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## **Third Evaluation Round**

### **Third *Interim* Compliance Report on France**

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

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#### **“Transparency of party funding”**

Adopted by GRECO  
at its 70<sup>th</sup> Plenary Meeting  
(Strasbourg, 30 November – 4 December 2015)

## **I. INTRODUCTION**

1. The Third Round Evaluation Report on France was adopted at GRECO's 41<sup>st</sup> Plenary Meeting (19 February 2009) and was made public on 12 March 2009, following authorisation from France (Greco Eval III Rep (2008) 5E, [Theme I](#) and [Theme II](#)).
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 50<sup>th</sup> 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 had 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 had invited the head of the French delegation to submit further information on the implementation of the outstanding recommendations.
4. In the [Second Compliance Report](#) adopted at its 59<sup>th</sup> Plenary Meeting (22 March 2013), GRECO had 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 62<sup>nd</sup> Plenary Meeting (6 December 2013), GRECO had 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 submit 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.
6. In the [Second Interim Compliance Report](#), adopted at its 66<sup>th</sup> Plenary Meeting (12 December 2014), it was noted that France had partially implemented an additional recommendation in

respect of Theme 1 – recommendation v regarding the limitation period, following case-law developments. It had also fully implemented a further recommendation in respect of Theme II concerning enhancing the supervision of the declaration of the assets and interests of elected representatives and senior civil servants (Recommendation x). France had at that stage implemented satisfactorily, or dealt with in a satisfactory manner, only five of the seventeen recommendations, nine 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 submit 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 2015 at the latest. This information was submitted on 9 October last. In accordance with Rule 32, paragraph 2, sub-paragraph ii. b), GRECO had decided to ask the President of the Statutory Committee to send a letter to the Permanent Representative of France to the Council of Europe.

7. This Third 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 second interim report and gives an overall evaluation of the level of compliance with the recommendations.

## II. ANALYSIS

### Theme I: Incriminations

8. In its Evaluation Report, GRECO had addressed 6 recommendations to France in respect of Theme I. To date, recommendations ii and iv have been implemented or dealt with in a satisfactory manner, recommendations i, v and vi have been partly implemented and recommendation iii has not been implemented. Compliance with these pending recommendations is discussed below.

#### **Recommendation i.**

9. *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".*
10. GRECO notes that it has so far agreed to consider this recommendation as partly implemented. With regard to the first part of the recommendation, the previous reports showed that the amendments 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 not a response to the recommendation under consideration here, but merely to a separate observation also included in the Evaluation Report. Furthermore, the case-law and the specialist literature still made 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.” GRECO held that the

training courses carried out in 2013 -2014, mentioned by France, either appeared not to have covered the specific problem of the corruption pact (instead of its prior occurring to any passing of bribes) or no information was provided on their content which would demonstrate that these courses were consistent with this recommendation. GRECO has pointed out on several occasions that offences of active and passive bribery are separate and distinct offences: apart from cases of unilateral solicitation (or where the aim is to prosecute the parties to an agreement that has not yet been carried out), the criminal intent of the bribe giver does not necessarily entail the criminal intent of the bribe taker and vice versa whereas French practice would appear to continue all too often to make the exchange of undertakings (the “pact”) an essential precondition for a conviction. As regards the second part of the recommendation, France has not yet taken any measures in line with what was expected and this part has not been implemented. Generally speaking, France has provided only inconclusive information or explanations. GRECO has hitherto observed that in the light of the still widespread use of the “pact” concept in judicial practice, it is difficult to include the concept of “receiving” in the offences of passive bribery, which relate exclusively to the fact of “soliciting” and “agreeing to” an offer, promise or gift.

