Adoption: 6 December 2019
Publication: 9 January 2020

Public
GrecoEval5Rep(2019)2

FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies

EVALUATION REPORT

FRANCE

Adopted by GRECO
at its 84th Plenary Meeting (Strasbourg, 2-6 December 2019)

Group of States against Corruption
Groupe d'États contre la corruption

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY 4
II. INTRODUCTION AND METHODOLOGY 6
III. CONTEXT 7
IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS) 9
SYSTEM OF GOVERNMENT AND TOP EXECUTIVE FUNCTIONS 9
System of government 9
Status and remuneration of persons with top executive functions at national level 12
ANTICORRUPTION AND INTEGRITY POLICY, REGULATORY AND INSTITUTIONAL FRAMEWORK 14
Anticorruption and integrity policy 14
Regulatory framework and code of conduct 16
Awareness 18
TRANSPARENCY AND OVERSIGHT OF EXECUTIVE ACTIVITIES OF GOVERNMENT 19
Access to information 19
Transparency of the law-making process 20
Third parties and lobbyists 20
Control mechanisms 22
CONFLICTS OF INTEREST 23
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES 24
Incompatibilities, outside activities and financial interests 24
Contracts with state authorities 25
Gifts 25
Misuse of public resources 26
Misuse of confidential information 26
Post-employment restrictions 26
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS 28
Declaration requirements 28
Review mechanisms 30
ACCOUNTABILITY AND ENFORCEMENT MECHANISMS 32
Criminal proceedings and immunities 32
Non-criminal enforcement mechanisms 34
V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES 35
ORGANISATION AND ACCOUNTABILITY OF THE LAW ENFORCEMENT/POLICE AUTHORITIES 35
Overview of the various law enforcement authorities 35
Access to information 37
Public confidence in the selected law enforcement authorities 38
Trade unions and professional associations 38
ANTICORRUPTION AND INTEGRITY POLICY, REGULATORY AND INSTITUTIONAL FRAMEWORK 38
Legislative and regulatory framework 38
Institutional framework 38
Anti-corruption and integrity policy, measures to manage corruption risks in at-risk departments 39
Handling undercover operations and contacts with informants and witnesses 40
Ethical principles and codes of conduct 41
Advice, training and awareness 43
RECRUITMENT AND CAREER ADVANCEMENT 45
Employment regimes 45
Appointment procedure and promotion 45
Performance evaluation 48

Rotation and mobility *48*
Termination of duties and dismissal *49*
Salaries and benefits *49*
Conflicts of interest 51
Prohibition or restriction of certain activities 51
Incompatibilities, outside activities and financial interests *51*
Gifts *52*
Misuse of public resources *53*
Contacts with third parties, confidential data *53*
Post-employment restrictions *53*
Declaration of assets, income, liabilities and interests 53
Oversight and enforcement 55
Internal oversight and control *55*
External oversight and control *56*
Public and civil society monitoring *57*
Reporting obligations and whistleblower protection *57*
Criminal proceedings and immunities *59*
Statistics *60*

VI. RECOMMENDATIONS AND FOLLOW-UP 61

I. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in France to prevent corruption amongst persons with top executive functions (President of the Republic, ministers, advisers and senior civil servants working at the highest level of the executive) and members of law enforcement agencies. It aims at supporting ongoing action to strengthen corruption prevention and develop a culture of transparency in public life. Therefore, the report sheds light on progress not only achieved but also needed in order to reinforce the existing framework.

2. As regards persons with top executive functions (PTEF), the report notes that positive legislative developments have taken place with a view to strengthening significantly transparency in public life. However, in a number of respects, prevention needs to be adjusted and further tightened. The report recommends in the first place the recently adopted action plan on corruption prevention that covers PTEFs in government be expanded to cover members of the President's private office. The High Authority on Transparency of Public Life and the French Anti-Corruption Agency should strengthen their cooperation, notably concerning the assessment of the risks affecting PTEFs. The report underlines the need to adopt codes of conduct applying equally to all PTEFs working in government and covering all matters pertaining to integrity (conflicts of interest, obligations in terms of declarations, incompatibilities, gifts, post-employment obligations, contacts with lobbyists, confidential information, etc.), illustrated by relevant examples. The Charter of Ethics of the President's private office ought to follow the same pattern. In order to guarantee their full respect, these instruments should go hand in hand with effective monitoring and proportionate disciplinary sanctions. In addition, the President of the Republic, ministers and private office members should be systematically briefed on questions linked to their integrity. Moreover, the confidentiality of advice given by ethics advisers should be embedded in the law and they should receive training on how to fulfil their role.

3. Regarding contacts between PTEFs and lobbyists, there is a striking need for more transparency, in particular through asking PTEFs to report publicly and regularly their meetings with lobbyists and the subject-matters discussed. Moreover, the existing register for lobbyists should cover all lobbyists having been in contact with PTEFs – at present, only those who have actively sought to contact PHFEs are required to register, therefore giving only a partial view of the situation.

4. The report also points out that the emerging practice of integrity checks on candidates for posts of advisers should be laid down in legislation so that future governments abide by it. Moreover, whilst welcoming the recent creation of a public register indicating areas where ministers will withdraw from the decision-making process so as to avoid any conflict of interest, the report finds that this register should also apply to private office members considering their often-crucial role in defining government decisions. The report also underlines that the asset and interest declarations filed by the elected President of the Republic whilst a presidential candidate should be examined upon taking office in order to help prevent any potential conflict of interest.

5. Finally, concerning potential legal proceedings in cases of a criminal offence being committed, the current system whereby, in criminal matters for facts occurring as part of their mandate, ministers appear before a court with half its members being parliamentarians (Court of Justice of the Republic), should be revised. The competent court should not only be impartial but

perceived as such. The report welcomes the setting-up of a specialised prosecutor's office (the national financial prosecution office), which can play an important part in dealing with criminal offences committed by PTEFs – notably those in post – provided it has the necessary means, in terms of specialised staff, and autonomy, by laying down additional guarantees concerning the possibility for the government of requesting information on ongoing proceedings against a PTEF so as to preserve the integrity of investigations.

6. As regards law enforcement agencies, the report underlines that a coherent strategy for the prevention of corruption should be adopted in order to map out long-term action, which could be supplemented by action plans that take into account the specificities of the national police's services and the national gendarmerie. The report takes note with satisfaction of the existence of a code of ethics common to both agencies but considers that its commentary should expand on all matters pertaining to integrity (conflicts of interest, gifts, contacts with third parties, outside activities, managing confidential information, etc.), with concrete examples of relevance to law enforcement members in their daily work.

7. Concerning recruitment and career, security vetting should be ensured not only upon recruitment but also all along the career of law enforcement members, particularly in sectors identified as more prone to corruption risks. In these very sectors, considered more exposed, a system of rotation of personnel should in parallel be put in place. As to the possibility of obtaining advice on ethical matters, the recent creation of ethics advisers/correspondents is positive but, in the same way as for PTEFs, the confidentiality of the procedure ought to be secured, and specific training of these advisers should be organised.

8. Finally, the adoption of legislation on whistleblowers, which applies to internal alerts, is to be welcomed. That being said, practice has shown that the system of successive thresholds whereby different bodies need to be informed of any alert so that a whistleblower benefits from the protection granted by law, has proved rather cumbersome. More training on this new mechanism should also take place so that all law enforcement personnel is aware of it.

II. INTRODUCTION AND METHODOLOGY

9. France joined GRECO in 1999 and has been evaluated under GRECO's First (in January 2001), Second (in June 2004), Third (in September 2008) and Fourth (in May 2013) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website (www.coe.int/greco). This Fifth Evaluation Round was started on 1 January 2017.[1]

10. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of France to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the players concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of France, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, France shall report back on the action taken in response to GRECO's recommendations.

11. To prepare this report, a GRECO evaluation team (hereinafter, the "GET"), carried out an on-site visit to France from 8 to 12 April 2019, and reference was made to the responses by France to the Evaluation Questionnaire, as well as other information received, including from civil society. The GET was composed of Mr Jean-Christophe Geiser, Senior Legal Adviser, Public Law Division, Federal Office of Justice (Switzerland), Mr Eivind Smith, Professor/Doctor of Law, Faculty of Law, University of Oslo (Norway), Ms Cornelia Vicleanschi, Former Prosecutor, Office of the Prosecutor General (Moldova) and Mr Michel Claise, Financial Investigating Judge, Regional Court (Belgium). The GET was supported by Mr Gianluca Esposito, Executive Secretary of GRECO, and Mr Gerald Dunn of the GRECO Secretariat.

12. The GET held talks with representatives of the Private Office of the President of the Republic and the Private Office of the Prime Minister, the Directorate for Criminal Matters and Pardons of the Ministry of Justice, the Directorate of Legal Affairs of the Ministry for Europe and Foreign Affairs, the Directorate General of Administration and Public Service, the Public Service Ethics Commission (CDFP), the Interdepartmental Digital and Government Information and Communication System Directorate (DINSIC), the Court of Audit and the Budgetary and Finance Disciplinary Court, the French Anti-Corruption Agency (AFA), the High Authority for Transparency in Public Life (HATVP), the National Financial Prosecution Office (PNF), the National Gendarmerie, the National Police (in particular, the Central Directorate of the Criminal Police – DCPJ, and the Paris Regional Community Safety Department – DSPAP-PP), the Central Office for Combating Corruption and Financial and Tax Offences (OCLCIFF), the Defender of Rights (Ombudsman) and police trade unions, as well as journalists and representatives of non-governmental organisations.

[1] More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's website.

III. CONTEXT

13. France has been a member of GRECO since 1999 and has undergone four evaluation rounds focusing on different topics related to the prevention and fight against corruption. At the closure of the compliance procedures, 80% recommendations of the first, second and third evaluation rounds had been fully implemented. The compliance procedure in respect of the fourth evaluation round covering members of parliament, judges and prosecutors is ongoing. In the latest compliance report, dated 22 June 2018, only 35% of recommendations had been fully implemented, whereas 35% had been partly implemented and 30% had not been implemented. In view of this, GRECO concluded that the level of conformity with recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3, of its Rules of Procedure.

14. According to the corruption perception index published by Transparency International, France occupied the 21st rank out of 180 countries in 2018, whereas it was 23rd in 2017, 2016 and 2015. According to the Eurobarometer, in 2017, recourse to bribes and abuse of power for their own interest were considered as widespread among politicians (national and local) for 68% of those polled et within the police for 37% of respondents.

15. Corruption political scandals have marked French political life, including over the last decades, up to the highest spheres of the State. A former Head of State was for instance convicted to a suspended sentence of two years' imprisonment for misuse of public funds, breach of trust, unlawful taking of interest and the offence of interference in respect of facts having occurred before his presidential mandates, whilst he held the office of mayor - those proceedings had been suspended by reason of the immunity of which the President of the Republic benefits while in office.[2] Moreover, another former Head of State has been indicted, after leaving office, of active corruption, influence peddling and handling the violation of professional secret; in this case, he allegedly was made aware of the stage reached in judicial proceedings in which he was involved by a magistrate posted in the jurisdiction competent for the case, the latter hoping to obtain support for his application to a coveted position.[3]

16. A particular case served as a catalyst for a far-reaching legislative development to reinforce transparency in public life and the accountability of political personnel. A minister serving in 2012 had several bank accounts abroad which he had failed to declare. He was found guilty on appeal of tax fraud and money laundering and sentenced to four years' imprisonment, two years without remission (convertible sentence), a penalty of 300 000 euros and five years' ineligibility.[4] This case has led to the adoption of the so-called "transparency" laws and notably the setting-up of the High Authority for Transparency in Public Life (HATVP), responsible for collecting and analysing asset and interest declarations filed by public officials.

17. Another case which has recently caused a big stir and led to a further legislative development concerns a former Prime minister and presidential candidate in 2017 who allegedly, *inter alia*, gave bogus jobs as parliamentary assistants to his spouse and two of his children whilst he was a deputy; failed to declare to the HATVP a loan without interests received from a businessman; and accepted expensive gifts, including when he was Prime Minister. The National Financial Prosecution Office opened a formal investigation, following which he was indicted, *inter alia*, for misappropriation of public funds and failure to respect his declarative obligations with the HATVP.[5] His case was sent before the criminal courts and proceedings are ongoing. Following the emergence of this case, the law of 15 September 2017 on trust in

[2] Article of 15 December 2011, Le Figaro
[3] Article of 2 July 2014, Le Monde
[4] Article of 15 May 2018, Le Figaro
[5] Article of 14 March 2017, Le Monde

political life has banned the employment of close relatives as parliamentary assistants or government staff, with criminal sanctions being incurred.

18. More recently, a case concerning an adviser to the President of the Republic, since then dismissed, has received great exposure.[6] He was, *inter alia*, accused of having wrongly assumed the position of police officer during a demonstration, having used diplomatic passports two months after his dismissal, and having built up contacts with foreign businessmen with a view to concluding contracts for the protection of assets whilst he worked in the President's private office. The National Assembly and the Senate set up investigation committees and, in the course of hearings, it came out that there was a divergence between this adviser's functions as described by members of the President's private office and his post description. In its conclusions, the Senate's committee calls, *inter alia*, for more transparency in respect of advisers to the President and strengthening ethical culture in the President's private office as well as ministerial private offices.[7] In parallel, the former adviser was indicted, *inter alia*, for having performed acts reserved to law enforcement and unlawful use of diplomatic passports. In addition, the National Financial Prosecution Office has initiated a formal investigation into suspicions surrounding the contracts of protection of assets. Judicial proceedings are ongoing.

19. Private-public sector dual experience is more and more frequent and can sometimes lead to conflict of interest. By way of example, the case of a former minister, who has not respected the restrictions issued by the HATVP prior to her move to the private sector, has recently been referred to the courts on suspicion of conflict of interest.[8] As to the influence of lobbyists in the highest spheres of the executive, insufficient transparency and the importance of their role in certain areas has recently been highlighted by a minister responsible for environmental matters and coming from civil society to justify his resignation.[9] Moreover, a former Minister of Justice was recently imposed a suspended sentence of one month's imprisonment by the Court of Justice of the Republic and a 5 000 euros penalty for sharing information on an ongoing judicial proceedings with a parliamentarian against whom the proceedings had been initiated.[10]

20. As regards law enforcement, albeit less frequent, corruption cases nevertheless come to the surface. For instance, a Chief Superintendent posted in Lyons was sentenced in 2016 to 4 years' imprisonment, including 18 months suspended, and has been barred from the profession indefinitely, notably for criminal conspiracy, passive corruption and influence peddling, unlawful removal of official seals, violating the legislation on seized drugs and breach of professional secret. It was established, *inter alia*, that he was providing confidential information on a suspect to a person known to be close to the local criminal underworld and paid other services to organised crime. A certain number of cases come to light at regular intervals concerning the management of informants. By way of example, a former head of the Central office against drug trafficking was indicted in March 2019 in connection with his handling of informants.[11] The head of regional directorate of the judicial police has been the object of a formal investigation on grounds of breach of investigation secrets, destruction of documents and passive and active corruption in respect of his handling of an informant he had recruited; the investigation is ongoing.[12] Smaller cases of corruption also come to light now and then, such as the convictions of several gendarmes who were refraining from giving tickets to drivers in exchange for money or other advantages.[13]

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[6] Article of 21 January 2019, Le Monde

[7] Report of the Senate's Investigation Committee 20 February 2019

[8] Article of 19 December 2018, L'Express

[9] Article of 28 August 2018, RTL

[10] Article of 30 September 2019, Le Figaro

[11] Article of 18 April 2019, Le Monde

[12] Article of 26 September, Le Monde

[13] Article of 22 March 2014, Le Figaro; Article of 2 July 2014, Le Progrès.

IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of government and top executive functions

System of government

21. France is a parliamentary republic, characterised by cooperation between the executive and the legislature through a government accountable to parliament. The French parliamentary system is uncommon in being coupled with the election of the head of state, the President of the Republic, by direct universal suffrage, which can lead to the President, as head of the majority, having a preeminent role if the presidential and parliamentary majorities are the same. Executive power is shared between the President of the Republic and the government s/he appoints.

The President of the Republic

22. Articles 5 to 19 of the Constitution define the functions of the President of the Republic. In performing his/her functions, s/he has powers of his/her own and powers shared with the government, in which case the presidential powers are subject to ministerial countersignature. The President ensures due respect for the Constitution and, by his/her arbitration, the proper functioning of the public authorities and the continuity of the State. S/he is also the guarantor of national independence, territorial integrity and due respect for Treaties (Art. 5).

23. S/he presides over the Council of Ministers (Art. 9), which comprises the Prime Minister, ministers, junior ministers and, where appropriate, High-Commissioners and state secretaries. It meets once a week and embodies the unity of the executive. The President signs the ordinances and decrees deliberated upon in the Council of Ministers (Art. 13) and may also issue orders.

24. The President may decide to hold a referendum (Art. 11). S/he promulgates laws within 15 days following their final passage and transmission to the government (Art. 10). S/he may refer legislation, before its promulgation, to the Constitutional Council for a ruling on its conformity with the Constitution (Art. 61). S/he may also refer the issue of the conformity with the Constitution of an international agreement to the Constitutional Council, prior to ratification of the agreement (Art. 54). S/he may declare the National Assembly dissolved (Art. 12) and make appointments to civil and military posts of the State (Art. 13). S/he is Commander-in-Chief of the Armed Forces (Art. 15). In the event of crises, s/he may exercise emergency powers (Art. 16).

25. As agreed by GRECO, a Head of State would be covered in the 5th evaluation round under "central governments (top executive functions)" when s/he actively participates on a regular basis in the development and/or the execution of governmental functions or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure and taking decisions on the appointment of individuals to top executive functions.

26. The GET notes the fundamental role played by the President of the Republic within the executive under the existing constitutional arrangements. The fact that s/he presides over the Council of Ministers, which symbolises the unity of the executive and determines government policy on an ongoing basis, reflects the President's central role in the daily exercise of executive

power. In practice, the GET is also aware of the President's active role in the formation of the government and the appointment of the PM and ministers as well as the distribution ministerial portfolios: the composition of the government is in principle the result of an agreement between the President and the PM. In view of the above, the President of the Republic will be considered as exercising top executive functions within the meaning of this report.

The Government

27. The Prime Minister's functions entail directing the actions of the government (Art. 21, Constitution). Subject to the provisions of Article 13, s/he exercises regulatory power. Alongside the PM, the members of the government are, in hierarchical order: ministers of State, ministers, junior ministers (reporting to the PM or a minister) and state secretaries. High-Commissioners can also be appointed as members of Government.

28. Ministers are appointed by decree of the President on the recommendation of the PM. They exercise the powers determined by decree deliberated upon in the Council of Ministers, following the opinion of the *Conseil d'État* (State Council), and published in the Official Gazette. The powers of state secretaries, who are also appointed by decree of the President upon the recommendation of the PM, are laid down in decrees published in the Official Gazette.

29. The government is collectively accountable to the National Assembly (Art. 49, Constitution). The PM may put this to a vote of no-confidence, which may lead to the rejection of the government's programme or general policy statement (by a majority of the votes cast) or the passage of a resolution of no-confidence concerning a bill (by a majority of the members of the Assembly). The members of the National Assembly may also call the government to account by means of a resolution of no-confidence signed by at least one tenth of its members. This may be passed only by a majority vote of the members. When the National Assembly passes a resolution of no-confidence or fails to endorse the government programme or general policy statement, the PM must tender the resignation of the government to the President (Art. 50, Constitution).

30. The current government is gender-balanced: apart from the PM (male), it comprises 16 ministers (including nine women, two of whom hold one of the four key ministries, and seven men), three junior ministers (male), the High Commissioner for Pensions (male) and 16 state secretaries (nine women and seven men).[14] Overall, the government comprises 19 men and 18 women, including nine ministers who are women and eight who are men. GRECO welcomes the fact that gender parity in the government both was a declared objective and has been achieved.

