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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 ADDENDUM TO THE SECOND COMPLIANCE REPORT

FRANCE

Adopted by GRECO at its 95th Plenary meeting
(Strasbourg, 27 November – 1 December 2023)

I. INTRODUCTION

1. This Second Addendum to 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. GRECO adopted the [Fourth Round Evaluation Report](#) on France at its 62nd plenary meeting (6 December 2013) and it was made public on 27 January 2014, following authorisation by France.
3. The [Compliance Report](#) was adopted by GRECO at its 71st Plenary meeting (18 March 2016) and made public on 15 April 2016, following authorisation by France.
4. The [Second Compliance Report](#) was adopted by GRECO at its 80th plenary meeting (22 June 2018) and made public on 18 September 2018. In this report, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3, of its Rules of Procedure. It therefore decided to apply Rule 32, paragraph 2 (i), concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report.
5. The [Interim Compliance Report](#) was adopted on 25 September 2020 and made public on 1 October 2020. In this report, GRECO concluded that the level of compliance with the recommendations was no longer "globally unsatisfactory" and therefore decided to cease its application of Rule 32.
6. The [Addendum to the Second Compliance Report](#) was adopted on 25 March 2022 and made public on 31 March 2022. In this report, GRECO concluded that France had now implemented or dealt with in a satisfactory manner six of the eleven recommendations in the Fourth Round Evaluation Report. Of the other recommendations, three remained partly implemented and two had still not been implemented. As required by GRECO's Rules of Procedure, the French authorities submitted a Situation Report containing additional information on measures taken to implement the five outstanding recommendations. The Situation Report received on 17 May 2023 and information provided subsequently served as the basis for the Second Addendum to the Second Compliance Report.
7. GRECO selected Luxembourg (in respect of members of parliament) and the Republic of Moldova (in respect of judicial institutions) to appoint rapporteurs for the compliance procedure. The rapporteurs appointed were Ms Cindy COUTINHO, on behalf of Luxembourg, and Mr Alexandru CLADCO, on behalf of the Republic of Moldova. They were assisted by GRECO's Secretariat in drawing up this report.

II. ANALYSIS

8. In its Evaluation Report, GRECO made eleven recommendations to France. In the subsequent compliance reports, it concluded that recommendations ii, iii, vi and vii had been implemented satisfactorily, recommendations viii and xi had been dealt with in a satisfactory manner, recommendations i, iv and x had been partly implemented and recommendations v and ix had not been implemented. The implementation of the five outstanding recommendations is therefore assessed below.

Recommendation i

9. *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.*
10. GRECO points out that this recommendation was found to have been partly implemented in the Addendum to the Second Compliance Report. GRECO held that the conditions relating to the use of parliamentary assistants and collaborators and the parliamentary reserve facility had been dealt with satisfactorily. With regard to the treatment of members' operational expenses, GRECO considered that the oversight exercised by the Senate met the recommendation's requirements. However, GRECO called for improved transparency with regard to the actual use of parliamentarians' operational expenses.
11. The French authorities report that in 2023, the Senate carried out its fifth audit of operational expenses, covering those incurred in 2022. In 2023, the Ethics Committee made 351 checks on 348 Senators in office and three former Senators. In all, around 18 600 receipts were examined by 27 independent accountants. The average inspection rate was for the first time over 50% (50.45% of the incurred expenses). This average inspection rate is over 60% for one out of five Senators, rising to 93.79% for the Senator whose expenses required the most attention. Since the last GRECO report, the Senate has made four changes to its system for checking operational expenses: registered auditors are now recruited under a public procurement contract, following a call for tenders for professionals in the sector; the set of control standards has been updated to enable targeted inspections; the computer application for operational expenses (JULIA) has been improved by adding an automatic alert to prevent input errors involving large amounts and a "background information" tab, to which Senators add relevant details; lastly, a new category of expenditure has been introduced to improve checks on official gifts that Senators may give to third parties in the course of their duties. In 2022, the Senate launched an analysis of the categories of expenditure that pose the greatest difficulties and therefore the greatest risks. According to the study, the most frequent irregularities occur in communication and documentation costs and legal fees, which require special attention. The authorities report that, during the first four audit campaigns, the work of the auditors and the Ethics Committee did not reveal any particularly serious misconduct that would have justified disciplinary action.
12. With regard to the *transparency of Senators' operational expenses*, the authorities point out that France, like most other countries (Belgium, Germany, Spain and Switzerland, etc.) and the European Parliament, does not publish detailed information on parliamentarians' operational expenses. It remains an exception to do so at international level (with the United Kingdom and the United States being the main examples). The authorities point out that adopting this practice in France would give rise to legal problems: the principle of the free exercise of parliamentary duties, as established by the Constitutional Council,¹ could imply, subject to changes in the case