11. The French authorities now refer to a decision of the Court of Cassation delivered in its judgment of 6 June 2011 in which it clearly stated – in pursuance of another decision it rendered in plenary in the same case on 23 July 2010 (case n.10-85.505, Bull.n°2) – the principle that active and passive bribery were separate offences (extracts have been provided). They indicate that by way of consolidation of this clarification, the Court, in its judgment of 24 April 2013 (appeal on points of law No. 12-81.955) annulled a decision of the appeal court which, in acquitting the defendants of a charge of active and passive bribery, had based its ruling on the fact that there was no evidence of a corruption pact, while noting other findings against the defendants but without drawing the legal conclusions for a conviction.<sup>1</sup> The French authorities explain that this second judgment confirms that the Court of Cassation has once and for all abandoned all reference to the concept of corruption pact for the purposes of finding that there have been acts of bribery. Furthermore, the Court now criticises such references, demonstrating its firm determination to draw all the relevant conclusions of the clear-cut distinction between active and passive bribery. This case-law applies by analogy to active and passive trading in influence since these two forms of the offence are structured similarly to the bribery offences in the same legal text. The French authorities also state that these case-law developments were broadly circulated among investigators and judges in the course of information and awareness-raising initiatives: for example, the discussion day between the judicial and financial prosecution services in Rennes in February 2014; three training sessions for investigators of the General Inspectorate of the National Police in March and June 2014; the colloquy on corruption at the Aix-en-Provence Law Faculty in September 2014; the training session at the Gendarmerie Academy in November 2014; the first meeting of the “probity officers” (a new mechanism put in place recently)<sup>2</sup> organised by the Director of Criminal Affairs

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<sup>1</sup> “In acquitting the defendants of the charges of active and passive bribery, the judgement stated that while “the circumstances of the case do not reveal a corruption pact in respect of the transactions in question, it must be observed that this type of ongoing relationship involving material benefits between a person in an official public decision-making position and his principal is indicative of regrettable laxity on the part of Mr Y... and is such as to arouse suspicion of dishonesty in situations in which, as noted above, public accounting rules have not been meticulously observed”. However, in ruling in this way, with contradictory arguments and failing to draw the legal conclusions from its own findings, the Court of Appeal has not adequately justified its decision.

<sup>2</sup> The institution of these « probity officers », introduced in March 2015, pursues the work done with the creation in 2013 of the High Authority for transparency in public life, and of the National Prosecution service for financial matters. These are magistrates specially appointed at the level of each court to be responsible for integrity-related matters in the public sector, which allows to centralise at local level all pertinent information but also to facilitate exchanges between partner institutions. This first meeting of « probity officers » gave an opportunity not just to take stock of the various missions attributed to the different actors involved in integrity issues and their necessary interaction (Court of Accounts, High Authority, Central Corruption Prevention Department (SCPC), National Prosecution service for financial matters, specialised inter-regional

and Pardons at the Paris Court of Appeal in June 2015. At the meeting, the new developments concerning the Court of Cassation were presented and discussed, in particular in relation to the need to abandon any reference to the concept of corruption pact. The authorities point out in their latest information that the presentations given by the Central Corruption Prevention Department (SCPC) in its training sessions convey the message, illustrated with the Court of Cassation's case-law, that active and passive bribery are two complementary yet distinct crimes, that prosecution and adjudication of one of these crimes is independent from the prosecution and adjudication of the other. The presentations also convey the message that it is not necessary to substantiate the existence of a corruption pact involving a meeting of criminal minds of the bribe-giver and of the bribe-taker. Lastly, the French authorities supply statistics to show the differences in the number of convictions between "active" and "passive" forms of bribery and trading in influence, and therefore illustrating the distinct nature of these offences in practice.<sup>3</sup>

12. Concerning the second part of the recommendation, the French authorities state that the latest case-law developments referred to above have had an impact on the substantive scope of bribery offences. They state that in accordance with the most recent specialist legal writing, criminalisation of "unlawfully agreeing to gifts, presents or any other advantages" undoubtedly covers the fact of "receiving an undue advantage" within the meaning of the Criminal Law Convention on Corruption. The fact of receiving, in the same way as keeping for a certain time what has been received (as GRECO previously stated) is a form of agreeing.<sup>4</sup> The situation referred to by GRECO, involving the receiving and keeping for a certain time a bribe clearly falls within the scope of the texts criminalising passive bribery. The French authorities also refer to other, less relevant matters.<sup>5</sup>
13. GRECO takes note of the updated information and explanations provided above. It is pleased to hear that the recent developments in the case-law of the highest criminal court, in judgments delivered in July 2010, June 2011 and above all in April 2013, have progressively lead to a significant clarification of case-law which is meant to be taken into account by national courts for the treatment of offences of active and passive bribery and by analogy, active and passive trading in influence. It appreciates the assurances given by France that the Court of Cassation has abandoned and condemned all reference to the concept of corruption pact for the purposes of finding that there have been acts of bribery. This development is in line with what is expected by GRECO. Various recent training events are reported and the messages they conveyed are in line with the present recommendation. GRECO notes with interest that in March 2015 a network of practitioners dealing with the subject of probity was established to support in future a concerted