The Private Offices of the President of the Republic, the Prime Minister and ministers

31. At present, the Private Office of the President of the Republic comprises 54 members, 12 of whom are also members of the Private Office of the Prime Minister. The staff of the Private Office of the President, as covered by the services of the Presidency, total 46 members and the staff of the Private Office of the PM, as covered by the latter's services, total 57.

32. The composition of the Private Office of the President and that of ministers is subject to prohibition of the employment of family members in the broad sense.[15] Breaches result in the

[14] The term "minister" will be used to cover all members of the government.
[15] Decree No. 2017-1098 of 14 June 2017 on the staff of the President of the Republic and members of the government.

appointment decision being illegal and in termination of any contract. In the more specific case of ministers' private offices, these rules were tightened up with Law No. 2017-1339 of 15 September 2017 on trust in politics ("trust" ordinary law, Art. 11), which i) prohibits any member of the government from employing a member of his/her close family in his/her private office, on pain of criminal penalty, ii) requires them to notify the HATVP without delay of the employment within their private office of a member of their extended family, and iii) requires any member of a minister's private office who has family ties with a member of the government other than the one for which s/he works to notify his/her employer and the HATVP without delay.

33. Moreover, since 2017, ministers' private offices have been limited to 11 members, while those of junior ministers and state secretaries may not have more than 9 or 6 members respectively, provided one of the members is responsible for following the enforcement of reforms. Appointments of the members of ministers' private offices, by ministerial decrees published in the Official Gazette, are submitted to the PM, who ensures compliance with the ceiling. Appointment decrees indicate the individuals concerned and posts which they are to hold within the private office, and individuals who have not been named on such decrees may not perform any tasks within a minister's private office. This transparency requirement is designed to prevent the circumvention of the staff ceilings through the hiring of "unofficial advisers". In addition, the members of ministers' private offices are required to submit declarations of assets and interests to the High Authority for Transparency in Public Life (HATVP, see para. 51).[16]

34. As members of the private offices of ministers or of the President, advisers and technical advisers advise and assist the President, the PM and ministers in the performance of their duties. As at 1 August 2019, the members of ministerial private offices (excluding support functions) totalled 324 officials (including 60 members of the Private Office of the PM): 35 directors, 24 deputy directors, 39 heads and deputy heads; 221 advisers and technical advisers; and 5 other staff members. As a result of the ceilings introduced under the above-mentioned decree, staffing levels were 42% down as compared to 2016. The composition of the private offices (President, PM and ministers) can be accessed online.[17] For the purposes of this report, all members of private offices, including that of the Presidency, will be regarded as being closely involved in the exercise of top executive functions and hence as PTEFs covered by the report.

35. Moreover, their functions must be confined to what is provided for in the appointment decrees and reflected on the government and Presidency websites. While it was claimed that a change in the responsibilities of a member of a private office would necessarily require a fresh decree, the GET can but note, on the basis of a recent case involving a member of the Presidents' staff, that there could be some discrepancy between the duties performed and those declared without a change in the initial decree. The GET therefore believes that the authorities should pay increased attention so as to avoid this type of situation and increase transparency.

36. Reference also needs to be made to the existence of secretaries general of ministries, directors general and central government directors.[18] According to the authorities, in view of the tasks assigned to them, they are involved, at a high level of responsibility, in the functions of the

[16] Article 11 (4), Law No. 2013-907 of 11 October 2013 on transparency in public life.

[17] For example: www.gouvernement.fr/les-services-du-premier-ministre; www.elysee.fr/la-presidence/cabinet-du-president-de-la-republique-et-services-de-l-elysee.

[18] The term "directors general" will be used to refer both to directors general and to central government directors.

executive and can therefore be regarded as performing top executive functions. They are therefore regarded as PTEFs and are covered by this report.

Status and remuneration of persons with top executive functions at national level

Status

37. The President of the Republic is elected by direct universal suffrage, for a five-year term, and can be re-elected once. Two-round majority voting applies. In the event of a breach of his/her duties patently incompatible with his/her continuing in office, the President may be removed from office by Parliament sitting as the High Court.

38. Members of the government are appointed by the President of the Republic. S/he first appoints the PM and then, on the recommendation of the latter, the other government members. In order to prevent conflicts of interest and ensure the integrity of the individuals due to be appointed, the "trust" ordinary law (Art. 22) enables the President to request, prior to the appointments, the transmission of information concerning the relevant individuals, in particular regarding any criminal convictions, compliance with disclosure requirements if they were subject to such in their previous capacity, proof of steps taken to manage their financial instruments under conditions which preclude any oversight on their part, the existence of any conflict of interest and, where applicable, the measures required to prevent or immediately end the latter (such information may be obtained from the HATVP) and tax compliance. The President may remove the PM solely on the presentation of his/her resignation and the other government members only on the PM's recommendation. The GET welcomes the possibility which the President now has of checking the integrity of potential ministers beforehand and invites the authorities to make this possibility a requirement involving the support of the HATVP.

39. Members of ministerial private offices have the status of public servants. While most are career public servants, some are contractual staff. They are subject both to the rules of conduct applicable to all public servants and to the rules on asset and interest declarations to the HATVP. Members of ministers' private offices are appointed by decree of the PM or the minister concerned. Likewise, the President's advisers are appointed by presidential decree. The relevant decrees are all published in the Official Gazette and can be accessed on the légifrance website.

40. In view of the above and the meetings held during the visit, the GET consider it positive that private office members are also required to make asset and interest declarations once appointed. They are also required to end any professional activity they may have. Nevertheless, there would not appear to be systematic provision for integrity criteria in the process of their selection, although it was mentioned that appointments to ministerial private offices go through the Government's General Secretariat, which asks ministries to ensure that the HATVP is contacted to check the absence of conflicts of interest. Moreover, the HATVP will have already had the opportunity to check the declarations of interests of those candidates that come from the public sector and were already subject to declaration obligations, including those that have worked in the private sector over the last three years. According to its 2018 activity report, several referrals were made to the HATVP to ascertain whether there were any conflicts of interest and regarding precautions to be taken in the event of appointment of the relevant candidates. The GET was also told that a similar practice had been initiated for the Private Office of the

President.[19] Under Law No. 2019-828 of 6 August 2019 on transformation of public service, persons from the private sector must be checked by the HATVP to make sure that there are no risks to the neutrality of the public service.

41. The GET considers it necessary to formalise in a legally binding text the emerging practice of the current Executive power, whereby the HATVP is consulted prior to any appointment to private offices, including that of the President, so as to ensure integrity from the outset, including the absence of conflicts of interest. The aim is that this practice becomes binding on future governments and heads of state. The recent Law on transformation of the public service of August 2019 is a step in the right direction in making the HATVP's control obligatory for persons coming from the private sector to work on a high-responsibility post. However, this requirement for checks by the HATVP should apply to all candidates, from both the private and public sectors given the increased mobility between sectors. Consequently, **GRECO recommends that the requirement of prior integrity checks for all posts of adviser to the Government or the President of the Republic, carried out as part of the selection process and with the support of the High Authority for Transparency in Public Life, be provided for by law.**

42. The termination of a minister's duties also terminates those of the members of his/her private office. The latter may also be dismissed under the procedures applicable to their status as public servants (established or contract). If there is a breakdown of trust with the minister, established staff members may be reassigned to other duties.

43. Secretaries general of ministries and directors general are appointed by presidential decrees issued in the Council of Ministers, on the recommendation of the PM and the competent minister. The relevant appointment decrees are published in the Official Gazette and can be accessed on the légifrance website. If the appointments are discretionary, they must first be referred for opinion to an appointments board,[20] which advises the relevant minister on the suitability of the individual interviewed. The officials concerned are removed from office by presidential decrees issued in the Council of Ministers.

Remuneration

44. In 2015, the average monthly salary of persons working full time in the private sector or in state enterprises was 2 250 euros net of social contributions. The average FTE monthly salary for all categories of employees in the national public service was 2 495 euros net.

45. The remuneration of the President and of the members of the government is set by decree. At present, the various salaries and allowances are as follows:

- for the President and the Prime Minister: 15 140 euros gross, including 11 759 euros of salary, 353 euros of residence allowance and 3 028 euros of duty allowance;
- for ministers: 10 093 euros gross, including 7 839 euros of salary, 235 euros of residence allowance and 2 019 euros of duty allowance;

[19] According to the HATVP's latest activity report, a corresponding practice was initiated in 2017 concerning the appointment of advisers in ministerial private offices.

[20] Comprising at least five members: the Secretary General of the Government (or his/her representative), at least one person from the ministry concerned, one from outside the latter, one with qualifications in the areas of responsibility covered by the post to be filled and one with experience of human resources.

- for state secretaries: 9 589 euros gross, including 7 448 euros of salary, 223 euros of residence allowance and 1 918 euros of duty allowance.

46. The remuneration of the Presidents' advisers depends on the post held. Net remuneration levels vary between 6 000 euros and 13 000 euros a month. The remuneration of members of ministers' private offices depends on their status as established public servants or contract staff. It may include an allowance which, in most cases, offsets the loss of payments received in previous posts by the staff of ministerial private offices. This allowance is also linked to the requirements of the post (permanent availability and heavy workload).

47. The gross remuneration of secretaries general of ministries and directors general is set at 5 243 to 6 220 euros a month. This is supplemented by payments that vary depending on the ministry concerned. They may be entitled to official accommodation in rare cases justified by the needs of the service, or to an official vehicle.

Anticorruption and integrity policy, regulatory and institutional framework

Anticorruption and integrity policy

48. France has adopted a number of legal texts to prevent corruption and increase transparency in public life over the past decade. The aforementioned "transparency" laws (Institutional Law No. 2013-906 and Law No. 2013-907 of 11 October 2013 on transparency in public life) boosted corruption prevention and the promotion of integrity among all public officials. This led to the establishment of the High Authority for Transparency in Public Life (HATVP, see below). They were followed by Law No. 2016-1691 of 9 December 2016 on transparency, anticorruption measures and the modernisation of economic life ("Sapin 2" law), which led to the establishment of the French Anticorruption Agency (AFA, see below), and the above-mentioned "trust" laws (Institutional Law No. 2017-1338 and Law No. 2017-1339 of 15 September 2017 on trust in politics).

49. The country's public policy on fighting corruption, including as concerns PTEFs, is now formalised in a multiannual anti-corruption plan 2019-2021. This interministerial plan, prepared under the aegis of the AFA, was adopted on 25 October 2019. One of its objectives is the rollout of anticorruption programmes in each ministry, with risk identification, a code of conduct, risk training, a procedure for evaluating third parties on the basis of identified risk and an internal control and evaluation mechanism.

50. The GET considers that the multiannual plan on the fight against corruption is a very positive development in terms of better tackling corruption risks specific to government work and PTEFs (ministers, advisers and senior civil servants) as each ministry is to adopt a corruption prevention programme and a code of conduct as well as carry out a risk assessment. This is all the more necessary that, to the knowledge of the GET, only 5 ministries out of 16 had commenced risk assessments, in spite of the prior recommendations of the AFA, and only one had introduced a code of conduct. Moreover, the GET considers that the plan should also cover the Private Office of the President, which is not immune to corruption risks or of conflicts of interest which should deserve a prevention programme and a risk assessment. Therefore, **GRECO recommends that the multiannual plan for the fight against corruption also covers the Private Office of the President of the Republic.**

Institutional framework

51. The [HATVP] is an independent administrative authority set up in January 2014. Its independence is guaranteed by the arrangements for the appointment of its president (Presidential decree on recommendation of a standing committee of each house of parliament), the composition and operation of its collegial body (six senior magistrates and two members selected by the presidents of the National Assembly and the Senate, appointed for a non-renewable, non-revocable six-year term) and its administrative and financial autonomy (50 staff members and a budget of 6.4 million euros in 2019).

52. In general, the HATVP is responsible for: (i) collecting and checking declarations of assets and interests, and potential conflicts of interest of public officials, including PTEFs, (ii) regulating returns to private-sector activities, in particular after ministerial duties, (iii) supporting all public officials covered by its scope in the consideration of any ethical issues that arise in the course of their duties and the implementation of ethics procedures in their institutions. Based on the experience acquired in the area of checking asset and interest declarations since 2014, the HATVP is identifying risks of conflicts of interest linked to the functions coming under its scrutiny. Since 2017 the HATVP also manages, checks and publishes a register of lobbyists (see, para. 75)

53. The [AFA] is a national body coming under the Minister of Justice and the Minister of Budget. It is headed by a senior judge appointed by the President for a non-renewable six-year term. The legislation provides that the director must not receive or seek instructions from any authority concerning the AFA's control activities. His/her term may be terminated only in case of impediment or serious misconduct. The agency does not have its own budget and its staff are managed directly by the above ministries. As at 31 December 2019, it had a staff of 63 and a budget of 7 million euros.

54. Its primary task is to take part in administrative coordination and to pool and disseminate the information needed to ensure the consistency and effectiveness of policies to prevent corruption and promote integrity at national and local levels. The AFA is tasked, on the one hand, with checking the quality and effectiveness of procedures established to prevent and detect offences constituting a breach of integrity and, on the other, advising on the introduction of such measures. Under its 2017 recommendations, government ministries are meant to introduce anticorruption measures comprising: i) mapping of risks of breaches of integrity; ii) a code of conduct; iii) training on the risk of breaches of integrity; iv) a procedure for evaluating third parties (suppliers, partners, etc.); v) an internal whistleblowing system; vi) rules clarifying the relevant criminal and disciplinary penalties and punishments; vii) suitable internal control and evaluation measures, including in the area of accounting controls. The AFA is currently assisting, on a permanent or punctual basis, five ministries with the introduction of anticorruption systems.

55. The GET notes that, since their recent establishment, the HATVP and the AFA have become the two cornerstones of corruption prevention in France, in particular as regards public officials. This is a very positive development whose full potential will be unleashed over time. While recognising the differences in their statuses, the GET notes that their respective fields of action are complementary and therefore considers that it is important to formalise the cooperation between the two institutions so that they can reinforce each other. The GET was told that a cooperation agreement is to be signed by the end of 2019.

56. The GET notes that both the HATVP and the AFA assist and advise ministries in drawing up risk assessments concerning PTEFs. Therefore, it would appear beneficial for them to pool together these findings so as to obtain as clear a picture as possible regarding PTEFs (formalising cooperation in an agreement, sharing findings and risk analyses, etc.). Consequently, **GRECO recommends that the High Authority for Transparency in Public Life and the French Anticorruption Agency strengthen their cooperation on their work pertaining to persons with top executive functions.**

57. The Public Service Ethics Commission (CDFP), which comes under the PM, is currently responsible for assessing compliance with the ethical principles inherent in the exercise of public office and, in particular, whether there is a risk of an outside activity breaching an ethical principle or giving rise to a conflict of interest. It issues recommendations of compliance, compliance subject to reservations of a duration of two to three years, or non-compliance. While prior referral to the commission is compulsory for all public officials, those who are exercising a government function or have done so in the previous three years come under the sole responsibility of the HATVP. Although, by law, members of ministerial private offices come under the HATVP, the GET was told during the visit that moves to the private sector by advisers, who have the status of public officials, are dealt with by the CDFP. The GET welcomes the fact that the law on transformation of the public service of August 2019 provides that the functions of the CDFP will be transferred to the HATVP as of February 2020, thereby improving the clarity of the system of oversight, which moreover will also be carried out by an independent authority.

Regulatory framework and code of conduct

58. There have been significant changes in the relevant legal framework in recent years. The above-mentioned "transparency" laws have consolidated ethical principles, rules and measures to prevent conflicts of interest in respect of public officials, including PTEFs.

59. In the case of the government, the Ministry for Europe and Foreign Affairs has introduced an ethics guide. The subjects covered include the principles of integrity, declaration requirements, concurrent activities and moves between the public and private sector. Specific recommendations address gifts and benefits, use of state resources, relations with third parties and public procurement. The guide is illustrated with practical examples. In addition, the Ministry of the Armed Forces has drawn up a public procurement charter, which addresses the issue of gifts, invitations and conflicts of interest.

60. While the HATVP may provide assistance with the drafting of such guides or ethics charters, most requests received come from local or regional authorities and semi-public companies. In 2014, however, the President's Private Office sought its opinion on a draft ethics charter for advisers. This Charter, which is currently being revised, is brought to the attention of the relevant staff and sets out rules on the use of resources and the prevention of conflicts of interest. Upon recruitment, the President's advisers undertake to comply with these ethical principles. In the case of contract staff, the contracts mention the obligations they must fulfil.

61. Since 2017, government members have signed declarations of honour on integrity and morality upon appointment. They undertake to perform their duties with dignity and integrity and to prevent or immediately put an end to any conflict of interest. The PM's circular of 24 May

2017 on exemplary, collegial and effective government working methods briefly summarises the duties of integrity and declaration requirements applicable to ministers and their private offices. There is also a circular of the PM on government members' exemplary conduct, dated of 23 July 2019, which aims at strengthening checks on works undertaken in official accommodation and reminding ministers that they should adopt an exemplary conduct, including in representation expenses, gifts and declarative obligations regarding their official accommodation. A circular was also adopted on 5 April 2019 by the Secretary General of the Government concerning the recruitment of ministerial advisers. These three texts form the framework of the HATVP's activities pertaining to PTEFs.

62. The GET firstly notes that legislation on ethics and integrity has been significantly tightened up in recent years and therefore provides a sound basis for preventing corruption in public life, including in the case of PTEFs. Nevertheless, to give it full effect, the GET underlines the importance of supplementing it with instruments such as codes of conduct or ethical principles to provide guidance on the application of the law to practical situations of the exercise of executive power, as experienced by PTEFs.

63. The GET notes that the Ethics Charter of the Presidency is being revised so as to provide an updated and more binding framework for advisers following a major scandal that involved one of them. In the case of the government, the GET takes note of the circulars calling on ministers to adopt an exemplary conduct. Nevertheless, the GET considers that these circulars cannot on their own make up for the lack of codes of conduct applicable to all PTEFs in the government which would set out their duties and obligations in terms of integrity. At present, it falls to each ministry to draw up such a document. As things stand, to the GET's knowledge, only the Ministry for Europe and Foreign Affairs has introduced a comprehensive code of conduct. The GET points out that, while taking account of the specific features of the ministry, this code also includes a number of general principles that could apply to PTEFs in all ministries.

64. The GET is of the view that some integrity rules are applicable to all PTEFs regardless of where they work in government. The GET takes note that the authorities have decided that each ministry should adopt its own code of conduct. In order to ensure coherence between codes and their content, it would seem important that they use the same rules pertaining to the matters dealt with in this report (preventing/dealing with conflicts of interest; declaration requirements; incompatibilities; gifts; obligations in the case of moves to the private sector; contacts with lobby groups; and confidential information, etc.). In addition, ministries will be able to add more detail and examples specific to their fields of action. The Ethics Charter of the Presidency currently being revised will also have to cover all the subject-matters detailed in this report.

65. The GET points out that codes of conduct for PTEFs should be practical documents that tackle crucial integrity matters and provide examples relevant to government work. If each ministry is to produce its own code of conduct, which is the wish of the French authorities, it is for the latter to ensure that integrity rules are transposed in each of the codes without any discrepancy. Their effectiveness also depends on monitoring and proportionate sanctions to ensure compliance. In this respect, the GET notes that there are already certain criminal penalties, such as for conflict of interest, and that the HATVP can issue orders linked to declaration requirements and managing interests. Certain disciplinary sanctions also exist for those PTEFs who have the status of public servant. The GET nevertheless considers that the codes of conduct

should expressly make reference to the sanctions incurred, either already in existing regulations or, if necessary, to be introduced. As PTEFs should lead by example and citizens' expectations in this respect are growing, compliance with the codes of conduct of the government and the Charter of Ethics of the Presidency (currently being revised) should include disciplinary measures proportionate to the seriousness of the breaches. Lastly, these codes should also be made public for the sake of transparency and as an expression of PTEFs' commitment to exercise executive power in full compliance with integrity rules.