¹ Constitutional Council, 5 July 2018, *Resolution on Senators' ethical obligations and the prevention of conflicts of interest*, Decision No. 2018-767 DC. The Council of State confirmed that operational expenses were inseparable from the status of parliamentarians and that they were linked to the exercise of national sovereignty. He therefore rejected a request to publish these expenses (Council of State, 27 June 2019, *Association Regards citoyens*, judgment n° 427725).

law, that Assembly members' and Senators' use of their operational expenses allowance does not warrant publication.²

13. In the case of the Senate, the authorities state that the amount of operational expenses paid to Senators is made public, through the publication of the regulations in force (Bureau order and Questure order of 7 December 2017)³ and an information page on the Senate's website, the content of which was completely revised in 2023 to make it clearer, more user-friendly and more precise.⁴ The Senate has also published a practical guide to operational expenses,⁵ which includes a summary of the amounts paid to Senators. The authorities point out that the Senate has a Special Audit and Internal Evaluation Committee. It is a cross-party body, composed of 10 Senators from all political groups, appointed on the basis of proportional representation. Each year this committee draws up a report on the Senate's accounts, which is published on the institution's website⁶ (Article 103 bis of the Rules of Procedure). Statistics on the use of operational expenses are also included and are therefore accessible to the general public. Lastly, the activity report of the Senate's Ethics Committee provides an annual review of the process of auditing operational expenses. It is published on the Senate website⁷ and contains a summary of the Committee's decisions and its proposals for improving checks.
14. The authorities also mention other efforts to promote transparency in the Senate and to provide educational tools. The Senate has published the Code of Conduct for Senators⁸, updated in 2023, provided for in Section XX ter of the Bureau's General Instruction. The code explains the rules applicable to each type of expenditure. The Senate has also published the Quaestors' Circular setting out the conditions for the application of the operational expenses system.⁹ Lastly, the Senate finalised in May 2023 a list of Frequently Asked Questions (FAQ) on operational expenses for Senators.
15. As regards the National Assembly, the authorities state that, the Lower House of Parliament has worked on several fronts over the past two years to ensure the transparency of the operational expenses system and to improve the scrutiny of such expenses. The impact of the reforms can be seen in the published results of the audits and in the increased workload of the Ethical Standards Commissioner,¹⁰ which shows

² See also: Germany, Federal Administrative Court, 16 March 2016, <https://www.bverwg.de/160316U6C65.14.0>, and General Court of the European Union, 25 September 2018, *Maria Psara v European Parliament*, Cases T-639/15 to T-666/15 and T-94/16 (<https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=T-639/15>).

³ These regulations are available here:

https://www.senat.fr/fileadmin/cru-1681198794/Connaitre_le_Senat/Fiches_techniques/frais_de_mandat/ab2017-272Consolide_Frais_de_mandat_15_12_2022.pdf and here:

https://www.senat.fr/fileadmin/cru-1681198794/Connaitre_le_Senat/Fiches_techniques/frais_de_mandat/AQ_2017-1202_Frais_de_mandat_16122021.pdf.

⁴ <https://www.senat.fr/connaitre-le-senat/role-et-fonctionnement/les-frais-de-mandat.html>.

⁵ The guide is available at:

https://www.senat.fr/fileadmin/Senateurs/Elections/2023/Guide_Deontologique_du_Senateur.pdf

⁶ The Special Committee's latest report is available here:

<https://www.senat.fr/rap/r21-629/r21-6291.pdf>.

⁷ The Ethics Committee's latest report can be found here:

https://www.senat.fr/fileadmin/cru-1681198794/Organisation_interne/Comite_de_deontologie/Rapports_d_activite/CDP_-_Rapport_d_activite_2021-2022-15-02.pdf.

