, concerning the third point, at an inter-ministerial meeting held on 23 March 2011 it was decided that France's reservation in respect of Article 17, paragraphs 1b and 1c, of the Criminal Law Convention should be maintained at least for the time being. GRECO considered that the last part of the recommendation had been taken into account, which justified its conclusion that recommendation vi had been partly implemented.

30. Concerning the first part of the recommendation, the French authorities now indicate that Article 113-8 of the Criminal Code remains in force: "In the circumstances laid down in Articles 113-6 and 113-7 [i.e. when offences are fully committed abroad] the prosecution can only be brought at the request of the prosecution service and must be preceded by a complaint from the victim or his or her beneficiaries, or an official report by the authorities of the country where the offence was committed." However, as stated in the previous interim report, the law finally passed on 6 December 2013 (see paragraph 19) repealed Articles 435-6 and 435-11 of the Criminal Code concerning the prosecution service's monopoly on initiating a prosecution for offences committed abroad, including where part of the acts were perpetrated in French territory. With these changes, the rule on the prosecution service's monopoly does not apply when the offences have been partly committed in French territory. It is in practice rare that corruption offences involving foreign public officials should be entirely committed abroad and that no act constituting an ingredient of the offence should have taken place in France. The prosecution service's monopoly is therefore reportedly of only limited scope in practice.

31. Concerning the second part of the recommendation, the French authorities indicate that France has not yet amended its legislation in this field but the discussions are continuing. Lastly, with

regard to the final part of the recommendation, the authorities refer to the wording of the reservation to Article 17 of the Criminal Law Convention, pointing out that the purpose of this reservation is to enable France to comply with a basic principle of its criminal law (Article 113-6 of the Criminal Code lays down a double criminality requirement). At this time there are no plans to modify the legislation in this respect, and, since the majority of states criminalise bribery, the issue raised can be seen to be primarily theoretical in nature. The French authorities also point out that this rule is applied with a degree of flexibility: the double criminality condition does not mean that the two countries' definitions of the offence must be identical in all respects and it is sufficient that the acts should be effectively qualified as an offence abroad. Moreover, for the condition to be met, Article 113-6 of the Criminal Code does not require that the offence's commission should have been established abroad. Concerning this part of the recommendation, the French authorities consider that this provision – which is not specific to cross-border corruption but concerns all types of offences – poses no real practical difficulties in so far as Article 16.1 of the United Nations Convention against Corruption, which has been ratified by 169 countries, requires states parties to establish bribery of foreign public officials as a criminal offence.

32. GRECO takes note of the above information. As regards the first part of the recommendation, GRECO naturally welcomes the amendments of December 2013 aimed at broadening to a certain extent the ability of France to prosecute bribery and trading in influence in respect of foreign or international public officials. That said, these are considerations specific to the work of the OECD and the recommendation under consideration here is aimed at relaxing the more general excessive restrictions laid down by Article 113-8 of the Criminal Code.

33. Concerning the second part of the recommendation, France has still not taken any measure while, regarding double criminality and the reservation made by France, GRECO had already considered that the third part of the recommendation had been implemented. It is therefore in principle not necessary to discuss this matter further. GRECO would merely point out that the argument that the double criminality condition has lost much of its practical relevance given the number of ratifications of the United Nations Convention against Corruption could in point of fact provide even more justification for France to do away with this restriction and withdraw a reservation that has become pointless.

34. GRECO concludes that recommendation vi remains partly implemented.

Theme II: Transparency of political party funding

35. It is recalled that, in its Evaluation Report, GRECO addressed 11 recommendations to France with regard to Theme II. On the adoption of the previous interim report, it was concluded that the situation was as follows: recommendations vi and viii had been implemented satisfactorily. Recommendations i, ii, iv, v, vii, ix, x and xi had been partly implemented and recommendation iii had still not been implemented. Compliance with these recommendations is discussed below.

Recommendation i.

36. *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.*

37. GRECO points out that this recommendation has been categorised as partly implemented. In previous compliance reports, it was found that no action had yet been taken on the first part of the recommendation. As to the second part, the French authorities stated that under Law No. 2011-412 of 14 April 2011 *to simplify the Electoral Code and improve financial transparency in political life* (published on 19 April 2011), candidates for elections to the Senate were now covered more fully by the rules on funding for election campaigns.

