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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

## SECOND COMPLIANCE REPORT

### FRANCE

Adopted by GRECO at its 80<sup>th</sup> Plenary Meeting  
(Strasbourg, 18-22 June 2018)

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## **I. INTRODUCTION**

1. The Second Compliance Report assesses the measures taken by the French authorities to implement the recommendations made in the Fourth Round Evaluation Report on France (see paragraph 2), which deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The report of the Fourth Evaluation Round on France was adopted by GRECO at its 62nd Plenary Meeting (6 December 2013) and made public on 27 January 2014 following France's authorisation (Greco Eval IV Rep (2013) 3E). The corresponding Compliance Report was adopted by GRECO at its 71st plenary meeting (18 March 2016) and made public on 3 June 2016 (GrecoRC4(2016)2).
3. In accordance with GRECO's Rules of Procedure, the French authorities submitted a Situation Report with additional information about measures taken to implement the nine outstanding recommendations which, according to the Compliance Report, had either not been implemented or were only partly implemented. This report, received on 23 April 2018 served, along with further information received on 3 May, 7 May and 16 May 2018, as the basis on which this Second Compliance Report was drawn up.
4. GRECO selected Luxembourg (with respect to parliamentary assemblies) and Moldova (with respect to judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Laurent THYES in respect of Luxembourg, and Mr Alexandru CLADCO for Moldova. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

## **II. ANALYSIS**

5. It is recalled that, in its Evaluation Report, GRECO addressed 11 recommendations to France. In its subsequent Compliance Report, GRECO concluded that recommendations ii and vi had been implemented satisfactorily, recommendations i, iii, iv, vii, and xi had been partly implemented and recommendations v, viii, ix and x had not been implemented. Compliance with the nine outstanding recommendations is therefore assessed below.

### *Corruption prevention in respect of members of parliament*

#### **Recommendation i.**

6. *GRECO recommended that the conditions relating to the use of parliamentary assistants and collaborators, the operational expenses allowance and the parliamentary reserve facility be thoroughly reformed in order to ensure the transparency, accountability and supervision of the resources concerned.*
7. GRECO points out that it considered this recommendation partly implemented, as all of the parts had been taken into account by the French authorities. With regard to parliamentary assistants and collaborators, GRECO welcomed the explicit recognition given in the rules of each House of their existence, their role and the legal framework governing their employment. It also welcomed the initial thinking within the National Assembly about a statute for the profession and encouraged the National Assembly to continue and further develop its thinking, focusing in particular on employment conditions for parliamentary assistants that ensure responsible management of public money and on management of possible conflicts of interest. GRECO called for consideration to be given to these matters in the Senate as well. It also called for greater transparency in practice regarding other possible functions carried out by assistants, for example through the publication of

a central list of assistants mentioning any other activities. Lastly, GRECO was satisfied with the additional information provided by the French authorities regarding procedures for supervision of the use of the "staff appropriation" by both Houses.

8. On the question of the operational expenses allowance (IRFM), GRECO took a positive view of the measures taken by the Bureau of each House. It asked for further information on the procedures for scrutiny by the Ethical Standards Commissioner of the National Assembly, the Ethics Committee of the Senate and the High Authority for Transparency in Public Life (HATVP) to detect any uses of the IRFM that are in breach of the rules. GRECO also reiterated that the recommendation called for more transparency concerning the IRFM.
9. With regard to the parliamentary reserve facility, no further measure had been taken by the National Assembly. The measures taken by the Senate were considered positive in that they regulated to some extent the use of the "parliamentary action grant" (DAP) although they did not fully satisfy the requirements of the recommendation. The criteria for the allocation of subsidies, in particular, were still somewhat vague and did not seem sufficient to limit the risks, noted in the Evaluation Report, of bias, cronyism and conflicts of interest. Funds could still be distributed freely within the political groups, creating the potential for inequitable distribution between senators, and no provision was made for auditing the use of funds.

*Parliamentary assistants and collaborators*

10. The French authorities now report that Law No. 2017-1339 of 15 September 2017 on promoting trust in political life (the "Public Trust Law"), which entered into force on 17 September 2017, with the exception of specific provisions, has strengthened the existing legal framework and radically altered the situation of these people. These statutory measures apply to both Houses. As a result, the legal framework for the employment of parliamentary assistants and collaborators is now governed by the law, no longer by the rules of each House. The Public Trust Law also gives a decisive role to the Bureau of each House where it comes to supervising the employment of parliamentary assistants. The Bureau establishes assistants' employment conditions, the aim being to draw up standard contracts with a high level of detail. On this basis, members of parliament and senators set the tasks to be assigned to their assistants and supervise the execution of the contract (Article 12). Preparations are underway to update these standard contracts. Subsequently, the Bureaux see to it that social dialogue is established between the representatives of the employers (members of parliament) and of the employees (their assistants) (Article 12). Lastly, each Bureau must be kept informed by members of parliament (as soon as they are aware thereof) of other functions performed by their assistants within a party or a political grouping or on behalf of representatives of interest groups (Article 13). Furthermore, payment of assistants by representatives of interest groups is now prohibited (Article 5, which entered into force on 16 December 2017).
11. The Public Trust Law also includes a special dismissal procedure designed to tighten up the rules on the termination of assistants' contracts. This procedure is combined with a personalised support package including increased training provision and pay (Article 19). An implementing decree to Article 19 was issued: decree No. 2017-1733 of 22 December 2017, on a personalised support package offered to

parliamentary assistants in case of termination of their contract for any reason other than personal<sup>1</sup>.

12. The Public Trust Law also prohibits all members of parliament and senators from employing a member of their immediate family.<sup>2</sup> The penalty in the event of a breach of this prohibition is three years' imprisonment and a €45 000 fine. In addition, the assistant's employment contract is automatically terminated and the member of parliament is required to reimburse any sums paid under contracts negotiated in breach of this prohibition (Article 14). Ongoing contracts are also terminated, in which case the dismissed assistants are paid compensation, which is covered by the House concerned (Article 18).
13. While it is not prohibited for members of parliament to employ members of their extended family,<sup>3</sup> they must, however, inform the Bureau and the body responsible for parliamentary ethics of the House to which they belong. If the body in charge of ethics finds, on its own initiative or following a report, that the employment of an extended family member may constitute an infringement of the rules of conduct of the House concerned, it may bring a halt to this situation through a public injunction (Article 14).
14. A similar system has been set up for "overlapping" jobs, in other words situations where a parliamentary assistant has a family link (immediate or extended) with a member of parliament other than his/her employer, regardless of whether the member of parliament belongs to the same House or not. The assistant must inform his/her employer and the Bureau and the body in charge of ethics in the House concerned of this straight away. The body in charge of ethics may bring a halt to this situation through a public injunction (Article 14).
15. The French authorities specify that limiting the prohibition to employ members of the immediate family as parliamentary assistants is due to constitutional reasons. A broader prohibition would have been contrary to the requirements of the principle of equal access to work in public administration<sup>4</sup>
16. This system is complemented by a series of separate measures in each House relating to parliamentary assistants.
17. The National Assembly has taken measures relating to the status of parliamentary assistant, the adoption of specific rules of conduct and access to information on any other functions of parliamentary assistants.
18. With regard to the status of parliamentary assistant, after a series of discussions between the assistants' organisations and the *Questeurs* (between 2012 and 2015), a collective bargaining framework was set up through the establishment, in April 2016, of an association of parliamentary employers for collective negotiation relating to parliamentary assistants. This negotiation resulted in the adoption of an initial collective agreement on parliamentary assistants on 24 November 2016. It established a system of working day quotas consolidating the employment

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<sup>1</sup> <https://www.legifrance.gouv.fr/eli/decret/2017/12/22/MTRD1733087D/jo/texte/fr>, which entered into force on 24 December 2017

<sup>2</sup> Immediate family is taken to mean members of parliament's spouses or partners, their or their spouses' or partners' children and their or their spouses' or partners' parents.