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judicial bodies for economic and financial matters, regular courts) but also to recall the new tools put in place in 2013 to better detect and sanction probity-related infringements, as well as the input from the Court of Cassation in those areas. These « probity officers » are meant to meet periodically, under the lead of the Ministry of justice, in order to intensify the relations and to exchange best practices.

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|                              | 2009 | 2010 | 2011 | 2012 | 2013 |
|------------------------------|------|------|------|------|------|
| Active bribery               | 73   | 60   | 96   | 77   | 79   |
| Passive bribery              | 51   | 58   | 60   | 64   | 66   |
| Active trading in influence  | 9    | 7    | 10   | 6    | 12   |
| Passive trading in influence | 18   | 8    | 12   | 12   | 15   |

<sup>4</sup> See Vitu A. and Stasiak F., Jcl pénal des affaires, fasc.40, March 2014, paragraph 22, and Segonds M., Jcl pénal des affaires, fasc.30, April 2015, paragraph 35

<sup>5</sup> The fact that the European Union's Framework Decision No. 2003-258 on combating corruption in the private sector also uses the concept of "receiving" has resulted in no infringement procedure against France for problems relating to the concept of "agreeing" (agréer) with EU law. Moreover, in its report on corruption of 3 February 2014, the European Commission indicated that France had adequately implemented the Framework Decision.

approach in this area. GRECO appreciates the fact that in this context, the Ministry of justice organised in June 2015 a meeting attended by numerous judges and prosecutors of the country's judicial instances<sup>6</sup> and that on this occasion the implications of this case-law development on the corruption pact was shared at high level. GRECO encourages the country to actively pursue its efforts to inform and improve the awareness of the other judicial authorities throughout the country to avoid in future the use of the concept of a "corrupt pact" and to limit the risk that decisions may continue to be delivered on the basis of whether or not there is a corruption pact.<sup>7</sup> However, overall GRECO concludes that the changes that have taken place in France achieve the desired result.

14. With regard to the second part of the recommendation, GRECO underlines that thus far, the French department specialising in corruption matters – the Central Corruption Prevention Department (SCPC) – has constantly referred to and defined the passive element of bribery as the act of "soliciting" or "accepting" (an undue advantage, promise, etc.), including quite recently.<sup>8</sup> The act of "receiving", as an element in its own right, does not appear in these references and explanations. It is reasonable to assume that if, in line with the case-law of the Court of Cassation, the courts gradually abandon the reference to the corruption pact – save, of course, exceptional cases in practice where the prosecution focuses on an "agreement" that has not yet begun to be implemented – the concept of "agreeing" must be understood to have a much broader meaning. GRECO appreciates, in any case, the above assurances given by France that "the fact of receiving, in the same way as keeping for a certain time what has been received is a form of agreeing", in accordance with the explanatory report of the Criminal Law Convention on Corruption. GRECO therefore welcomes this progress which clearly goes towards meeting the expectations of the second part of the recommendation and hopes that France will do what is necessary to inform as many as possible of the practitioners likely to be concerned, through meetings involving the probity officers or otherwise. The underlying concerns of all of this recommendation have therefore now been fully taken into consideration.

