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## Third Evaluation Round

### Addendum to the Second Compliance Report on France

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

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“Transparency of party funding”

Adopted by GRECO  
At its 75<sup>th</sup> Plenary Meeting  
(Strasbourg, 20-24 March 2017)

## I. INTRODUCTION

1. The Third Round Evaluation Report on France was adopted by GRECO at its 41<sup>st</sup> plenary meeting (19 February 2009). It was made public on 12 March 2009, following the authorisation of France (Greco Eval III Rep (2008) 5E, [Theme I](#) and [Theme II](#)).
2. According to the [first Compliance Report](#) adopted by GRECO at its 50<sup>th</sup> plenary meeting (1 April 2011), France had satisfactorily implemented or dealt with three of the seventeen recommendations contained in the Third Assessment Report Cycle. GRECO considered that, given the ongoing reforms, these had the potential to lead to an acceptable level of compliance.
3. In the [second Compliance Report](#) adopted at its 59<sup>th</sup> Plenary Meeting (22 March 2013), GRECO concluded that, despite some progress, France had not finally made decisive progress, as could be expected in the light of the situation assessed previously. The number of recommendations implemented was still very low and further progress was not on the agenda in the near future, making the situation "globally unsatisfactory" within the meaning of Rule 31.8.3 of GRECO's Rules of Procedure (RoP). GRECO therefore decided to apply Rule 32 concerning members who are found not to be in compliance with the recommendations contained in the mutual Evaluation Report.
4. The [first Interim Compliance Report](#) adopted at the 62<sup>nd</sup> Plenary Meeting (6 December 2013) noted the absence of any progress on Theme I - Incriminations and only decisive progress in relation to one of the recommendations of Theme II - Transparency of party funding. At that stage, France had satisfactorily implemented (or dealt with in a satisfactory manner) only four of the seventeen recommendations in the Third Round Evaluation Report. GRECO therefore concluded that the level of implementation of the recommendations remained "globally unsatisfactory". In accordance with Article 32, paragraph 2, sub-paragraph (ii.a) of the RoP, GRECO instructed its Chairman to send a letter - with a copy to the Chairman of the Statutory Committee - to the Head of Delegation of France, in order to draw attention on non-compliance with the recommendations concerned and on the need to take firm measures with a view to making tangible progress as soon as possible.
5. In the [Second Interim Compliance Report](#), adopted at the 66<sup>th</sup> Plenary Meeting (12 December 2014), France had satisfactorily implemented (or treated) a total of only five of the 17 recommendations, nine remaining recommendations being partly implemented and three recommendations remaining unfulfilled. GRECO therefore concluded that the level of implementation of the recommendations remained "generally unsatisfactory" and requested the head of the French delegation to submit a new report on the measures taken to implement the outstanding recommendations. In accordance with Rule 32, paragraph 2, sub-paragraph ii. b) of the RoP, GRECO invited the President of the Statutory Committee to send a letter to the Permanent Representative of France to the Council of Europe.
6. The [Third Interim Compliance Report](#) adopted at the 70<sup>th</sup> Plenary Meeting (4 December 2015) noted some progress and as the level of implementation of the recommendations was no longer "generally unsatisfactory", GRECO put an end to the application of Rule 32 of the RoP. However, the overall results left room for further improvement: of the 17 recommendations contained in the Evaluation Report, seven had been implemented or adequately addressed, eight had been partly implemented and two had not been implemented. GRECO therefore once again requested the French delegation to report back on these outstanding recommendations. The requested information was provided on 8 November 2016 in agreement with the Secretariat.

7. The present addendum was drawn up by the rapporteurs, Mr Olivier GONIN (Switzerland) and Mr Guido HOSTYN (Belgium) with the assistance from the GRECO Secretariat. It assesses the status of implementation of the pending recommendations since the adoption of the Third Interim Report and provides an updated overall assessment of the level of compliance with the recommendations.

## II. ANALYSIS

### Theme I: Incriminations

8. It is recalled that in its Evaluation Report, GRECO addressed six recommendations to France concerning Theme I and that to date, recommendations i, ii and iv have been implemented or dealt with in a satisfactory manner, recommendations v and vi have been partly implemented and recommendation iii has not been implemented. Compliance with these outstanding recommendations is examined below.