38. The French authorities now point out that before withdrawing, candidates are subject to funding rules, and that this makes it possible to ensure that potential candidates are treated equally. Under Article L. 52-4, supervision of the funding of electoral campaigns begins one year before the month in which the election is scheduled. Furthermore, it is wrong to claim that candidates who withdraw are not subject to the rules on political funding as the Electoral Code has specific provisions covering the use of income on the campaign accounts of candidates who do not stand. The French authorities consider that the fact that these particular cases are not subject to some provisions of the legislation on election campaign funding – in this case the requirement to file campaign accounts – is not such as to undermine the sincerity and transparency of the electoral process. Firstly, in the French authorities' view, the income and expenditure of candidates who decide in the end not to stand do not seem to have any influence on the outcome of the vote. In addition, as has already been pointed out, funds raised by the fundraising associations of candidates who withdraw are strictly supervised by the Electoral Code, which sets out the arrangements for the transfer of these sums to other legal entities. Article L. 52-5 of the Electoral Code describes the procedure for the dissolution of electoral fundraising associations. When candidates stand in the election, associations are dissolved automatically three months after the candidates' campaign accounts have been filed. If candidates supported by an electoral fundraising association do not submit their nomination forms within the deadline set, "the association shall be automatically dissolved when the deadline expires" (paragraph 5). However, before any such dissolution, the association must decide what use is to be made of its assets. Paragraph 4 of the Article provides: "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 département 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."

39. The assets of a candidate's fundraising association may be allocated only to another political party, not to another candidate. Consequently, it would appear to be impossible for artificial candidatures to be set up to raise funds which are ultimately destined for another candidate. It should also be pointed out that at all events, such payments must remain within the election spending limits which guarantee that there is equality between the candidates. The French authorities believe therefore that positive law already regulates the funding of campaigns by candidates who decide ultimately not to stand.

40. As to GRECO's concerns about the arrangements which may be made between candidates from rival parties for one of them to withdraw from an election campaign, which could give rise to agreements of a financial nature (with one party making a donation to another), these practices, although not explicitly covered by the Electoral Code, are still legal and do not seem liable to affect the sincerity of the vote. A party's decision to support another party financially is part of its freedom of organisation, which is protected by Article 4 of the French Constitution. Such transfers

of funds are, moreover, explicitly authorised by the law, which states that the only legal entities entitled to finance a political party are other political parties.

41. GRECO takes note of the above information, which consists, for the most part, of a series of justifications for the fact that the situation has not changed since its on-site visit. The French authorities assert that the current situation poses no particular problem in terms of the transparency or fairness of the elections. Yet, as GRECO already pointed out in its First Compliance Report, in some cases, the practice of withdrawal may be a sign of negotiated financial agreements, which may pose a problem because of the lack of transparency about the sums of money at stake, as was still the case at the recent presidential elections in 2012.[15] This has inevitably led to speculation about some of the other withdrawals. GRECO therefore repeats its invitation to France to look into the first part of the recommendation.

42. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

43. *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.*

44. GRECO points out that this recommendation is currently considered to have been partly implemented as no tangible action has been taken on the first part of the recommendation. There have actually been consultations and a feasibility study on the second part of the recommendation (following on from the work done by the Mazeaud Committee in 2009) although this has not led to any change in the situation.

45. The French authorities point to the constitutional principle of the free organisation of political parties (Article 4 of the Constitution), their room for manoeuvre to consolidate their accounts and have them audited and the fact that the accounts of some local party branches may be excluded from the party's national accounts for pragmatic reasons to do with the management of local entities, which can be very small. The authorities agree nonetheless that some consideration of more thorough supervision of political parties' local branches could contribute to improved transparency in politics while not necessarily imposing forms of organisation or management (such as the financial supervision of local bodies by central or immediate bodies) on political parties, which should be free to organise themselves according to their own needs. The French authorities also reiterate that parliamentary groups are not legal persons and that they cannot be equated to parties, which have a legal personality and hence their own assets. Consequently, it is impossible for parliamentary groups to fund election campaigns or political parties. As to the traceability of any operating grants or allowances allocated to parliamentary groups, these are duly identified and disclosed in the annual financial reports of the houses of parliament, which are accessible on the Internet.