15. GRECO therefore concludes that recommendation i has been dealt with in a satisfactory manner.

### **Recommendation iii.**

16. *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).*
17. GRECO notes that, to date, this recommendation has not been implemented. As indicated in the previous report, "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

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<sup>6</sup> See, for example, <http://www.hatvp.fr/reunion-dacg/>

<sup>7</sup> In a verdict of 28 May 2015, the penal chamber of the Bordeaux court of first instance pronounced the acquittal in a case of trading in influence on grounds of a missing corruption pact, in a reasoning which presents similarities with the one which was used in the judgment annulled in April 2013 (the judges from the courts whose judgement is annulled had found anomalies, improper behaviour and coincidences in the acts of the accused, but ordered the acquittal as there had been no demonstration of a corruption pact): [http://www.lesechos.fr/28/05/2015/lesechos.fr/02195695408\\_affaire-bettencourt---woerth-relaxe--banier-et-de-maistre-condamnes.htm](http://www.lesechos.fr/28/05/2015/lesechos.fr/02195695408_affaire-bettencourt---woerth-relaxe--banier-et-de-maistre-condamnes.htm)

<sup>8</sup> In the SCPC's annual reports and fact sheets published online on the Ministry of Justice website: the 2004 report on corruption in the public sector, which refers to "soliciting or accepting" (gifts, promises, etc.) and the 2005 report on corruption in the private sector which refers to "solicitation" and the fact of "agreeing to a solicitation". More recently in the report published in June 2015 for the year 2014 (page 111): "passive corruption, a situation in which a public or private person **solicits** or **accepts** gifts, promises" ([http://www.justice.gouv.fr/art\\_pix/rapport\\_scpc\\_2014.pdf](http://www.justice.gouv.fr/art_pix/rapport_scpc_2014.pdf))

advanced in the Evaluation Report and a number of considerations relating to the dual criminality requirement<sup>9</sup> (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<sup>10</sup> and an impact study<sup>11</sup> 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.”

18. The authorities continue to state that this recommendation requires in-depth discussions, which are currently being conducted actively between various ministries, and that GRECO will be informed as soon as possible of the follow-up action taken.
19. GRECO takes note of the lack of any relevant new developments and concludes that recommendation iii has still not been implemented.

#### **Recommendation v.**

20. *GRECO recommended to extend the limitation period for bribery and trading in influence offences, as planned.*
21. GRECO reiterates that this recommendation was deemed to have been partially implemented. A previous bill had come to nought, but the authorities felt, nonetheless, that the judicial precedents introduced greater flexibility into the method of calculating the three-year limitation period for offences of bribery and trading in influence, particularly 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 (the most recent was a November 2014 judgment by the Court of Cassation in a criminal case of infanticide)<sup>12</sup>. GRECO has commented in detail on the situation in France and has welcomed the steady progress made in the case-law, but has emphasised that this case-law solution was not sufficient to fully implement the recommendation with all the legal security required in cases of bribery and trading in influence, for example by incorporating this development in legislation.

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> Link to the Legifrance information page:

[http://www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=1DEA4746C7BA96E68A9984FE350CD418.tpdjo05v\\_3?idDocument=JORFDOLE000027354779&type=general](http://www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=1DEA4746C7BA96E68A9984FE350CD418.tpdjo05v_3?idDocument=JORFDOLE000027354779&type=general)

<sup>12</sup> [https://www.courdecassation.fr/jurisprudence\\_2/assemblee\\_pleniere\\_22/613\\_14\\_30461.html](https://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/613_14_30461.html)



22. The French authorities now state that a parliamentary committee tasked with reviewing and putting forward proposals regarding the limitation period in the criminal-law field, submitted a public report on 20 May last.<sup>13</sup> Its proposals Nos. 5, 10 and 11 seek to raise the limitation period to 6 years for criminal offences (and therefore for the various corruption and trading in influence offences<sup>14</sup>), and to establish in legislation the case-law principles of: a) deferral of the starting point of the limitation period to the date of discovery of the offences and b) suspending the calculation of the limitation period in the event of insurmountable obstacles to bringing charges. These three proposals were included in a bill tabled by the authors (members of the National Assembly) of the above report, on 1 July 2015.<sup>15</sup>
23. GRECO notes with considerable interest the above legislative proposals, tabled before parliament on 1 July 2015. These clearly are in line with the expectations of this recommendation. GRECO hopes that these will come to fruition.
24. GRECO concludes that recommendation v remains partly implemented.