<sup>3</sup> Extended family is taken to mean members of parliament's brothers or sisters, their brothers' or sisters' spouses, partners by civil solidarity pact or cohabiting partners; their brothers' or sisters' children or such children's spouses, partners by civil solidarity pact or cohabiting partners; their former spouses, partners by civil solidarity pact or cohabiting partners; the children, brothers or sisters of these former spouses or partners; and the brothers or sisters of their current spouses, partners by civil solidarity pact or cohabiting partners.

<sup>4</sup> See opinion of the Council of State of 12 June 2017 and decision of the Constitutional Council of 8 September 2017 DC 2017-753.

relationship so that assistants could be free to organise their own work timetable but enjoy advantageous compensation arrangements when they were dismissed at the end of a member of parliament's term of office. The agreement also formalised the existing financial and social schemes for assistants.

19. In January 2018 the Bureau decided to launch further collective negotiations relating to the establishment of job descriptions, vocational training, career path protection and wage scales. The decision was prompted by the conclusions of a working group on working conditions at the National Assembly and the status of assistants. The group was set up at the start of the current legislature and it submitted its report in December 2017. It contained 19 proposals to improve the professional recognition of assistants, which were adopted entirely by the Bureau of the Assembly.
20. Draft rules of conduct relating specifically to parliamentary assistants are currently being prepared by the Assembly's new Commissioner for Ethical Standards. They are due to be adopted by October 2018 at the latest. The Commissioner for Ethical Standards is increasingly being consulted on the issue of collaborators' accessory activities (50 requests since the beginning of the current legislature).
21. Lastly, access to information on any other functions of parliamentary assistants has been simplified since February 2017 as a result of the publication on the National Assembly website of the name of each member's assistant. By consulting the personal profiles of members of parliament it is possible to access both the name of their assistants and any other functions these assistants perform through a direct link to the member's declaration of interests and activities to the HATVP, which is required to mention any such functions. This information is published as open data to make it easier to use and to identify conflicts of interest.
22. The Senate has also adopted internal measures relating to these three aspects: regarding the status of parliamentary assistants, the French authorities would point out that an association of parliamentary employers was set up as far back as 1976. Entitlement to the "staff appropriation" is subject to membership of the Association for the Management of Senators' Assistants (AGAS), whose purpose is to manage parliamentary assistants and act as their day-to-day contact for matters connected with wages, employment contracts and the like.
23. Pursuant to the Public Trust Law, which assigned the Bureau of each House the task of ensuring that social dialogue is established between the representatives of members of parliament as employers and the representatives of parliamentary assistants, the Senate has begun setting up a robust, reinforced social dialogue framework and is planning subsequently to conduct thematic negotiations on fundamental matters. It is planned for example to establish a permanent platform for social dialogue on assistants' working conditions. At its meeting of 10 February 2018, the AGAS Board endorsed the principle of appointing a joint working group which will be tasked with presenting the Bureau with proposals on the membership, functions and operating methods of such a body. The chairs of each political grouping and each assistants' organisation will be asked to designate their representatives on this group, whose first meeting took place on 5 June 2018. Depending on the outcome of the work of this group, the AGAS statutes could be adjusted to give the new body authority to negotiate collective agreements. For parliamentary assistants, rules on the representativeness of trade unions will have to be established prior to any collective bargaining.
24. Without waiting for these future developments concerning the social dialogue framework, updates were made to a collection of texts covering parliamentary assistants in September 2017 following the adoption of the Public Trust Law. This

collection is available to all assistants and issued to all new ones on recruitment. Although they do not amount to a collective agreement, these texts do cover the rules on recruitment and career management in detail, along with the collective arrangements for social protection. Alongside this, in 2017, the AGAS, working in consultation with assistants' organisations, drew up a job description for use by the Association for the Employment of Managers (APEC), with which a partnership had been established to promote vocational rehabilitation for assistants dismissed at the end of the member of parliament's term of office. This description is issued, at their request, to senators who wish to establish a detailed job description for their assistants.

25. As to the rules of professional ethics applying to parliamentary assistants, they arise from the application of the law, internal rules and contractual clauses. They include a duty of loyalty to the senator employing them, a duty of reserve and discretion, a prohibition on using work tools for outside purposes, a prohibition on taking advantage of their status as assistant and a duty to inform their employers about certain external functions. These professional obligations are drawn to the attention of those concerned when they take up their functions through the collection of texts that is issued to them.
26. In principle, the Senate Ethics Committee does not have authority to give an opinion on the individual situation of a senator's assistant. However, there are a series of exceptions to this rule. Firstly, the Ethics Committee may address observations to an assistant who has responded favourably to a request by a representative of an interest group in breach of the rules laid down by the Bureau (Article 25 of Law No. 2016-1691, of 9 December 2016, the so-called Sapin 2 Law, on transparency, anti-corruption measures and the modernisation of economic life; section I of Chapter XXIIbis of the Bureau's General Instruction on representatives of interest groups). The Ethics Committee may also be required to rule on professional ethics issues relating to parliamentary assistants when the case is referred to it by the Speaker or the Bureau of the Senate or by a senator who is employing an assistant. For example, since the opening on 2 October 2017 of the current ordinary session, the Chair or the Vice-Chair of the Ethics Committee has addressed six ethics meetings at the request of senators on subjects relating to the employment of their assistants (reimbursement of expenses, performance of a secondary occupation, recruitment conditions, etc.).
27. Lastly, with regard to access to information on any other functions exercised by parliamentary assistants, the authorities explain that this is facilitated by the publication on the Senate website of two exhaustive lists of assistants' names, one in alphabetical order of their own names,<sup>5</sup> combined with a photo gallery,<sup>6</sup> and the other in the order of the corresponding senators' names<sup>7</sup>. These lists are drawn up by the AGAS and updated daily when preparing payslips. Through these two lists, it is easy to access information on any other functions exercised by assistants as it is enough to consult the biographical details of the senator posted on the Senate website, which are linked up directly through a hypertext link to the declaration of interests and activities to the HATVP of the senator concerned, which must describe the nature of any such functions (Article L.O. 135-1, 10°, of the Electoral Code). Access to this information is made all the easier by the fact that the information in the declaration of interests and activities is published as open data in accordance with section IV of Article L.O. 135-2 of the Electoral Code, meaning that it can be used legally by third parties and compared with other information so as to improve prevention and detection of conflicts of interest.

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<sup>5</sup> [http://www.senat.fr/pubagas/liste\\_collaborateurs\\_senateurs2.pdf](http://www.senat.fr/pubagas/liste_collaborateurs_senateurs2.pdf)

<sup>6</sup> <http://www.senat.fr/trombinoaga/>

<sup>7</sup> [http://www.senat.fr/pubagas/liste\\_senateurs\\_collaborateurs.pdf](http://www.senat.fr/pubagas/liste_senateurs_collaborateurs.pdf)