[15] Ten official candidates took part in the 2012 presidential election, while five or six relatively major candidates withdrew before the vote. One of the candidates, a party leader, indicated that she had spent several hundreds of thousands of euros on her campaign, and that her withdrawal eight months after declaring her candidacy, had been negotiated with one of the favourites. In exchange for her withdrawal, the favourite's party was to have paid a sum of €800,000 after the election (corresponding to the portion of her expenses which would probably have been reimbursed in the form of a state subsidy after the election). Controversy arose when it was claimed that only part of the sums which were meant to be returned to the former candidate's party were actually paid back.

46. GRECO takes note of the foregoing and the lack of any changes reported as regards the first part of the recommendation. The question of consolidating political parties' accounts has not therefore been resolved but GRECO does welcome the fact that France proposes that some consideration should be given to this issue. As to the funding of parliamentary groups, despite the French authorities' assurances, GRECO notes that major reforms have begun in this area following the controversies which arose between June and September 2014 about funds belonging to the parliamentary groups of both houses which were alleged to have been used to help one of the main parties or individual parliamentarians.[16] The courts are currently investigating the case and in response, the houses decided to introduce measures to improve the transparency and supervision of funding for groups. The French authorities confirm this in their latest comments of 26 November. Thus, the Senate decided on 9 July 2014 to establish the principle that the groups' funds may exclusively be used for their activities and to remunerate their collaborators. Likewise, the groups shall submit as from 2015 certified financial statements to the Speaker and the questers of the Senate (the documents shall be accessible for consultation to the groups' chairpersons) with the possibility for the Bureau to suspend State financial support where a group does not comply. The Assembly adopted similar measures on 23 July, which additional requirements such as a duty for political groups to register as associations and the publication of the financial statements on the Parliament's website. GRECO considers that these measures clearly go towards implementing the recommendation. It encourages France to now step up its efforts to implement this recommendation fully and to address also the issue of extended consolidation of party accounts, which actually remains the most important element of the present recommendation.

47. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

48. *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.*

49. GRECO points out that this recommendation is considered not to have been implemented to date owing to the lack of any relevant follow-up. In the previous interim report, the authorities stated that parliament was currently discussing a draft piece of legislation designed to regulate political funding in the context of referendums (by extending the existing rules on transparency and supervision of political funding to cover such sums, which should figure in political parties' accounts). GRECO welcomed this initiative but pointed out that it had nothing to do with recommendation iii.

50. The latest information provided by the French authorities in relation to the first part of the recommendation states that contributions by political parties or groups to candidates' election campaigns are entered in candidates' campaign accounts. This already enables the National Commission for Campaign Accounts and Political Funding (CNCCFP) to verify this support, making a statement by the party concerned redundant. Parties must also include the information in question in their own accounts (and hence their annual accounts) in accordance with the

[16] See, for example: http://blogs.lexpress.fr/cuisines-assemblee/2014/09/17/une-reforme-pour-les-groupes-a-lassemblee/; http://www.liberation.fr/politiques/2014/06/22/le-groupe-ump-a-prete-3-millions-d-euros-au-parti_1047484; http://www.liberation.fr/politiques/2014/07/23/le-statut-d-association-apportera-plus-de-transparence-aux-groupes-politiques_1068354

arrangements described in CNCCFP opinion No. 95-02. Consequently, political parties' accounts include items intended to record the party's activity in areas including publicity and communication, support for candidates and defrayal of election expenses. The ultimate recipients of these funds can be identified from the accounting and party documents which the CNCCFP may ask to be communicated to it during the supervisory period.

51. Furthermore, such funding is legal only if the party complies with the Law of 11 March 1988, amended. 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. Only local bodies which fall within the supervisory scope of such auditors may be authorised to finance election campaigns.

52. As to spending by political parties using the media to support a candidate, it should be pointed out firstly that such spending is recorded in the campaign accounts because it equates to election spending. Furthermore, it should be stressed that, to ensure equal treatment of candidates, the use of any commercial advertising in the press or the audio-visual media is prohibited for the six months preceding an election in accordance with Article L. 52-1 of the Electoral Code.

53. With regard to the second part of the recommendation, the authorities point out that campaign accounts are audited by accountants and filed with the CNCCFP for verification, then published in the French Official Gazette, thus ensuring that they are made fully public. Article L. 52-12 of the Electoral Code describes the function of accountants in this process, stating that campaign accounts must be presented by a member of the association of chartered accountants, who duly draws up the accounts and ensures that the required supporting documents are present.