#### Recommendation iii.

9. *GRECO recommended to consider criminalising trading in influence in connection with foreign public officials or members of foreign public assemblies and thus withdrawing or not renewing the reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173).*
10. GRECO recalls that this recommendation has so far not been implemented. It refers to the previous report of December 2015 for an overview of developments in France, where the authorities indicated that various ministries were involved in consultations with a view to implement this recommendation.
11. The authorities report that the government has submitted to parliament the draft law "on Transparency, Combating Corruption and Modernisation of Economic Life" (also known as the "Sapin 2 Law"). It was adopted by Parliament at the end of last year: law n°2016-1691 of 9 December 2016 "on Transparency, Combating Corruption and Modernisation of Economic Life" published the following day (JORF, n°0287)<sup>1</sup>. This law implements a general reform of the existing anti-corruption framework, including in particular by establishing the French Anti-Corruption Agency which replaces the Central Service for the Prevention of Corruption. Article 20 of the law extends the provisions of articles 435-2 and 435-4 of the Criminal Code on passive and active trading in influence to situations in which the target of influence is a public official or assembly member "in a foreign state or" (words added in both articles)<sup>2</sup>. Consequently, the Government envisages not to renew the reservation which will, in any case, expire shortly after 1 August 2017.
12. GRECO welcomes the fact that France has not only given proper consideration to the measures mentioned, as it was recommended, but that it has also implemented the reform discussed by extending with effect from 10 December 2016, its incriminations of active and passive trading in influence to situations involving foreign public officials and members of foreign elected assemblies. It notes that the reservation to article 12 of the Convention has become obsolete and is meant to disappear.
13. GRECO concludes that recommendation iii has been implemented satisfactorily.

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<sup>1</sup> [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033558528&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033558528&dateTexte=&categorieLien=id)

<sup>2</sup> Link to the French version of the consolidated [Criminal Code](#) available on Legifrance

Recommendation v.

14. *GRECO recommended to extend the limitation period for bribery and trading in influence offences, as planned.*
15. GRECO recalls that this recommendation was considered partly implemented. It refers back to the previous interim report, which indicated in particular that new proposals on a reform of the statute of limitation had been publicly presented on 20 May 2015 in a parliamentary report. This resulted in a draft law<sup>3</sup> amending the criminal law provisions concerned, filed on 1 July 2015 by parliamentarians. The initiative consecrated in particular proposals 5, 10 and 11 contained in the parliamentary report of May 2015 under which: a) there would be a twofold increase of the limitation period which would be 6 years instead of 3 for lesser offences (which include notably the various bribery and trading in influence offences); b) the law would lay down the jurisprudential *acquis* which allows to postpone the starting point of that period to the uncovering of "hidden or concealed" offences (instead of the time of their commission), which by their nature concern acts of bribery and trading in influence; and (c) suspension of the time limit calculation in the event of an insurmountable obstacle to prosecution.
16. The French authorities indicate that in the second reading, the draft law reforming the statute of limitations in criminal matters has retained the three proposed amendments above, which concern in particular articles 8, 9 -1 et seq. and 9-1A of the Criminal Procedure Code. The text was finally adopted very recently: law n°2017-242 of 27 February 2017 on amendments to the statute of limitation in criminal matters (published in the Official Journal n°0050 of 28 February 2017). It entered into force on 1 March 2017. The new limitation period (6 years) being more severe than the former (3 years), it does not affect the prosecution of offences already time-barred on 1 March 2017, but it replaces the former limitation period for the deadlines which are still running on 1 March 2017. The postponement of the starting point of the new limitation period to moment where hidden or concealed offences are uncovered was limited – following a late amendment by the Senate – to maximum period of 12 years starting from the day an offence was committed. The introduction of this absolute time limit concerning the starting point of the limitation period, is aimed at avoiding that hidden or concealed offences are not time-barred. This 12-year time limit will only start to run as from 1 March 2017, and it has no impact on the validity of proceedings already initiated prior to that date (article 4 of the law).
17. GRECO takes note of the final version of the amended provisions regulating the statute of limitation in criminal matters. It also notes that the introduction of an absolute 12-year limit for lesser offences at a late stage in the legislative process has sometimes been perceived negatively by the media and by NGOs working against corruption<sup>4</sup>. GRECO considers, however, that the law of 27 February 2017, which entered into force, constitutes an indisputable step forward for offenses classified as lesser offenses including bribery and trading in influence. GRECO is also pleased that the jurisprudential *acquis* was enshrined in the Penal Procedure Code concerning not only the postponement of the starting point for the calculation of the limitation period for hidden and concealed offences, but also the suspension of the limitation

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<sup>3</sup> The legislative file is available under: <https://www.senat.fr/dossier-legislatif/ppl15-461.html>

<sup>4</sup> <http://www.anticor.org/2017/02/16/reforme-des-delaix-de-prescriptions-le-diable-est-dans-les-details/>  
<http://www.observatoire-corruption.org/delai-de-prescription-penale-le-senat-sest-il-vote-une-auto-amnistie/>

This has notably led the Ministry of Justice to provide publicly certain explanations: <https://blogs.mediapart.fr/la-redaction-de-mediapart/blog/180217/une-reponse-du-ministere-de-la-justice>

period in case of legal or factual obstacles. France has therefore taken measures in accordance with the present recommendation.

18. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

19. *GRECO recommended i) to abolish the condition that the prosecution of acts of corruption committed abroad by French nationals must be preceded by a complaint or an official report (Article 113-8 Criminal Code); ii) to abolish the condition that the principal offence committed abroad must have been established by a final decision of the foreign courts (Article 113-5 Criminal Code) and iii) to consider withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173).*
20. GRECO recalls that this recommendation was considered partly implemented insofar as the possible withdrawal of the reservation to Article 17 of the Convention (part iii of the Recommendation) had already been considered. France had finally decided to maintain the legal situation as it stood and not to abolish the condition of dual criminality for bribery and trading in influence committed abroad; GRECO regretted it all the more because the argument put forward by France - that in any case most countries had ratified the UN Convention against Corruption (and thus also impugned the relevant facts) - could also show that the French reservation was no longer justified. Concerning the first part of the recommendation, the French authorities had pointed out that the amendments to the Criminal Code of December 2013 had partly extended France's ability to prosecute bribery and trading in influence for acts committed partly abroad. That said, these concerns were specific to the work of another body (the OECD) and thus without direct connection to the present recommendation issued by GRECO. Regarding the second part of the recommendation, France had still not taken any action. In the previous interim report of December 2015, however, the French authorities indicated that reflection was continuing between several ministries on the first two (pending) aspects of the recommendation.
21. The French authorities now point out that the Law "on Transparency, Combating Corruption and Modernisation of Economic Life" (known as the "Sapin 2 Law") already cited in relation to recommendation iii, which was adopted by Parliament on 9 December 2016 and published in the Official Journal the following day, took into account the first two elements of the Recommendation.
22. As regards the first element, the new article 435-6-2 of the Penal Code now provides, in the first paragraph, that where the offenses set out in articles 435-1 to 435-4<sup>5</sup> are committed abroad by a French national or a person habitually resident in French territory or who exercises fully or partly a business activity in French territory, French law is applicable by way of derogation from the second paragraph of article 113-6 and the provisions of article 113-8 shall not apply". Moreover, the new article 435-11-2 of the same code provides, in its first paragraph, that "where the offenses provided for in articles 435-7 to 435-10<sup>6</sup> are committed abroad by a French national or by a person ordinarily resident in French territory or who exercises fully or partly a business

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<sup>5</sup> Articles 435-1 to 435-4 of the Criminal Code appear in a section entitled « Crimes in relation to the public administration», which comprises two subsections, one on « Passive bribery and trading in influence offences » and one on « Active bribery and trading in influence offences ».

<sup>6</sup> Articles 435-7 to 435-10 of the Criminal Code appear under a section entitled « Crimes in relation to justice», which comprises two subsections, one on « Passive bribery and trading in influence offences » and one on « Active bribery and trading in influence offences ».

activity in French territory, French law is applicable by derogation from the second paragraph of article 113-6 and the provisions of article 113-8 do not apply".

23. As regards the second element, it was taken into account according to the same logic. Paragraph 2 of the new article 435-6-2 of the same code provides that "for the prosecution in the territory of the Republic of accomplices of those who committed abroad an offense under articles 435-1 to 435-4, the condition that the main offences gave rise to a final conviction by a foreign court, as provided for in article 113-5 shall not apply". Furthermore, under the new article 435-11-2, paragraph 2, "for the prosecution in the territory of the Republic of accomplices of those who committed abroad an offense under articles 435-7 to 435-10, the condition that the main offences gave rise to a final conviction by a foreign court, as provided for in article 113-5 shall not apply".
24. GRECO welcomes the progress made on the first two elements of the recommendation with the amended provisions on France' jurisdiction for offenses of bribery and trading in influence, resulting from the so-called "Sapin 2" law of 9 December 2016 which has already come into force. The new articles 435-6-2 and 435-11-2 of the Penal Code (PC) abolish – for principal offences of bribery and trading in influence committed abroad and for ancillary offences (committed in France) related to those principal offences (committed abroad) – the jurisdictional limitations that the first two elements of the recommendation sought to remove. France has thus given full effect to the recommendation as a whole, since the third element – which called for a consideration of measures – was deemed to have been implemented at an earlier stage of the compliance procedure.
25. Concerning the third element of the recommendation, which was already implemented, GRECO is nevertheless pleased to note that the amendments of December 2016 also rule out or minimise the importance of three other conditions to be fulfilled for the prosecution of acts of bribery and trading in influence committed abroad. First, the dual criminality requirement is abolished as an exception to article 113-6 PC. Secondly, the condition that the offender must have been a French national, again in derogation of article 113-6 was loosened since French law is now applicable not only to a French national but also to "a person ordinarily resident in French territory or who exercises fully or partly a business activity in French territory"; Thirdly, the initiation of proceedings solely by the prosecutor was abolished by excluding the applicability of article 113-8 PC and NGOs as well are now entitled to launch cases in relation to criminal acts committed fully or partly abroad.
26. These positive developments, which go beyond the consideration of new measures which was recommended and which had already been addressed, respond largely to the underlying concerns of the third element of the recommendation.
27. GRECO concludes that recommendation vi has been implemented satisfactorily.

## Theme II: Transparency of party funding

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

Recommendation i.