*Operational expenses allowance (IRFM)*

28. The French authorities point out that the part of the recommendation relating to the IRFM called for this measure to be thoroughly reformed in order to ensure the transparency, accountability and supervision of the resources concerned. The IRFM was discontinued on 1 January 2018 by the Public Trust Law (Article 20), rendering this part of the recommendation obsolete.
29. The authorities wish nonetheless to clarify the following points. A new mechanism to cover operational expenses has been put in place instead of the IRFM. From now on operational expenses can be covered in three different ways: direct payment, reimbursement on presentation of supporting evidence or payment of an advance. The decision on the payment method was transferred back to the Bureau of each House along with the decisions on eligible expenses and the means of supervision by the body in charge of ethics.
30. Consequently, the Bureau of the National Assembly issued Order No. 12/XV of 29 November 2017 on members' parliamentary expenses.<sup>8</sup> It came into force on 1 January 2018 and begins by outlining the three general rules which apply to the coverage of parliamentary expenses, namely: that there must be a direct link between the expenses and the exercise of the office of member of parliament; that expenses must be reasonable; and that there must be no personal gain for members, their families or their assistants. The order then gives a detailed list of expenses which cannot be covered and a list of those that may, providing a breakdown of the methods of payment, which details the amounts concerned and the upper limits.
31. Auditing of members' parliamentary expenses has been stepped up. Procedures vary according to the payment method.
32. When expenses are paid directly or reimbursed on presentation of supporting documents, auditing is carried out by the services of the National Assembly ordering the expenses, under the authority of the *questeurs* and, in some cases, the Ethical Standards Commissioner, as the latter is entitled to check any expense and request the relevant National Assembly department to send him/her supporting documents justifying payment.
33. Auditing of other parliamentary expenses, which are covered by a monthly advance, is carried out by the Ethical Standards Commissioner. This involves a two-stage procedure, the first of which takes place at the end of the financial year, focusing on all the members' accounts, and the second of which occurs unannounced, at any time during the year, on the expenses charged by members to their advance account, such that every member is audited at least once during each legislative period on a completely random basis using a survey or a sample established by lots of sufficient scope to be considered significant.
34. All members are required to keep detailed accounts of expenses charged to the monthly advance and provide supporting evidence for any expenses over and above the limit of 150 euros per week for which no documentation is required. On the Ethical Standards Commissioner's request, members are required to send him/her data and supporting documents straight away, which he/she must register, file and keep.
35. In the event of a clear breach of the rules set by the order, the member will be required to reimburse any expenses wrongly paid for. Such decisions are taken by

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<sup>8</sup> [http://www2.assemblee-nationale.fr/static/12\\_XV\\_Bureau\\_frais%20de%20mandat.pdf](http://www2.assemblee-nationale.fr/static/12_XV_Bureau_frais%20de%20mandat.pdf)

the Ethical Standards Commissioner and may be disputed by the member before the Bureau. If the Ethical Standards Commissioner also considers that the errors identified during his/her audit constitute a breach of the code of ethics, the member may be subject to a disciplinary sanction.

36. Lastly, all members are required to return any of the monthly advance they have not used at the end of their term of office.
37. The Senate Bureau, for its part, adopted Order No. 2017-272 on parliamentary expenses, which also came into force on 1 January 2018. On the basis of this order, a detailed practical guide was produced in January 2018.<sup>9</sup> These measures are mostly similar to those adopted by the National Assembly. They do have some specific features, however, linked to the way in which the expenses are covered on the one hand and the auditing procedures on the other.
38. As to coverage, it takes only two forms, namely direct payment and advances. The maximum amount of advances is limited to the equivalent of one year's payment. Therefore, from 2019 onwards, advances paid during 2018 for which no supporting documents have been provided will not be paid a second time. They will be deemed not to have been used and to remain at the disposal of senators to settle their parliamentary expenses. Auditing of expenses charged to these advances is carried out by the Ethics Committee, assisted by a "trusted third party" appointed by the High Council of the Association of Chartered Accountants. For this purpose, the Ethics Committee will work with the trusted third party to draw up an annual auditing programme including the following activities:
  - a detailed examination of the situation of a sample of senators and one-off examinations outside this sample, seeing to it that all senators are audited at least once during their term; this examination may, exceptionally, go back three years in the event of problems;
  - audits of specific types of spending and random audits of supporting documents in line with standard professional auditing practices.
39. The Ethics Committee can also be called on at any time by the Speaker of the Senate, at his/her instigation or at the *questeurs'* request, for explanations relating to the payment of senators' parliamentary expenses. After the audits and an adversarial procedure, the Ethics Committee will draw up a list of senators who, on investigation have been revealed to have committed charging errors or irregularities. In the light of this list, the *Conseil de Questure* will notify those concerned of the need to reimburse the corresponding sums to the Senate.
40. It will also be for the Speaker of the Senate to call, where appropriate, on the Bureau to apply the penalties provided for by the Senate's rules of procedure (Rule 99ter) if he/she considers that the senator's integrity is at issue. Each year the Ethics Committee will submit a report describing the audits conducted and making recommendations to the Speaker for communication to the Bureau. These recommendations will outline in particular, at the end of a full year, the examination that will be made by the Bureau of the Senate at the latest by 30 September 2019, of any adjustments that might be made to the procedure.

#### *Parliamentary reserve facility*

41. The French authorities point out that the so-called parliamentary reserve facility was discontinued from 2018 onwards by Article 14 of Organic Law No. 2017-1338 of 15 September 2017 on promoting trust in public life (the "Public Trust Law"). It

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<sup>9</sup> [http://www.senat.fr/role/nouveau\\_regime\\_frais\\_de\\_mandat.html](http://www.senat.fr/role/nouveau_regime_frais_de_mandat.html)



follows, that as with the IRFM, the part of the recommendation relating to this facility has become obsolete and hence no longer applies.

42. The authorities would, however, like to clarify the following points.
43. It should be recalled that in 2017, 146 million euros were earmarked for the parliamentary reserve facility, made up of 86 million euros for grants for various activities and 60 million euros for associations. 90 million euros were allocated according to the National Assembly's wishes and 56 million euros according to the Senate's.
44. Since the beginning of 2018 it has no longer been possible to award a grant under the reserve facility.
45. At the instigation of the National Assembly's Finance Committee, the 2018 Finance Law provided for the reallocation of 75 million euros:
  - 50 million euros will go towards the local and regional infrastructure grant (DETR). These funds will be allocated at *département* level by prefects following the opinion of a committee with up to 19 members including representatives of mayors and presidents of public intermunicipal co-operation establishments and four members of parliament at most;
  - an additional 25 million euros will go to the voluntary sector development fund (FDVA). The ways in which these funds will be distributed are still under discussion. The government bill rules out the participation of members of parliament, who therefore no longer have any decision-making role in the allocation of the funds corresponding to the former parliamentary reserve.
46. GRECO takes the view that the entry into force of the Public Trust Law and the complementary measures adopted by the two Houses amount to significant progress in the implementation of the part of the recommendation relating to the reform of the conditions relating to the use of parliamentary assistants.
47. The fact that the legal framework for the employment of assistants is now governed by the law, not just the rules of procedure of the two Houses, is positive. The Public Trust Law includes important measures such as the establishment of a specific dismissal procedure and personalised support measures for assistants who request them, a ban on the remuneration of assistants by representatives of interest groups and the duty to inform the Bureau of each House about activities performed by assistants on behalf of representatives of interest groups.
48. However, some of the rules concerning assistants still need to be clarified in each House through social dialogue which has already led to the conclusion of a collective agreement at the end of 2016 but which remains on-going in the National Assembly. This dialogue has not yet started in the Senate, pending the establishment by the end of 2018 of a permanent platform for social dialogue on assistants' working conditions.
49. GRECO welcomes the measures taken to prohibit the employment of immediate family members of members of parliament and senators and limit employment of extended family members and overlapping employment. The penalties imposed in the event of employment by a member of parliament of immediate family members appear to act as a sufficient deterrent and the bodies in charge of ethics in each House may issue injunctions against members where a non-prohibited job infringes the House's rules of conduct, which is a positive development. GRECO is satisfied with the explanations provided by the French authorities to justify the lack of a prohibition on the employment of members of the extended family as parliamentary assistant and on overlapping employment. However, GRECO calls upon the French

authorities to be vigilant in the implementation of the system governing the employment of extended family members and overlapping employment due to risks of conflicts of interest. Furthermore, as regards the problem of fictitious jobs, GRECO takes note of Articles 12 and 13 of the Public Trust Law. However, it regrets that with this law the opportunity was not taken to provide a more global response to this problem.