⁸ https://www.senat.fr/fileadmin/Fichiers/Images/sqp/Comite_de_deontologie/GUIDE_DEONTOLOGIE_SENATE_UR_v7_DOUBLE-PAGE_.pdf (Section VIII, "Les frais de mandat des sénateurs" (Senators' operational expenses)).

⁹ https://www.senat.fr/fileadmin/cru-1681198794/Connaitre_le_Senat/Fiches_techniques/frais_de_mandat/Circulaire_Questeurs_Frais_de_mandat.pdf.

¹⁰ The current Ethical Standards Commissioner, Professor Jean-Eric Gicquel, was appointed by the Bureau on 18 January 2023. The Ethical Standards Commissioner's team was expanded again in July 2022. It is now made

that parliamentarians are increasingly aware of their professional responsibilities in this respect. On 18 January 2023, the Bureau of the National Assembly, acting on the advice of the Ethical Standards Commissioner, amended the procedures for selecting the members of parliament to be audited during the 16th legislative term in order to consolidate scrutiny of their operational expenses. The reform has several aims: to audit a larger number of members earlier in the parliamentary term to ensure that the rules governing operational expenses are better understood; to follow up on the results of the first round of audits – members with the highest claims for reimbursement are subject to a mandatory second audit; and to continue to conduct audits on a random basis so that members who have already been audited do not have a sense of impunity, as mentioned in previous reports.

16. The monitoring of Assembly members' operational expenses will now be divided into two phases. In the first phase, running from 2023 to 2025, all members will be subject to an audit of their expenditure during a six-month period of the previous year, as determined by the Ethical Standards Commissioner, at a rate of one third of members each year. A second phase will combine follow-up and spot checks. In 2026, 100 of the top claimants from the 2023-2025 audits will be selected, based on the proportional representation of each political group, to undergo a new round of checks on their expenses over a six-month period in one of the years since their first audit. A further 100 members will be chosen by lot, based on the proportional representation of each group, for an audit of the use of their operational expenses over a six-month period in a different year from their first audit. Lastly, in 2027, 50 members will be chosen by lot for an audit of the use of their operational expenses during three months in 2026. Systematic checks are also carried out on how members whose term of office is interrupted before its formal end date used their advance of operating expenses (AFM) in the six months prior to their departure, if they have not already been subject to an annual check during that parliament. At the end of their term of office or the parliamentary term, members must declare the unused AFM balance and repay it within four months, in accordance with Bureau Order No. 12/XV of 29 November 2017 on members' operational expenses.
17. Special checks are also carried out in the event of a matter being reported. According to Bureau Order No. 12/XV of 29 November 2017 on members' operational expenses, "at the request of the National Assembly's Ethical Standards Commissioner, the member shall immediately submit supporting information and documents, which the Commissioner shall register, file and retain". Following press reports questioning some of the ways in which various members had used their advance of operating expenses, the Standards Commissioner carried out two ad hoc audits in 2022. In the event of unjustified use of an advance of operating expenses, a member is first required to repay the amounts wrongfully received. If members fail to comply with their obligations regarding the verification of their operational expenses or their obligations to declare and repay the AFM balance, the Standards Commissioner may ask the Speaker to refer the matter to the Bureau for a decision, which will expose the member to disciplinary sanctions as provided for in the Rules of Procedure, ranging from a "call to order" (formal admonishment or reprimand) to a "censure with temporary exclusion" (withholding of half of salary for two months and a 15-day suspension from parliament). On 18 January 2023, the Bureau widened the range of disciplinary procedures at its disposal by allowing itself to make a public announcement if a former member of parliament refuses to submit to an AFM inspection. Lastly, if the Commissioner detects a case of personal enrichment or misappropriation of public funds, he or she may inform the Public Prosecutor, in accordance with the provisions of Article 40 of the Code of Criminal Procedure. In

up of 10 people: a head of division, two administrators, two deputy administrators, four technical assistants and a further member of staff.

addition, both the Commissioner and the Speaker of the National Assembly respond every year to legal requests.