29. *GRECO recommended to extend the provisions on party and campaign funding to take into account: i) candidates who campaign but ultimately decide not to stand; ii) elections to the Senate.*
30. GRECO recalls that this recommendation has been categorised as partly implemented. To date, no action has been taken on the first element, while, in the case of the second, Law No. 2011-412 of 14 April 2011 has made candidates in the Senate elections more broadly subject to the rules on campaign financing.
31. The French authorities confirm, with regard to the first part of the recommendation, that the domestic situation is problematic from the point of view of taxation, since donations are deductible from the donor's taxes only if the campaign accounts have been submitted so that the National Commission on Campaign Accounts and Political Financing (CNCCFP) can verify that donations were actually used to finance an election campaign. From this point of view, the issue has been taken into account in relation to campaigns for presidential elections. First of all, the official donation receipts issued by the CNCCFP can be delivered only after the list of candidates has been published by the Constitutional Council, thereby submitting candidates to the obligation to file their campaign accounts (provided that they participated in the first round of voting). Secondly, the donation receipts which are then given by the financial managers to donors can lead to tax deductibility of donations only insofar as the candidate concerned has submitted his/her financial campaign statements. This practice was confirmed in a decision of the CNCCFP of 11 April 2011, and recently validated by the courts. The French authorities emphasise that a similar system could be extended to other elections.
32. GRECO takes note of the above information. Making the tax deductibility of donations subordinate to the submission of campaign accounts can indeed be an incentive for candidates to file such accounts (failing which at least some of the donors seeking a tax advantage would not support them). However, this presently remains conditional on participation in the first round of the election (a candidate could still withdraw before that) and is in any event confined to presidential elections. GRECO cannot conclude that the concerns underlying this recommendation have been completely taken into account to date.
33. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

34. *GRECO recommended i) to introduce criteria to extend more systematically the scope of the consolidated accounts of parties and political groups to include associated structures, in particular the party's regional sections, and in parallel to identify the material means of parliamentary groups and ii) to hold consultations on whether or not regulations should be introduced to take account of the activities of third parties, depending on their significance in practice.*
35. GRECO recalls that this recommendation was considered as partly implemented. As indicated in the previous report, the second part of the recommendation has been taken into account since consultations and an expediency review had indeed taken place as a follow-up to the work of the Mazeaud Commission in 2009 – even though this did not result in changes. Regarding the first part of the recommendation, GRECO had noted that Parliament had taken steps in the summer of 2014 to increase transparency and the financial responsibility of parliamentary political groups.

It remained to redefine the scope for accounting purposes of political parties and formations. The authorities had then indicated that the discussion was continuing and that, in its report for 2014, the CNCCFP had put forward proposals along the lines expected by GRECO, in particular with a view to integrating the territorial sections into the political parties' accounts.

36. The French authorities have indicated that the new rules on the transparency of parliamentary political groups have taken effect and that for 2016 each of the assemblies has published the information required on its website. This practice is intended to ensure a financial separation between the parliamentary groups and the political parties. On the issue of the consolidation of the accounts of political parties in the direction expected by GRECO, reflection is continuing and proposals have been made along these lines, in particular: a) in the last annual report of the CNCCFP for 2015;<sup>7</sup> b) in a parliamentary report by the MP Romain Colas of July 2015.<sup>8</sup> Moreover, in 2016 the French Accounting Standards Authority (CRA) conducted a wide-ranging consultation process, including all stakeholders (political parties, CNCCFP, public accountants and financial auditors) with a view to establishing a standardised accounting format for the political parties.
37. GRECO takes note of the above and the absence of any further tangible development. It notes with interest, however, that its recommendations are increasingly echoed in recent reports and work. It encourages France to redouble its efforts to fully implement these, in order to ensure that political parties' financial information is as comprehensive as possible and achieve the greatest possible transparency as regards party funding.
38. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

39. *GRECO recommended to take steps to ensure that i) political parties which have funded a candidate's election campaign or which have supported him or her via the media be required to submit to the CNCCFP, details of their involvement, financial or otherwise, during the campaign, and that ii) this statement be verified by the CNCCFP and made public.*
40. GRECO recalls that this recommendation had been deemed not to have been implemented, given the absence of any pertinent developments. For the details of previous analyses, GRECO refers back to its earlier reports.
41. The French authorities now point out that the part of the recommendation concerning the use of media by political parties, in order to support a candidate, is difficult to address, since this type of intervention in principle lies outside the scope of the provisions on political financing.
42. Otherwise, progress has been made or is under way. Firstly, with regard to presidential elections, Article 7 of Organic Law No. 2016-506 of 25 April 2016 on the modernisation of the rules applicable to presidential elections requires: a) first of all, that "each statement shall be accompanied by an annex giving a detailed presentation of expenses incurred in support of the candidate, as well as of any direct or indirect benefits, services or gifts in kind provided by such

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<sup>7</sup> The last report is available online on the CNCCFP's website : <http://www.cnccfp.fr/index.php>, and earlier reports can be found on the website of the *Documentation Française* :

<http://www.ladocumentationfrancaise.fr/ezexalead/Search?SearchText=cncfc&cat%5BGroupeThematique%5D=&n=slDocFrancaise>

<sup>8</sup> <http://www.assemblee-nationale.fr/14/rap-info/i2979.asp>



parties and groups"; b) that "the whole of this annex shall be published with the statement " (publication in the Official Gazette of the French Republic within one month of the expiry of the period for filing the statement with the CNCCFP); c) finally, that "political parties and groups ... shall communicate to the CNCCFP, at its request, the accounting documents and supporting documents necessary to assess the accuracy of this annex." This new system, which is applicable immediately, gives a clearer picture of political parties' financial intervention in election campaigns (see items a and b: specific annex and its publication), and facilitates supervision by the CNCCFP (item c).