50. GRECO notes that special rules of conduct for parliamentary assistants are being drawn up in the National Assembly. It also takes note of the compendium of rules of conduct which is given to senators' assistants when they take up office and it encourages the Senate to continue to develop awareness activities on an ethical culture for senators' assistants.
51. GRECO is satisfied with the general structure of the information on parliamentary assistants on the respective chambers' websites. GRECO has also noticed when consulting a sample of members of parliaments' and senators' declarations of interests and activities that sometimes not all assistants mentioned on the chambers' websites are included on declarations of interests, which raises the issue of the updating of information, and that there is little information concerning their possible ancillary activities. This part of the recommendation has been dealt with in a satisfactory manner.
52. GRECO welcomes the abolition of the operational expenses allowance (IRFM) by the Public Trust Law. It points out that the main aim of the recommendation was to ensure the transparency, the responsible use and the supervision of members' parliamentary expenses. However, although the new measures introduced by the National Assembly and the Senate are a move in the right direction, they still do not guarantee transparency. As to supervision, whose main aim is to prevent personal enrichment, it is only credible if it is accorded adequate resources and a proactive approach is adopted. GRECO wishes to examine these matters in its next report so as to ascertain whether the aims pursued by this part of the recommendation have been achieved. This part of the recommendation therefore also remains partly implemented.
53. Lastly, GRECO also welcomes the abolition of the parliamentary reserve facility. It is positive that members of parliament now no longer have any decision-making power over the corresponding funds. This part of the recommendation has now been dealt with satisfactorily.
54. GRECO concludes that recommendation i remains partly implemented.

### **Recommendation iii.**

55. *GRECO recommended that the system for dealing with conflicts of interests of members of the National Assembly and Senators be supplemented by rules and guidance on when there may be an individual obligation, depending on the case, to declare a potential conflict of interests or to abstain from participation in parliamentary activities.*
56. GRECO would point out that this recommendation was considered partly implemented in the Compliance Report. It took a favourable view of Article 5 of the National Assembly's Code of Ethics, combined with monitoring of certain draft legal texts which the Ethical Standards Commissioner regarded as sensitive. However, it expected more detailed explanations to be adopted with regard to conflicts of interest and expressed some doubts about a draft amendment to Article 5 which was being discussed at the point at which the report was adopted. As to the

Senate, it took note of the new definition of conflicts of interest and of the embryonic good practice guide appended to the General Instruction of the Bureau.

57. The French authorities now explain that Article 3 of the Public Trust Law, which came into force on 17 September 2017, foresees the setting up of a public register in each House designed to record cases in which members of parliament have considered that they should not take part in parliamentary proceedings because of a conflict of interests. The register will be published electronically, in an open standard, and can be easily reused and exploited by an automatic processing system, thus meeting the transparency aim pursued by the new measures. Setting up these registers entails amending each House's rules of procedure. This process should be completed by 1 October 2018, when the new ordinary session begins.
58. The scope of these new registers is broad as it covers all of the parliament's work, including both public sessions and committee work. Abstentions apply both to deliberations and to votes. Entry on the public register of cases of abstention or withdrawal is not optional but compulsory. It is done *ex post facto*, in other words after parliamentary debates. However, its aim is to incite members of parliament to anticipate potential conflicts of interest and to take necessary and adequate measures to avoid an actual conflict of interest unduly interfering in the exercise of the parliamentary mandate.
59. The decision to abstain from participating in parliamentary proceedings still depends on an individual, voluntary step on the part of the member of parliament. However, the Public Trust Law invites members of parliament to be particularly vigilant: "each member of parliament or senator takes care to prevent or put an immediate end to actual or potential situations of conflicts of interest affecting him or her, after consulting if necessary the body responsible for parliamentary ethics" (Article 3). Accordingly, Article 5 of the Assembly's Ethics Code, which was not amended in the manner which GRECO had raised doubts about, states clearly that members of parliament have a duty, not just the possibility, to report conflicts of interest.
60. In view of the upcoming establishment of a public register of conflicts of interest as foreseen by the Public Trust Law, discussion is currently under way in the National Assembly about the way in which the register should be kept and on how to amend or, where appropriate, add to the measures designed to step up the fight against conflicts of interest under the rules of procedure and the parliamentary code of ethics. The Speaker of the National Assembly has asked the new Commissioner for Ethical Standards to present him with a report. This report was presented on 15 May 2018 and the Assembly is currently examining the follow-up to be given.
61. A similar discussion is being held in the Senate. In an opinion of 5 April 2018, the Ethics Committee expressed a desire to draw up a "senator's ethics guide" summarising senators' obligations and the related procedures, clarified through the opinions and advice given on behalf of the Ethics Committee. This would make it possible to compile the opinions given by the Ethics Committee over several years and categorise them under theme headings so as to provide senators with as much information as possible about the practical implementation of the ethical obligations to which they are subject (until now, the Ethics Committee's annual activity report has reported on the opinions given, but only during the preceding year and without arranging them under theme headings).
62. GRECO takes the view that the establishment by the Public Trust Law of a public register of abstentions or withdrawals of members of parliament within each House is a major and welcome step. So is the obligation upon MPs to ensure the immediate cessation of and prevention of actual and potential conflicts of interest

situations which might involve them, after having consulted, if necessary, the body responsible for parliamentary ethics. This obligation mirrors that imposed upon members of the government and local elected representatives by the Law of 11 October 2013 on transparency in public life (Article 1).

63. The current system in the National Assembly is rendered positive by the fact that it encourages members to comply, as Article 5 of the Ethics Code makes it perfectly clear that it is an obligation to report conflicts of interest not just a possibility. A useful addition would be explanations for members relating to potential actual cases of conflicts of interest to complement the possibility of confidential consultation with the Commissioner for Ethical Standards.
64. GRECO would also point out that the current system in the Senate, as evaluated in the Compliance Report (paragraphs 31, 33 and 34) still rests on the optional nature of reporting and withdrawal. The Senate could usefully develop educational and encouraging tools to strengthen the prevention and handling of conflicts of interest. To this end, GRECO expresses its support for the Ethics Committee's desire to compile an ethics guide for senators, which can only facilitate the process of informing senators about the Committee's opinions.
65. GRECO concludes that recommendation iii remains partly implemented.

#### **Recommendation iv.**

66. *GRECO recommended i) that the parliamentary regulations on gifts and other benefits be revised and supplemented to improve consistency, lay down prohibitions in principle and cover the various forms of benefits; ii) that declarations be published, especially in cases where those of a particular value remain permitted and are subject simply to a declaration (including invitations and travel).*
67. GRECO points out that this recommendation was considered partly implemented in the Compliance Report. The Senate had implemented the second part of the recommendation through a decision by its Bureau to publish invitations to trips financed by third parties of a value exceeding 150 euros. However, no measure had been taken with regard to the first part of the recommendation. As to the National Assembly, it had not implemented either of the parts of the recommendation.
68. With regard to the National Assembly, the French authorities now state that at the beginning of 2016, provisions were added to Article 7 of the Assembly's Code of Ethics regarding invitations to a sports or cultural event and invitations on a trip financed by a third party.
69. Invitations to sports or cultural events of a value exceeding 150 euros must now be declared to the Ethical Standards Commissioner, as was already the case with donations and benefits. The last activity report by the previous Commissioner (which dates back to November 2016) recorded 19 declarations for the period from 1 June 2015 to 1 November 2016, which is the same figure as for the previous period. Of these 19 declarations, 12 related to an invitation to a sports or cultural event and seven to various donations and gifts. It is clear from the last report that the Commissioner plays a major role in warning members, particularly where the same member makes frequent declarations or where declarations relate to gifts whose value seems largely to exceed that of a simple, routine diplomatic gift, prompting the members concerned to part with them and hand them over to the Commissioner. In such cases the Commissioner will temporarily place the gifts in a safe while issuing the member with a dated receipt, with a view to their sale at the end of the legislative period, the proceeds being subsequently earmarked for a public interest aim (allocation to the budget of the National Assembly or a charity).