66. Therefore, **GRECO recommends (i) the adoption of codes of conduct for each ministry containing rules common to all PTEFs in government that cover all integrity matters (preventing and managing conflicts of interest; declaration requirements; incompatibilities; gifts; post-employment restrictions; contacts with lobbies; and confidential information, etc.), including practical examples, and being made public; (ii) the finalisation of the revision of the Ethics Charter of the Presidency, making sure that it covers the relevant above-mentioned integrity matters and includes practical examples to illustrate each standard; (iii) the introduction of checks on compliance with the codes and charter, together with proportionate disciplinary measures.**

Awareness

67. The HATVP issues specific guides and documentation for public officials coming within its remit, including PTEFs, which are accessible on its website. PTEFs may refer any ethical issues arising in the course of their duties to it. It deals with requests concerning PTEFs' personal circumstances in confidentiality, and issues recommendations on preventing or ending conflicts of interest. The AFA holds awareness-raising activities together with public service training establishments. These are open to ministerial private office members who are civil servants. The Law on transformation of public service provide that contractual agents appointed to State managerial positions are to follow training to prepare them to their functions, including on integrity matters.

68. In addition, since Law No. 2016-483 of 20 April 2016 on ethics and the rights and duties of civil servants, all civil servants have been entitled to consult an ethics adviser. Questions may concern, for example, the duties of dignity, impartiality and integrity, conflict of interest, outside activities, starting or taking over a business, moving to the private sector and professional secrecy. Apart from this consultative role, ethics advisers can also take statements from officials who, as whistleblowers, wish to report circumstances that may constitute conflicts of interest. An ethics adviser must be appointed in each administration.

69. The GET notes, notably in the light of the meetings held during the visit, that awareness-raising for different types of PTEFs on issues relating to corruption prevention in the exercise of executive power is currently diffuse and sometimes amounts to a formality regarding declaration requirements (signature of a document notifying them of their obligations) and giving information documents from the HATVP. In the case of private office members, awareness-raising is left to each ministry, with no guarantees as to content. The President of the Republic does not seem to receive any specific information upon taking office, in particular in terms of managing his/her interests so as to avoid any conflicts. The authorities have only indicated that he had met the head of the HATVP after taking office. In the case of the government, codes of conduct would,

naturally, be a useful means of raising awareness among PTEFs, provided that they covered the issues addressed in this report (see previous recommendation). The Presidency's Ethics Charter could serve a similar purpose.

70. As to advice on ethics, PTEFs can turn to the HATVP, one of whose statutory roles is the provision of advice in full confidentiality. Moreover, ethics advisers have been introduced to provide advice to civil servants and, by extension, to the public servants making up private offices. The GET was told that almost all ministries (save two) had appointed ethics advisers, while the Private Office of the President did not yet have one. The GET considers that this is a useful means of obtaining advice in-house and therefore a worthwhile addition to the possibility that PTEFs, who are public servants, have of referring issues to the HATVP. Nevertheless, according to the information gathered during the visit, it would seem that the ethics advisers are not statutorily bound by a duty of confidentiality, even though some appear to abide by such a duty of their own initiative. Moreover, there is no specific training for individuals appointed as ethics advisers.

71. In view of the above, the GET considers that increased awareness-raising on integrity is needed, both on a more structured and comprehensive basis, for ministers and members of private offices (including of the Presidency). Such awareness-raising should also be renewed when legislative or regulatory developments take place. Some form of awareness-raising should also be introduced for the President of the Republic upon taking office, in particular regarding the management of his/her interests so as to avoid any risks of conflicts in the exercise of his/her duties. Lastly, consultations of ethics advisers by private office members should be made confidential, and ethics advisers should receive training on addressing ethical issues. Consequently, **GRECO recommends that (i) awareness-raising on integrity issues be provided systematically for persons with top executive functions when they take office and when legislative developments so require; (ii) confidentiality of interviews with ethics advisers be provided for by law; (iii) ethics advisers be required to take specific training on addressing ethical issues referred to them.**

Transparency and oversight of executive activities of government

Access to information

72. Government documents relating to executive decision-making are, as a rule, made public. France is part of the Open Government Partnership. Law No. 2016-1321 of 7 October 2016 on a digital republic broadened the scope of administrative documents made public. Any administrative body with over 50 staff members must now release: (i) the documents communicated further to access requests; (ii) the documents in public information directories; iii) regularly updated database content; (iv) regularly updated data of economic, social, health or environmental interest. In addition, the "Etalab" open data unit makes the data.gouv.fr data portal available to administrative authorities, public and private organisations and citizens. The government has launched a website presenting its various activities, which, in particular, informs the public about the decisions taken by the Council of Ministers. The latter are also usually presented to the press after each Council of Ministers meeting by the State Secretary in the PM's Office. Nevertheless, the GET notes in this connection that France has not ratified the Council of Europe Convention on Access to Official Documents (CETS 205) and invites it do so.

73. The Code governing Relations between the Public and the Administrative Authorities (CRPA) provides for a right of access to documents issued or received by the state in the course of its public service remit. The relevant administrative documents include files, reports, studies, minutes, meeting reports, statistics, instructions, ministerial replies and circulars, correspondence, opinions, forecasts, source codes and decisions. This right applies only to documents which are no longer at the preparatory stage. Access to administrative documents is subject to restrictions concerning certain secret documents (Art. L. 311-5 and L. 311-6, CRPA). In particular, documents the consultation or communication of which would infringe or undermine the secrecy of government deliberations, defence secrecy, the conduct of French foreign policy, state security, public safety and security, the safety of individuals or the security of government information systems may not be disclosed. The PM decides on a case-by-case basis whether the preservation of the secrecy of government deliberations prevents their disclosure. Such secrecy concerns, for example, files on the basis of which deliberations of the Council of Ministers were conducted, minutes of meetings of defence committees and councils and interdepartmental committees and documents relating to government deliberations.

Transparency of the law-making process

74. The process governing how the executive branch drafts legislation is described in a document published on the Légifrance website. This document sets out all the rules, principles and methods to be observed by the executive in preparing normative texts (laws, ordinances, decrees and orders). The preparation of draft laws can be followed by the public on this website and that of the parliamentary body where the said draft law is tabled. These websites provide a full legislative file (draft law, explanatory memorandum, impact assessment, opinion of the *Conseil d'État* and press release of the Council of Ministers), with the various stages in the discussion of draft legislation in Parliament. As to draft regulatory texts (ordinances or decrees), decisions taken by the Council of Ministers are published at short notice in the Official Gazette. The public can therefore consult them. Further, in April 2018, the National Assembly adopted an action plan entitled "Openness, transparency and citizen participation", which includes an undertaking to highlight better the normative footprint of laws. This ensures greater clarity on the involvement of third parties, in addition to lobbyists, in the process of drafting individual laws.

Third parties and lobbyists

75. The "Sapin 2" law introduced a digital register of lobbyists to ensure that citizens are properly informed about the relations between lobbyists and the authorities (Art. 25, supplementing the "transparency" ordinary law with new Art. 18-1 to 18-3). The register covers relations with the executive branch, Parliament and certain local authorities. It is managed checked and published by the HATVP in open data format. Registration is compulsory for all lobbyists within the meaning of this law, i.e. when they initiate contacts with officials to influence public decision-making.

76. The concept of lobbyist covers a range of stakeholders (legal entity or natural person), including executives, employees or members, whose principal or regular activity is to influence public decision-making, in particular the content of laws or regulatory acts, by entering into communication with a series of public officials such as government members or ministerial private offices or staff of the President.

77. Lobbyists are required to communicate a range of information to the HATVP, including: (i) their identity; (ii) the scope of their lobbying activities, i.e. the types of public decisions (laws, regulatory acts, public procurement, etc.) and the types of issues (identified by their purpose and field of action) on which they have engaged in lobbying; (iii) the activities their lobbying involved (informal discussions, public debates, consultations, hearings, online lobbying strategies and the submission of suggestions, information and expert reports, etc.); (iv) the categories of public officials with whom they have entered into contact. To date, over 1 900 lobbyists have been listed on this public register and have declared over 15 000 lobbying activities with public officials of all categories who fall within the HATVP's remit.

78. The "Sapin 2" law (Art. 25, supplementing the "transparency" ordinary law with Art. 18-5) introduced a range of ethical rules for lobbyists. In addition to the general requirement to conduct their activities with integrity, they must, in particular, declare the body for which they work and the interests or entities which they represent in their dealings with public officials; refrain from offering or giving the latter any presents, gifts or benefits of significant value; and refrain from holding events at which the arrangements for public officials to speak are linked to remuneration. The "trust" ordinary law (Art. 5) prohibited lobbyists from making any payments to staff of the President or members of ministerial private offices.

79. Where the HATVP finds, on its own initiative or following reports, that there has been a breach of ethics, it issues the lobbyist concerned with a warning, which it may make public, to honour the obligations by which s/he is bound, having ordered him/her to submit comments. After a warning and for the next three years, any fresh breach of ethical obligations is punishable by one year's imprisonment and a fine of 15 000 euros.

80. The GET notes that the establishment of a register of lobbyists, in particular those entering into contact with PTEFs, has the potential of increasing transparency on lobbying activities. Nevertheless, there are several weaknesses in the system from the outset as to this aim. In the GET's opinion, the main shortcoming to ensure real transparency regarding contacts between PTEFs and lobbyists lies in the fact that the declaration requirement applies only to lobbyists, without PTEFs being required to provide information about lobbyists they have met in the course of their duties. The French authorities indicated that in some cases committees involving various stakeholders can be set up to advance discussions on a particular policy. The GET considers this practice positive inasmuch as it aims at formalising contacts with the stakeholders concerned, as long as such contacts are made transparent. At the same time, the GET is more concerned about the influence exercised on PTEFs in less formal settings. The GET considers that PTEFs, including the President, should themselves report their meetings with lobbyists on a regular basis and the topics discussed so as to increase transparency concerning the various sources that can influence political decision-making.

81. Moreover, under the existing system, only those lobbyists who themselves seek contacts with PTEFs are required to register. In this connection, the GET was informed by various interlocutors that the main lobbyists frequently do not have to request interviews and are contacted directly by the executive in the context of consultations designed to inform decision-making in a field that concerns them. While that is legitimate, the goal being to gather the views of interest groups representing various positions on given issues, the current arrangements are problematic in that the most powerful lobbyists do not themselves have to contact PTEFs and are

therefore not required to register. The GET considers that, when such a register exist, it should provide an accurate picture of all lobbyists who can influence PTEFs' decision-making processes. It is therefore of the view that the system whereby only lobbyists who initiate contacts with PTEFs have to register does not provide a sufficient degree of transparency.

82. In view of the above, **GRECO recommends that (i) persons with top executive functions be required to disclose on a regular basis details of the lobbyists they meet and the topics discussed; (ii) all lobbyists who enter into contact with public officials (in particular, persons with top executive functions), regardless of whether they themselves initiated the contacts, be required to register on the register of lobbyists.**

Control mechanisms

83. Under the Constitution, Parliament monitors the action of the government and assesses public policies (Art. 24 (1)). One in four weeks of sittings is set aside for monitoring the action of the government and assessing public policies. At least one sitting a week is set aside for questions from members of parliament to the government. There are also written questions which government members are asked to reply to in writing as quickly as possible.

84. Parliament may set up committees of inquiry (Art. 51-2, Constitution), on the initiative of each house by majority vote. Minority groups may request the establishment of one committee of inquiry per annual session and relevant requests may be rejected only by a majority of three-fifths. Committees of inquiry comprise 30 members of the National Assembly or 21 senators and their chairs or rapporteurs must be members of the opposition. Committees of inquiries may look into the management of public services or state enterprises or into certain circumstances. They are set up for a maximum duration of six months and have extensive powers of inquiry: summoning individuals, if necessary, with the support of law enforcement agencies; hearings under oath; and communication of documents. Refusal to appear or to submit or communicate documents, false testimony and witness tampering are subject to criminal prosecution. The relevant hearings and reports are public unless decided otherwise. Whilst conclusions are not binding, their impact results from the increasing media coverage.

85. Standing or special committees may be assigned the same powers as those of committees of inquiry on a temporary basis (also for a maximum of six months). In addition, in the National Assembly, the Public Policy Evaluation and Monitoring Committee (CEC)[21] may, on its own initiative or at the request of a standing committee, assess public policies in fields which are broader than those of standing committees.

86. Public auditing is mainly performed by the Court of Audit. It includes an assessment of the budget execution of the various ministries in its annual report on the national budget. It assists Parliament and the government with the evaluation of public policies. Its role is not to comment on the choices made but evaluate the consequences and make recommendations on achieving the objectives approved by Parliament. The responsibility of public accountants can be challenged for breaches to public finances related legislation or serious management breaches before the Budgetary and Finance Disciplinary Court (see para. 140).

[21] Chaired by the Speaker of the National Assembly and comprising 36 members, with proportional representation of political groups and balanced representation of parliamentary committees.

87. In addition, each ministry has an internal audit and control system. These are assessed annually by the Court of Audit when preparing its opinion on certification of the national accounts. Moreover, a ministerial accounting and budgetary controller (CBCM), placed under the authority of the minister responsible for the budget, is appointed at central level in each ministry. Their primary task is to perform budget control in their respective ministry.

88. All public funds made available to PTEFs are provided for and approved in the initial finance law, which may be corrected in a finance (amendment) law. Only "special funds" appropriations for funding activities related to external and internal state security are covered by an exceptional procedure in terms of execution and control.[22] Scrutiny of the use of the special funds is performed by a verification committee comprising four parliamentarians and five members of the Court of Audit. Its discussions are confidential, but it draws up reports on the conditions of use of the appropriations.

89. Alongside the budgets allocated to ministries under finance laws, the Presidency enjoys financial autonomy. Nevertheless, the amount of appropriations determined by the Presidency is included in the draft finance law and submitted for parliamentary debate and approval. An appendix on the Presidency is included in each draft finance law, indicating the planned and actual use of the appropriations approved in the finance law. The accounts and management of the offices of the Presidency are audited annually by the Court of Audit, which publishes its findings.

Conflicts of interest

90. Under the "transparency" ordinary law, government members must perform their duties with integrity and prevent or immediately end any conflicts of interest (Art. 1). The concept of conflict of interest is defined as "any situation involving interference between a public interest and public or private interests likely to influence or appear to influence the independent, impartial and objective exercise of a function" (Art. 2). This requirement and this definition were extended to public officials under the 2016 "amended Le Pors" law (Art. 25 *bis*). Members of ministers' private offices, advisers to the President and secretaries general of ministries and directors general are therefore also covered.

91. The "transparency" ordinary law lays down a series of requirements to refrain from action on public officials affected by a conflict of interest. These requirements, which were applicable to certain categories of public officials, were extended to all public officials under the "amended Le Pors" law. The "trust" ordinary law provided for the establishment of a publicly accessible register on the prevention of conflicts of interest, listing cases in which government members believe that they should not exercise their powers on account of conflicts of interest, including in the Council of Ministers. This register, operational since 2018, can be consulted on the government website. It indicates steps taken to prevent potential conflicts of interest: delegation of certain powers to the minister ranked immediately below, decree determining the powers which the Prime Minister exercises in place of a minister or which a minister exercises in place of a government member attached to that minister. A circular from the PM of 2 January 2018 states that ministers and state secretaries must notify the PM, before meetings of the Council of

[22] "Special funds" are a funding package (66.8 M euros in the 2019 finance law) made available to the PM and used for activities related to national security. These funds are approved each year in the finance law. The amount is published. The appropriations are used by the Directorate General for External Security (DGSE) and for "other security-related activities" of other ministries.

Ministers, through the secretary general of the government, or inform the President during such meetings, of their intention not to take part in deliberations on particular agenda items. In addition, withdrawal from decision-making is governed by Art. 2-2 of Decree No. 59-178 of 22 January 1959 as amended on the ministers' powers. Moreover, the PM has issued several decrees altering the powers of certain government members so as to prevent potential conflicts of interest.

92. The GET welcomes the existence of a public register of withdrawals, under which ministers are removed from the decision-making process in particular areas where there is a risk of conflict of interest. This is a positive practice of the executive regarding transparency in the exercise of power. The GET notes that private office members are checked by the HATVP and, where needed, face similar requirements to withdraw from decision-making. Given the role of private office members in government decision-making, as close advisers to ministers or the President, it is important that such withdrawals from the decision-making process are also recorded in the existing register. Consequently, **GRECO recommends that the register of withdrawals covers not only ministers but also members of private offices.**

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interests

93. Under Article 23 of the Constitution, the functions of government members are incompatible with a series of functions and activities: parliamentary office; any position of professional representation at national level; any public employment; and any other public or private professional activity, which covers all professions, including the independent professions (such as lawyer) and trade union responsibilities.[23] In addition, as part of the interest declarations control, the HATVP checks that private interests of government members are not of such a nature as to compromise the exercise of governmental duties. When a risk is identified, measures to prevent or end any conflict of interest are systematically imposed.

94. In addition, a specific mechanism has been set up concerning the management of financial instruments held by government members (Art. 8, "transparency" ordinary law). They are required to give up any right of oversight over the management of financial instruments, which they hold during their entire term in office. They must provide proof of the corresponding measures they have taken to the HATVP, which checks that the measures are such as to rule out any oversight on their part over the management of such financial instruments.

95. Other top executive functions (in private offices and government) are also subject to a rule on incompatibility with parliamentary office. This comes on top of the incompatibility between the functions of government member and the holding of public employment. As a result, public officials who are appointed to governmental functions are placed on secondment.

96. The exercise of governmental functions also rules out any gainful private activity on the part of public officials ("amended Le Pors" law, Art. 25 *septies*). They are expressly prohibited from: (i) taking part in the governing bodies of profitmaking associations or companies; (ii) acting

[23] The draft constitutional law for a more representative, accountable and effective democracy provides for the extension of the list of incompatibility of government members' functions to executive functions and those of presidents of deliberative assemblies in local and regional authorities and in the groupings or legal entities that come under them.

as consultants, providing expertise or pleading in court in cases involving any public person; (iii) acquiring or holding, directly or through intermediaries, in enterprises under the oversight of the authority to which they belong or which have dealings with it, interests likely to compromise their independence; (iv) combining a full-time permanent post with another full-time permanent post. However, this series of prohibitions does not preclude the possibility which public officials are expressly granted: (i) of starting or taking over a business on condition that they receive authorisation from their line authority to do part-time work and obtain the approval of the CDFP; (ii) engaging in a gainful or non-gainful activity on a secondary basis with a public or private body or person, on condition that they receive authorisation from their line authority.

97. There are no measures to prohibit or restrict, strictly speaking, the holding of financial interests by top public officials. There are, however, strict rules on such holdings so as to prevent, detect and eliminate any possible conflicts of interest that may result from them through declarations of interests applicable to all persons with top executive functions and disinterested management of financial instruments held, which applies only to government members.

Contracts with state authorities

98. The conclusion of a contract with state authorities, directly or through holdings in a company, is prohibited under Art. 25 *septies* of the "amended Le Pors" law. It may also constitute the offence of benefiting from a conflict of interest (see section on misuse of public resources).

Gifts

99. An Ethics Charter has been drawn up for the President's staff. In its opinion, the HATVP approved the idea of banning them from accepting gifts, directly or indirectly, in the course of their duties, while allowing that gifts received in the formal context of a visit or an exchange between authorities would receive special treatment.

100. The issue of gifts received by government members is dealt with succinctly in the above-mentioned PM's circular of 24 May 2017 on exemplary, collegial and effective government working methods. In addition, the circular of 23 July 2019 on Government members' exemplary conduct specifies that gifts are handed to the public institution collecting movables (Mobilier National) or protocol and offers of private trips must be refused. Government members are responsible for ensuring proper compliance with this requirement by themselves and their private offices.