43. Concerning this last point, the CNCCFP may indeed ask political parties and groups to provide it with all the accounting documents and supporting documents necessary to assess the accuracy of the specific annex to the candidate's campaign accounts. This also enables the CNCCFP to make cross-checks, in due course, with the information provided by the candidates. This new possibility for the CNCCFP effectively supplements the right of communication already available to it (since Act No. 2013-907 of 11 October 2013 on the transparency of public life).
44. Three more general initiatives must also be mentioned, which do not only concern presidential elections and which are also in line with GRECO's recommendation: a) the work undertaken by the ANC (see rec. ii above) includes a discussion on political parties' financial intervention in election campaigns in general (not just during presidential elections); b) the CNCCFP is proposing that its powers be extended to include on-site verifications in real time in respect of party accounts so as to check and compare the different financial elements and supporting evidence concerning election candidates; c) law n° 2017-286 of 6 March 2017 on the strengthening of accounting obligations of political parties and election candidates – mentioned under recommendation xi – paragraph 68) introduced improvements with regard to certain financial interventions in the form of loans granted by parties to their candidates or taken by candidates themselves. The conditions of those borrowings are now to be indicated in detail, including the loan terms and identity of the lender, in both the campaign accounts and in the political parties' accounts which are then published, which goes in the direction of increased transparency, as recommended. The new mechanism also gives the CNCCFP a very useful means of scrutiny, in particular for detecting certain "disguised" illegal donations (taking the appearance of loans) and consequently for verifying compliance with the ceiling on donations and the prohibition on donations from legal entities other than political parties or groups.
45. GRECO considers that significant progress has been made in 2016 and early 2017 in the direction intended by this recommendation, but at present this mainly concerns presidential election campaigns. GRECO welcomes this progress and encourages the French authorities rapidly to bring the current discussions to fruition in order to extend these improvements to other elections.
46. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

47. *GRECO recommended to take the appropriate measures to ensure that i) incoming funds are received as far as possible via the fundraising association/financial agent and that ii) candidates appoint their agent as early as possible.*
48. GRECO recalls that this recommendation has so far been categorised as partly implemented. Follow-up had been given to the second element of the recommendation, with amendments

made in 2011 to the Electoral Code which require candidates to declare their financial agent at the time of their registration as candidates (failing which it would be void). The first part of the recommendation has been deemed not implemented so far. The information provided by France moreover confirmed that a good part of the resources of political parties are not controlled in practice by the National Commission on Campaign Accounts and Political Financing (CNCCFP) because of deficiencies regarding the centralisation of flows. GRECO also recalled that recent cases had illustrated the issues raised by financial flows which did not go through the financial agents when political parties played an important direct role in the financing of expenditure or used intermediate structures to do so.

49. The French authorities explain that, while financial agents or political parties' funding associations centralise donations by natural persons (no gift from a natural person can be collected by a party without involving the financial agent or a funding association), that is not the case for other party revenues, i.e., firstly, membership fees and, secondly, donations from other political parties and groups. These revenues are not necessarily centralised by financial agents or funding associations: they may either transit through the latter (which entitles contributors to a tax advantage) or be collected directly by the political parties (which deprives the contributors of this tax advantage). The authorities however underline that the CNCCFP is meant to remain informed of the various donations and financial flows: on the one hand, all incoming funds must systematically be mentioned in the political parties' accounts; on the other hand, the CNCCFP has strengthened its control of party financing thanks to the consolidated list of donors and of those paying membership fees, introduced by the law of 11 October 2013 on the transparency of public life, which has been implemented since 2015, and thanks to the possibility to cross check the accounts of political parties.
50. GRECO regrets that the first part of the recommendation has not led to more significant developments in order to respond to the concerns expressed in paragraph 112 of the Evaluation Report: the principle of financial agents (or funding associations) was introduced a) to collect all donations outside election times and b) to centralise all income and expenses of candidates or parties during election periods (it is nonetheless permissible that the parties themselves may pay part of the expenses).<sup>9</sup> It is the agent who opens and operates the bank account under his / her responsibility and normally monitors the legality of donations received (ceilings, origin etc.), compliance with the accounting rules for campaign accounts, etc. The report pointed out that, in practice, things did not necessarily work in this way, despite the central role given by law to financial agents. Since the Evaluation Report, certain phenomena seem to have amplified, notably in relation to so-called "micro-parties",<sup>10</sup> with recurring allegations that some of them are involved in illegal operations or the constitution of financial reserves. However, in the electoral field, campaign expenditures are subject to a ceiling and in the event of a positive balance in the campaign account, the surplus must be paid to charitable organisations. This is only possible if all operations are managed by the agent and if funds are not transferred to – or in practice collected by – the candidate's micro-party. GRECO therefore regrets the absence of significant evolution on this first part of the recommendation.
51. GRECO concludes that recommendation iv remains partly implemented.