70. Invitations on a trip financed by a third party, whether a natural or legal person, must be systematically declared to the Commissioner, regardless of their value. The declaration must be made before the trip and include details of the programme and funding methods. According to the Commissioner's last report, the number of declarations made over the period concerned (101 between 1 June 2015 and 1 November 2016) reflect growing acceptance by members of the requirement to declare such benefits. It is also clear that such declarations have been an opportunity to play a major warning role, particularly in the case of repeated invitations from a particular company, which led the members concerned not to accept these invitations or to take extra care during the trip.
71. Following on from this enhancement of the Ethics Code, Article 10 of the code of conduct for representatives of interest groups provides that "representatives of interest groups shall clearly indicate the names of bodies financing events or bodies in which members of parliament participate. They shall systematically inform members of parliament of the cost of invitations made to them to allow them to comply with the declaration requirements in the parliamentary ethics code".<sup>10</sup>
72. With regard to the Senate, the French authorities report two positive developments, one relating to gifts, donations and other benefits, the other to invitations on trips abroad.
73. Firstly, since 1 July 2017, it is prohibited for representatives of interest groups to give senators gifts, donations or other benefits of a value exceeding 150 euros. This is the consequence of Article 10 of the code of conduct for representatives of interest groups in the Senate, which provides as follows: "representatives of interest groups shall refrain from offering or giving any form of present, gift or benefit of a value exceeding 150 euros to persons with whom they enter into contact in the Senate".<sup>11</sup>
74. The definition of representatives of interest groups adopted by the Sapin 2 Law is broad (Article 25). It covers a whole series of public or private legal persons provided that the regular or main activity of a manager, employee or member of such a body is to influence public decision making, particularly in the legislative or regulatory sphere.<sup>12</sup> This category also covers natural persons who are not employed by a legal person and engage in individual professional activities meeting these conditions.
75. The 150-euro limit that applies to this prohibition corresponds exactly to the one that applies to the declaration of gifts and other benefits to which senators have been bound for several years. Therefore, in the same way that it is prohibited for representatives of interest groups to offer or give gifts, donations or other benefits of a value exceeding 150 euros to senators, it is prohibited for senators to accept them if such representatives infringe the prohibition applying to them.
76. The obligation to declare gifts within 30 days of their reception does not have the effect of freeing senators from the prohibition that applies to them at a later stage as to the action that will be taken on them. The prohibition on accepting these gifts, donations and benefits after their reception is still absolute. This is what the Chair of the Senate Ethics Committee recently confirmed to senators who consulted him on this point. The ethical principle of integrity (which figures in Chapter XXbis of the Bureau's General Instruction) does not require a senator to systematically refuse

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<sup>10</sup> [http://www2.assemblee-nationale.fr/14/representant-d-interets/repre\\_interet](http://www2.assemblee-nationale.fr/14/representant-d-interets/repre_interet)

<sup>11</sup> [https://www.senat.fr/fileadmin/Fichiers/Images/sqp/Code\\_de\\_conduite.pdf](https://www.senat.fr/fileadmin/Fichiers/Images/sqp/Code_de_conduite.pdf)

<sup>12</sup> The law covers private legal persons, public establishments or groupings performing an industrial or commercial activity, chambers of commerce and industry, and chambers of trades and crafts.

gifts, donations or other benefits presented to them but prohibits them from accepting gifts, donations or benefits which are given too repeatedly or excessively valuable.

77. The code of conduct for representatives of interest groups in the Senate also includes a transparency measure for invitations on trips abroad. Under Article 10 of this code, "representatives of interest groups undertake to communicate by electronic means any information on invitations on trips abroad they address to senators, senators' or group assistants or members of the Senate staff to the relevant directorates with a view to their being posted on the Senate website". This transparency measure joins the measure that already exists whereby declarations concerning invitations on trips financed by third parties must be published on the Senate website where these invitations exceed a value of 150 euros.
78. Following on from this transparency measure, it has been decided to require publication of the list of gifts, donations and benefits declared by senators. This is the purpose of the resolution on senators' ethical obligations and the prevention of conflicts of interest which was adopted on 6 June 2018 by the Speaker of the Senate with a view to amending the Senate's rules of procedure (see Article 91 quinquies, paragraph 3)<sup>13</sup>.
79. With regard to the first part of the recommendation, GRECO notes that the National Assembly has added to the declaration procedure by introducing a requirement to declare invitations to sports and cultural events exceeding a value of 150 euros. The obligation to declare invitations on trips financed by third parties is not new (see paragraph 36 of the Evaluation Report). The system has the merit of being consistent but GRECO regrets that no prohibition on principle has been established concerning gifts, benefits and invitations over a certain value, as called for by the recommendation.
80. Such a prohibition in principle is foreseen in the Senate, according to the authorities. However, it does not appear in the booklet on senators' ethical rules, which only mentions the duty to declare gifts, donations and other advantages of a value exceeding 150 euros. Adding it would be useful.
81. With regard to the second part of the recommendation, GRECO welcomes the recent decision taken by the Senate to publish the list of gifts, donations and benefits declared by senators, which complements the list of trips financed by third parties. GRECO encourages the National Assembly to take a similar decision.
82. GRECO concludes that recommendation iv remains partly implemented.

#### **Recommendation v.**

83. *GRECO recommended that declarations of assets by members of the National Assembly and Senators be made easily accessible to the public at large.*
84. GRECO points out that the recommendation was considered not to have been implemented in the Compliance Report.
85. The French authorities state that here has been no change in the situation. In its last activity report, for the year 2016, the HATVP made express reference to the recommendation and suggested that members of parliament's declarations of

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<sup>13</sup> <http://www.senat.fr/leg/ppr17-364.html>

assets should be published on its website. There was no follow-up to this proposal when the Public Trust Law was adopted.

86. GRECO regrets again that no measure has been taken by either House to follow up on the recommendation, especially as the adoption of the Public Trust Law would have been an opportunity to fill this gap by adopting a major transparency measure to relieve the current discredit of politicians. This was a missed opportunity.
87. GRECO concludes that recommendation v has still not been implemented.

#### *Corruption prevention in respect of judges*

##### **Recommendation vii.**

88. *GRECO recommended that a reform be carried out in respect of commercial courts and industrial tribunals with a view to strengthening the independence, impartiality and integrity of lay judges.*
89. GRECO points out that it considered this recommendation to have been partly implemented in the Compliance Report in respect both of commercial courts and of industrial tribunals. With regard to industrial tribunals, the reforms introduced by the "Macron Law", focusing on professional ethics, disciplinary rules and training, were in line with the recommendation. GRECO observed, however, that little specific attention had been paid to the problem of conflicts of interest, that the reform did not remedy the fact that each group of lay judges defended its electorate's sectoral interests in the first instance and that the Macron Law still had to be supplemented by enabling decrees, which were decisive for the implementation of its provisions.
90. With regard to Commercial Courts, GRECO considered that Article 47 of draft law No. 661 seemed to meet to some extent the objectives of the recommendation in that it provided for compulsory training for commercial court judges, made them subject to the same ethical obligations as professional judges and strengthened the provisions relating to conflicts of interest and disciplinary rules. The measures relating to the transfer of cases in the event of bias were also in line with the recommendation.

#### *Commercial courts*

91. The French authorities explain that draft law No. 661, which is referred to in the Compliance Report, was adopted on 16 November 2016 (Law No. 2016-1547, known as "Law J21").<sup>14</sup> Articles 95 and 99 of this law and the accompanying regulations comprise seven steps forward in line with GRECO's recommendation.
92. Firstly, Law J21 grants commercial court judges statutory protection along the same lines as professional judges (new Article L.722-19 of the Commercial Code). This protects them from threats or assaults of any type to which they may be subject in, or in connection with, the performance of their duties. An enabling decree should shortly be published, setting out the financial arrangements to pay for protection in civil or criminal proceedings.
93. Secondly, Law J21 substantially improves the system for preventing and handling conflicts of interest. It begins by defining what conflicts of interest are and establishing a duty for commercial court judges to prevent them or bring them to an end. It then requires commercial court judges to submit an exhaustive, accurate

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<sup>14</sup> <https://www.legifrance.gouv.fr/eli/loi/2016/11/18/JUSX1515639L/jo>

and sincere declaration of interests to their superior within two months of taking up office (new Articles L.722-20 and L.722-21 of the Commercial Code). The declaration must mention ties and interests which the declarants currently have, or had during the five years before they took up office, and which may influence or seem to influence the independent, impartial and objective exercise of their functions. When judges hand this declaration of interests in, an ethics interview is held with the authority to which they submitted the declaration. The aim of the interview is to rule out any potential conflict of interests. Following the interview, the declarant may amend the declaration. The interview may be held again at any time at the judge's or the authority's request. Any substantial change in judges' ties or interests must be detailed within two months in an additional declaration taking the same form and possibly also giving rise to an ethics interview. Failure to submit a declaration or to declare a substantial part of one's interests is punishable by a three year prison sentence and a fine of 45 000 euros combined with a prohibition on exercising civic rights or holding public office.