18. Lastly, the authorities indicate that an exhaustive report on the activities of the Ethical Standards Commissioner, published on 14 April 2021, set out the results of the auditing processes in 2018 and 2019. Her successor, Christophe Pallez, published his first annual report on 21 February 2022, providing an in-depth review of the audit processes in 2020 (annual audits) and 2021 (spot checks). His second annual report was published on 23 May 2023. In addition to reviewing the audit of operational expenses in 2021 (annual audits) and 2022 (spot checks), it includes details of the audit of the repayment of unused advances of operating expenses at the end of the 15th parliamentary term.
19. These reports describe the conduct of these procedures, the adjustments which were deemed necessary or could be contemplated and the results in both quantitative and qualitative terms. The aim of giving such detailed data is to provide the largest possible number of tangible examples of what Assembly members may or may not treat as operational expenses so as to guide them in their decisions. The authorities stress that the aim is also to ensure transparency in the use of operational expenses while respecting the freedom to perform parliamentary duties, a constitutional requirement laid down by the Constitutional Council in Decision No. 2018-767 DC of 5 July 2018. The authorities report that the expenditure coverage rate (i.e. the percentage of expenses subject to checks), which is always over 90%, is increasing every year. The number of requests for repayment is also low in relation to the amounts checked. The total amount of expenses subject to repayment requests has decreased each year since the introduction of the audits, accounting for 3.06%, 2.07%, 2.29% and 1.84% of the total amount of AFM declared in 2018, 2019, 2020 and 2021, respectively.
20. GRECO takes note of the information provided by the authorities concerning the oversight of operational expenses and the efforts made to educate and promote transparency both in the Senate and in the National Assembly. GRECO points out that, as regards oversight, the recommendation had already been found to have been implemented. Regarding the transparency of operational expenses, GRECO takes note of the arguments put forward by the authorities, according to which more stringent disclosure requirements would be contrary to the principle of the free exercise of parliamentary duties. It also notes that a case concerning the refusal to disclose certain documents relating to the use of members' operational expenses is currently pending before the European Court of Human Rights.¹¹ Overall, GRECO considers that the transparency of operational expenses as regards the actual use made of them has not yet been fully achieved. In the absence of significant changes since the last report, GRECO therefore concludes that this part of the recommendation remains only partly implemented.
21. GRECO concludes that recommendation i remains partly implemented.

Recommendation iv

22. *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).*

¹¹ Application no. [1511/20](#), *Regards Citoyens contre la France*, lodged on 20 December 2019, communicated on 20 June 2022.

23. GRECO points out that this recommendation was deemed to have been partly implemented in the Addendum to the Second Compliance Report. The second part of the recommendation had been implemented satisfactorily by the Senate and the National Assembly. The first part of the recommendation had not yet been complied with (as the National Assembly had failed to provide for a ban in principle on certain gifts, donations and other benefits and the scope of the “invitation to refuse” certain gifts in the Senate, which was limited to gifts and benefits offered by representatives of interest groups, remained too narrow), despite the improvements made.
24. With regard to the National Assembly, the French authorities refer to the information submitted in previous reports, i.e. that Article 80-1-2 of the Rules of Procedure of the National Assembly and Article 7 of the Code of Conduct for Members of the National Assembly lay down the obligation to declare gifts and travel invitations from third parties. These declarations are submitted to the Ethical Standards Commissioner and made public on the National Assembly’s website. As the members are only required to make a declaration, the Commissioner has no power to authorise any member to accept a gift or an invitation. His role is limited to receiving the declarations and, if necessary, issuing a warning when the gifts come from public or private companies, in order to prevent members from finding themselves in a situation of conflict of interest, as defined in Article 80-1 of the National Assembly’s Rules of Procedure. The Commissioner is also not authorised to approve any travel invitations from third parties. However, he is regularly called on to warn members of the conflicts of interest which may arise or how their visits to certain politically exposed destinations may be deliberately misinterpreted. He also reminds them of the requirement to declare any donations valued over €150 that they may receive in connection with such trips.
25. The authorities stress that members’ reporting practices have changed for the better. In 2022, there was a sharp increase in the number of declarations of gifts, invitations and other benefits that members are required to submit to the Commissioner. While the number of declarations of trips funded by persons other than members themselves or the National Assembly remained relatively stable, with 41 declarations in 2022 (compared with 39 in 2021), the number of declarations of gifts, invitations and other benefits received in connection with parliamentary duties more than quadrupled, from 32 in 2021 to 130 in 2022.¹²
26. As regards the Senate, the French authorities point out that the rules require Senators to declare trips and gifts with a value of more than €150. The declaration forms are available directly on the Senate’s website, both for travel and for gifts. Since 2014, the Senate has published a list of trips paid for by external bodies worth more than €150 and, since 1 October 2018, a list of gifts worth more than €150. Any Senator may seek written advice from the Chair or Vice-Chair of the Ethics Committee on gifts that may be received. If a Senator knowingly fails to declare a trip or gift worth more than €150 euros, he or she will be liable to disciplinary action. In general, the Senate is particularly vigilant about all gifts, whether they come from lobbyists or other outside entities. Lastly, even stricter rules apply to gifts offered by representatives of interest groups, and lobby groups are actually prohibited from “offering or giving any form of present, gift or benefit of a value exceeding €150 to persons with whom they enter into contact in the Senate”. The Ethics Committee remains responsible for monitoring the activities of lobbyists and ensuring that they refrain from offering Senators a gift worth more than €150.
27. The authorities also point out that, after a year’s work, the Ethics Committee adopted in December 2022 a report entitled “Representatives of interest groups: rekindling the spirit of the Sapin II Law”. In particular, this report aims to continue efforts to