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<sup>9</sup> This is recalled in recent vademecums edited by the CNCCFP for financial agents: in relation to the elections: <http://www.cnccfp.fr/index.php?r=3> ; in relation to the political parties: <http://www.cnccfp.fr/index.php?art=756>

<sup>10</sup> Originally conceived as think tanks, the number of such bodies has dramatically increased in recent years; they are now treated by the rules and CNCCFP as fully fledged political parties and they are increasingly active in the collection of funds – including in campaign periods – in parallel to the electoral and financial activity of the candidate's "regular" political party.

Recommendation v.

52. *GRECO recommended to consider the advisability and feasibility of i) improving the public availability and publication of campaign accounts, including on a regular basis in the course of the campaign, ii) including the conditions under which they may be consulted in the Electoral Code, and iii) making the procedure before the court with jurisdiction for the election more effective (for example by specifying a (new) time-frame for consultation and challenges after the submission of campaign accounts), without however affecting the necessary speed with which the case must be dealt.*
53. GRECO recalls that this recommendation has so far been considered as partly implemented. In the previous compliance reports, it was concluded that the last part of the recommendation had been taken into account but not the first two elements. GRECO considered that France had not actively pursued solutions along the lines recommended.
54. The French authorities now indicate that, regarding the first part of the recommendation, they did not endorse the principle of publication during the campaign, but did not rule it out during the post-election period, even before the accounts were examined by the CNCCFP. This would entail extending the system set up for presidential elections to all elections, proceeding by analogy - as GRECO had suggested. However, given the volume of data concerned, which is not comparable with the one generated by presidential elections, the CNCCFP would have to receive the relevant data in an electronic format. Discussions have been conducted on the dematerialisation of campaign accounts and their supporting documents (currently submitted in paper format). The abovementioned report by Mr Colas (see recommendation ii) contains a proposal No. 4 "to introduce the electronic submission of campaign accounts and the accounts of political parties, including all supporting documentation needed for their examination by the CNCCFP"). A bill along these lines was tabled by a group of parliamentarians - Bill No. 3333, registered on 9 December 2015, Article 6 of which reflects the above proposal.<sup>11</sup> Even if the project did not succeed, in its most recent activity report the CNCCFP addresses at length the issue of the extension of dematerialisation. It has commissioned an external consultant to study the matter.
55. As regards the second part of the Recommendation, public access to accounts is not confined to on-site viewing at the CNCCFP's premises, but is widely open by electronic means: a) on the CNCCFP website, via the electronic editions of the Official Journal, the publication of the accounts in the OJ, which is signalled by a press release; b) secondly, the information is accessible on the national data portal [data.gouv.fr](http://data.gouv.fr), in the form of reusable data sets on candidates' campaign accounts for the elections in general (since the parliamentary elections of 2012); c) thirdly, by means of an on-demand consultation, by sending a written request (also by e-mail) to the CNCCFP, which is sufficient to obtain from it a copy of a campaign account. As stressed by the CNCCFP in its most recent activity report (p.135), "the workload generated by these requests is cumbersome (...)" and the Commission is facing an increase in the number of applications" (57 in 2013, 314 in 2015).
56. As for a deadline for the publication of campaign accounts after verification, even if this appears desirable fixing such a time limit in the electoral code raises important practical problems. In particular, it is not possible to predict, in a sufficiently precise manner, the time that the verification procedure may take: the control carried out by the CNCCFP may be challenged in court, which adds uncertainty as to the total duration of the control procedure. The possibility of publishing some data on campaign accounts (in an even more simplified format than the current

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<sup>11</sup> [http://www.assemblee-nationale.fr/14/dossiers/legislation\\_financement\\_campagnes\\_partis\\_renovation.asp](http://www.assemblee-nationale.fr/14/dossiers/legislation_financement_campagnes_partis_renovation.asp)

one), before their examination by the CNCCFP, would again depend on the question of the dematerialisation of campaign data.