101. The Ethics Guide of the Ministry for Europe and Foreign Affairs includes a non-exhaustive definition of the concept of gifts, illustrated with examples (objects and services of symbolic value, gifts in the form of money, food products, trips, invitations to performances, etc.). The rule is to refuse gifts, with exceptions for courtesy gifts, provided that they are ad hoc and do not exceed the value of 150 euros. While it may be difficult to refuse a gift for diplomatic reasons, it must be made clear that it will be handed over to the authorities or a charitable institution. In the case of public procurement, while low-value or promotional items may be accepted, any invitations to restaurants, to receptions or to leisure activities (sporting events, performances or trips) must be politely declined. Similar provisions exist in the Ministry of the Armed Forces' Ethics Charter for Public Procurement.

102. The GET considers that it is vital for any future code of conduct applicable to PTEFs to cover the issue of gifts in sufficient detail, with examples that are representative of the exercise of executive power, and the possibility of additional tools depending on the specificities of each ministry. The GET therefore refers to the recommendation on the adoption of codes of conduct for PTEFs. It considers that the circulars currently in force are not so much practical tools as a declaration of general principles, including on integrity, and are therefore not sufficient.

Misuse of public resources

103. The offence of misappropriation of public funds is defined as "the destruction, misappropriation or purloining of a document or security, private or public funds, papers, documents or securities representing such funds, or any other object entrusted to him/her, committed by a person holding public authority or discharging a public service mission, a public accountant, a public depositary or any of his/her subordinates" (Art. 432-15, CC). It is punished by 10 years' imprisonment and a fine of 1 000 000 euros, which may be increased to double the proceeds of the offence, and additional penalties (e.g. ban on holding a public office or engaging in the occupation in the performance of which the offence was committed, the display or dissemination of the relevant decision). The penalty of ineligibility is handed down automatically, barring a reasoned court decision to the contrary. The misappropriation or destruction of public funds or assets by a third party as a result of negligence on the part of the persons covered by Art. 432-15 is punished by one year's imprisonment and a fine of 15 000 euros (Art. 432-16).

Misuse of confidential information

104. The "amended Le Pors" law (Art. 26) provides that public officials are bound by the requirement of professional secrecy under the Criminal Code. They must show professional discretion with regard to all facts, information or documents which come to their notice in or during the performance of their duties. Apart from cases expressly provided for by the regulations in force, officials may only be freed from this obligation of discretion by explicit decision of the authority to which they answer. Any breaches of these obligations may lead to disciplinary and/or criminal proceedings. The GET considers that it would be important to include a provision on the misuse of confidential information in any future code of conduct for PTEFs. This is all the more pertinent that a recent decision of the Court of Justice of the Republic against a former Minister of Justice has shown that the confidentiality of information about ongoing court proceedings should equally apply to the minister when information on such proceedings is provided to him/her by the Prosecutor General's Office. In this respect, it refers to its recommendations on the adoption of a code of conduct and on the National Financial Prosecution Office.

Post-employment restrictions

105. The exercise by a public official of an activity in the private sector after the end of his/her term of office is covered by the Criminal Code which provides for the offence of benefiting from a conflict of interest upon termination of public office ("revolving doors"). This is defined as the act, for a period of three years after leaving office, of concluding contracts or, "by services, advice or investment," taking or receiving any part in a private enterprise which the official had been entrusted with supervising or controlling, or with which s/he had concluded contracts or issued opinions on contracts, or in respect of which s/he had recommended that the competent authority take decisions or issued an opinion on such decisions (Art. 432-13). The penalty carried

is three years' imprisonment and a fine of 200 000 euros, which may be increased to double the proceeds of the offence.

106. Engagement in the planned activity is subject to prior assessment by an administrative authority. The HATVP is responsible for government members, while the CDFP has residual competence, in particular for the President's staff, ministerial private offices members and secretaries general of ministries and central government directors. The law on the transformation of the public service provides for the transfer of the CDFP's powers to the HATVP in 2020.

107. The HATVP assesses risks of former public officials committing the conflict of interest offence. It checks that they have not used their governmental functions to prepare the ground for changing employment; whether the overlap between their previous duties and the planned employment is strong enough to give rise to reasonable doubts as to the independence, objectivity and impartiality with which they performed them; and that the planned employment does not undermine the independent, impartial and objective operation of the institution in which they worked. Compliance with the latter requirement means, in particular, that the persons concerned must not use their ties with their former department for the benefit of their private activity. The HATVP issues a recommendation on the possible compatibility of the planned private-sector employment with former governmental functions (exercised over the previous three years): compatible, compatible subject to reservations or incompatible. These recommendations can be appealed before the *Conseil d'État* and are published if the HATVP considers that such is required by public interest. They are communicated to the new employer and the authority where the former public official worked so as to ensure their proper implementation.[24] If the HATVP believes that the reservations it issued have not been followed, it refers the file to the public prosecution service and published a special report in the Official Gazette – as it did recently in the case of a former minister.

108. The CDFP currently conducts similar checks, after which it issues recommendations of compatibility, compatibility subject to reservations (of two or three years in duration) or incompatibility. It may publish its recommendations. It has frequently issued recommendations concerning ministers' staff, central government directors and secretaries general of ministries.[25] The GET notes that PTEFs currently come under either the HATVP or the CDFP. The GET considers good that, from 2020, the HATVP, as an independent authority, will have sole responsibility for checking moves to the private sector by PTEFs, whether ministers, advisers (including those of the President) or senior civil servants. As stated by the GET regarding declarations of assets and interests by members of private offices, it considers that recommendations on moves to the private sector should be published (see para. 118).

109. Moreover, as the executive is increasingly favouring dual public-private professional experience, the GET considers that tighter checks should not only when PTEFs leave office but also when they are being selected, especially when they have acquired experience in the private sector in the preceding years. The GET considers that the most appropriate measures are those reflected in the recommendation on checks on integrity during the selection of PTEFs, with close involvement of the HATVP, and the assessment of conflicts of interest in the case of recommendations on withdrawals, also produced by the HATVP.

[24] The HATVP has issued 32 recommendations on former government members (12 in 2017 after the change of government).
[25] 18 in 2016, 67 in 2017 (change of government) and 13 in 2018.

Declaration of assets, income, liabilities and interests

Declaration requirements

110. PTEFs are required to declare their assets to the HATVP upon taking and leaving office and their interests within two months of taking office. The HATVP keeps a centralised register of the declarations received.

111. Declarations of assets are made when officials take and leave office and also between the two if there are major changes in their assets. Declarations of assets must include shared assets in the case of individuals who are married or in civil partnerships (PACS). However, the assets of children and parents do not have to be declared.[26] The declarations must cover the following:

- immoveable property;
- shares in property investment companies;
- other unlisted transferable securities;
- financial instruments;
- life insurance policies;
- current accounts and savings products;
- miscellaneous moveable property, with a unit value of at least 10 000 euros;
- motor vehicles;
- business capital/goodwill, client bases, income from official functions;
- cash holdings and other assets, including corporate current accounts or stock options of at least 10 000 euros in value;
- moveable and immoveable assets and accounts held abroad;
- liabilities, including tax debts;
- income earned every year since the start of the individual's term of office or functions (in the end-of-term declaration).

112. The declaration of interests must be filed by government members, ministerial private offices members, staff of the President and secretaries general of ministries. Declarations must be submitted to the HATVP within two months of the date of appointment. They must also be submitted to the PM (in the case of other government members) or to the line authority (in the case of ministerial private office members, staff of the President and persons performing duties by government decision). They indicate interests held on the date of appointment and in the previous five years. Substantial changes in interests (purchase or sale of shares, change in secondary activity, new senior position, etc.) must be declared within two months, or one month in the case government members. Presidential candidates are required to submit declarations of interests, which are published by the HATVP at least 15 days prior to the first round of voting. The declarations of interests of presidential candidates, together with their declarations of assets, are filed with the Constitutional Council and then forwarded to the HATVP for publication. The HATVP does not carry out a substantial check of these declaration at the beginning of the presidential mandate. An examination of the asset situation takes place when the President of the Republic leaves office.

113. All declarations of interests must cover the following:

[26] The Constitutional Council has ruled out both declarations of assets and declarations of interests in their case.

i) employment on the date of appointment and during the previous five years;
ii) consultancy work on the date of appointment and during the previous five years;
iii) participation in governing bodies on the date of appointment and during the previous five years;
iv) direct financial holdings in corporate capital on the date of appointment;
v) occupations of spouse, civil partner or cohabiting partner on the date of appointment;
vi) voluntary duties involving a potential conflict of interest;
vii) elected offices or functions on the date of appointment.

114. Ministers' declarations of interests must also indicate the amount of remuneration, allowances and other payments received in respect of points i) to iv) and vii). The circumstances of the parents or children of the persons making the declarations are not covered.[27]

115. The GET notes that all presidential candidates make a declaration of assets and a declaration of interests during the election campaign, i.e. shortly before the elected candidate takes office. However, the HATVP is not competent to examine these declarations but only to publish them to inform voters. The GET considers that examining declarations, once the President of the Republic has been elected, would allow the HATVP to identify any potential conflicts of interest, either real or perceived, and to propose possible solutions. Consequently, **GRECO recommends that declarations of assets and interests of the presidential candidate who has been elected be examined by the High Authority for Transparency in Public Life upon his/her taking office in order to prevent any conflict of interest, real or perceived.**

116. The HATVP publishes the declarations of assets and interests of ministers, but not those of members of ministers' private offices, staff of the President, secretaries general or directors general. The Constitutional Council has ruled out their publication on the grounds that it would interfere disproportionately with the right to respect for private life. Some details of government ministers' declarations are not made public (for example, address of the declarant, names of their relatives, exact location of properties, names of joint owners, account numbers). The publication of ministers' declarations may include assessments of how complete, accurate and truthful they are, once the individuals concerned have been allowed to submit their comments. This makes it possible to publish shortcomings in declarations which are deemed to be of some degree of seriousness, but which do not warrant referral to the prosecution service. The same applies to the President's end-of-term declaration of assets. The authorities argue that the publication of asset and interest declarations depends on the exposure of the public official. Declarations of persons with decision-making power and entitled to express the government's position in public, such as ministers, should not be subject to the same publication regime as those with no decision-making power nor the ability to express the government's position in public, such as advisers. The latter have a decisive advisory role, checked by the HATVP, but that does not warrant, according to the authorities, that their declaration be published, even if elements most detrimental to private life are not published.

[27] The Constitutional Council has ruled out the inclusion of parents' and children's interests on the grounds of the disproportionate interference with the right to respect for private life.

117. The GET takes note that the authorities emphasise that only declarations of elected public officials can be made public, as decided by the Constitutional Council at the time the declaration requirements were laid down. In view of the decisive role played by advisers in decision-making, the need to prevent any conflict of interest (real or perceived) in the Executive and the growing expectations of the public as to the exemplary conduct of all PTEFs, the GET is of the opinion that, like those of ministers, declarations of advisers ought to be published. Therefore, it invites the authorities to further examine how transparency concerning the interests of the closest advisers to ministers or the President could be increased. Including advisers to the register of withdrawals from decision-making, where only interests that could lead to a conflict of interest are mentioned, would be a beneficial step (see para. 92).

118. The GET notes that declarations of assets cover the assets of spouses and partners only insofar as they come under community of property. Neither declarations of assets nor declarations of interests cover children. In line with GRECO's well-established position, it is recommended that the authorities consider including the requirement that spouses, partners, children and any dependants of PTEFs report their assets and interests, even though the latter are not subsequently made public to preserve their privacy.

119. Consequently, **GRECO recommends (i) examining how to increase transparency concerning the interests declared by close advisers of ministers and the President of the Republic; (ii) considering extending the requirement for persons with top executive functions to make declarations of assets and interests to their spouses, partners and dependents (it being understood that such information would not necessarily need to be made public).**

Review mechanisms

120. Declarations of assets are reviewed by the HATVP and an outside rapporteur in the case of government members. The files are then submitted to the HATVP collegial body, which decides on follow-up action. Following initial formal checks, declarations by members of the government and of ministers' private offices are looked at more closely so as to identify any omissions, under-estimates or errors and, at the end of their terms or duties, any unexplained changes in assets.

121. A tax check is carried out by the tax authorities, under the authority of the HATVP. The HATVP may request fresh information or investigations from the tax authorities, which are required to act within 30 days. The HATVP may also request the communication (within 60 days) of any relevant information (bank account balances, ongoing court proceedings, company balance sheets, etc.) and, where appropriate, the initiation of international administrative assistance procedures. Some HATVP staff members have direct access to various databases of the tax authorities for routine checks (for example, concerning the value of real estate, on the basis of data in the land registry).

122. The HATVP liaises with the department for information processing and action against illicit financial channels (TRACFIN) and the prosecution service. Monitoring software has been developed to pool and check any relevant information about public officials subject to declaration requirements (from news items, social media and various databases). When the HATVP determines that a government member is not complying with his/her tax obligations, it reports

the matter either to the President, in the case of the Prime Minister, or to the President and the Prime Minister, in the case of other government members.

123. The HATVP reviews declarations of interests in a targeted manner to detect circumstances in which public or private interests may interfere with the exercise of an office or function. Interest declarations of government members and private office members are systematically subject to substantial checks. Theses substantial checks take place at the same time as that of asset declarations. As part of checks on interest declarations, only conflicts of interest arising from activities of the declarant's spouse, civil partner or cohabiting partner are identified. Nevertheless, as part of its remit to provide advice on ethics, the HATVP may examine the circumstances of relatives other than spouses, civil partners and cohabiting partners to ascertain whether they may entail a conflict of interest.

124. As to measures and sanctions concerning declarations, the HATVP may: (i) publish an assessment with the declaration if its request for clarification goes unanswered or the response is inadequate and the breach of obligations is of some degree of seriousness and concerns a government member or a public official whose declaration must be published; (ii) where it believes that a declaration omits a substantial share of assets or the valuation is false, it refers the matter to the prosecution service. Failing to declare a substantial share of assets (or interests) or misrepresenting the value of assets and failing to submit a declaration of assets (or interests), carry a penalty of three years' imprisonment and a fine of 45 000 euros, and may entail additional penalties (for example, up to 10 years' forfeiture of civic rights or a ban on holding public office).

125. When checks on a declaration of interests reveal a conflict of interest, the HATVP may recommend that appropriate measures be taken to prevent or end it. This may involve disclosing the interest in question, not taking part in deliberations in which the individual concerned has an interest or, in some cases, giving up an interest, etc. Thereafter, if the problem persists, the HATVP can take binding measures in the form of orders. It may order any member of the government, except the PM, to end a conflict of interest. Such orders may be published, and non-compliance is a criminal offence which carries a year's imprisonment and a fine of 15 000 euros. The authorities indicate that the PM, appointed by the President of the Republic, leads government policies and is accountable to Parliament. According to the them, the exercise of these constitutional duties prevents that he is subject to orders, recommendations or opinions of an administrative authority, even an independent one. In case of failure of the PM to tackle a conflict of interest, the HATVP will inform the President of the Republic. Moreover, the PM must delegate his/her powers to another minister when s/he considers there is a conflict of interest.

126. The GET takes notes of the exception under which, unlike the situation regarding ministers, the HATVP cannot order the PM to end a conflict of interest. It nonetheless considers that the public interest in having any conflicts of interest being ended should not be set aside. The HATVP should be able to make public, as a last resort, situations where the PM fails to prevent a conflict of interest revealed by his/her interest declaration. **GRECO recommends that the High Authority for Transparency in Public Life be able to make public as a last resort any failure of the Prime Minister to end a conflict of interest.**

127. In the event of failure to submit a declaration within the legal time-limit or of submission of an incomplete declaration, the individual concerned receives a reminder from the HATVP

involving a warning to submit the declaration within eight days; where applicable, an order to submit the declaration within 30 days; where necessary, referral to the judicial authorities, as non-compliance with the requirement to submit a declaration of interests is a criminal offence carrying a penalty of three years' imprisonment and a fine of 45 000 euros.

128. In the case of PTEFs, in 2018, 490 reminders were issued, including 136 to members of ministers' private offices and 34 to persons holding various posts appointment to which is by government decision. In 2018, 120 orders were issued, including 29 to members of ministers' private offices, plus one to a member of the President's staff and another to a central government director. In 2017, the HATVP published recommendations concerning two government members' end-of-term asset declarations. Between January 2014 and December 2018, 33 files were referred to the prosecution service on the grounds of substantial omissions or misrepresentation of assets. Only one, which was referred on 31 March 2014, concerned a PTEF, more specifically a junior minister, who was, by a final court judgment, sentenced to a suspended term of imprisonment and a fine and disqualified from standing for election for failing to declare a substantial share of her assets and interests.

129. Reference may also be made here to the existence of rules to protect public officials against any reprisals for reporting, in good faith, to the judicial or administrative authorities circumstances which may constitute a conflict of interest ("amended Le Pors" law, Art. 6 *ter*). In addition, general rules on reporting/whistleblowing and the protection of whistleblowers were subsequently introduced ("Sapin 2 law, Art. 6 to 16). The rules are broad in scope and cover the reporting of conflicts of interest. A graduated procedure has been established: internal reporting; if no action is taken within a reasonable timeframe, external reporting (to the public prosecutor and administrative authorities such as the HATVP or the AFA); as a last resort, public disclosure. The Defender of Rights and the ethics advisers can assist the relevant whistleblowers, who are entitled to certain safeguards, in particular in terms of confidentiality, and measures of protection against any reprisals by their employers.

130. The interviews held by the GET during the visit showed that although the legal protection of whistleblowers is a significant development, in practice, the process for being classified as a whistleblower and then enjoying adequate protection is insufficiently known and is regarded as complex; this ultimately undermines the effectiveness of the legislation. Under the current system, whistleblowers are required to comply scrupulously with a demanding procedure and failing to do so may result in their being denied the protection afforded by law, even though their role in detecting possible conflicts of interest may prove decisive. The GET refers here to its comments on the subject in the section on law enforcement agencies, given that they may be deemed valid in the context of PTEFs (see paras. 260-262).

Accountability and enforcement mechanisms

Criminal proceedings and immunities

131. The President of the Republic may be held accountable in the event of any breach of his/her duties patently incompatible with his/her continuing in office, which may lead to his/her removal from office by Parliament sitting as the High Court (Art. 68, Constitution). However, s/he enjoys jurisdictional immunity throughout his/her term of office (Art. 67). This time-limited immunity is accompanied by the suspension of all limitation periods, which facilitates the

resumption or bringing of proceedings against him/her after his/her term of office. The ordinary courts have sole jurisdiction for the latter.

132. Government members do not enjoy any immunity, but specific rules apply to their appearance as witnesses and their criminal liability. They are covered by ordinary courts if the acts concerned can be dissociated from their official duties (e.g. acts relating to private life).

133. However, as to criminal liability for acts performed in the course of their duties (Art. 68-1, Constitution), they are tried by the Court of Justice of the Republic (CJR). The CJR consists of 12 members of parliament (equal numbers elected by the National Assembly and the Senate) and three Court of Cassation judges (elected for three years by their peers), one of whom presides over the CJR. Any person claiming to be a victim of a serious crime or other offence committed by government members in discharging their duties may lodge a complaint with the CJR. The CJR's petitions committee, which is made up of judges, considers the action to be taken on the complaints and, where appropriate, refers them to the chief public prosecutor at the Court of Cassation for prosecution. The chief public prosecutor may also make referrals ex officio with the assent of the petitions committee. Following referrals by the chief public prosecutor, the investigating committee (consisting of judges) takes all steps it deems necessary to ascertain the truth (hearings, interrogations, confrontation of witnesses, etc.). Following these investigations, if the constituent elements of the alleged offences are established, referral of the cases to the CJR is ordered. Such orders of referral or discontinuation of proceedings may be appealed against on points of law. In case of annulment, the cases are referred to the investigating committee made up of different members. The CJR's decisions on convictions and penalties are taken by absolute majority, by secret ballot, and may be appealed against on points of law.