¹² [2022 Annual report](#) of the National Assembly’s Ethical Standards Commissioner, 15 May 2023, p. 127. In all, 104 (or 80%) of the 130 declarations of gifts, invitations and other benefits in 2022 were made by two members of the National Assembly who were particularly vigilant in this respect.

increase transparency and to gain a better understanding of lobbying activity and its influence on the legislative process, to clarify ethical obligations in contacts with lobbyists, to disseminate the applicable rules and to strengthen the supervisory capacity of the High Authority for Transparency in Public Life (HATVP) and the Senate. The Ethics Committee's proposals to strengthen the supervision of gifts were adopted by the Senate Bureau at its meeting on 5 July 2023. Lobbyists now have reinforced transparency obligations regarding the value of their gifts (Article 8 of the Code of Conduct for Lobbyists). This rule is in addition to the ban on gifts of more than 150 euros by lobbyists, which is maintained.

28. GRECO notes that the authorities have not provided any new information that would meet the requirements of the first part of this recommendation. There is still no general ban on certain gifts, donations and other benefits in the National Assembly. As regards the Senate, there is now an obligation for lobbyists to inform Senators of the value of gifts to them. However, the onus is on the lobbyists to comply, not on the Senators themselves. Furthermore, the scope of the invitation to Senators to refuse certain gifts remains limited to gifts and other benefits from lobbyists and does not apply to all outside bodies with an interest in parliamentary business. GRECO encourages the authorities to further strengthen the parliamentary rules on gifts and other benefits, in line with the recommendation.
29. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v

30. *GRECO recommended that declarations of assets by members of the National Assembly and Senators be made easily accessible to the public at large.*
31. GRECO points out that this recommendation was found not to have been implemented in the Addendum to the Second Compliance Report. GRECO noted that the procedure for consulting the declarations of assets made by members of the National Assembly and Senators, of which few citizens are aware, was excessively complicated and operated as a particular disincentive. GRECO reiterated that a reform of this procedure was necessary for the purposes of increased transparency and should include the declarations being published on the website of the High Authority for Transparency in Public Life (HATVP).
32. The French authorities reiterate that the HATVP monitors changes in parliamentarians' assets during their term of office¹³ and has the necessary means to check that their declarations of assets are complete, accurate and truthful, and that parliamentarians who fail to obey the applicable rules are liable to penalties. The publication of these declarations of assets, which contain sensitive and private elements, is governed by a specific institutional framework. Article L.O. 135-2 of the Electoral Code provides for the consultation of Assembly members' and Senators' declarations of assets. Any voter on the electoral roll may request an appointment to consult them at the prefecture of the *département* in which the parliamentarian was elected. Voters may also send the HATVP any written comments on the declarations that they have consulted. The practical arrangements for viewing the declarations are published online. The authorities also point out that the declaration of interests and activities, which summarises all the interests and the activities carried out by members of the National Assembly or Senators during their term of office and any

¹³ On 15 February 2023, the HATVP drew up a positive report on the fulfilment by the members of the 15th Parliament of their obligations to declare their assets at the end of their term of office, and by those of the 16th Parliament of their obligations to declare their assets at the beginning of their term of office. In particular, it noted that it had not identified any unusual variations in assets in 2022, unlike in 2017, which reflects a definite step forward in the implementation of the legal provisions.

activities carried out before their term of office, is published in full on the HATVP website.