54. GRECO takes note of the above information and regrets that no action has been taken on this recommendation. It points out that some elections are principally matters for the candidates themselves (presidential elections) and that even if the parties are involved in financing the candidates' campaigns and that, in principle, this must figure in their accounts and their annual public financial statements, it would be preferable for this information to be more clearly apparent. As stated in the Evaluation Report, neither the CNCCFP nor the general public have an overall view of the financial investment of political parties in election campaigns, and this quite naturally limits the scope of the provisions relating to transparency. It also limits the scope of any supervision, as it is not possible to cross-check candidates' and parties' campaign accounts. If it were possible to carry out such cross-checking over the same time interval, some of the risks inherent in the French system could be avoided, especially the risk of exceeding authorised spending when a party directly or indirectly covers major expenses. Evidence that this is a genuine risk has been provided by a large-scale affair reported by several media companies since February 2014 (but not by the CNCCFP).[17] GRECO therefore encourages the French authorities to continue their efforts to implement this recommendation.

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

Recommendation iv.

56. *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.*

[17] The so-called "Bygmalion" affair, named after a PR company and relating to the 2012 presidential election campaign and allegations of false invoicing for sums of several million euros http://fr.wikipedia.org/wiki/Affaire_Bygmalion

57. GRECO points out that to date, this recommendation has been categorised as partly implemented. From previous reports in the current compliance procedure, it emerged that action has been taken on the second part of the recommendation because, since the amendments to the Electoral Code in 2011, candidates have had to declare their agent when submitting their candidature (or otherwise render it invalid) and their role in the centralisation of income and expenditure has been enhanced. GRECO called for increased efforts with regard to the first part of the recommendation as political parties are covered by the regulation in Law No. 88-227 of 11 March 1988 on the financial transparency of politics and there is nothing to prevent campaign funds from being raised through means other than an agent or fundraising association. The Evaluation Report stated 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".*

58. The French authorities point out, with regard to the first part of the recommendation, that where political party agents are concerned, under the Law of 11 March 1988, amended, parties may not accept donations from individuals before they have appointed a financial agent, which may be either an individual or a fundraising association. Agents centralise all donations and subscriptions from individuals. All other incoming funds (members' subscriptions, donations from political parties or political groupings – which are the only legal persons entitled to make donations) do not have to go through the financial agent and may be collected directly by the party. However, this distinction between types of income has no effect on the transparency of party funding as all income is recorded in the party's accounts. As to controls on incoming funds, the CNCCFP concentrates on verifying donations processed by the financial agent while other incoming funds are audited by the auditors.

59. GRECO regrets that no further action has been taken on the first part of the recommendation in response to the concerns expressed in the Evaluation Report and reiterated two paragraphs above. The affairs referred to in the footnotes 15 and 16 also illustrate the problems posed by flows of funds not handled by the financial agents where parties play a substantial role in the financing of expenses or use other entities to do so. The information provided by France confirms moreover the fact that a considerable share of political parties' resources are not supervised in practice by the CNCCFP.

60. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

61. *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.*

62. GRECO points out that to date, this recommendation has been considered to have been partly implemented. In previous reports in the compliance procedure, it was concluded that the last part of the recommendation had been taken into account but not the first two. GRECO regretted the failure to look more actively for solutions to facilitate the consultation of campaign accounts, highlighting the fact that the publication of simplified accounts (following their auditing) took more than one year and no deadline was set for their 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 by the general public to adequate political financing information.

63. The French authorities mainly reiterate their previous position against taking account of the first part of the recommendation, emphasising in particular that the interim publication of campaign accounts could give an inaccurate picture of a candidate's campaign as such accounts would have been neither consolidated nor audited.

64. GRECO regrets the fact that there has been no further progress, even on simple measures such as setting a deadline for publication or making it easier in practice to consult campaign accounts elsewhere than at the main offices of the CNCCFP. These questions, in any event, have not been examined or discussed in France.