134. In the case of criminal liability of government members for acts committed in the course of their duties, the GET takes the view that the current situation, in which ministers are brought before a special court, half of whose members are parliamentarians, is unsatisfactory. In formal terms, such composition may create suspicion about the CJR's independence and impartiality, as politicians will, at least in part, be tried by their peers. It has to be said that, apart from a recent decision, the case law of the CJR shows some degree of leniency in the penalties imposed on ministers tried by it. For example, criminal proceedings brought against a former minister concerning the misappropriation of public funds by a third party, in connection with an arbitration procedure, as a result of negligence by a person exercising public authority, gave rise to the former minister being found guilty of the charges against her but not being imposed any sanction. In keeping with the GET's view, a constitutional reform supported by the executive which is, however, currently on hold, proposes to abolish this court. Consequently, **GRECO recommends that, with regard to acts of corruption relating to the performance of their duties, government members be brought before a court that ensures total independence and impartiality, both real and perceived.**

135. In 2014, the position of financial prosecutor as head of the National Financial Prosecution Office (PNF) was established. This prosecution office deals with highly complex proceedings involving the fight against tax fraud, as well as corruption and stock markets, for which it has sole competence. A correctional division of Paris Regional Court set up the same year is devoted to cases dealt with by the PNF. The PNF is made up of 18 judges/prosecutors, six special advisers and 14 administrative staff. It has over 500 ongoing cases, based on referrals from the territorially

competent prosecution service, reports from administrative authorities, its own initiative or referrals from approved associations. Three investigations under way during the visit concerned PTEFs in office.

136. The GET considers that the establishment of the National Financial Prosecution Office (PNF) as a specialised prosecution service can facilitate the handling of corruption cases involving PTEFs. The GET was impressed by the quality of its work and the results obtained since its establishment. The PNF has become a central component of the fight against political corruption. Given the complexity and number of cases concerned, the GET notes that the staff of the PNF ought to be increased, in particular its special advisers (experts on accountancy, financial markets, IT, international taxation, etc.). Furthermore, its full effectiveness depends not only on suitable resources but also on its independence from the executive, in particular by having additional guarantees to preserve the integrity of investigations when it comes to the transmission to the Executive of confidential information on pending cases against PTEFs. The GET thus invites the authorities to guarantee and strengthen the PNF's autonomy. Consequently, **GRECO recommends that the National Financial Prosecution Office be provided with additional resources, more specifically in terms of staff, and that its independence from the executive be ensured, in particular through additional guarantees on the transmission to the government of information concerning ongoing proceedings against persons with top executive functions in order to preserve the integrity of investigations.**

137. With regard to statistics on criminal penalties, it is not possible to indicate the exact status of those convicted and identify PTEFs precisely. The authorities nevertheless indicated that criminal proceedings are in progress concerning several former advisers to a President. They are accused of disregarding public procurement rules and thereby favouring a polling firm in connection with the delivery of opinion polls, involving the offences of favouritism and misappropriation of public funds by a third party as a result of negligence by a person exercising public authority.

Non-criminal enforcement mechanisms

138. All public officials (in the case of PTEFs, this corresponds in particular to private office members) may face disciplinary proceedings if they fail to abide by the rules of conduct that apply to them. Disciplinary proceedings are initiated by the authority which has the power to appoint the officials. The authority may take the least serious measures (admonishments and reprimands recorded in the officials' files as well as the temporary exclusion for less than 3 days) without a meeting of the disciplinary board but with the possibility of the individua to access his/her private file. For other measures, the authority must first consult a disciplinary board comprising staff representatives and the administration. These other measures are as follows: elimination from the promotion table (no promotion); relegation in step (loss of seniority), temporary removal from duties for more than 3 days, demotion (return to a lower-grade post), compulsory transfer or retirement and dismissal. The statistics that exist concerning proceedings brought, and disciplinary measures imposed cover all public servants across the board. There are no statistics available specifically concerning PTEFs.

139. At the Court of Audit, "de facto management" proceedings may be brought against "any person". In particular, this covers circumstances in which a minister, who is chief financial and

budgetary commitments officer for the department s/he is in charge of, abuses the rules of public accounting and the role of public accountant, in breach of the division of tasks between commitments officer and accountant. The proceedings may lead to the issuing of repayment orders (in the event of "shortfalls in public accounts") and fines. De facto management proceedings involving ministers are very rare and the only conviction dates back to 1996 (there were two acquittals in 2017).

140. In cases where the criminal liability of a minister may involve, the allegations may also be referred to the judicial authorities by the Principal Public Prosecutor at the Court of Audit, and to other authorities with powers to investigative and to impose sanctions (such as the HATVP or the AFA). Ministers may also be held liable, as commitments officers, before the Budgetary and Finance Disciplinary Court. This court is linked to the Court of Audit and has jurisdiction to punish serious mismanagement and misconduct concerning public finance law, which covers a wide range of misconduct (for example, the payment of unlawful bonuses, anomalies in public procurement, commitment of expenditure without the requisite authority, failure to submit an expenditure commitment to financial control). Fines apply in these cases as well as a publication in the Official Gazette. Proceedings before the Budgetary and Finance Disciplinary Court do not prevent the adoption of disciplinary measures or criminal prosecution, subject to observance of the *non bis in idem* principle. It recently ruled against a number of directors and members of ministers' private offices (decisions of 21 March 2013 and 21 July 2016).

141. In connection with its recommendation on the code of conduct for PTEFs, GRECO points out that if it is to be fully effective, it should include a number of proportionate disciplinary measures for ethics breaches which are not serious enough to be matters for the criminal or financial courts (see para. 65).

V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

Organisation and accountability of the law enforcement/police authorities

Overview of the various law enforcement authorities

142. The internal security forces, corresponding to the concept of law enforcement agencies (LEAs), include the national police, the national gendarmerie and the municipal police. The missions of the various forces carrying out an internal security role are defined in the Internal Security Code. This evaluation will cover both the entire national gendarmerie and selected national police authorities.

143. The National Police (PN) has jurisdiction in urban areas and the National Gendarmerie (GN) in peri-urban areas and in all other territories (representing 95% of the total territory). The GN also has jurisdiction over transportation routes and plays a role in policing cyberspace. The PN deals with 83% of serious crime and 70% of lesser crime (totalling some 3 million crimes and offences). It is made up of approximately 150 000 staff (28% of whom are women). The PN was responsible for 76% of detentions in remand in 2018. Both the PN and GN have recorded more than 3 million crimes and misdemeanours in 2018.

144. The GN is defined by law as "an armed force established to enforce the law" (Law No. 2009-971 of 3 August 2009 on the national gendarmerie). Article L. 3211-3 of the Defence Code

states that the GN is responsible for maintaining law and order, enforcing laws and carrying out judicial missions. It comprises: (i) the département gendarmerie, placed under the authority of the département gendarmerie grouping (at département level), then divided into companies (at arrondissement level) and territorial brigades (at canton level); (ii) the mobile gendarmerie, which maintains and restores order and also plays a role in public security throughout the country, particularly alongside the département gendarmerie; (iii) specialised units, such as the maritime gendarmerie and the air transport gendarmerie. It has a staff of around 100 000.

145. The hierarchical organisation of the GN is pyramid-shaped; each regional commander of the gendarmerie or administrative unit, placed under the authority of the Director General of the National Gendarmerie (DGGN), is responsible for the département gendarmerie units, the mobile units in his or her command area, and certain specialised units.

146. The PN's priority missions are primarily to ensure public safety, collect intelligence and conduct police investigations under the supervision and guidance of the judicial authority. Two departments were selected for this evaluation based on several criteria, which relate to the nature and extent of their assignments, the number of staff and their geographical scope (national and sub-national): the Central Directorate of the Criminal Police (DCPJ) and the Paris Region Community Safety Department (DSPAP-PP).

147. The DCPJ, which is part of the Directorate-General of the National Police (DGPN), is responsible, at both operational and national level, for (i) centralising information and co-ordinating investigations vis-à-vis the other relevant French services (PN, GN, customs) in conjunction with the judicial authorities; (ii) conducting investigations against organised criminals or in both financial and criminal fields requiring a high degree of technological expertise; (iii) managing, for the benefit of the justice system and all police and gendarmerie services, the various forms of France's involvement in international operational police co-operation (Interpol, Europol, Schengen); (iv) designing and managing modern investigative instruments; (v) analysing crime and criminal activity and suggesting useful technical or legal improvements to the authorities.

148. The DCPJ is organised on the basis of specialised units, centralised command and an operational interlinking of national and sub-national services. At national level, it includes many mainly operational departments, such as the Sub-Directorate for the Fight against Organised Crime (SDLCO), the Sub-Directorate for the Fight against Financial Crime (SDLCF) and the Central Department for Racing and Betting (SCCJ), responsible for administrative and criminal police missions in the field of racing and betting. At sub-national level, the departments are grouped into nine interregional divisions, two regional divisions and eight regional departments, 38 sub-offices, 16 research and intervention brigades and 17 regional intervention groups. Hierarchical authority is exercised by a central director, who is appointed by the government. S/he is assisted by a deputy central director and deputy directors, appointed by ministerial order.

149. The other department selected within the PN is the Paris Region Community Safety Department (DSPAP-PP), which is part of the active police departments of the Paris Police Headquarters and includes all Paris police stations. Its tasks include preventing and combating petty and moderate-level crime, particularly on the public highway, and assisting in the provision of general information on administrative police and the fight against gang-related activities. The DSPAP has a headquarters, four territorial departments in the Paris region and four sub-

directorates. One of the other sub-directorates - "operational support" - comprises an ethics, analysis and evaluation department. This ethics department helps to strengthen the operational measures to prevent corruption and promote the integrity of staff, with input from the various stakeholders (the HQ, local management, each territorial directorate and sub-directorate).

150. With regard to the status of the LEAs, PN officers are civil servants with civilian status, whereas GN officers are military personnel. The LEAs are placed under the authority of the Minister of the Interior and the Minister of Justice with regard to police duties.[28] The specialised gendarmeries are under the operational authority of the Minister of the Armed Forces. Beyond that, the PN and the GN are subject to the authority of the Préfets, who are government delegates and direct representatives of the PM and each of the ministers in their département.

151. Regarding staff numbers, the DSPAP has 19 631 civil servants, including 17 596 police officers, nearly 802 police community support officers and 1 233 administrative and technical staff (as of 30 September 2019). The DCPJ has a staff of 5 964, including 3 865 serving officers (761 women, 3 104 men); 1 052 administrative staff; 68 contract workers; 512 technical and scientific staff (306 women, 206 men); 124 technical staff (16 women, 108 men). The DCPJ also has 343 staff from the GN or ministries. The total strength of the GN in 2017 was 103 503 military and civilian personnel (officers, non-commissioned officers and volunteers). The percentage of women in the gendarmerie, all categories combined (military and civilian employees), is 19.5%.[29]

152. Strategic policies, appropriations and posts requested under the PN or GN programme must be justified to Parliament, and at the end of the tax year it must be clearly shown that they have been properly implemented. The financial accountability of the LEAs is also ensured by the ministerial budgetary and accounting auditor, who is placed under the authority of the minister responsible for the budget.

153. The activities of LEAs are documented by means of public reports that may be thematic, such as those prepared by Parliament[30] or the Court of Auditors. Other reports may focus on specific activities, such as the annual activity reports of the general inspectorates (PN and GN general inspectorates – IGPN and IGGN respectively). Replies to oral and written questions put by members of parliament to the Minister of the Interior are another way.

Access to information

154. As regards access to documents held by LEAs, the Code of relations between the public and administrative authorities provides for a right of access to documents produced or received by the state when imparting public service. This right can be exercised with the LEAs provided that it does not compromise any secrets protected by law or major public interests. The following

[28] In accordance with the military status of gendarmes, the Ministry of the Armed Forces has certain powers relating in particular to initial training, disciplinary authority, external operations and the use of certain specialised gendarmeries.

[29] The staff numbers are as follows: 6 637 officers, 8.2% of whom are women, and 74 218 non-commissioned officers, 13.9% of whom are women (jobs that are directly operational or require professional experience based on alternating between jobs in operational units and at headquarters); 579 officers, 49% of whom are women, and 4,655 non-commissioned officers, including 58.4% of women in the technical and support corps of the gendarmerie; 12,724 voluntary deputy gendarmes, 31.6% of whom are women (operational or support staff with either directly exploitable professional qualifications or short-term training); 4 675 civilian staff, 51.9% of whom are women (managerial, expert or specialist positions in administrative, logistical and technical fields, not subject to the requirements resulting from military status); 15 military officers (commissioners, weapons engineers, liaison officers, etc.); 30 000 reservists.

[30] For example, the report by the Senate Committee of Inquiry of 27 June 2018 on the state of the internal security forces.

may not be disclosed: administrative documents whose consultation or communication would affect national defence secrecy, state security, public safety, personal safety or the security of administrative information systems, the conduct of proceedings before the courts or operations preliminary to such proceedings, unless authorised by the competent authority, and the investigation and prevention, by the competent services, of offences of any kind.

Public confidence in the selected law enforcement authorities

155. According to the European Commission's 2017 Special Eurobarometer on Corruption, 37% of French respondents (slightly above the EU-27 average of 31%) believe that giving or taking bribes or abusing power for personal purposes is widespread in the police force. Nevertheless, two opinion polls from 2019 found that more than 70% of respondents believed that the police inspired confidence. There are no specific surveys on the gendarmerie.

Trade unions and professional associations

156. There are many sector-specific trade unions active within the PN, grouped together in trade union federations. The elected trade union representatives act on behalf of their federation in the process of examining texts relating to the organisation and functioning of services. They also represent trade unions in the administrative committees examining individual situations (e.g. promotion, mobility, discipline, appraisal). The number of members of trade unions is not known.

157. As regards the GN, the principle of a prohibition of trade union membership prevails to keep military personnel away from political and social conflicts. However, since 2015, it has been possible to establish national professional military associations, whose purpose is limited to the preservation and promotion of the interests of military personnel with regard to their conditions of service. They may, however, take legal action against any regulatory act relating to military conditions and against individual decisions affecting the collective interests of the profession.[31]

Anticorruption and integrity policy, regulatory and institutional framework

Legislative and regulatory framework

158. The amended "Le Pors" law is the common legislative basis for both the PN and the GN. Directly applicable to police officers, it sets out the rights and obligations of public officials, as described in the first part of the report. It lays down the rule that every public servant must perform his/her duties with dignity, impartiality, integrity and probity. For gendarmes, this principle is reflected in Article L. 4122-3 of the Defence Code. In addition, the PN and GN Code of Ethics, described in the following section, has regulatory force.

Institutional framework

159. A number of persons are required to declare their interests and assets to the High Authority for Transparency in Public Life (HATVP, see para. 51). In addition, the French Anti-Corruption Agency (AFA) has an oversight role to assess the quality and effectiveness of the procedures implemented, particularly in administrations such as the PN and the GN, to prevent and detect offences against integrity, and an advisory role (individual or institutional). Other

[31] There are two national professional associations: i) the Association professionnelle nationale des militaires de la gendarmerie du XXIe siècle (GEND XXI) – 1 000 members and ii) the Association gendarmes et citoyens (AG&C) – 1 100 members.

players in preventing corruption and promoting integrity among LEAs are the General Inspectorates: the IGPN and the IGGN. The GN also has a Military Ethics Committee (see para. 234). Finally, the French Defender of Rights has an important role to play in preventing corruption and promoting the integrity of the LEAs.

Anti-corruption and integrity policy, measures to manage corruption risks in at-risk departments

160. The objectives of preventing corruption and promoting integrity in LEAs are part of an overall policy to promote the integrity and professional ethics of public officials and civil servants. The HATVP and the AFA play an important role in implementing this policy, including for LEAs.

161. In the PN, the IGPN has created a department dedicate to fighting corruption (National Division of Investigations, DNE) now composed of a dozen highly specialised and experimented investigators. According to the IGPN's analysis, corruption within the PN has several dimensions: corruption of proximity with cash payments (supposed "police protection", access to police data bases for the benefit of criminals; theft of valuables during searches; misuse of public funds). These instances are identified in all police corps, from constable students up to heads of services. Such cases can be linked to individuals (e.g. expert officer using his/her close relations with a company during call for tender for personal gain such as a promise of position after leaving the police) or in some cases take place in more structural ways where control was insufficient.

162. since 2016, the IGPN's AMARIS office has been responsible for coordinating and steering an approach to strengthen internal oversight by enhancing risk management, particularly regarding professional ethics rules. This approach entails developing several complementary mechanisms: (i) a database for analysing incidents and accidents in departments; (ii) preventive sheets, including on good practices; (iii) a computerised tool for the permanent self-monitoring of at-risk activities; (iv) the annual mapping of risks, followed by action plans, by each of the 14 PN departments part of the system. The risk management approach is gradually being rolled out across all departments. The DSPAP Ethics Department is involved in this process with AMARIS. An internal audit is scheduled to evaluate the entire system and the main tool, which is currently only in the experimental phase.

163. For the GN, this task is carried out by the IGGN, which identifies the risks faced by the gendarmerie in its organisation, administration and logistics. The IGGN relies in particular on the analysis of self-assessments carried out by the major units. In this way, it can map out risks accurately and launch targeted audits in areas of weakness.

164. Several types of general risk management measures are used to prevent breaches of integrity. In addition to the obligations of certain LEAs to declare their interests and assets, targeted audits may be carried out in areas where there are weaknesses. Ethical charters have also been drawn up and are being applied to address the specific nature of certain activities.

165. The GET considers that a proper, comprehensive strategy for the prevention of corruption within the LEAs, i.e. the GN and the PN (including DCPJ departments and the DSPAP), must be drawn up in order to map out long-term action to reduce any existing corruption risks. These risks could be identified through the mapping that is already being done in the GN and PN. The adoption of such a strategy, common to all LEAs, would also have the added benefit of demonstrating to the general public the authorities' willingness to resolutely tackle corruption

risks and gain in visibility. This strategy could of course be broken down into the departments concerned, for example in the context of action plans, to take into account the specific characteristics of the PN and the GN. Accordingly, **GRECO recommends the adoption of a global strategy focusing on the prevention of corruption risks within law enforcement agencies on the basis of risk assessments and the most vulnerable sectors as drawn up by the National Gendarmerie and the National Police**.

Handling undercover operations and contacts with informants and witnesses

166. Undercover operations are strictly regulated by law and are limited to the most serious offences covered by the legislation on organised crime. It is subject to the authorisation and supervision of the judicial authority. Such operations are carried out by the Inter-ministerial Technical Assistance Service (SIAT), which is composed of specially authorised police, gendarmerie and customs officers. SIAT is responsible for training undercover agents, providing technical assistance for undercover operations and centralising the intelligence gathered. It runs the operation and the specific undercover procedure and provides investigators with all the relevant information for the investigation. The agents' authorisation is issued by the public prosecutor at the Paris Court of Appeal.

167. PN and GN units may pay an informant who provides information leading to the discovery of crimes and offences or to the identification of their perpetrators. To streamline the management and remuneration of informants at national level, a specific entity has been set up within SIAT: the Central Office of Sources (BCS).

168. The PN has deployed a computer application to monitor and supervise the activity of handlers and sources (central data-base on contact staff, FCTS). This relationship is closely monitored by the hierarchical superior, who must receive a report from all contacts. Remuneration is given to the informant in the presence of two police officers and a receipt is issued, co-signed by the three parties and then countersigned by the superior officer. The latter then submits the transaction to the BCS, which forwards it to the Director of the DCPJ, who validates the payment. Any violation by public servants may result in disciplinary action. Public servants must not derive any personal benefit from their relationship with the informant. A charter sets out the applicable regulations for the management of informants.[32] This charter was revised on 19 February 2019 in order to redefine who is responsible for the management of operational sources and to strengthen control from hierarchy.[33] Training of staff contacting informants was also strengthened in 2019.[34] Dedicated training is also devoted to supervisors. A new version of the FCTS is being introduced to take into account changes to the charter.