#### **Recommendation vi.**

25. *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).*
26. GRECO reiterates that this recommendation was deemed to have been partially implemented insofar as the removal of the reservation to Article 17 of the Convention (third part of the recommendation) was discussed at political level, even though France ultimately decided to maintain the current situation. GRECO found this a matter of regret, particularly as the argument put forward by France – namely that most countries had ratified the UN Convention on Corruption (and therefore also criminalised the relevant acts) – could also imply that there was no longer any justification for maintaining the French reservation. With regard to the first part of the recommendation, a number of amendments had been introduced in December 2013, in order to expand 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 were concerns specific to the work of the OECD, while the recommendation under consideration here is aimed at relaxing the more general excessive restrictions laid down by Article 113-8 of the Criminal Code. Concerning the second part of the recommendation, France has still not taken any measure.
27. In their latest information, the French authorities state that discussions are continuing with the involvement of several ministries on the above two outstanding aspects, and that GRECO will be informed as soon as possible of the follow-up action taken.
28. GRECO takes note of the lack of any concrete progress at this stage in the implementation of this recommendation, even though discussions are continuing. This recommendation concerns measures which would help enhance France's ability to prosecute transnational corruption-

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<sup>13</sup> [www.assemblee-nationale.fr/14/rap-info/i2778.asp#P1161\\_279746](http://www.assemblee-nationale.fr/14/rap-info/i2778.asp#P1161_279746)

<sup>14</sup> Except the offence of bribery of a judge or prosecutor in connection with criminal proceedings, which falls into the category of crimes (felonies) for which the statute is already 10 years.

<sup>15</sup> [www.assemblee-nationale.fr/14/propositions/pion2931.asp](http://www.assemblee-nationale.fr/14/propositions/pion2931.asp)



related offences. GRECO reiterates that France is one of the major exporting countries and that despite this, efforts to penalise transnational corruption have so far produced minimal results. This is an anomaly often highlighted at national and international level, including by GRECO in the Third Round Evaluation Report.

29. GRECO concludes that recommendation vi remains partly implemented.

## **Theme II: Transparency of political party funding**

30. 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, viii and x had been implemented satisfactorily. Recommendations i, ii, iv, v, vii, ix and xi had been partly implemented and recommendation iii had still not been implemented. Compliance with these outstanding recommendations is discussed below.

### **Recommendation i.**

31. *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.*
32. GRECO points out that this recommendation has been categorised as partly implemented. To date, no measures have been taken on the first point, whereas, in the case of the second, following Law No. 2011-412 of 14 April 2011, candidates for elections to the Senate are now covered more fully by the rules on funding for election campaigns.
33. The French authorities indicate that there were no new developments in the implementation of this recommendation.
34. GRECO regrets the lack of progress and can only conclude that recommendation i remains partly implemented.

### **Recommendation ii.**

35. *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.*
36. GRECO points out that this recommendation is currently regarded as partly implemented. To date, France has not reported any progress on the first part of the recommendation, but GRECO noted that the French parliament had taken measures over the summer of 2014 to increase the transparency and financial responsibility of parliamentary political groups, following several controversial cases which attracted considerable media attention. It therefore remains to redefine the scope of the consolidated accounts of parties and political groups. The second part of the recommendation has been taken into account, given that there have actually been consultations and a feasibility study on this subject (following on from the work of the Mazeaud Committee in 2009), although this has not led to any changes in the situation.

37. In the latest information submitted, the French authorities state that the discussions are continuing and that, in its report for 2014, the National Commission for Campaign Accounts and Political Funding made proposals in line with GRECO's expectations, particularly concerning the inclusion of territorial sections in the accounts of political parties.
38. GRECO takes note of the foregoing and of the lack of any tangible new developments. It notes with interest, however, that its proposals are echoed in the latest report of the body responsible for supervising political funding in France.
39. GRECO concludes that recommendation ii remains partly implemented.