33. In its activity report for 2021,¹⁴ the HATVP confirmed that “the publication of declarations of assets containing personal data concerns very few public officials: only the declarations of assets of members of the Government and members of the High Authority’s board are published online on the High Authority’s website, while those of members of the National Assembly and the Senate and French representatives in the European Parliament are made available for consultation in prefectures”. The HATVP notes that, although the number of consultation requests in prefectures remains low, there was a slight increase in 2021: 19 consultation requests were received (compared with 14 in 2020) in 12 *départements*, concerning 27 members of the National Assembly, Senators or members of the European Parliament. In 2022, 18 consultation requests were sent to the prefectures, relating to 113 declarations of assets submitted by 41 parliamentarians.¹⁵ The HATVP also points out that “alongside these declarations being made available in the prefectures, the High Authority publishes press releases providing information on the quality of the declarations verified in terms of accuracy, completeness and good faith”.¹⁶
34. The French authorities conclude that the provisions of the Institutional Law of 11 October 2013, as applied, achieve both the aim pursued (preventing any undue enrichment by members of Parliament), with the means available to the HATVP enabling it to monitor changes in the assets of members of the National Assembly and Senators during their term of office and prevent any undue enrichment; and also ensure that citizens have a right of access to a document containing sensitive and private information.
35. GRECO notes that, despite undeniable progress in the verification of parliamentary asset declarations, these are still not easily accessible to the general public, as required by the recommendation. GRECO reiterates that the declarations of assets of members of the National Assembly and Senators may be consulted by appointment only, in the presence of prefectural staff, with no notes or copies allowed. The annual number of consultations of these declarations of assets (14 in 2020, 19 in 2021, 18 in 2022) therefore seems very low compared to those published on the HATVP website¹⁷ (concerning members of the Government and members of the High Authority’s board), which were viewed more than one million times in 2022. This shows that the system, which remains identical to the one described in the 2013 evaluation report, should be changed and the declarations of assets of members of the National Assembly and the Senate should be made public on the HATVP website.
36. GRECO concludes that recommendation v remains not implemented.

Corruption prevention in respect of judges

Recommendation ix

37. *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.*

¹⁴ HATVP, Activity Report 2021: <https://www.hatvp.fr/wordpress/wp-content/uploads/2022/05/Rapport-dactivite-HATVP-2021.pdf>.

¹⁵ HATVP, Activity Report 2022, p. 70: <https://www.hatvp.fr/wordpress/wp-content/uploads/2023/05/HATVP-RA2022-pages-1.pdf>.

¹⁶ HATVP, Activity Report 2021, p. 55.

¹⁷ HATVP, Activity Report 2022, p. 70.