[32] Charter on the handling of informants in criminal police matters by the National Police; Art.R. 434-22, Code of Ethics.

[33] The system now includes five levels of responsibility: (i) hierarchical authority (director, head of service, person responsible for the implementation of the charter); (ii) supervisor (line manager responsible for validating the actions of the contact staff and for their training); (iii) the controller (appointed by the hierarchical authority); (iv) the resource staff who assists administratively the supervisor and local staff dealing with the central data base on contact staff; (v) contact staff authorised by the supervisor to contact informants. Within the DCPJ, it is additionally planned that deputy directors, interregional and regional directors of judicial police, directors of regional services, heads of central services and heads of central offices can no longer be contact staff. This new rule aims to ensure the effectiveness of control and to guarantee the legal security of the management of sources.

[34] Training includes:(i) handing the charter to any new contact staff by supervisors reminding them formally of applicable requirements; (ii) compulsory training from half-a-day to a full day in investigation services for any new contact staff; (iii) one-week training session on operational management of sources for the most involved contact staff.

169. In the GN, a confidential policy has been adopted to ensure the security of the work of selected staff, trained in the management of human sources of intelligence. It is based on the establishment of a functional chain and a very small number of operators (handling agent, handling officer, supervising officer, regional and national supervisory level). The handling officer must remain as close as possible to this relationship in order to advise the handling agent, prevent possible abuses, ensure security and lay down the procedures to be followed. The supervising officer directly validates the various phases of the relationship: recruitment of sources, appointment of handling agents, protection of personal data, use of contacts, remuneration. In addition to this, there is regional and national monitoring. The IGGN has carried out two audits, one in 2013 and the other in 2017, the results of which have led to a redrafting of the reference circular and new recommendations aimed at further consolidating and improving the system.

170. While noting the efforts that have been made to ensure a better operational framework for the use of informants, the GET cannot but note that there continue to be cases of non-compliance and that they have made up the bulk of corruption cases in the law enforcement sector over the past few years. It transpires from this that the new rules that should make for better hierarchical monitoring are not always scrupulously complied with on a daily basis. It would seem that these rules are sometimes perceived in the field as an obstacle to the smooth day-to-day management of informants, which is largely based on a special link between an officer and the informant. In practice, therefore, a form of flexibility sometimes seems to prevail to encourage the collection of information provided by informants and forms of remuneration (e.g. facilitating the granting of residence permits).

171. The GET note however that the management of informants has recently been examined in depth in order to improve its effectiveness, including the PN charter on the subject. In connection with control by hierarchy and training, the GET considers it important to strengthen security checks (vetting) and, in particular, their frequency, notably for officers in direct contact with informants. In this respect, it refers to its recommendation on the security vetting if law enforcement officials. Considering that the management of informants has regularly proved problematic in spite of successive reforms, the GET considers it important that an assessment of the current reform be carried out within a maximum period of two years.

172. There are numerous provisions designed to protect witnesses who may be placed in danger. Disclosure of the address of a protected witness or of the identity of an anonymous witness constitutes an offence.

Ethical principles and codes of conduct

173. A common code of ethics for the PN and the GN came into effect in 2014. It provides police officers and gendarmes with benchmarks for their actions and missions and for their various obligations (loyalty, integrity, impartiality, professional secrecy, etc.). It is incorporated into the Internal Security Code and has regulatory force. It is therefore binding on and enforceable against all staff. Any breach by a member of the police or the gendarmerie will be grounds for disciplinary action, independently of the criminal penalties incurred (Art. R-434-27, Internal Security Code).

174. This code was drawn up by the IGPN, in conjunction with the GN. Article R.434-9 deals specifically with the duty of integrity: "Police officers and gendarmes shall perform their duties with integrity. They shall not use their status to obtain a personal advantage and shall not use

information obtained in the course of their duties for purposes unrelated to their duties. They shall not accept any benefit or gift directly or indirectly related to their duties or offered on the basis, real or supposed, of a decision taken or in the hope of a decision to be taken. They shall not grant any advantage for personal reasons." An annotated code, with commentary and examples, is handed out to police students.

175. There are also three codes specific to the PN: (i) the Charter on the handling of informants; (ii) the Charter on IGPN values; and (iii) the Charter of the DCPJ's Central Department for Racing and Betting. The GN has adopted two other codes: (i) the Gendarme's Charter; and (ii) the IGGN's Charter of Ethics and Professional Conduct. These charters are not binding, but any violation of the obligations contained therein would constitute a breach of the duty of obedience.

176. The GET considers the adoption of a code of ethics common to all LEAs to be a positive development. It is a relatively concise document, containing, among other things, an article more specifically on integrity (not using one's duties to gain a personal interest, not using information obtained in the course of one's duties for purposes other than professional, not accepting gifts, not granting benefits for personal reasons) and one on not having more than one activity.

177. The GET considers that the adoption of such a code of ethics, which contains general principles of integrity, needs to be supplemented by a practical document that sets out in clear and instructive language what these principles mean when applied to the day-to-day situations of the staff concerned. Consequently, this tool must contain specific examples illustrating each principle. A code with a commentary has been prepared; it contains a concise descriptions and general examples for each of the 32 articles of the code. However, considering the number of essential notions pertaining to integrity that are covered by one article dealing specifically with probity (conflict of interest, confidential data, gifts and contacts with third parties), the GET considers that the commentary accompanying this article should be significantly expanded. For the moment, this article is only complemented by a commentary of around 10 lines, which underlines the breadth of the notion of integrity, and by six rather general examples (such as "illegal appropriation of an asset", "promise of an advantage or indulgence linked to their duties, in exchange for compensation"; "communicating/misuse of information contained in a data-base in exchange for compensation"). This appears all the more important concerning gifts that there is no guidance in the PN (see para. 229). The practical factsheets published on the PN intranet and based on actual cases could probably be used to supplement the code with examples from the field. The handbook for GN trainers could prove useful for the same purpose.

178. According to the GET, the current commentary to the code of ethics should be complemented in order to provide more detail on essential aspects of integrity (conflict of interest, contacts with third parties and notably the issue of gifts). This commentary should be a means of ensuring that the principles set out in the relevant article of the code in a general and abstract way, with the help of practical examples, make easier for police officers and gendarmes to understand the conduct that is expected of them in the situations they encounter in their daily work. Consequently, **GRECO recommends that the commentary to the code of ethics of the national police and the national gendarmerie be revised to further expand on integrity issues (such as conflicts of interest, gifts, contacts with third parties, outside activities, the handling of confidential information) and include concrete examples**.

Advice, training and awareness

179. During the initial training of police Chief Superintendents, corruption prevention and promoting integrity in LEAs are an integral part of the modules on ethics and the police civil service as part of the 22-month training of the National Police College (ENSP). The Code of Ethics is formally handed over to all students. This topic is addressed through lectures and practical work on the PN's General Employment Regulations, and by a presentation by the IGPN on ethical and professional breaches and how to handle them in an administrative and/or judicial investigation.

180. For police officers, the "ethics and professional conduct" component is addressed during initial training in lectures with case studies. This topic is addressed, in a cross-cutting way, throughout the period of training (which lasts 18 months, including 6 months of practical training), totalling some 30 hours in all. When reaching the rank of commander, officers follow training over several weeks during which the IGPN make a presentation on ethics rules.

181. During the initial training of police constables *(gardiens de la paix)*, the issue of corruption is addressed in connection with road safety missions through a two-hour module that includes a case study. As part of promotional training, in the examination curricula for police constables to be promoted to the higher rank of sergeant *(brigadier)*, corruption is addressed twice: in the common core, a chapter deals with ethics and breaches of duty of integrity (misappropriation, corruption, influence peddling); in the five specific training paths for promotion to sergeant (investigation, intelligence, public order, public peace and border-migration issues), the relationship between police officers and offenders is covered in a three-hour training module.

182. In in-service training, the mandatory training undertaken by the newly assigned Chief Superintendents *(Commissaires)* includes a presentation by the IGPN focusing on the areas to which the head of department must pay particular attention, including those relating to integrity, his/her staff and his or her own conduct. A two-and-a-half day "informant management" course for Chief Superintendents assigned to investigations and heads of criminal investigation units covers the informant management charter, including role plays and a presentation by a head of department who has had to deal with problems of integrity following non-compliance with this charter. The subject is also covered in the 13-hour course entitled "Administrative investigation and disciplinary procedure" for police officers.

183. Within the DSPAP, briefing notes are distributed to the heads of departments to ensure that everyone is aware of professional and ethical rules. In parallel, these instructions are also posted online on its intranet site. The DSPAP also posts AMARIS factsheets on its intranet site to improve operational and risk management. It organises or provides input to awareness-raising campaigns on the risks of professional or ethical breaches, in particular with police constable cadets, officers and Chief Superintendents at the end of their training, when staff assigned to the DSPAP take up their duties, following their initial training and during the training for accreditation of personnel assigned to the anti-crime brigade. Furthermore, the DCPJ's Central Racing and Betting Department has set up a specific training course on the areas falling within its remit for all new "racing and betting" correspondents.[35]

[35] This course takes place once or twice a year and has between 10 and 14 trainees each session.

184. In the GN, during the two-year initial training for gendarmerie officers, 24 modules are devoted to ethics. The Gendarme's Code of Ethics is the subject of a two-hour presentation. In June 2016, the Commander of the National Gendarmerie College (EGN) published a book on professional values and ethics for instructors which includes a commentary on each article of the code of ethics, using specific practical examples, to enable misconduct to be identified more easily. For officers, the objective of initial training is not only to teach them what they need to know in order to comply with the rules of ethics, but also to put in place measures to prevent and deal appropriately with unethical behaviour among their subordinates.[36] With regard to in-service training, ethics is on the syllabus for training courses for certain posts and is part of the senior military training courses taught to the officers during training courses for certain jobs and during higher military education courses.

185. As to non-commissioned officers, their initial training includes a module on "military ethics" (30 hours). Volunteer deputy gendarmes are taught modules on ethics during initial training, including a 20-hour general module during which "military ethics" is tackled. The in-service training programme for officers includes an 8½-hour module dealing with: ethics of an officer, ethics of an army officer, ethics of the institution. Gendarmes are taught a half-day module on ethics. In addition, 28 training modules are accessible on the GN's multimedia platform.

186. With regard to awareness-raising, the AFA regularly provides training for law enforcement officers. For example, in 2017 and 2018 it worked with the trainee police lieutenants at the ENSP. In 2018, the AFA also worked with police Chief Superintendents and gendarmerie officers carrying out their initial training. Training courses for police lieutenants were run jointly with a representative of the IGPN, which meant that actual disciplinary proceedings for breaches of integrity could be used and participants were able to discuss these practical cases.

187. The Defender of Rights is also involved in the training activities run by the DGPN and the DGGN. Since 2015, it has been carrying out training activities for police constable cadets on the prevention of discrimination and ensuring that professional practices comply with the relevant ethical and legal rules. Since 2017, training courses have been organised for PN instructors and "ethics and discrimination" officers. This training includes the arrangements for the Defender of Rights' involvement in cases regarding compliance with the ethical rules by those performing security duties, with a particular emphasis on the carrying out of identity checks.

188. Ethics advisers are responsible for providing advice on compliance with ethical rules and PN or GN personnel can refer individual situations to them. A note of the Minister of the Interior of 19 mars 2019 and implementation circular specify that agents should be able to turn advisers/correspondents in conditions that guarantee the confidentiality of their request. Heads of service must inform their staff who the ethics adviser is. For the PN, the ethics adviser is the deputy director of the IGPN. For the GN, it is the director of the IGGN. Ethics correspondents are responsible for providing advice on compliance with obligations and ethical principles set out in law. For the PN, this task is entrusted to the heads of the IGPN's regional delegations. Pursuant to the principle of subsidiarity, any member of staff working in the correspondent's department may refer matters to him/her. For the GN, ethics correspondents are appointed in each region

[36] The following number of hours are devoted to ethics in the officers' syllabus: gendarmerie officers - 41 hours; officers of the technical and administrative corps of the gendarmerie (OCTAGN) - 30 hours; non-commissioned officers: 9 hours; volunteer gendarmerie candidates (AGIV) - 4 hours.

and administrative unit. In practice, the role of ethics adviser appears to be entrusted to heads of departments or equivalent posts. The GET considers that entrusting this role to such high-ranking officers may run the risk of inhibiting requests for advice from low-ranking personnel; therefore, it invites the authorities to examine the matter further.

189. The GET considers that the creation of ethics advisers and correspondents is a step forward enabling law enforcement officers to have access to advice on any ethical dilemma they may face. However, the GET noted during the visit that the guarantee of confidentiality, which is not provided for in law but in legally non-binding documents, did not appear to have fully translated into practice. The GET therefore considers that further efforts should be made to guarantee the confidentiality of the procedure of consultation of advisers/correspondents. Ideally, this should be embedded in law. In addition, apart from the training on referring whistleblowers to the Defender of Rights, the GET notes that there is no training on ethical issues for those appointed as ethics adviser/correspondent. The full effectiveness of this procedure and credibility depend in great part on the reliability of the advice obtained. Training should also emphasise the need for confidentiality in this procedure. **GRECO therefore recommends that (i) the confidentiality of advisory procedures with ethics advisers/correspondents be provided for in law; (ii) specific training be provided for ethics advisers/correspondents**.

Recruitment and career advancement

Employment regimes

190. With regard to the PN, including the DCPJ and DSPAP, operational staff are divided into three corps: the Policy and Strategic Planning Corps, the Command Corps and the Management and Enforcement Corps. They are appointed to one of a number of directorates of active departments, such as public security, the criminal police or the border police.

191. The organisation of the GN is pyramid-shaped: officers (from general down to officer cadet) are responsible for operational command, policy and strategic planning duties; non-commissioned officers carry out command, managerial and enforcement duties. Competitive and internal examinations are the means by which personnel are promoted or even admitted to the officers corps.

Appointment procedure and promotion

192. The principle of equality of candidates, stemming from the constitutional principle of equal access to public posts, means that all candidates are treated identically throughout the selection process by means of competitive examinations. Ordinary law recruitment procedures in the public service also apply to the LEAs. Competitions can be organised only by ministerial order, which describes the arrangements for the competition (for example, the nature of the tests, the list of required qualifications, the minimum pass mark and, if it is a qualification-based competition, the documents that must be supplied for examination by the panel).

193. All candidates must fulfil the general conditions of access to public posts and the special conditions required by the competition regulations (French nationality, civil rights, criminal record, national service, physical fitness). The principle of non-discrimination or parity governs the recruitment process. It applies to both candidates and the members of the panel.

194. The selection panel has sovereign discretion over the merits of the candidates and is not required to give reasons for its decisions. Its assessments cannot be challenged before the administrative courts. It is independent of the hierarchical authority and is the only body competent to draw up a list of successful candidates who are the only ones who can be appointed. In addition, the candidates' merits must be assessed solely on the basis of the results of the tests they have undergone. Each competition will result in the drawing up of a ranking list in order of merit of the candidates deemed eligible by the selection panel.

195. Special rules also apply to access to PN posts. Candidates must meet the conditions of special physical fitness to verify that they can, for example, carry and use weapons. A medical examination is carried out, including the screening of alcohol consumption and drug use. Special rules govern access to GN posts set out in the Defence Code. The competition is open without discrimination to candidates who meet all the conditions defined by the texts (age, qualifications and physical condition) and all applications that meet these criteria are accepted. No candidate may be rejected by the entity or person having decision-making power without justification.

196. The verification procedures and criteria introduced to establish the integrity and suitability of candidates are intended to ensure that any entries in the criminal record are not incompatible with the performance of their duties and that the result of the screening for drug use to which they are subject is negative. Administrative investigations are also carried out to ensure that the candidates' behaviour is not incompatible with the performance of the duties or missions they are to carry out. In this context, it is possible to consult files, e.g. computerised incident file, wanted persons file, public security breach prevention file and criminal records processing file.

197. Regarding the PN, investigators verify all relevant information; this may include consulting the head of department for a candidate for a deputy community support officer or a public official, and consulting social media. Moreover, the opinion of supervisors is systematically sought in the case of internal candidate. Investigators also consult the local archives of the PN or GN to identify any involvement in facts that have not resulted in recorded legal proceedings but that reveal potentially incompatible behaviour (drunkenness, repeated minor violence, etc.) or relationships that could bring discredit to the department to which the candidate has applied. Another type of administrative investigation may be conducted under the aegis of the National Administrative Security Investigation Service (SNEAS), which is part of the DGPN. This service deals with administrative investigations by analysing the information obtained from consulting a wide range of PN and GN files. The SNEAS is informed by the PN's Central Recruitment and Training Directorate, which sends lists of eligible or admitted candidates in line with the estimated processing times.

198. As for the GN, candidates are assessed by a panel at cognitive level (knowledge, understanding, etc.), by psychologists (adaptability to military life, motivation, psychological profile, etc.), by the recruitment chain, by a check in the files and by consulting the criminal record. Investigations into the family environment are not authorised.

199. Since 2017, the Internal Security Code has provided for account to be taken of the staff member's career advancement. Previously, an official's accreditation was granted only at the recruitment stage. From now on, during his or her career, administrative investigations may be initiated, and automated processing of personal data may be consulted in order to ensure that the conduct of the person concerned has not become incompatible with the duties or missions

carried out. In the event of such an incompatibility, the staff member is transferred in the interest of the service or, where appropriate, demoted. Such decisions may be taken only after an adversarial procedure.

200. The GET notes that security vetting is carried out upon recruitment and in the event of a change of post but, apart from these two cases, is not regularly carried out despite the new provision in the Internal Security Code to this effect. For example, the GET was informed that some staff members who had been in the Racing and Betting Department for a long time had been guilty of ethical breaches that could probably have been avoided if security checks had been more frequent in this sector, which is considered as more vulnerable to corruption risks. A recent case concerning a person with access to classified documents also showed that checks were carried out only every five years in connection with the authorisation to access confidential information, and that a high degree of bureaucracy seemed to hinder additional checks, even in cases of suspicion raised by peers. The GET emphasises that personal circumstances are likely to change over time and, in some cases, make a person more vulnerable to possible corruption risks (financial problems arising, for example, as a result of a mortgage or consumer loan, divorce, the illness of a relative, the bankruptcy of a spouse, radicalisation, etc.).

201. Accordingly, the GET stresses the importance of security checks at regular intervals during the careers of law enforcement personnel; the frequency of such checks should depend on the sector's exposure to risks and on access to sensitive information. Consequently, **GRECO recommends that security checks relating to the integrity of members of the national police and the national gendarmerie be carried out at regular intervals in compliance with the Internal Security Code**.

202. In the PN, including the DCPJ and the DSPAP, the procedures for appointing personnel depend on their status. The Central Directors of the National Police are appointed by decree of the President adopted by the Council of Ministers. The posts of director of the active departments of the police headquarters are filled by secondment, by decree following a report from the Minister of the Interior. The appointment of department heads within the PN is made by order. Officials engaged in operational activities are recruited through a competitive process. Recruitment by contract does not apply to law enforcement officers.

203. Generally speaking, for the PN, depending on the corps, police officers' promotions are linked either to passing a professional examination, to conditions of seniority of tenure, or seniority in the rank. Sometimes these conditions may be cumulative. Requests for advancement are examined by the Joint Administrative Commission (CAP). Promotion is decided by decree.