65. GRECO can only conclude that this recommendation remains 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. GRECO points out that this recommendation is, at present, partly implemented. During the debate on the 2013 Budget Act, the parliamentarians made an amendment to Article 11-4 of Law No. 88-227 to ensure that an individual could not make concurrent donations to a number of parties (or "offshoots" of the same party) exceeding an upper limit of €7,500. Following a constitutional appeal which resulted in the annulment of this provision because the Budget Act was not considered the appropriate text through which to make the change, the amendment finally found its way into statute in the form of Article 15 of the Law of 11 October 2013, amending Article 11-4 of Law No. 88-227. A single person cannot therefore donate more than €7,500 per year any longer, no matter how many parties benefit. Article 15 also provides that every year fundraising associations and agents must now present the CNCCFP with a list of individuals having made donations of at least €3,000. GRECO welcomed this advance, but regretted the continuing lack of progress on the second part of the recommendation, reportedly on grounds of respect for privacy.

68. The French authorities point out that donations by an individual to election candidates may not exceed €4,600 per donor per election. Details of donors and the amounts of donations are not made public. The campaign accounts filed with the CNCCFP record donations received by means of donation receipts issued by agents to donors. The French authorities reiterate their objection to any form of publication of the amount of donations or the identity of donors whether in respect of contributions to the funding of parties or of candidates. Public disclosure of this sort

would excessively undermine the principle of freedom of political opinion, one of the consequences of which is the principle of the secret ballot. The supervisory work of the CNCCFP is enough to ensure that the funding of parties and candidates complies with the rules, and public disclosure of the identity of donors would destabilise and personalise the electoral debate.

69. GRECO regrets the lack of action on the second part of the recommendation and France's reticence to any such measure. It points out that public disclosure of donations exceeding a certain amount is one of the requirements of the Recommendation of 2003 by the Committee of Ministers to the member states on common rules against corruption in the funding of political parties and electoral campaigns (Articles 12 and 13).

70. GRECO concludes that recommendation vii remains partly implemented.

Recommendation ix.

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

72. GRECO points out that to date this recommendation has been categorised as partly implemented. Following amendments by Law No. 2013-907 of 11 October 2013 on financial transparency in public life, the possibility for the CNCCFP to ask political parties to provide accounting documents and related supporting material has been incorporated into the law and GRECO considers that this should indeed give the CNCCFP more authority when making such requests, to which the response formerly depended solely on practice.

73. The French authorities repeat exactly the information that they already provided for the previous interim compliance report. No mention is made of any further changes or new projects.

74. GRECO takes note of the above and regrets that there have been no new developments in line with this recommendation. GRECO refers to the Evaluation Report (paragraph 123) and to the previous reports in the compliance procedure for a description of the improvements which could be made. GRECO points out that where political parties are concerned, the CNCCFP can do no more than verify compliance with the formal requirements and its practical supervisory powers are limited.[18] France must therefore continue to make efforts in these areas and, overall, the progress made since the Evaluation Report is still distinctly unsatisfactory.

75. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

76. *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.*

77. GRECO points out that this recommendation was considered to have been partly implemented. Legislative reforms were carried out in 2011 and these satisfied the requirements of the last part

[18] As the CNCCFP points out regularly itself in its annual reports, for example in the latest one available, for the year 2012-2013 (page 147) http://www.cnccfp.fr/index.php?art=699

of the recommendation. With regard to the first two parts, France began by improving access to information for the Commission for Financial Transparency in Politics (CTFVP) (access to tax declarations). However, these improvements were insufficient as the CTFVP still faced the following problems: no access to information about the financial situation of close relatives or about the functions and mandates of the persons concerned, no requirement for an income declaration, and a lack of human resources. Following a much publicised case involving a minister, it was decided to replace the CTFVP by the High Authority for Transparency in Public Life (HATVP), under two laws of 13 October 2013. The HATVP was also granted supervisory powers further up the chain as declarations were made, and not just with regard to any variations in assets. It was given increased means of communicating with the tax authorities (making it possible in particular to make use of international legal assistance in this area) and a power of injunction (failing to comply with its injunctions or to provide it with the information and material it needs to carry out its duties within a month is punishable by one year's imprisonment and a fine of €15,000). The new laws also introduced a new mechanism for the management of conflicts of interest for elected officials and certain senior officials and a new system for them to declare their assets. This takes into account the various types of movable or immovable property and debts and liabilities, including those of spouses and similarly related persons (the Constitutional Court considered that including the situation of ascendants or descendants was disproportionate). Lastly, a system of penalties was maintained – like that introduced in 2011 – to guarantee the accuracy of the information declared and hence the value of the declaratory system: failing to declare a substantial part of one's assets or supplying or providing a false estimate of them is punishable by up to three years' imprisonment and a €45,000 fine. As to the second part of the recommendation, GRECO noted that there was clear progress, in particular the fact that declaring officials would be required in future to disclose all their activities and mandates (this information would be public), and, to a certain extent, the financial situation of related persons (spouses and similar persons), as stated above. In conclusion, GRECO found that the second part of the recommendation had also been acted upon.