94. The legislation concerning declarations of interests of commercial court judges was implemented by Decree No. 2017-1163 of 12 July 2017 on ethics, eligibility and disciplinary rules with regard to commercial court judges. A circular was also published on 16 February 2018.<sup>15</sup>
95. Third, measures to promote an ethical approach have been stepped up. The ethics interviews held when commercial court judges submit their declaration of interests contribute to this. This new system was preceded by other measures to this effect deriving from Decree No. 2016-514 of 26 April 2016, on judicial organisation, alternative dispute resolution methods to commercial courts and the professional ethics of commercial court judges.
96. The decree began by setting up an Ethics Board, placed under the authority of the National Council of Commercial Courts (CNTC) and tasked with promoting the proper application of the ethical principles inherent in the exercise of the function of commercial court judge. It is the Board's role to give opinions on any ethical issue relating personally to a commercial court judge at the request of the judges themselves, the presidents of commercial courts or the first presidents of courts of appeal, and issue recommendations capable of enlightening judges on their ethical obligations and the good practices they must apply when performing their activities. These opinions and recommendations are made public in anonymous form by the Ethics Board if it feels that they may help to clarify certain points for all commercial court judges. The Ethics Board is made up of an ordinary court judge appointed by order of the Minister of Justice and two Commercial Court judges elected by the general meeting of the CNTC from among its members. Their term of office is two years.
97. Other than setting up the Ethics Board, the Decree provides for the appointment at each appeal court of ethics contact judges, who are tasked with replying to any request for an opinion on an ethical question. Questions may also be referred to them by the President of a Commercial Court located within the appeal court's jurisdiction at the instigation or request of a judge within that jurisdiction. Such judges must take account of the opinions and recommendations issued by the Ethics Board.
98. Lastly, this decree of 2016 entrusted the CNTC with the task of drawing up an ethics source book, which it is planned to publish. Preparation of this book was completed by the members of the CNTC's Ethics Board by the end of August 2017. It was approved by the CNTC at its general meeting on 5 February 2018 and made

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<sup>15</sup> <http://circulaire.legifrance.gouv.fr/index.php?action=afficherCirculaire&hit=1&r=43107> [link does not work]



public on 29 March 2018.<sup>16</sup> Bound copies will be sent to all commercial court judges. The CNTC will keep it up-to-date as it is intended to be a living instrument.

99. Fourth, Law J21 has strengthened the disciplinary rules applying to commercial court judges. For instance, the new Article L.724-1 et seq. of the Commercial Code assigns a warning and pre-disciplinary role to the first presidents of appeal courts. They may issue a warning to commercial court judges after they have sought the opinion of the Commercial Court president. They may also raise an issue with the national disciplinary board (CND) after the judge has been heard by the first president of the appeal court (and no longer the president of the Commercial Court). Where appropriate, they may, having heard the judge, propose to the Chair of the CND that the commercial court judge should be temporarily suspended. A procedure has also been set up whereby members of the public can refer a case directly to the CND.
100. The law also extended the range of disciplinary sanctions, which had been limited previously to reprimand and disqualification, establishing a penalty of prohibition to sit as a single judge for a maximum length of five years and combining disqualification with permanent ineligibility or ineligibility for ten years. Furthermore, the prosecution and punishment of infringements by commercial court judges is now possible after they have left office, whereas sanctions were only applied previously to serving judges. The aforementioned Decree of 12 July 2017 altered the regulatory provisions in the Labour Code in line with the legislative amendments.
101. Fifth, Law J21 required commercial court judges to undergo initial and further training and punished those who failed to abide by the obligation to undergo initial training within a time limit set by decree with a penalty which consisted in automatically considering such judges to have resigned. This initial training requirement will come into force on 1 November 2018. Between now and then a simple decree will be issued to formalise the role of the French National Judicial Training College as the organiser of such training and establish the parameters of this obligation, particularly the deadline within which it will need to be satisfied.
102. Sixth, Law J21 increased the restrictions on access to and exercise of judicial office. Firstly, the number of successive terms at the same court is now limited to four for judges (14 years in total) and five for Presidents (18 years in total) and the age limit is now 75. The scope of incompatible activities was also widened significantly. For instance, a commercial court judge may not simultaneously:
  - be a member of an industrial tribunal or another commercial court;
  - engage in the following occupations: lawyer, notary, bailiff, court valuer and auctioneer of movables, commercial court registrar or court-appointed administrator; or work for a member of one of these professions during his/her term;
  - be a member of the European Parliament;
  - exercise office as a regional, *département*, municipal, district, Paris City or Lyon Metropolitan councillor or a member of the Assemblies of Corsica, French Guiana or Martinique within the jurisdiction of the court in which they perform their functions.
103. These cases of incompatibility were added to those already established for the office of member of parliament in the district in which commercial court judges serve and the function of honorary consul of a foreign state.

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<sup>16</sup> <http://www.justice.gouv.fr/justice-civile-11861/recueil-des-obligations-deontologiques-des-juges-consulaires-31443.html>

104. Lastly, Law J21 introduced specific guarantees to ensure the impartiality of commercial judges and courts in the areas of prevention and court practice concerning enterprises in difficulty. For instance, Article 99 of the law (new Article L. 662-7 of the Commercial Code) lists a number of prohibitions on sitting in court or participating in deliberations, failing which any conviction will be void, for judges who have already been involved in the case, particularly as a bankruptcy judge, or for presidents who have already heard the debtor's case.

#### *Industrial tribunals*

105. The French authorities refer to the two enabling decrees of the 2015 Macron Law, which were evaluated positively by GRECO in the Compliance Report. Decree No. 2017-684 of 28 April 2017 on initial and further training for members of industrial tribunals describes the arrangements for the implementation of the training requirement. Initial training is organised and provided by the national judicial training college while further training is the responsibility of the Ministry of Labour. A circular of 4 April 2018 describes the legal framework and arrangements for the supervision of compliance with the training obligation and the consequences of failure to comply.
106. Decree No. 2016-1948 of 26 December 2016 described the new disciplinary procedure that applies to members of industrial tribunals, especially the rules on the establishment and functioning of the National Disciplinary Board for Members of Industrial Tribunals (CNDCPH). It also tasked the Industrial Tribunals Board (*Conseil supérieur de la prud'homie (CSP)*) with drawing up a source book of ethical practices, which is to be published.
107. This source book was prepared in the course of 2017 by a CSP working group. It was validated during a plenary session of the CSP on 26 January 2018 and published on 15 March 2018<sup>17</sup>. The book deals in particular with the prohibition on accepting any imperative mandate, members' duties and conflicts of interest.
108. Alongside the measures to implement the Macron Law, the means of appointing tribunal members was amended (Law No. 2014-1528 of 18 December 2014, amended by Article 8 of Law No. 2015-994 of 17 August 2015, and Order No. 2016-388 of 31 March 2016, amended by the Law of 8 August 2016). Tribunal members are no longer elected but appointed for four years by a joint decree of the Ministers of Labour and Justice on a proposal by the trade unions and professional organisations, having ascertained that the candidatures are admissible. The allocation of seats between employee and employer organisations, which is based on a survey of the representativeness of trade unions and employers' organisations carried out beforehand by the Ministry of Labour, is specified in a joint order of the Ministries of Labour and Justice.
109. The admissibility of candidatures is subject to systematic checks on the good character of the candidates through examination of an extract from section No. 2 of their criminal record.
110. The general renewal of members carried out in 2017 for the 2018-2021 term resulted in the appointment, by Order of 14 December 2017, of 13 482 members to the 14 512 posts to be filled. Under the provisions of the Labour Code, the 1 030 posts left vacant and the posts declared vacant since the publication of the order (owing to resignations, refusals to take up office, deaths, etc.) will be published

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<sup>17</sup> <http://www.metiers.justice.gouv.fr/magistrat-12581/le-metier-12582/les-conseillers-prudhommes-26226.html>

shortly as part of an initial campaign of appointments (at least one campaign per year).