**Recommendation iii.**

40. *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.*
41. GRECO points out that, to date, this recommendation has been considered as not implemented in view of the lack of any relevant developments. For details of its analysis, it refers to the previous report.
42. GRECO notes the lack of progress since the previous report and can only conclude that recommendation iii is still not implemented.

**Recommendation iv.**

43. *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.*
44. 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 had 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. The first part of the recommendation has not been implemented to date. The information submitted by France up to now confirms, moreover, that a considerable proportion of political parties' resources is not supervised in practice by the CNCCFP, owing to inadequate centralisation of financial flows.
45. The French authorities state that, to date, there have been no particular developments regarding the first part of the recommendation.
46. 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. Furthermore, recent cases cited in the previous report bear witness to the problems caused by flows outside the agents' control where political parties directly play a major role in the funding of expenditure or use intermediate structures for that purpose.
47. GRECO concludes that recommendation iv remains partly implemented.

## Recommendation v.

48. 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.
49. GRECO points out that, to date, this recommendation has been considered 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 accounts are published following their auditing and this takes more than one year, with no deadline being laid down for this 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 continues to limit, in practice, access by the general public to adequate political financing information. In any event, this type of question had clearly not been given proper consideration before in France.
50. The French authorities report that in-depth consideration has been given to this recommendation, both as regards the opportunity of measures and their feasibility, but that this could not lead to the solution recommended by GRECO. They reiterate that the publication of interim campaign accounts (before the CNCCFP has completed its audit of accounts and any possible appeal decision was rendered against a conclusion of the CNCCFP) involves risks that a false picture is given of the campaign conducted by a candidate since such accounts still need to be finalised and certified. In this connection, they quote excerpts from a recent decision of the *Conseil d'Etat* dated 27 March 2015 (case no. 382083)<sup>16</sup>. In their latest comments, the authorities explain that this decision also concerns implicitly any communication of the content itself of campaign accounts (income and expenditure) and it confirms that as long as the supervision process has not been completed, such information cannot be published.
51. GRECO takes note of the foregoing and of the lack of any new concrete developments along the lines of the first two elements of this recommendation, including the subjects and actors who have been involved in discussions on the active search for solutions in the direction suggested. As GRECO has already pointed out, it cannot be content with the argument that no information whatsoever can be published before the end of the control phase including any possible appeals, and that the above decision of the *Conseil d'Etat* would indirectly prevent any progress. First, this

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<sup>16</sup> The full text is available at the following address: <http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2015-03-27/382083>. This was a decision given on an appeal brought by a media organisation against the refusal by the supervisory authority for political funding to disclose supporting documents relating to campaign accounts: "Whereas all documents which support entries in the campaign account of a candidate in the presidential election and allow the CNCCFP to check that the account is in order are produced or received by that administrative authority under its mission to audit campaign accounts, which was assigned to it by Parliament to guarantee equality between candidates; whereas such documents have no judicial status; whereas, therefore, they are administrative documents which, in the absence of any special legislative provision, can only be governed by the Law of 17 July 1978; whereas it follows from what was said in section 6 of this decision that these documents are excluded from the right to disclosure until the expiry of the time-limit for appealing against a decision of the CNCCFP rejecting, approving or rectifying the campaign account of a candidate in the presidential election or, if applicable, the delivery of the decision by the Constitutional Council on the appeal against such a decision; whereas the situation is different after that date, when it lies solely with the CNCCFP, on receipt of a request for disclosure of such documents, to determine whether the provisions applying to them allow the request to be granted."