204. The procedures for appointing gendarmes are defined by the Defence Code. Under Art. 4134-1, "appointments to a rank in the military hierarchy shall be made: 1. By decree of the Council of Ministers, for general officers; 2. By decree of the President of the Republic, for career officers and under contract; 3. By the authority authorised by regulation, for career non-commissioned officers, those enlisted and volunteers as well as for officers and non-commissioned officers". GN officers and non-commissioned officers begin their careers with paid training. At the end of their training, officers become career officers, and non-commissioned officers become career non-commissioned officers following a three-year observation period. In addition, there are volunteer deputy gendarmes, who serve as volunteers in the French armies.

205. For the GN, the promotion procedures are defined by decree and are specific to each member body. Requests for promotion are examined by a committee whose members, of a higher rank than the persons concerned, are appointed by the Minister of the Interior. The committee takes into consideration the order of preference and the annual marks of the candidates. The promotion tables are approved by the Minister of the Interior and published in the Official Gazette.

206. The GET does not have complete statistics on the gender distribution in the PN departments specifically examined in this report (DCPJ and DSPAP), which would enable it to make an accurate assessment. However, it notes that 80% of the so-called active staff of the DCPJ are male. With regard to the GN, the GET notes that the number of women varies depending on the type of position. However, it notes that among officers and non-commissioned officers in so-called operational posts, women represent only 11% of personnel, while in the so-called support corps, they represent nearly 53%. The GET calls on the authorities to look at these GN statistics and also to draw up a table in the DCPJ and the DSPAP (and more generally the PN) in order to better promote gender balance, particularly in field posts, which are often more vulnerable to corruption because of the contact inherent in such posts, in order to avoid group thinking resulting from a more uniform staff profile which could encourage unethical conduct.

Performance evaluation

207. The evaluation of the performance of LEAs is annual, mandatory and carried out by the officers' hierarchical superiors on the basis of predefined criteria.

208. The evaluation of PN staff follows three main focal points: the officer, the missions and compliance with ethics. An officer may ask, in writing and duly justified, the hierarchical authority to review some or all of the content of his or her evaluation. This specific remedy does not preclude administrative and judicial appeals under ordinary law. At the same time, it is possible to refer the matter to the internal mediator of the PN.

209. The evaluation of GN personnel is based on their performance in operational duties, technical skills, leadership style, interpersonal skills and achievement in their position. Military candidates for promotion who have been fully successful in their duties may advance to the next rank and higher-level responsibilities. In the evaluation process, all military personnel may challenge their marking before the Military Appeals Board (a prior administrative appeal is mandatory). In the event of serious shortcomings, an interim marking may be given.

Rotation and mobility

210. In the PN and therefore the DCPJ and the DSPAP, mobility takes place by means of an assignment order, following an assessment of the compatibility of the candidates' profile with the position to be filled. Staff members of the management and enforcement corps are required to remain for a minimum period of five years from the date of their appointment as trainees in the region where they were first assigned (eight years in Ile-de-France). The duration of assignment in the same post, for a staff member in the policy and strategic planning corps, is limited to five years. This period may be extended, by up to a maximum of three years, at the request of the person concerned or on the initiative of the administration. An additional extension of one year may be granted, on an exceptional basis, if justified in the interests of the department. A transfer

may also take place in the interests of the department. The constraints of regular mobility are applicable only to staff working in the policy and strategic planning corps.

211. In the case of the GN, the transparency of career progression is achieved through a dialogue based on an individual career plan between the staff member and the human resources department over the course of the staff member's career. The management bases promotion on successful performance and decides on transfers according to the needs of the department and the wishes of the staff. Promotion generally leads to functional mobility with possible geographical mobility for officers and non-commissioned officers. Consequently, mobility generally speaking forms an integral part of the career path of gendarmes.

212. The GET notes that, with regard to the DCPJ and the DSPAP, and more generally the PN, rotation is planned for only the most senior positions. However, it has been informed that cases of corruption had arisen in the DCPJ's Racing and Betting Department, where risks are considered higher but where rotation is not mandatory and in practice infrequent. The GET considers this example to be telling. In the sectors identified as more vulnerable to corruption risks, it seems all the more important to provide for a rotation system. The GET considers rotation as a way of preventing any corrupt behaviour which could arise from holding the same post over a prolonged period of time in a sensitive department; it should thus be put in place as it can prove a useful prevention tool. Therefore, **GRECO recommends that the national police set up a rotation system in the sectors identified as most vulnerable to corruption risks**.

Termination of duties and dismissal

213. In the PN, the dismissal of staff members can be ordered only after a procedure before a Joint Administrative Commission,[37] sitting as a Disciplinary Board. The officer is entitled to disclosure of the entire file and assistance from counsel of his or her choice. After deliberation, a reasoned opinion is sent to the Minister of the Interior. The dismissal of police Chief Superintendents is by presidential decree and the dismissal of other officers by ministerial order.

214. Gendarmes having military status may be dismissed following administrative or disciplinary proceedings that are validated by the DGGN. Any gendarme may, when sentenced to a penalty of prohibition of civil rights or of performing a public function, also be subjected to a loss of rank resulting in the termination of his or her military status and his or her dismissal. These decisions can be appealed against before the administration and then before the administrative court. The contract of the volunteer deputy gendarmes may be terminated during the probationary period. If the person concerned has received a criminal sentence, his or her contract shall be automatically terminated. The contract may also be terminated by disciplinary action.

Salaries and benefits

215. The gross annual salary of law enforcement officers (LEOs) varies according to their rank, functions, seniority in rank and corps, family status and place of duty.

216. The following table presents the average remuneration of the main PN corps at the beginning of their careers:

[37] Joint Administrative Commissions comprise an equal number of representatives of the administration and staff representatives.

CORPS	RANK/GRADE	STEP	GROSS ANNUAL SALARY (Île-de-France) in €	GROSS ANNUAL SALARY (Province) in €
Community Support			20 310.84	18 979.75
Management and Enforcement Corps (CEA)	Constable	1	29 290.82	26 971.43
		Intern	28 615.96	26 328.89
		Cadet	20 822.19	20 289.74
Command Corps (CC)	Police captain	1	35 248.80	33 180.47
		Intern	25 223.69	23 250.62
		Cadet	20 469.38	19 931.43
Policy and Strategic Planning Corps	Commissioner	1	46 368.45	44 187.83
		Intern	29 194.09	27 141.05
		Cadet	23 610.45	22 205.55
Forensic Police Department (PTS) Engineer	Engineer	1	36 345.47	33 748.10
PTS Technical officer	Technical officer	1	31 932.88	29 822.18
PTS Specialist	Specialist	1	30 420.67	28 557.08
Administrative Officer	Administrative Officer	1	35 448.74	29 989.79
Administrative Secretary	Standard grade	1	27 348.95	24 305.22
Administrative and technical assistant	First grade	1	24 419.84	22 568.98

217. These gross annual salaries include the main allowances paid to the various police forces.[38] The main factors for variations in the remuneration of LEOs are linked to their functions, place of duty, seniority and commitment (e.g. exceptional performance bonus, responsibility and performance allowance, depending on the evaluation).

218. In the case of the GN, salaries are defined according to scales set by decrees of the Minister of the Interior or the Minister of the Armed Forces. The table below summarises the gross salary received per corps at the beginning of the career:

Category	Gross monthly salary (in €)
NCO	2 276
Technical and administrative support corps	1 844
Officer	3 186
Officer in the technical and administrative corps	2 735

219. Each gendarme's net index is increased according to seniority in the rank and upon promotion to the next higher rank in his/her corps or upon passing a competition to join the officers' corps. Military personnel may have a new index bonus and a duty and responsibility allowance. Remuneration also varies according to the corps to which they belong. All officers and non-commissioned officers receive the special police hardship allowance, whose rate varies according to rank, qualification bonuses held, unit of assignment, area of residence and family situation. The exceptional performance bonus makes it possible to reward deserving employees on an annual basis. The duty and responsibility allowance fixed by decree may be granted to 4 200

[38] Residence allowances and special police hardship allowances for active corps, functional, hardship and expertise allowances for administrative and technical corps, management allowance for the supervisory and enforcement corps, responsibility and performance allowance for the command corps and the policy and strategic planning corps and specific hardship allowances for the technical and scientific police.

posts divided into eight categories. For four of the categories, there is a variable part of up to 20% of the annual amount of the fixed part established for all categories. This takes into account the results obtained in the performance of duties and the manner of serving.

Conflicts of interest

220. The definition of conflicts of interest contained in the "Transparency" ordinary law has been adopted verbatim by the amended "Le Pros" law, in Art. 25bis, applicable to the PN, and has been incorporated for the GN into the Defence Code (Art. L. 4122-3). The requirements to refrain from action imposed on certain categories of officials are relevant for LEOs (see paras 90-91).

221. The procedure for identifying and resolving conflicts of interest is mainly based on the declaration of interests that a number of LEOs must submit (see the section on declarations for more details). When a superior officer identifies a conflict of interest situation, s/he takes the necessary measures to put an end to it or orders the public servant or member of the military to put an end to the situation within a specified period of time. If s/he does not consider himself or herself in a position to assess whether there is a conflict of interest, s/he transmits the declaration either to the HATVP (in the case of a police officer) or to the competent ethics adviser (in the case of a member of the GN). The HATVP or ethics advisers assess, within two months, whether the declarant is in a conflict of interest situation. If so, a recommendation is made to the hierarchical superior. The latter takes the necessary measures to put an end to the situation or instructs the person concerned to put an end to the situation within a fixed period of time.

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interests

222. With regard to outside activities, reference is made to the section on PTEFs and the amended "Le Pors" law (Art. 25 septies), these arrangements having been supplemented by a decree.[39] These provisions have been taken up in essence for all LEOs: (i) by the Internal Security Code: "Police officers or gendarmes shall devote themselves to their duties. They may only engage in a private gainful activity in the cases and under the conditions defined for each of them by the laws and regulations" (Art. R. 434-13); ii) by the Defence Code, applicable to gendarmes (Art. L 4122-2 and R. 4122-26). Since the outside activities that may be authorised are listed in the aforementioned articles, no police officer or gendarme may be authorised to carry out, on a secondary basis, other activities, such as that of a private security agent on an employed basis.

223. With regard to the activities, listed in Art. R. 4122-26 of the National Defence Code, which may be authorised, gendarmes must first seek the approval of their hierarchical authority and submit their request to the Military Ethics Committee[40] for review. The approval given by the authority following a detailed written request specifies the amount of time that can be realistically spent on the outside activity(ies).

[39] Decree No. 2017-105 of 27 January 2017, on the carrying out of private activities by public officials and certain private law contract staff who have ceased to hold office, engaging in concurrent activities and the Public Service Ethics Committee.

[40] Placed under the Minister of the Armed Forces, this Committee comprises a member of the Conseil d'État, a senior adviser at the Court of Auditors, an eminent figure with expertise in the field in question, a member of the General Inspectorate of the Armed Forces, four commanding officers, a gendarmerie commanding officer, the Director responsible for GN military personnel in the Ministry of the Interior (or the substitutes or representatives of these members).

224. With regard to police officers: in 2013, 8 sanctions were imposed; in 2014, 11 sanctions; in 2015, eight sanctions; in 2016, nine sanctions and in 2017, three sanctions. By way of example, there was a case of a private gainful activity while on sick leave and one of a paid activity as a guard in a nightclub.

225. With regard to financial interests, reference is made to the section on PTEFs and the amended "Le Pors" law. These legislative provisions, applicable to the PN, were extended to the GN (Art. L. 4122-5, Defence Code). In addition to interest declaration, there is also a mechanism for managing the financial instruments held by civil servants or military personnel who exercise economic or financial responsibilities and whose hierarchical level or nature of functions justify this. Those concerned are required, within two months of their appointment, to give up any right of oversight over the management of the financial instruments they hold during their entire term of office. They must provide the HATVP with proof of the corresponding measures taken.

Gifts

226. A prohibition in principle on gifts and other benefits is set out in Art. R. 434-9 of the PN and GN Code of Ethics, which states that police officers and gendarmes cannot accept any benefit or gift directly or indirectly related to their duties or that they may be offered on the actual or supposed basis of a decision taken or in the hope of a decision to be taken.

227. The meaning and scope of this prohibition in principle on gifts and benefits is specified in the ethical charter of the Central Racing and Betting Department. This charter stipulates that officers must refuse any donation, remuneration or benefit from a gaming/betting professional, with the exception of promotional products of low value. This prohibition is supplemented by an obligation to report immediately to their superiors any proposals made to them. Various actual situations are described, for example: an invitation to have a meal may be accepted only in exceptional circumstances and with the express authorisation of the hierarchy; an invitation to a show may be accepted only in a limited way; visiting gambling establishments for the purpose of benefiting from free additional services (hotel, restaurant, in particular) is strictly prohibited.

228. Donations and gifts that may be made to gendarmerie units are strictly regulated: (i) acceptance may take place only by ministerial order or by express authorisation from a group commander or the administrative unit to which the recipient is assigned; (ii) any acceptance of a gift of equipment, which is subject to a condition or restriction of use enabling the donor to interfere in the operational functioning of the gendarmerie units, is prohibited.

229. During the visit, the EEG learnt that there is currently no explanatory document in the DCPJ and the DSPAP, and more generally in the PN, which addresses the sensitive issue of gifts, except for the DCPJ's Racing and Betting Department. The IGPN has initiated a reflection on the possibility of establishing a self-assessment grid in this area, but this work, which has been ongoing for several years, has yet to be completed. In this regard, the GET reiterates its recommendation that more detailed explanations and concrete examples be given in the commentary to the Code of Ethics of the PN and the GN (see para. 178). As the code covers the issue of gifts, the GET underlines the importance of providing specific examples and of covering the most frequent situations and the possibility of contacting ethics advisers in case of doubt.

Misuse of public resources

230. Reference is made in this respect to the section on PTEFs concerning the offence of misappropriation of public property or funds (see para. 103). Furthermore, the power of scrutiny and inspection, not only of the hierarchical authority, but also of the general inspectorates, is a deterrent to the misuse of public resources (official cars, etc.). As to sanctions imposed on gendarmes, in 2014 there was a dismissal for the disappearance of a weapon and silver seals and, in 2015, a dismissal for the theft of military equipment, later on put up for sale on the Internet.

Contacts with third parties, confidential data

231. Article 26 of the amended "Le Pors" law" law provides for an obligation of professional secrecy in accordance with the Criminal Code and Article 11 of the Code of Criminal Procedure, according to which, except in cases provided for by law and without prejudice to the rights of the defence, proceedings during police and judicial investigations shall be secret. Article R. 434-8 of the Internal Security Code provides that LEOs are subject to the obligations of professional secrecy and the duty of discretion and must not disclose information obtained in the course of or in connection with their duties. Article R. 434-21 of the Code of Ethics stipulates that police officers and gendarmes shall update and consult the files to which they have access in strict compliance with the purposes and rules specific to each of them.

232. With regard to breaches of professional secrecy by a police officer, in 2014, two sanctions were imposed; in 2015, one sanction; in 2016, two sanctions and in 2017, one sanction. Regarding confidential data files, in 2015, one sanction was imposed; in 2016, one sanction and in 2017, one sanction. In the case of gendarmes, in 2014, there was one dismissal for misuse of data from a named file, and for passive corruption and misappropriation of funds during criminal investigations; and in 2015, one dismissal for consulting files.

Post-employment restrictions

233. Reference is made to the criminal offence of conflict of interest resulting from "revolving doors" and the requirement for prior authorisation by an ethics body (HATVP, Civil Service Ethics Commission) as mentioned in the section on PTEFs (see para. 104).

234. With regard to the GN, the above-mentioned Military Ethics Committee is consulted by the Minister of the Interior, who must be informed, without delay and in writing, of the nature of the private gainful activity that a gendarme intends to exercise. Within one month, it may deliver an opinion on compatibility (with or without reservations) or incompatibility (final or as it stands if the request is incomplete). The Minister decides within two months, failing which the gendarme's request is deemed to have been rejected.

235. Like all civil servants, police officers who have ceased their duties remain subject to the limitations provided for in Article 432-13 of the Criminal Code, which defines the offence of conflict of interest. Before taking up a new activity, a retired police officer must first cease all professional activities regardless of the retirement plan concerned.

Declaration of assets, income, liabilities and interests

236. The rules on the declaration of assets, laid down by the "Transparency" ordinary law, apply, for LEOs, to positions for which appointments are made by government decision. This is

the case, for example, for the posts of Secretary General, Director General and Director of Central Administration, Head of Department of the General Inspectorate of Administration, Director of Active Police Services and Head of the IGPN and the IGGN. These rules on the declaration of assets and liabilities have been extended, by the amended "Le Pors" law, to civil servants appointed to posts whose hierarchical level or nature of duties justifies it. The list of these posts was laid down by Decree No. 2016-1968, of 28 December 2016, and then further clarified by the aforementioned Order of 23 July 2018, applicable to the PN (such as department heads, deputy directors). In the case of GN military personnel, the list of positions whose hierarchical level or nature of duties justifies an obligation to declare their assets (provided for in Art. L. 4122-8 of the Defence Code) was laid down by Decree No. 2018-63 of 2 February 2018 (Art. R. 4122-42, Defence Code).

237. Asset declarations are to be submitted to the HATVP within two months of appointment. Within two months of leaving office, a new declaration must be submitted. Any substantial change in the financial situation during the performance of duties must give rise, within a period of two months, to an amending declaration. The reporting forms are identical to those described in the section on PTEFs (see paras. 110 and following). These declarations are not made public. With regard to the declaration of assets, the arrangements for married or civil partnership declarants are the same as those described in the section on PTEFs.

238. The HATVP is responsible for collecting and verifying the accuracy, completeness and truthfulness of the declarations it receives. In addition to the matters already referred to in the section on PTEFs, under Article L. 4122-9 of the Defence Code, any gendarme who is required to submit a declaration of assets and who does not do so is liable to a three-year prison term and a fine of 45 000 euros. In addition, civil rights may be suspended along with a prohibition on holding public office. If a gendarme subject to a declaration does not comply with HATVP injunctions or does not provide it with the relevant information and documents, s/he is liable to one year's imprisonment and a fine of 15 000 euros.

239. There is a further mechanism, which is to prevent conflicts of interest by means of an obligation to declare interests: either to the HATVP, for the most senior positions and posts for which appointment is decided by the Government; or to the hierarchical authority, which in case of doubt can turn to the HATVP, (through the appointing authority), for other posts, taking into account the nature of the functions and the resulting risk of exposure to situations of conflicts of interest.

240. With regard to declarations of interest to the HATVP, the rules described in the section on PTEFs are also relevant in the case of LEOs (see paras. 111 and following). With regard to declarations of interest to other authorities, a whole series of interests, financial or otherwise, must be declared.[41] For any substantive change in interest, a supplementary declaration must be made updating this prior declaration and indicating the nature and date of the event leading to the change. These declarations are forwarded to the appointing authority and supplementary declarations to the hierarchical authority, all in strict confidentiality. For persons closely associated with LEAs, the rules mentioned for PTEFs for declarations to the HATVP apply to LEOs.

[41] The functions of the declarant; professional activities giving rise to remuneration/gratification and consultancy work during the previous five years; participation in the governing bodies of a public or private entity or company during the previous five years; direct financial holdings on the date of appointment; occupation of spouse, civil partner or cohabiting partner on the date of appointment; elected functions and offices exercised on the date of appointment.

Oversight and enforcement

Internal oversight and control

241. Before concluding that there has been a breach of ethical rules, a pre-disciplinary administrative investigation (EAPD) is launched to establish the material facts and to conclude, if necessary, that one or more breaches have occurred. This investigation may be carried out by the employment directorates, as part of their internal control function, or by the inspectorates (IGPN or IGGN). They may be accompanied by preventive measures, such as the suspension of the staff member's duties. At the end of the EAPD, in case of breach of ethical or professional standards, the authority with the power to impose sanctions may start investigations and impose disciplinary measures (a warning or reprimand), refer the staff member to the Disciplinary Board, or decide to close the case without further action. Under Art. 40 of the Code of Criminal Procedure, the administration must also report the facts to the judicial authority, which may initiate an investigation if they could constitute a criminal offence. It is up to the latter to choose the department that will carry out the investigations. Not all judicial investigations involving LEOs are referred to the IGPN or IGGN.