111. GRECO welcomes the reform of commercial courts carried out by Law J21, which takes up GRECO's recommendations and those of a parliamentary fact-finding mission of 2013 focusing in particular on the strengthening of the ethical and disciplinary rules covering commercial court judges, the compulsory declaration of interests and improved monitoring and taking into account of conflicts of interest. The recommendation has now been implemented with regard to commercial courts.
112. As to industrial tribunals, GRECO is satisfied with the adoption of the enabling decrees for the Macron Law relating to members' ethical obligations, training and disciplinary procedures, which complement the measures which it assessed favourably in its previous report. The source book of ethical practices adopted under one of these decrees appears satisfactory and GRECO notes that it will be updated as necessary. GRECO also takes note of the changes to the means of appointing tribunal members.
113. GRECO concludes that recommendation vii has been implemented in a satisfactory manner.

#### **Recommendation viii.**

114. *GRECO recommended that the criteria for the awarding of official honorary decorations and distinctions of judges be reviewed in order to reduce any perceived risks for their independence and impartiality.*
115. GRECO points out that this recommendation was considered not to have been implemented in the Compliance Report because consideration of this matter was in the early stages.
116. The French authorities state that there has been no change in this situation since the Compliance Report.
117. GRECO concludes that recommendation viii has still not been implemented.

#### **Recommendation ix.**

118. *GRECO recommended that disciplinary authority over judges and any prior administrative procedure be concentrated in the hands of the section of the Judicial Service Commission with jurisdiction over judges.*
119. GRECO points out that this recommendation was considered not to have been implemented because the authorities had not taken any measures.
120. The French authorities explain that there has been no fundamental change in the situation. The Minister of Justice still has the power to refer matters to the Judicial Service Commission (CSM) and there are no plans to set up a disciplinary investigation department under the sole authority of the CSM in the near future.
121. However, it should be pointed out that the member of the CSM who has been appointed as rapporteur by the First President of the Court of Cassation may delegate his powers of investigation to a judge in this court, in other words a third party, who is independent from the Inspectorate and hence from the Minister of Justice. The CSM's last annual report, for the year 2016, describes a practice of this type.

122. The authorities also describe a policy to prevent conflicts of interest which applies to all judges and prosecutors. Organic Law No. 2016-1090 of 8 August 2016 introduces an obligation for judges to declare their interests, which gives rise to an ethics interview between the judge and the authority to which this declaration was submitted. If there is any possibility that there may be a conflict of interests, the head of the court is entitled to ask the ethics board for its opinion. Actions which may constitute disciplinary infringements must be brought to the attention of the head of the court so that he/she is in a position to assess what disciplinary or pre-disciplinary steps might be taken.
123. GRECO notes that the recommendation has still not been implemented. The measures reported, although welcome, do not exactly meet the expectations expressed in the Evaluation Report (paragraph 126).
124. GRECO concludes that recommendation ix has still not been implemented.

*Corruption prevention in respect of prosecutors*

**Recommendation x.**

125. *GRECO recommended i) that legislative reform establish a procedure for the appointment of prosecutors in line with that for judges, making it possible for the Judicial Service Commission to issue an opinion which is binding on the Minister of Justice; ii) that consultations take place on the possibility of aligning the disciplinary procedure for members of the prosecution service with that applicable to judges (with the CSM holding sole authority).*
126. GRECO concluded in the Compliance Report that this recommendation had not been implemented.
127. The French authorities point out that the two parts of the recommendation had been included in a draft constitutional law, and that this had been adopted in identical form by both Houses. However, this had not led to the convocation of a Congress of Parliament by the serving President of the Republic as other issues had been less consensual.
128. The new government has announced that it is taking up the draft reform again, particularly on these two points on which a consensus remains. The draft constitutional reform will be part of a broader institutional reform. The draft constitutional law was forwarded to the Conseil d'Etat for its opinion and validated by the Council of Ministers on 9 May 2018. On the same day, it was transmitted to and registered by the National Assembly, where it is currently being examined by the committee on legislation. It will be discussed in an extraordinary plenary session in July 2018. The government's aim is to complete the reform in 2019.
129. GRECO notes the information provided. As the second part of the recommendation has been incorporated into the draft constitutional reform presented to the Council of Ministers, the French authorities have gone beyond the consultations recommended and this part of the recommendation has now been satisfactorily implemented. With regard to the first part of the recommendation, GRECO notes that it has also been included in the draft constitutional reform that has been approved by the government and is currently being examined by the National Assembly. In accordance with GRECO practice, this part of the recommendation is therefore considered to have been partly implemented.
130. GRECO concludes that recommendation x has been partly implemented.

## **Recommendation xi.**

131. *GRECO recommended i) that the capacity of the Minister of Justice to ask or obtain information in a particular case be regulated precisely as to its purposes; ii) that a clear limit be set on "national security confidentiality", accompanied by a procedure enabling undue impediments to be avoided to inquiries relating to cases of national or international corruption.*
132. GRECO points out that it considered this recommendation to have been partly implemented. With regard to the first part of the recommendation, it welcomed the information provided regarding the purposes of upward reporting of information on individual cases, detailed in the circular of 31 January 2014, and the target of reducing the number of cases reported. It noted, however, that the circular did not explicitly cover individual requests for information from the Minister of Justice. As, according to the French authorities, these individual requests were covered by the circular, GRECO called on them to specify this interpretation explicitly, in order to complement the mechanism. By contrast, no measures had been taken to give effect to the second part of the recommendation.
133. The French authorities now state, with regard to the first part of the recommendation, that the latest criminal policy circular of the Minister of Justice of 2 June 2016<sup>18</sup> describes the purposes of upward reporting of information, which had already been identified in the circular of 2014 and expressly confirms that these purposes encompass the upward reporting of information in situations involving individuals in both directions, in other words not only on the initiative of prosecutors (information obtained) but also at the Minister of Justice's bidding (information requested). The purposes and hence the extent of upward reporting of information are identical whoever instigates it – prosecutor or Minister of Justice.
134. With regard to the second part of the recommendation, the French authorities say that they share its general aim, which is to reconcile protection of national security with the needs of criminal investigations, particularly in corruption cases. However, achieving such reconciliation is far from easy as it is necessary to ensure that it is balanced and this precludes one of the imperatives taking precedence over the other or weighing more in the balance when solutions are sought. The real difficulty is in striking this balance between conflicting needs.
135. The French authorities refer again to Constitutional Council decision No. 2011-192 QPC of 10 November 2011, which was already mentioned in the Evaluation Report (paragraph 162) and the Compliance Report. In this decision, the Constitutional Council considered whether a series of provisions in the Criminal Code, the Code of Criminal Procedure and the Defence Code afforded a balanced reconciliation between several constitutional requirements, namely:
- the constitutional requirements inherent in protecting the fundamental interests of the Nation, which includes national security confidentiality; and
  - the constitutional value (necessary to protect constitutional rights and principles) residing in the search for perpetrators of offences.
136. The Constitutional Council's concern was to ensure that the protection of national security confidentiality, which pursues a public interest and is a concern shared by all democratic states (as reflected in its presence in international law and its protection in most foreign legislation),<sup>19</sup> would not unduly impede the conduct of

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<sup>18</sup> [http://www.justice.gouv.fr/publication/circulaire\\_politique\\_penale\\_20160602.pdf](http://www.justice.gouv.fr/publication/circulaire_politique_penale_20160602.pdf)

<sup>19</sup> See the commentary by the Constitutional Council on its decision on its website (page 11): [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2011192QPCccc\\_192qpc.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2011192QPCccc_192qpc.pdf)

criminal investigations. This is exactly the same concern as expressed in GRECO's recommendation. It is a shared concern therefore, but it gives rise to differing interpretations.