57. GRECO takes note of the above. As for the first part of the recommendation, GRECO welcomes that active consideration is being given to the possible submission of data in an electronic format and that the CNCCFP has commissioned an expert study on this subject, although for the time being parliamentary work on these issues seems to have been suspended. It is clear that the issues of dematerialisation and the sufficiency of the CNCCFP's resources are important preconditions that will not be solved immediately. Against this background, another possibility to be explored could be outsourcing part of the work by asking the candidates (and/or parties) to publish themselves during the campaign an overview of income and expenditure. Concerning the second part of the recommendation, GRECO it appreciates the fact that conditions of practical access to the campaign accounts deposited with the CNCCFP are facilitated and that, despite time and resource constraints, efforts are being made to also communicate them by mail. Overall, GRECO is now in a position to conclude that France has given consideration to, and examined the feasibility of the various aspects of this recommendation.
58. GRECO concludes that recommendation v has been implemented satisfactorily.
- Recommendation ix.
59. *GRECO recommended to enhance the supervisory functions of the CNCCFP in respect of political parties.*
60. GRECO recalls that this recommendation was categorised as partly implemented. Following amendments introduced by Law No. 2013-907 of 11 October 2013 on the transparency of public life, the CNCCFP has the right to ask political parties to provide supporting documents and accounting vouchers. However, no further development has remedied the other weaknesses mentioned in the Evaluation Report (paragraph 123). GRECO had recalled that, in respect of political parties, the CNCCFP is confined to verifying compliance with formal and accounting obligations, and its supervisory powers remain limited.<sup>12</sup>
61. The French authorities recall that the traditional mission of the CNCCFP is to verify compliance with the accounting obligations of parties, that is to say: a) the timely submission of accounts; b) the dual certification, by two auditors, of the accounts filed. Beyond this formal control, administrative court case-law<sup>13</sup> has since 2010 accepted the possibility for the CNCCFP – in the event of an obvious inconsistency – to conclude that a party has failed to comply with its accounting obligations. While this does not give the CNCCFP the role of a true "judge" of political party accounts, the way is clear for an enhancement of the CNCCFP's control function in practice, as regards the consistency of the accounts of political parties. The most recent CNCCFP activity report (the 17th, concerning 2015, pp. 82-86) notes that the CNCCFP can therefore carry out certain cross-checks, for example with the receipts of financial agents or accounts deposited by other political parties, and also with the accounting and supporting documents which it may request under the aforementioned law of 11 October 2013.

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<sup>12</sup> As recalled also continuously by the CNCCFP itself in its annual reports, such as the one for the period 2012-2013 (pp. 147-148) and the more recent one for 2014 (page 100): <http://www.cnccfp.fr/index.php?art=699>

<sup>13</sup> Conseil d'Etat, 9 June 2010, Cap sur l'avenir 13

62. As indicated in recommendation iii., under Organic Law No. 2016-506 of 25 April 2016 on the modernisation of the rules applicable to the presidential election, as well as the law n°2017-286 of 6 March 2017 on the strengthening of accounting obligations of political parties and election candidates, there have been other improvements: the CNCCFP can verify the accuracy of the annex to political parties' accounts concerning electoral expenses and the CNCCFP is informed of loans taken out and their terms. This reinforces the CNCCFP's control function. The French authorities take the view that this positive development must be seen in conjunction with the CNCCFP's proposal that it be given direct and immediate access to parties' books during the review of campaign accounts (with the assistance of the auditors).
63. GRECO notes with interest that the process and discussions to strengthen the scope of the CNCCFP's controls have continued since the previous report and that the financial statements of political parties and candidates contain an increasing amount of pertinent information which can – indeed – contribute to enhancing the scope of the CNCCFP's controls. The progress made to date, however, still remains insufficient given the weaknesses highlighted in the Evaluation Report and confirmed by recent news items and the officials of the CNCCFP themselves. As recalled in paragraph 60, the CNCCFP's control largely remains formal. The CNCCFP itself is advocating for new possibilities of direct, real-time control of political party accounts, and it is therefore clear that it still does not have full powers of on-site control and full access to documents. It may ask for additional information, but a refusal still cannot be sanctioned, as the CNCCFP does not have such a power. And as the Evaluation Report also pointed out, it cannot involve (as is the case for campaign accounts) the judicial investigation services in cases where it suspects irregularities in political parties' financial accounts. The case law of 2010, which extended the CNCCFP's control beyond compliance with formal requirements, paved the way for further progress, which should be definitively and as widely as possible enshrined in law. The need to pursue the reforms, enhancing the CNCCFP's financial and human resources as the scope of its control is gradually broadened was emphasised in various recent reports.<sup>14</sup>
64. GRECO concludes that recommendation ix remains partly implemented.
- Recommendation xi.
65. *GRECO recommended to harmonise and to differentiate the penalties, without abolishing ineligibility, and improving the system of publication of decisions.*
66. GRECO recalls that this recommendation was categorised as partly implemented. The law of 14 April 2011 simplifying provisions of the electoral code and relating to the financial transparency of political life introduced some improvements, and the authorities underlined that the CNCCFP makes full use of its power to reduce to a variable extent the public subsidy paid to reimburse election campaign expenses, depending on the seriousness of offences. It also makes use of its discretionary power to approve accounts submitted in relation to elections only after their revision. The penalties of ineligibility are already adjustable by the courts. The CNCCFP's decisions are published in the official gazette, and judicial decisions are notified to the persons concerned and may be consulted in the relevant case-law reports. However, GRECO regretted that greater consideration had not been given to the deficiencies mentioned in the Evaluation Report, such as

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<sup>14</sup> See overall progress report of Transparency France for the period 2012-2017, <https://transparency-france.org/wp-content/uploads/2016/12/BILAN-DU-QUINQUENNAT-VF.pdf>; report of the MP Romain Colas of June 2015: [http://www.assemblee-nationale.fr/14/rap-info/i2979.asp#P207\\_56635](http://www.assemblee-nationale.fr/14/rap-info/i2979.asp#P207_56635); report of the HATVP of January 2015: [http://www.hatvp.fr/renouer-la-confiance-publique/projet/boutons/RENOUER\\_LA\\_CONFIANCE\\_PUBLIQUE.pdf](http://www.hatvp.fr/renouer-la-confiance-publique/projet/boutons/RENOUER_LA_CONFIANCE_PUBLIQUE.pdf)

the fact that the loss of public funding was not also adjustable for political parties and the shortcomings in the publication of decisions.