78. GRECO said that it would need to consider the situation again once the HATVP was operational in 2014, particularly with regard to the issues of human resources and the precise extent of the new institution's supervision and own powers, including its means of investigation and verification, as it seemed that the HATVP, like the CNCCFP before it, would not have its own means of investigation.

79. In their additional information, the French authorities give a list of the various regulatory texts adopted for the implementation of the laws of October 2013, particularly five decrees issued between late 2013 and March 2014.[19] They also refer to the procedure to audit the tax situation of newly appointed ministers, which has been in effect since the above-mentioned decree of March

[19] - Decree of 19 December 2013 appointing the President of the High Authority for Transparency in Public Life - Mr Jean-Louis NADAL, former Principal State Prosecutor at the Court of Cassation
- Decree No. 2013-1204 of 23 December 2013 on the organisation and functioning of the High Authority for Transparency in Public Life
- Decree of 16 January 2014 on preventing conflicts of interest in the performance of ministerial functions
- Decree No. 2014-90 of 31 January 2014 on the application of Article 2 of Law No. 2013-907 of 11 October 2013 on transparency of public life
- Decree No. 2014-386 of 29 March 2014 on the procedure for the verification of the tax situation of Government members provided for by Article 9 of Law No. 2013-907 of 11 October 2013 on transparency of public life
- Decree No. 2013-1212 of 23 December 2013 on declarations of assets and of interests to the High Authority for Transparency in Public Life
- Order of 28 May 2014 establishing the arrangements for the consultation by voters of parts of the declarations of assets of members of parliament described in Article LO 135-2 of the Electoral Code
- A circular to prefects setting out the practical arrangements for the consultation of these declarations at prefectures.

2014, for which the HATVP applies to the director general of public finances. The French authorities also refer to the fact that the HATVP is also responsible for checking parliamentarians' declarations of assets, which can subsequently be consulted by any member of the public at their local prefecture.

80. GRECO takes note of the information above by the French authorities and regrets that it does not contain any details as to the resources and powers of the HATVP. From public sources, it notes that the HATVP has begun operations in recent months.[20] This is also the case with the system for the declaration and online publication of information on interests and income, as parliamentarians' declarations of assets can be consulted at their local prefectures by any members of the public concerned, as the French authorities point out. GRECO notes that the HATVP has nine members, its own budget and a Secretariat with a staff of about 20. Information currently available from public sources confirms that the HATVP does not have its own powers of investigation and verification and that it relies largely in this respect on information from the tax authorities. It has the authority to ask members of parliament and the government to present it with their tax declarations. If they fail to do so within two months, the High Authority can still consult these documents by approaching the tax authorities and, by the same means, indirectly obtain any information from sources to which the tax authorities would ordinarily have access (financial institutions, companies, notaries and other repositories of documents), including international sources. The HATVP may act of its own accord or at the request of the speaker of either house where it comes to declarations of conflicts of interest. Whereas it may directly instruct a minister to bring a halt to a situation of conflict, it must report cases of this sort involving members of parliament to the speaker of the house concerned. Public disclosure of information about income also enables anyone who has doubts about the authenticity thereof to express these misgivings (the data on assets that can be consulted at prefectures may also be disputed by the public in the constituencies concerned). The French authorities, in their last comments, point out that the HATVP may also at present seek explanations from any third person (and not just from the subject person). It would seem therefore that although it has very few of its own powers, the HATVP is considerably better equipped to perform its tasks than the Commission for Financial Transparency in Politics which the evaluators encountered in 2008. GRECO notes that the new system has already resulted in cases (reported in the media) of elected representatives who are alleged to have failed to make a tax declaration or whose statements of activities and income seem to be incomplete.[21] GRECO invites France promptly to remedy certain shortcomings, for example the fact that declarations are filled in by hand, sometimes somewhat negligently. On the whole, it is clear therefore that substantial improvements have been made along the lines desired by this recommendation and that the new system is now operational.

81. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

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

[20] http://www.hatvp.fr/

[21] http://www.lemonde.fr/societe/article/2014/06/27/jean-marie-le-guen-a-sous-evalue-son-patrimoine_4446645_3224.html; http://www.lemonde.fr/politique/article/2014/09/11/thomas-et-sandra-thevenoud-la-chute-de-deux-ambitieux_4485890_823448.html; http://www.latribune.fr/actualites/economie/france/20140401trib000822989/patrimoine-benguigui-desavouee-par-la-haute-autorite-de-la-transparence.html

83. GRECO points out that this recommendation was categorised as having been partly implemented in the Second Conformity Report of March 2013. The Law of 14 April 2011 simplifying the provisions of the Electoral Code and relating to financial transparency in politics resulted in some improvements but GRECO regretted the failure to take more account of the shortcomings noted by GRECO in the Evaluation Report such as the fact that there was no room for flexibility where it came to the loss of public funding for political parties and shortcomings with regard to the publication of decisions.

84. The French authorities give exactly the same information as that assessed already in March 2013. They say nothing about any new developments or proposals.

85. GRECO regrets the lack of any new developments or even any plans and concludes that recommendation xi remains partly implemented.

III. CONCLUSIONS

86. **In view of the conclusions contained in the Third Round Compliance Reports on France and of the analysis set out above, GRECO concludes that France has so far implemented satisfactorily, or dealt with in a satisfactory manner, only five of the seventeen recommendations contained in the Third Round Evaluation Report.** As for the remaining recommendations, ten of these have been partly implemented and two have not been implemented.

87. With regard to Theme I – Incriminations, the situation has barely changed: recommendations ii and iv have been implemented satisfactorily, recommendations i and vi remain partly implemented just as it now the case with recommendation v, and recommendation iii remains not implemented. As to Theme II – Transparency of political party funding, recommendation x can now be added to recommendations vi and viii as having been satisfactorily implemented. Recommendations i, ii, iv, v, vii, ix and xi remain partly implemented. Recommendation iii has still not been implemented.

88. Concerning incriminations, GRECO notes a partial progress on the statute of limitation following an important jurisprudential decision of November 2014. But overall, GRECO again regrets the fact that no significant progress has been made. France has not taken any decisive measures to follow up on GRECO's recommendations and its position often consists of reiterating earlier comments. Nor does it announce any relevant plans, whether for legislation or any other measure.

89. With regard to the transparency of political funding, GRECO notes with satisfaction that the High Authority for Transparency in Public Life was set up during the first half of 2014 and the new system for the declaration of activities, income and assets is already giving rise to certain "clarifications" in individual cases of elected representatives. This is the only tangible step forward in respect of which it can be noted that there has been any progress in the implementation of one of the recommendations (recommendation x). Otherwise, GRECO regrets to say that no other substantial measure or reform has been taken / initiated to satisfy the requirements of the recommendations still pending. GRECO notes that the initial information provided often does not contain anything new and that occasional relevant advances are commented by the French authorities only once they are signalled by GRECO itself, in particular the measures taken over the summer of 2014 to increase the transparency and financial responsibility of political groups in the parliament, which did meet some of the Evaluation Report's expectations.

90. For the time being, in view of the overall result nearly six years after the adoption of the Evaluation Report and the lack of any prospect of progress in the near future, GRECO concludes that the current level of implementation of the recommendations remains "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure.

91. In accordance with paragraph 2(i) of Rule 32 of its Rules of Procedure, GRECO asks the head of the French delegation to provide a report on the measures taken to implement the recommendations still pending, namely recommendations i, iii, v and vi for Theme I and recommendations i, ii, iii, iv, v, vii, ix and xi for Theme II by 30 September 2015 at the latest.

92. GRECO further decides that, pursuant to Rule 32, paragraph 2 (ii) b) of its Rules of Procedure, it will request the President of the Statutory Committee to send a letter to the Permanent Representative of France to the Council of Europe, drawing his/her attention to the non-compliance with the relevant recommendations and the need to take firm action so that tangible progress can be made as expeditiously as possible.

93. GRECO invites the French authorities to authorise publication of this report as soon as possible.