242. In the PN, there are three types of internal control: (i) hierarchical control, which can be direct (by heads of department) or indirect (by the ethical bodies of each directorate or employment department); (ii) control by the IGPN; and (iii) control by the General Inspectorate of Administration. Each year, approximately 2 000 disciplinary sanctions are imposed; this figure covers all staff members and all types of ethical breaches. These sanctions have been steadily decreasing over the past five years. 80% of them are reprimands or warnings. They are mainly issued by the heads of department, the staff member's direct superior authority; 9% of them are issued following an IGPN investigation.

243. Internal control of the GN applies to all areas and is exercised at several levels. First-level control is the responsibility of each unit or formation commander: (i) self-monitoring of each member of staff; (ii) control of operations conducted by other staff in accordance with directives defined by the unit commander or the head of formation; (iii) direct control by the unit commander or head of formation or by a delegated person of the operations performed by his or her subordinates. Second-level control is exercised by the gendarmerie regional commanders or equivalent authorities. It involves verifying the effectiveness and reliability of the first-level control and taking into account the corrective measures decided in the event of anomalies or malfunctions. It is carried out mainly during scheduled annual inspections but may lead to more frequent or unannounced control operations. Third-level control is the responsibility of the General Directorate and involves overseeing first- and second-level internal controls.

244. The evaluation of the GN's internal control is the responsibility of the IGGN. Its expertise capacities are focused on ethics, internal audit, studies and investigations. This internal control is performed in different forms: audit, inspections or administrative investigations (for example, in cases where there is a suspicion of non-compliance with ethical rules). Investigations are initiated by the Head of the IGGN, either on instructions from the Director General of the GN or on his or her own initiative. These investigations result in the drafting of an investigation report, which concludes with recommendations. The IGGN also conducts judicial investigations under the direction and delegation of the public prosecutor's office and the investigation authorities in

accordance with the requirements of the Code of Criminal Procedure, with national jurisdiction. The IGGN will be notified of cases in which an officer may be held criminally liable.

245. Sanctions range from warning to dismissal: (i) warning, reprimand and exclusion from 1 to 3 days; (ii) removal from the promotion table, reduction in step, temporary exclusion from duty from 4 to 15 days and official travel; (iii) demotion and temporary exclusion from 16 days to 2 years; (iv) compulsory retirement and dismissal. All these sanctions are subject to appeal.

246. Anyone can file a complaint, including legal entities. The IGPN may receive complaints. The IGGN does not receive any complaints and is directly referred to by the public prosecutor's office to conduct judicial investigations that may involve gendarmerie personnel. There is also an Internet reporting platform that enables any citizen to report facts implicating the PN or the GN. A report may be made in writing anonymously, either directly to the public prosecutor's office or by sending it to a police or gendarmerie department, which will forward it to the public prosecutor's office. Judicial complaints are handled by the investigation departments under the direction of the judicial authority. When the investigation is completed, the file is forwarded to the prosecutor's office, which decides whether or not to prosecute.

247. When the public prosecutor decides to close proceedings without further action, s/he notifies the complainants and victims and indicates to them the legal or expediency reasons justifying his/her decision (Art. 40-2, Code of Criminal Procedure (CCP)). Any person who has submitted a complaint to the Prosecutor may appeal to the Principal State Prosecutor against a decision to discontinue proceedings, who may order the Prosecutor to initiate proceedings if s/he considers the complaint to be well founded, and failing that, informs the person concerned that s/he considers the complaint unfounded (Art 40(3), CCP). The person who lodged the complaint may also decide to supplement his/her complaint with a civil action before the senior investigating judge where the prosecutor has informed the person concerned of his/her decision not to prosecute or where the prosecutor has taken no action for three months (Art. 85, CCP).

External oversight and control

248. In addition to judicial control, parliamentary control is also exercised through the vote on the budget, written or oral questions addressed to the government and parliamentary committees of inquiry. In addition, the control of the HATVP has already been mentioned with regard to the obligation to make declarations. Other independent administrative authorities may also carry out external control: the National Data Protection Commission (CNIL), which authorises the creation of files, monitors their use and may authorise access to them by individuals; the Commission for Access to Administrative Documents (CADA); the National Commission for the Monitoring of Intelligence Gathering Techniques (CNCTR) which monitors the implementation and exploitation of interceptions of communications such as telephone tapping; the Inspector-General of deprivation of liberty premises (CGLPL), which ensures that persons deprived of their liberty are treated with humanity and dignity.

249. Furthermore, the Defender of Rights is responsible for ensuring that persons carrying out security activities in the country comply with the code of ethics. Any person who has been the victim or witness of facts that s/he considers to constitute a breach of the rules of ethics in the field of security may refer the matter to the Defender. The Defender of Rights may also be

petitioned by other individuals entitled through the person whose rights and freedoms are in question and s/he may also take action on his/her own initiative.

250. S/he has broad investigative powers as part of an administrative investigation. S/he may request explanations from any person appearing before him/her. S/he may take a statement from any person whose assistance seems helpful to him/her and gather any information s/he deems necessary. The secret or confidential nature of the information cannot be invoked (except in matters of national defence, State security or foreign policy). When a pre-disciplinary administrative investigation is initiated by the IGPN or IGGN, the Defender may ask to be informed thereof. S/he may carry out on-the-spot checks at the administrative or private premises of the persons accused. Where criminal proceedings are in progress, the secrecy of the investigation may not be invoked to prevent him/her from having access to the information s/he requires. Finally, when his/her requests are not acted upon, the Defender may give notice to the persons concerned to reply within a specified period of time and, failing that, s/he may submit a reasoned request to the summary proceedings judge for the purpose of ordering any appropriate measure.

251. At the end of this investigation, the Defender may issue recommendations on which the authorities are invited to take action within a certain period of time. S/he refers the matter to the authority empowered to initiate disciplinary proceedings. The latter authority must inform him/her of the action taken and, if disciplinary proceedings are not initiated, must give reasons for this decision. If appropriate action is not taken on the recommendations, the Defender may draw up a special report, which is submitted to the disciplinary authority and may be made public.

252. In the departments of the Defender of Rights, a unit comprising a head, eight lawyers, an assistant and two trainees is dedicated to security ethics. The number of referrals on security ethics increased slightly: from 1 228 in 2017 to 1 520 in 2018, 69.3% of which concerned PN or GN officers. To date, no complaints have been received concerning acts of corruption committed by a police or gendarmerie officer. Should the Defender receive such a complaint, s/he would immediately refer it to the Public Prosecutor's Office.

Public and civil society monitoring

253. Public and civil society monitoring of LEAs is ensured by the National Consultative Commission on Human Rights (CNCDH), trade unions, the media, associations and citizens. Citizens can also file reports, for example through the reporting platform. They may also refer the matter to the Defender of Rights (see above), among other options.

Reporting obligations and whistleblower protection

254. Article 40 of the CCP requires LEOs to notify the public prosecutor when they become aware of a crime or offence in the course of their duties and to transmit all relevant documents. No specific sanction other than disciplinary is provided for in the event of failure to comply with this provision. In addition, any police officer or gendarme is required to inform the hierarchical authority without delay of any event occurring in the course of or outside his or her duty, which caused or may cause him or her to be summoned by a police, judicial or supervisory authority (Art. R. 434-4, Internal Security Code). Failure to comply with this obligation may result in disciplinary proceedings. An LEO may report a breach of ethics to his or her superiors, on reporting

platforms, to an inspection body, to the officer designated to receive such reports, to the ethics adviser, or to the Defender of Rights. Such peer monitoring is encouraged (Art. R. 434-26).

255. The framework of the general arrangements for the protection of whistleblowers is laid down by the "Sapin 2" law of 2016. The material scope of whistleblower protection has been extended to cover facts that can be classified as conflicts of interest. Specific provisions have been introduced in this area: (i) an obligation to alert the hierarchical authority; (ii) the right to give evidence to the ethics adviser; (iii) evidence given in bad faith shall be made a criminal offence and be punished. No official may be penalised or discriminated against, directly or indirectly, for having alerted the authorities to an incident.[42] The scope of protection afforded to whistleblowers includes the staff of the organisation to which the facts reported relate, subcontractors and occasional colleagues.

256. This whistleblower protection system is based on: (i) ensuring the security of the procedures for receiving reports in order to guarantee the confidentiality of the identity of the whistleblower and the person implicated; (ii) strict supervision of disclosures of information that could identify the whistleblower or the person implicated;[43] (iii) making the disclosure of information that must remain confidential a criminal offence and punishable; (iv) the whistleblower cannot be held criminally liable for having breached a secret protected by law; (v) the prohibition of discriminatory measures or reprisals in the workplace; (vi) the possibility for courts of ordering the reinstatement of the whistleblower in case of removal from office, non-renewal of his/her contract or dismissal; (vii) the doubling of the civil fine (to 30 000 euros) for wrongfully filing a complaint for defamation against a whistleblower.

257. Anyone may submit their report to the Defender of Rights for referral to the appropriate whistleblowing body. The Defender must also safeguard the rights and freedoms of the whistleblower. S/he looks at whether a whistleblower who claims to be the victim of a reprisal measure by his or her employer is justified in believing that this is the case and, if it is substantiated, intervenes so as to put an end to the reprisal measures. The Defender has published a guide on the counselling and protection of whistleblowers.

258. In the case of LEAs, reports must be addressed to the specifically designated officer, the direct or indirect hierarchical superior, or the employment authority. The hierarchical superior or employment authority shall forward the referral, subject to the agreement of the originator, to the relevant officer/correspondent, who shall then become the addressee of the report and be responsible for acting on it. Where a report considered admissible requires action to be taken to put an end to the situation in question, the relevant officer may refer the matter either to the staff member's superior so that he/she can take the necessary measures or to the disciplinary authority, where the facts reported are such that disciplinary action may be taken. The relevant officer/correspondent shall regularly inform the whistleblower of the action taken on his or her report and of the anticipated processing time, which must not exceed three months.

259. Whistleblowing reports may be made public, as a last resort. They may also, in exceptional cases, be made public directly, without going through the various stages in the reporting process, in the event of serious and imminent danger or if there is a risk of irreversible damage (Article 8,

[42] For gendarmes, these provisions have been incorporated in identical terms in Article L. 4122-4 of the Defence Code.

[43] Disclosure of this confidential information is prohibited by law and punishable by two years' imprisonment and a fine of €30 000.

of the "Sapin 2" law). While anonymous whistleblowing reports are possible, their processing shall be limited to the most serious reports duly justified by factual evidence. The whistleblower must have had "personal knowledge" of the facts giving rise to his or her report (Article 6, of the "Sapin 2" law). As the decree was issued very recently no statistics are currently available from the Ministry of the Interior.

260. The GET considers that the passing of legislation establishing a protective regime for whistleblowers in 2016 is undoubtedly a positive development. However, it notes that the procedure for benefiting from the status of whistleblower and therefore from the guarantees of special protection is still not well known, as several people met during the visit pointed out. In particular, the different levels of reporting (internal, external, public) are relatively complex to implement in practice, including for practitioners, as the Defender's Guide to the Counselling and Protection of Whistleblowers shows. It is not always easy to determine which stakeholder is competent at each step to receive the reports given by whistleblowers over the different stages of the procedure, since there are several alternatives. It is this that will determine the application of the specific protective regime for whistleblowers.

261. The Defender of Rights is the designated authority to assist whistleblowers in these steps but, like the protective regime for whistleblowers per se, this role is not yet sufficiently well-known. The Defender of Rights dealt with 155 cases in 2017 and 2018, all sectors combined. In this respect, as far as law enforcement is concerned, little time seems to be devoted to training in the system for the protection of whistleblowers. In addition, the whistleblower system is superimposed on other types of reporting that can be made via dedicated platforms but do not offer the same protection guarantees; this may lead to a confused understanding of the whistleblower protection system. The GET was also told that certain procedures had allegedly been used to send police staff away when they had blown the whistle (unfavourable opinion of the medical service, transfer, dismissal, etc.); this shows the importance of good knowledge of the law so that whistleblowers benefit from the best protection possible.

262. As stated in Committee of Ministers Recommendation CM/Rec(2014)7 on the protection of whistleblowers, as soon as the law is implemented and warning mechanisms are used, lessons can be learned about what works and what does not. Experience shows that it is extremely important and relevant to evaluate the system periodically to determine which aspects should be improved. Accordingly, the GET, in the light of what it has been able to learn from practitioners, considers that it would be useful to review the application of the law protecting whistleblowers with a view to simplifying the procedure regarding the different levels of entities to whom report and improving its comprehensibility. In addition, it is essential to step up the training of law enforcement personnel on the protection regime for whistleblowers. In view of the above, **GRECO recommends that (i) the protective regime for whistleblowers be evaluated and revised in order to simplify the reporting procedure; (ii) the training of law enforcement authorities on this regime be further strengthened.**

Criminal proceedings and immunities

263. Police officers and gendarmes do not enjoy immunities or procedural privileges. However, when they are the perpetrators or victims of acts, the Principal State Prosecutor may, ex officio, on the proposal of the Public Prosecutor and at the request of the person concerned, transfer the

proceedings to the Public Prosecutor's Office of the High Court nearest to the jurisdiction of the Court of Appeal (Art. 43, CCP). This departure from procedure is applicable to any proceedings concerning persons representing public authority or performing public duties, since the latter are usually, by virtue of their functions, in contact with the judges or officials of the court.

Statistics

264. On pre-disciplinary administrative investigations conducted by the IGPN, the DSPAP Ethics Department and the IGGN, and also on disciplinary sanctions for breach of the duty of integrity, judicial investigations conducted by the IGPN and the IGGN for acts of corruption and other breaches of integrity, and disciplinary sanctions imposed for breach of rules concerning the exercise of outside activities, use of confidential data and public resources.

265. Since 2014, the IGPN has initiated several dozen administrative investigations with a financial dimension. Half of these investigations were related to corruption, and others concerned other areas such as influence peddling, abuse of trust, fraud and misuse of public funds. The IGPN has initiated in 2018 several dozens of investigations related to breaches of integrity, i.e. undue advantage as part of the exercise of official functions (misuse of official seals or sensitive items, conflict of interest, etc.). These are serious breaches which have led in 2/3 of cases to a referral to the Disciplinary Committee.

266. The data sources used by the Ministry of Justice do not provide information on the profession or status of those convicted. It is therefore not possible to provide statistics on criminal sanctions imposed on LEOs over the last five years for acts of corruption or other breaches of integrity. However, there are two cases mentioned that resulted in a conviction: (i) on 20 October 2015, two officials were given a suspended sentence of two months' imprisonment and a fine of 500 euros, in proceedings following a guilty plea, for bribery of representatives of public authority; (ii) on 12 June 2018, on appeal, an officer was sentenced to 4 years' imprisonment, including 18 months' suspended sentence and a permanent ban on practising the profession in question, for acts of criminal association, drug trafficking, corruption, influence peddling, concealment and tampering with sealed items.

267. Court decisions are in principle delivered in open court. As such, they can be reported in the media. In addition, the additional penalty of "displaying or broadcasting the decision", provided for in Art 131-35 of the Criminal Code, may be imposed for offences of breach of integrity, which entails displaying or broadcasting the decision, for a specified time and in certain places determined by the courts and at the convicted person's expense.

VI. RECOMMENDATIONS AND FOLLOW-UP

268. In view of the findings of the present report, GRECO addresses the following recommendations to France:

Regarding central governments (senior executive functions)

i. **that the requirement of prior integrity checks for all posts of adviser to the Government or the President of the Republic, carried out as part of the selection process and with the support of the High Authority for Transparency in Public Life, be provided for by law** (paragraph 41);

ii. **that the multiannual plan for the fight against corruption also covers the Private Office of the President of the Republic** (paragraph 50)**;**

iii. **that the High Authority for Transparency in Public Life and the French Anticorruption Agency strengthen their cooperation on their work pertaining to persons with top executive functions** (paragraph 56)**;**

iv. **(i) the adoption of codes of conduct for each ministry containing rules common to all PTEFs in government that cover all integrity matters (preventing and managing conflicts of interest; declaration requirements; incompatibilities; gifts; post-employment restrictions; contacts with lobbies; and confidential information, etc.), including practical examples, and being made public; (ii) the finalisation of the revision of the Ethics Charter of the Presidency, making sure that it covers the relevant above-mentioned integrity matters and includes practical examples to illustrate each standard; (iii) the introduction of checks on compliance with the codes and charter, together with proportionate disciplinary measures** (paragraph 66)**;**

v. **that (i) awareness-raising on integrity issues be provided systematically for persons with top executive functions when they take office and when legislative developments so require; (ii) confidentiality of interviews with ethics advisers be provided for by law; (iii) ethics advisers be required to take specific training on addressing ethical issues referred to them** (paragraph 71)**;**

vi. **that (i) persons with top executive functions be required to disclose on a regular basis details of the lobbyists they meet and the topics discussed; (ii) all lobbyists who enter into contact with public officials (in particular, persons with top executive functions), regardless of whether they themselves initiated the contacts, be required to register on the register of lobbyists** (paragraph 82)**;**

vii. **that the register of withdrawals covers not only ministers but also members of private offices** (paragraph 92)**;**

viii. **that declarations of assets and interests of the presidential candidate who has been elected be examined by the High Authority for Transparency in Public Life upon his/her taking office in order to prevent any conflict of interest, real or perceived** (paragraph 115)**;**

ix. **(i) examining how to increase transparency concerning the interests declared by close advisers of ministers and the President of the Republic; (ii) considering extending the requirement for persons with top executive functions to make declarations of assets and interests to their spouses, partners and dependents (it being understood that such information would not necessarily need to be made public)** (paragraph 119)**;**

x. **that the High Authority for Transparency in Public Life be able to make public as a last resort any failure of the Prime Minister to end a conflict of interest** (paragraph 126)**;**

xi. **that, with regard to acts of corruption relating to the performance of their duties, government members be brought before a court that ensures total independence and impartiality, both real and perceived** (paragraph 134)**;**

xii. **that the National Financial Prosecution Office be provided with additional resources, more specifically in terms of staff, and that its independence from the executive be ensured, in particular through additional guarantees on the transmission to the government of information concerning ongoing proceedings against persons with top executive functions in order to preserve the integrity of investigations** (paragraph 136)**;**

Regarding law enforcement agencies

xiii. **the adoption of a global strategy focusing on the prevention of corruption risks within law enforcement agencies on the basis of risk assessments and the most vulnerable sectors as drawn up by the National Gendarmerie and the National Police** (paragraph 165)**;**

xiv. **that the commentary to the code of ethics of the national police and the national gendarmerie be revised to further expand on integrity issues (such as conflicts of interest, gifts, contacts with third parties, outside activities, the handling of confidential information) and include concrete examples** (paragraph 178)**;**

xv. **that (i) the confidentiality of advisory procedures with ethics advisers/correspondents be provided for in law; (ii) specific training be provided for ethics advisers/correspondents** (paragraph 189)**;**

xvi. **that security checks relating to the integrity of members of the national police and the national gendarmerie be carried out at regular intervals in compliance with the Internal Security Code** (paragraph 201)**;**

xvii. **that the national police set up a rotation system in the sectors identified as most vulnerable to corruption risks** (paragraph 212)**;**

xviii. **that (i) the protective regime for whistleblowers be evaluated and revised in order to simplify the reporting procedure; (ii) the training of law enforcement authorities on this regime be further strengthened** (paragraph 262).

269. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the French authorities to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2021. These measures will be assessed by GRECO through its specific compliance procedure.

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

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.