67. The French authorities essentially reiterate their earlier indications information with regard to the first part of the recommendation. As for its second part, the authorities state that decisions on sanctions are published in the Official Journal and case-law reports, which can be consulted on the Internet. In addition, the sanctions decided by the CNCCFP are set out in its publications in the Official Journal and also on the Internet under the heading "campaign accounts and political parties". The media also refer to such decisions.
68. GRECO notes, in addition, that on 6 March 2017 the Parliament adopted – under accelerated procedure – a new law to strengthen the accounting obligations of political parties and election candidates. This simplifies auditing requirements for small political formations (some forty parties out of 440 will in future be subject to the obligation to use two auditors, only one auditor in other cases) and will in future oblige both parties and candidates to indicate the loans they have taken out in the annex to their annual or campaign accounts. Above all, it amends article 11-7 of Law No. 88-227 of 11 March 1988, which governs the financing of political parties, by allowing the CNCCFP to deprive a party or political group of the public subsidy for a maximum of three years in the event of breaches of basic accounting obligations under Article 11-7.
69. GRECO hopes that this added possibility to adjust the deprivation of public support will encourage the CNCCFP to use this sanction more broadly in future, as and when necessary. This was one of the main underlying concerns of this recommendation. GRECO also hopes that the CNCCFP will use this sanction in the event of inaccuracies in the accounts due to infringements of the legislation. The penalties provided for in the case of illegal donations (3750 euros fine and one year's imprisonment) remain insufficiently effective, proportionate and dissuasive in cases of serious irregularities. With regard to the issue of the publication of sanctions, this information should now be widely available both in the official gazette and on the CNCCFP website. This is to be welcomed. Finally, GRECO is pleased to note that an Act of 21 December 2015 has filled gaps in the sanctions mechanism of Article 11-4 of Law 88-227. Indeed, following a controversial amendment in 2013, it was no longer possible to sanction various problematic situations (in particular, the receipt of an illegal donation, or making or receiving an illegal donation in connection with a particular party). Article 11 (4) in question also makes it possible at present to explicitly sanction those who receive other categories of illegal support (such as support from abroad). Overall, progress has been made in relation to this recommendation.
70. GRECO concludes that recommendation xi has been implemented satisfactorily.

### III. CONCLUSIONS

71. In the light of the conclusions of previous reports in the Third Round compliance procedure in respect of France and of the analysis contained in this report, GRECO concludes that France has so far implemented (or dealt with in a satisfactory manner) a total of twelve of the seventeen recommendations contained in the Third Round Evaluation Report. The five pending recommendations have been partly implemented.
72. With regard to Theme I - Incriminations, France has now implemented (or dealt with in a satisfactory manner) all six recommendations. With regard to Theme II - Transparency of party funding, recommendations v, vi, vii, viii, x and xi have been implemented satisfactorily. Recommendations i, ii, iii, iv and xi have been partly implemented.

73. Concerning incriminations, GRECO is pleased to see that all the recommendations have now been implemented. It welcomes the fact that the statute of limitation applicable to corruption-related offences has been extended and that the postponement of the calculation starting point and the suspension of the statute have been enshrined in legislation. GRECO also welcomes the improvements made with the so-called "Sapin 2" law of December 2016 concerning the incrimination of trading in influence also in relation to foreign public officials and members of foreign public assemblies. The same goes for the relaxing of conditions to be met for the prosecution of acts of bribery and trading in influence with a cross-border dimension and complicity in such cases. GRECO hopes that these changes, which have improved the country's repressive capacity, will lead to positive results in relation to the fight against bribery and trading in influence given the weight of the country in international business relations. As the present compliance procedure comes to an end, France has also made other improvements, in addition to those set out above, with a view to increasing its level of conformity with the Criminal Law Convention on Corruption and its additional protocol. In particular, the practitioners' attention was drawn to the obsolete nature of the concept of a "corrupt pact".
74. With regard to the transparency of party funding, progress has been made. It is however unfortunate that, despite the significant number of legislative reforms conducted in relation to integrity in public and political life since the adoption of the Evaluation Report eight years ago, five of the eleven recommendations remain partly implemented. Among these, some concern particularly important areas such as the proper consolidation of party accounts and the strengthening of the CNCCFP's supervision. Several studies and national discussions have largely echoed GRECO's recommendations, and it encourages France to redouble its efforts to pursue the reforms.
75. This report terminates the third Evaluation Round compliance procedure in respect of France. If France so wishes, it may keep GRECO informed of future developments, in particular with regard to the supervision of political financing.
76. Finally, GRECO invites the French authorities to authorise the publication of this report as soon as possible.