38. GRECO points out that this recommendation was found not to have been implemented in the Addendum to the Second Compliance Report. GRECO encouraged the authorities to continue considering the most appropriate measures to address the aim of this recommendation, particularly in the light of the Judicial Service Commission's (*Conseil supérieur de la Magistrature* - CSM) opinion.
39. The French authorities point out that the administrative procedure prior to any disciplinary proceedings does not fall within the CSM's remit but is the responsibility of the presidents of the courts and, in particular, of the General Inspectorate of the Justice System (IGJ), which carries out administrative investigations – the only inspections that can lead to a judge being brought before the disciplinary body – using a strict methodology, under the supervision of the Council of State and in accordance with certain principles, in particular the obligation to exercise restraint and discretion, which implies strict confidentiality in the conduct of investigations and respect for the adversarial principle. Administrative investigation teams are also composed exclusively of judges. In its decisions of 15 September and 19 October 2022, the CSM reaffirmed the impartiality and integrity required for these investigations.
40. The authorities also point out that the CSM's proposals were discussed. It was concluded that the proposal to allow the CSM to refer cases directly to the IGJ was unconstitutional in view of the principles set out in Article 20 of the Constitution and Article 15 of the Declaration of the Rights of Man and of the Citizen (DDHC), according to which all ministers have the power and even the duty to inspect and control the functioning of their departments. Accordingly, Article 1 of Decree No. 2016-1675 of 5 December 2016 establishing the IGJ states that it is "placed under the authority of the Minister of Justice".¹⁸ The CSM, on the other hand, does not have any inspection powers; the provisions of Article 20 of Institutional Law No. 94-100 of 5 February 1994 merely enable it to gain a better understanding of the needs of the courts and tribunals. It is not, however, a body that supervises the functioning of the courts. It has no authority over the administrative or budgetary management of the ordinary courts. Consequently, its powers and its role in the constitutional and legal organisation of the French State preclude it from referring cases directly to the IGJ, which is entrusted by the Minister of Justice with the power to inspect and control the management of the judiciary.
41. On the other hand, the authorities point out that this does not prevent the filtering panel (*commission d'admission des requêtes*) or the rapporteur appointed in CSM proceedings from asking the Minister of Justice to refer matters to the IGJ if the technical nature of the investigation so warrants. In some cases, it may be necessary to have more detailed information than that contained in the public's complaint. It may also be necessary to use special investigative techniques which the IGJ is better placed to carry out (data extraction, drawing up a list of the cases handled by a judge's chambers, evaluating a department, etc.). Proposals to this effect are included in the draft organic law relating to the opening, modernisation and accountability of the judiciary, which was presented by the Government in the Council of Ministers on 3 May 2023. This text relaxes the conditions of admissibility of complaints filed by litigants with the CSM and allows the filtering panel to request from the Minister of Justice that an administrative investigation be carried out "when the technicality of the investigative acts justifies it" (article 9). The National Assembly adopted the final version of the law on 10 October 2023 and the Senate definitively voted on the text on 11 October 2023. The Prime Minister submitted the organic law to the Constitutional Council on 16 October 2023 and the Constitutional Council

¹⁸ The hierarchical link between the IGJ and the Minister of Justice was enshrined in the Council of State's decision of 23 March 2018, *Syndicat force ouvrière magistrats et autres*, which points out that the power of inspection is a power specific to the Minister of Justice, based on the Government's responsibility for public administration pursuant to Article 20 of the Constitution and Article 15 of the DDHC.

rendered its decision on 16 November 2023, thus validating article 9 of the organic law relating to the opening, modernisation and accountability of the judiciary.

42. GRECO takes note of the information provided and welcomes the reform proposals aimed at increasing the opportunities for referral to the IGJ in the context of disciplinary proceedings against judges. It also notes that the Venice Commission, in its opinion on the CSM and the status of the judiciary,¹⁹ also recommended shifting from the Minister of Justice to the CSM the power to initiate the disciplinary proceedings *ex officio* and to request the IGJ to carry out an investigation. The Venice Commission said it was "concerned about the power of initiative and investigation of the Minister of Justice and the lack of such power in the hands of the CSM. Albeit tasked with conducting disciplinary proceedings, the CSM enjoys no correlated power in the conduct of administrative inquiries".²⁰ These remarks echo those made by GRECO, which considered in the Evaluation Report that "the disciplinary procedure relating to judges should be the sole prerogative of the CSM, which should be able to have proper powers of investigation and be allowed to make use of a service with an investigative capacity, such as the IGSJ, even before proceedings are opened. The intervention of the Minister of Justice should be restricted to receiving complaints and filing a case for possible deficiencies with the CSM." GRECO regrets that no tangible progress has been made in this respect.
43. As a result, GRECO concludes that recommendation ix remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation x

44. *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).*
45. GRECO points out that this recommendation was found to have been partly implemented in the Addendum to the Second Compliance Report. As the second part of the recommendation had been incorporated into the draft constitutional reform presented to the Council of Ministers, the French authorities had gone beyond the consultations recommended and this part of the recommendation was deemed to have been satisfactorily implemented. With regard to the first part of the recommendation, GRECO took note of the fact that there had been no progress on the constitutional reform amending the process of appointing prosecutors and the disciplinary procedure that applies to them and concluded that this part of the recommendation remained partly implemented.
46. The French authorities report that, as part of the constitutional reform initiated in 2013, a draft constitutional law was adopted on 26 April 2016 by the two chambers of Parliament in identical terms, giving the CSM disciplinary powers over public prosecutors, and making the proposed appointment of all public prosecutors subject to the CSM's assent. However, the draft has not been submitted to the Congress that brings both houses of parliament together. A new draft constitutional reform "for the

¹⁹ France - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy [CSM] and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), [CDL-AD\(2023\)015-e](#).