137. According to the Constitutional Council, only the procedure that was provided for (at the time) to conduct searches in places that were classified because of the installations housed or the activities taking place there failed to achieve a balanced reconciliation and prioritised national security over criminal investigations in a way that unduly impeded such investigations.<sup>20</sup>

138. Otherwise, the Constitutional Council held that this balance was achieved with regard to the following procedures:

- the procedure for the declassification and communication of classified information, bearing in mind the guarantees of independence conferred on the Advisory Committee on National Security Confidentiality (an independent administrative authority, since renamed the Committee on National Security Confidentiality (CSDN)), which it is compulsory to consult and whose opinions are published and almost systematically followed by the administrative authorities, together with the system taken as a whole (conditions and procedure, including shorter delays);
- the procedure for access to classified information on the occasion of searches in places which have already been precisely identified as containing items covered by national security confidentiality, as the conduct of searches is not subject to any prior authorisation but is accompanied by certain safeguards to ensure a balanced reconciliation between protecting national security confidentiality and the needs of investigations (the presence of a CSDN representative on site makes it possible to proceed immediately with the seizure and the placing of official seals on documents of relevance to the investigation);
- the procedure for access to classified information when searches are carried out in places which, unlike in the previous case, have not already been precisely identified as containing items covered by national security confidentiality but prove by chance to contain them (discovery during a search), as the conduct of searches is not subject either to any prior administrative authorisation but is accompanied by certain guarantees to ensure a balanced reconciliation between protecting national security confidentiality and the needs of investigations (it is possible to seize documents for the investigation or place them under official seals immediately and then transmit them to the Chair of the CSDN).

139. In these three circumstances, the Constitutional Council therefore held that the existing procedures for declassification and access to classified information afforded

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These items of comparative law were confirmed in a recent judgment by the European Court of Human Rights on 19 September 2017 (Grand Chamber, *Regner v. the Czech Republic*, application No. 35289/11, paragraph 67): *"In the light of the comparative information available to the Court concerning thirty member States, protection of national security is a matter of concern in every State whose legislation was examined. Whilst the concept of 'national safety' or 'national security' is not uniformly defined, the legislation in each member State allows the executive, in particular the authorities responsible for national security, to restrict access to classified information, including in judicial, criminal and administrative proceedings, where this is deemed necessary to protect the State's interests. The authorities enjoy a wide discretion in this regard"*.

<sup>20</sup> The Constitutional Council relied on the following argument: *"classification of a place has the effect of removing a given geographical area from the investigation powers of the judicial authority. It makes the exercise of these investigation powers subject to an administrative decision [temporary declassification of a place]. The result is that all evidence of any nature found in such places is inaccessible to the judicial authority unless this authorisation has been issued"*. The consequences of the Constitutional Council's invalidation of the provisions at issue were drawn through the adoption of two decrees and an order of 30 November 2011 (Decree No. 2011-1691 repealing provisions of the Defence Code; Decree No. 2011-1692 on the entry into force of orders and; an order repealing the Order of 21 June 2010 classifying places).

a balanced reconciliation between protecting national security confidentiality and the needs of investigations, particularly in criminal proceedings. Accordingly, the Constitutional Council concluded that these procedures were not such as to impede investigations unduly.

140. The French authorities take the view that in calling for “a procedure enabling undue impediments to be avoided to inquiries relating to cases of ... corruption”, GRECO makes a different interpretation of these three scenarios to that of the Constitutional Council and seeks therefore to question the Constitutional Council’s case-law directly. In the light of this case-law, which is based on a detailed and comprehensive examination, the French authorities do not plan to change the existing procedures. Furthermore, it is worth noting that in keeping with this national case-law, in its recent judgment, already cited above, the Grand Chamber of the European Court of Human Rights expressed how much store it set by protecting superior national interests such as national security.<sup>21</sup>
141. With regard to the first part of the recommendation, GRECO welcomes the clarifications made expressly by the circular of 2 June 2016, which confirm that the circular of 2014 encompasses the reporting of information between the prosecutor’s office and the Ministry of Justice in both directions, in other words not only on the initiative of prosecutors but also at the Minister of Justice’s request. This part of the recommendation has now been satisfactorily implemented.
142. As to the second part of the recommendation, GRECO takes note of the detailed explanations provided by the French authorities on the decision of the Constitutional Council of 20 November 2011, under which the existing procedures for declassification and access to classified information reconciled the imperatives of protecting national security confidentiality and the needs of investigations in a balanced manner. In view of these explanations, it considers that this part of the recommendation has now been dealt with satisfactorily.
143. GRECO concludes that recommendation xi has been dealt with satisfactorily.

### **III. CONCLUSIONS**

144. **Based on the conclusions contained in the 4th Round Compliance Report on France and in the light of the above, GRECO concludes that France has implemented satisfactorily four of the eleven recommendations contained in the 4th Round Evaluation Report (i.e. two more since the First Compliance Report).** Of the remaining recommendations, four have been partly implemented (i.e. one more since the First Compliance Report) and three have not been implemented.
145. More specifically, recommendations ii, vi and vii have been implemented satisfactorily, recommendation xi has been dealt with satisfactorily, recommendations i, iii, iv and x have been partly implemented and recommendations v, viii and ix have not been implemented.
146. There have been several developments of note in respect of members of parliament. Progress has been made on the rules for the employment of parliamentary assistants, as well as their status and ethical obligations, a public register of withdrawals and abstentions by members of parliament will soon be

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<sup>21</sup> Judgment of 19 September 2017, Grand Chamber, case of Regner v. the Czech Republic (application No. 35289/11). In this judgment, the European Court of Human Rights conceded that the protection of superior national interests such as national security could be applied to an individual in the context of administrative proceedings to block the communication of certain classified documents to the person concerned. As a result it found that there was no violation of Article 6 of the ECHR.

established; in the Senate, publication of the lists of trips has been extended to gifts, donations and other advantages and discussion on the matter is under way in the National Assembly. GRECO also welcomes the abolition of the parliamentary reserve facility and the operational expenses allowance. Further progress is expected, however, with regard to the rules on conflicts of interest and gifts, and public access to members of parliament's and senators' declarations of assets.

147. As to judges and prosecutors, GRECO welcomes the major progress made on the reform of commercial courts and industrial tribunals. It supports the draft constitutional reform under way with regard to the role of the Judicial Service Commission (CSM) in prosecutors' appointments and disciplinary procedures and takes note of the clarifications provided concerning exchanges of information between the prosecutor's office and the Minister of Justice about particular cases and concerning the limits of national security confidentiality. However, some recommendations have yet to be dealt with, such as those relating to the criteria for the award of honorary decorations and distinctions, the commencement of disciplinary proceedings of the CSM with regard to judges and on its investigative powers.
148. In the light of the above, GRECO concludes that the current level of compliance with the recommendations at present is "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3, of its Rules of Procedure. It decides, therefore, to apply Rule 32 concerning members failing to comply with the recommendations contained in the mutual evaluation report and asks the Head of the French delegation to submit a report on its progress in implementing the recommendations still pending (i.e. recommendations i, iii, iv, v, vii, ix and x, as soon as possible and at the latest by 30 June 2019, pursuant to Rule 32, paragraph 2(i).
149. GRECO invites the French authorities to authorise publication of this report as soon as possible and to make it public.