decision appears to concern a different issue from the one addressed in this recommendation, which is aimed essentially at improving the communication of information on campaign funding and expenditure, and not the publication of detailed financial records including all supporting documents and accounting material. GRECO recalls that transparency can be achieved by means of simplified and synthetic documents to be submitted by the reporting persons, ideally in electronic format in order to save time. Secondly, the National Commission for Campaign Accounts and Political Funding already publishes in the official journal available on-line, before the completion of the control phase and within a period of approximately three months following the elections, a synthetic overview of campaign accounts concerning the presidential election. This principle dates back to 2006, it has not been questioned up to now and it could inspire the discussions on further new improvements which are thus envisageable: extension to other elections of the publication of basic information in a simplified format, publication within adequate timeframes – possibly during the campaign – by using the current advanced means of communication. Finally, GRECO recalls that political parties also do participate in practice to the financing of their candidate(s) and that this contribution normally appears in their own financial statements. But this information is only available after the submission of those statements, at the earliest within the year following a year of elections, and at the premises of the National Commission. In this context, and with a view to increasing the transparency of campaign funding, it is important that France pursues consideration of the solutions contained in the first two elements of the recommendation. GRECO can only maintain, for the time being, its previous conclusion.

52. GRECO concludes that this recommendation remains partly implemented.

**Recommendation vii.**

53. *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.*
54. GRECO points out that this recommendation is, at present, partly implemented. As mentioned in its previous report in December 2014, “[d]uring 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.”
55. Regarding the outstanding second part of the recommendation, the French authorities indicate that in-depth consideration was given to these matters as recommended, that inter-ministerial – technical and political – consultations were conducted on the opportunity and possibility of introducing the disclosure of donors above a certain threshold, but that the political decision was finally taken to not legislate in that area. The main reason is that there are constitutional obstacles stemming both from the principle of secret voting (publishing the identity of donors

would amount to obliging them, as voters, to disclose their voting intentions) and from the right to privacy. In this regard, in a decision given on 9 October 2013<sup>17</sup>, the Constitutional Council addressed the issue of compatibility of the publication of declarations of interests and activities of persons subject to this requirement, with the constitutional principles on privacy. To sum up, the Council expressed reservations – on grounds taking into account the proportionality principle – with regard to the communication of information about non-elected persons holding administrative office (as opposed to elected or ministerial office). The authorities are of the opinion that this case law is such as to prevent the measures contained in the recommendation from being implemented. They consider that the situation of donors, even beyond a certain donation threshold, is far from being as specific as that of parliamentarians or candidates in a presidential election. The principle of proportionality militates against public disclosure of the identity of donors, which is already brought to the knowledge of the National Commission for Campaign Accounts and Political Funding (CNCCFP) as the supervisory body

56. GRECO takes note of the above. It appreciates the assurances given by France that the opportunity of introducing the disclosure of donors and donations above a certain amount was examined in-depth at a high level. GRECO points out that this is one of the requirements of Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns (Articles 12 and 13). It also points out that the vast majority of the other GRECO member countries have managed to introduce the principle of disclosure of the identity of donors above a certain threshold. Even if it regrets the absence of a positive outcome of these discussions and decisions, it considers that France has now fully addressed the present recommendation.

57. GRECO concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation ix.**

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

59. GRECO points out that, to date, this recommendation has been categorised as partly implemented. Following amendments introduced by Law No. 2013-907 of 11 October 2013 on financial transparency in public life, the CNCCFP is explicitly empowered to ask political parties to disclose supporting documents and accounting information. But there have been no new developments remedying the other shortcomings pointed out in the Evaluation Report (paragraph 123); as already stressed and reiterated by GRECO, where political parties are concerned, the CNCCFP can do no more than verify compliance with the formal and accounting requirements and its practical supervisory powers are still limited.<sup>18</sup>

60. The French authorities state that there have been no new developments regarding this recommendation.

61. GRECO regrets the lack of any developments in this crucial area of the basic legal requirements for supervision.

62. It concludes that recommendation ix remains partly implemented.

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<sup>17</sup> <http://www.conseil-constitutionnel.fr/decision/2013/2013-675-dc/decision-n-2013-675-dc-du-09-octobre-2013.138242.html>

<sup>18</sup> As the CNCCFP itself points out regularly in its annual reports, for example in the report for 2012-2013 (page 81) <http://www.cnccfp.fr/index.php?art=699>.