²⁰ *Ibid.*, para. 64.

renewal of democracy” (No. 2203) was tabled on 29 August 2019, but was not taken further, particularly due to the fallout from the Covid public health crisis.

47. The authorities state that on 17 February 2021, the President of the Republic asked the CSM for an opinion and that on 4 June 2021, he met with the heads of the Court of Cassation, who were the presidents of the CSM’s judicial and prosecutorial sections respectively. During these discussions, he reiterated his deep attachment to the principles of the separation of powers and the independence of the judiciary, of which he is the guarantor. Following the CSM’s report, the President of the Republic launched a national consultation on the reform of the justice system (*Etats généraux de la justice*) on 18 October 2021. He announced that he wanted the Minister of Justice to report annually to Parliament on the government’s criminal justice policy. The April 2022 report on the conclusions of the national consultation noted that “the majority of the Committee of the *Etats Généraux* rejected the much debated possibility of giving the Judicial Service Commission the power to propose appointments to certain positions in the public prosecutor’s office, in particular those of principal state prosecutor and public prosecutor. Since the public prosecutor’s office was autonomous and subject to a hierarchy, it seemed necessary not to sever its constitutional link with the executive branch of government.”
48. GRECO notes that the draft constitutional reform law submitted on 29 August 2019 has not been taken forward and is no longer on the parliamentary agenda of either chamber of Parliament. It regrets that no measures have been taken to meet the requirements of the recommendation. These requirements were reiterated by the Venice Commission in its opinion of June 2023: the Commission recommends “proceeding to the legislative and constitutional reforms needed to align the appointments’ procedure of prosecutors to the current procedure for judges”.²¹ In view of the foregoing, GRECO cannot uphold its previous conclusion on the first part of the recommendation, which has therefore not been implemented.
49. GRECO concludes that recommendation x remains partly implemented.

III. CONCLUSIONS

50. **Having regard to the conclusions in the previous Fourth Round Compliance Reports on France and in the light of the foregoing, GRECO concludes that the level of implementation remains the same as in the previous report. France has implemented or dealt with in a satisfactory manner six of the eleven recommendations in the Fourth Round Evaluation Report.** Of the other recommendations, three have been partly implemented and two have not yet been implemented.
51. More specifically, recommendations ii, iii, vi and vii have been implemented satisfactorily, recommendations viii and xi have been dealt with in a satisfactory manner, recommendations i, iv and x have been partly implemented and recommendations v and ix have not been implemented.
52. With regard to corruption prevention in respect of members of parliament, GRECO notes that no significant progress has been made in the implementation of the three outstanding recommendations. It calls for greater transparency in how members of the National Assembly and Senators use their operational expenses and for the publication online of their declarations of assets. GRECO also reiterates that bans in principle on

²¹ *Ibid.*, para. 78. The Venice Commission “considers that the alignment of the appointments’ procedure of prosecutors to the current procedure for judges would indeed be more in line with the principle of prosecutorial autonomy and European practice” (para. 51). It also recommends “entrusting sole authority to impose disciplinary sanctions on prosecutors to the CSM and aligning the disciplinary procedure for members of the prosecution service with that applicable to judges” (para. 71).

certain gifts, donations and other benefits should be introduced or clearly imposed by the National Assembly and the Senate.

53. As to prevention of corruption in respect of judges, GRECO regrets the lack of progress on how disciplinary cases should be referred to the Judicial Service Commission and the latter's powers of investigation. A recommendation on corruption prevention in respect of prosecutors has also still not yet been addressed. The question of the role of the Judicial Service Commission (CSM) in prosecutors' appointments is of the utmost importance.
54. The adoption of this Second Addendum to the Second Compliance Report terminates the Fourth Round compliance procedure in respect of France. The French authorities may, however, wish to inform GRECO of further developments with regard to the implementation of the outstanding recommendations (recommendations i, iv, v, x and ix); and the authorities are strongly encouraged to continue their efforts in this respect.
55. GRECO calls on the French authorities to authorise publication of this report as soon as possible.