### **Recommendation xi.**

63. *GRECO recommended to harmonise and to differentiate the penalties, without abolishing ineligibility, and improving the system of publication of decisions.*
64. 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.
65. The French authorities essentially repeat the information already submitted. The CNCCFP makes full use of its power to reduce the amount of the partial reimbursement of electoral expenses according to the seriousness of the breaches committed. It also makes use of its power of approval after rectification of election accounts. Penalties of ineligibility can already be adjusted by the court having jurisdiction for the election. The decisions of the CNCCFP are published in the official gazette and judicial decisions are served on those concerned and may be consulted in the relevant case law collections. In their latest comments, the authorities point out that with the law n°2014-973 of 4 Augst 2014 on the actual equality between women and men, the loss of the public subsidy can be modulated to a greater extent than before for political parties, in case they do not comply with the parity rules established by law.
66. GRECO notes that no new measures have been taken on this recommendation along the lines expected and previously reiterated by GRECO: in particular, differentiation of the loss of public funding for parties too (which is now well established in the area of gender parity), and decisions made more accessible in practice.
67. GRECO concludes that recommendation xi remains partly implemented.

### **III. CONCLUSIONS**

68. **In view of the conclusions contained in the previous reports in the Third Round Compliance procedure 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 seven of the seventeen recommendations contained in the Third Round Evaluation Report, i.e. two more than in the previous report. As for the remaining recommendations, eight of these have been partly implemented and two have not been implemented.**
69. With regard to Theme I – Incriminations, recommendation i can now be considered as having been dealt with satisfactorily. As far as the other recommendations are concerned, the situation remains unchanged: recommendations ii and iv have already been satisfactorily implemented, recommendations v and vi remain partly implemented, and recommendation iii has still not been implemented. With regard to Theme II – Transparency of political party funding, recommendation vii can be added to recommendations vi, viii and x which had already been implemented, recommendations i, ii, iv, v, ix, and xi remain partly implemented, and recommendation iii has still not been implemented.

70. With regard to incriminations, GRECO is pleased to note that France reports a significant advance on the question of the “corruption pact” (recommendation i) since the supreme court for criminal matters has consolidated the trend in its case law towards abandonment of the concept of “pact”. It notes with interest that in March 2015 a system of “probity officers” was established within the judicial institutions, which would allow in future to hold regular consultation meetings on the impact of pertinent case-law developments and on other matters related to the fight against corruption. GRECO also welcomes the preparation of draft legislation designed to give legislative effect to the case law developments concerning calculation of the limitation period for offences of corruption and trading in influence. For the remainder, it regrets once again the lack of any progress, including in areas which would enable France to extend its ability to prosecute corruption-related offences committed in a transnational context. Nor does France announce any relevant new plans for legislation or any other measures on the outstanding recommendations, except as regards limitation periods.
71. With regard to transparency of political funding, GRECO notes that with the consultations conducted in respect of the possibility to introduce the disclosure of donors above a certain amount of donations, France has accomplished some modest progress. Concerning the other reforms recommended, no progress has been made in the last few months and no plans or consultations relating to possible reforms have even been started. For its part, GRECO notes that extensive consultations were held recently at the National Assembly and that they led to the Information Report No. 2979 filed on 15 July 2015 by the deputy Romain Colas, on the assessment of the adequacy of laws and regulations governing the financing of election campaigns and political parties<sup>19</sup>. It contains an analysis of desirable improvements which reflects in part the findings of GRECO’s Third Round Evaluation Report. GRECO encourages, once again, the French authorities to redouble their efforts.
72. More than six years after the adoption of the Evaluation Report, France has achieved mixed results. GRECO however concludes that the current level of implementation of the recommendations is no longer “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
73. In view of the fact that a significant number of recommendations are yet to be implemented, GRECO in accordance with Rule 31 Revised, paragraph 9 of its Rules of Procedure asks the head of the French delegation to provide a report on the measures taken to implement the recommendations still pending, namely recommendations iii, v and vi for Theme I and recommendations i, ii, iii, iv, v, ix and xi for Theme II by 30 September 2016 at the latest.
74. GRECO invites the French authorities to authorise publication of this report as soon as possible.

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<sup>19</sup> <http://www.assemblee-nationale.fr/14/rap-info/i2979.asp>