



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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Adoption : 6 December 2013

Publication : 27 January 2014

Public

Greco Eval IV Rep (2013) 3E

FOURTH EVALUATION ROUND

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

EVALUATION REPORT

FRANCE

Adopted by GRECO at its 32nd Plenary Meeting
(Strasbourg, 2-6 December 2013)

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EXECUTIVE SUMMARY

1. If France, considered as a whole, appears to be little affected by corruption according to the various opinion polls conducted in recent years, the situation may vary strongly depending on the categories of institutions considered. Judges and prosecutors are thus well perceived in terms of integrity, whereas the public perception concerning elected officials is clearly negative in this respect. Nonetheless, both the judiciary and parliament have been subject to controversies in recent years, which have triggered reforms aimed at making these institutions more resistant to undue influences, and at introducing or improving standards on integrity, among other changes.

2. As for members of parliament, the reforms implemented in October 2013 by the laws on transparency of public life represent positive developments concerning the management of conflicts of interest and the system for the declaration of assets and interests of MPs, among other categories of public officials. Occasional conflicts of interests (whether they are real or perceived) are not adequately addressed as yet and information on assets needs to be made accessible to a broader public. The introduction of deontological rules and mechanisms in 2010 and 2011 by the Assembly and the Senate also go in the right direction. However, senators are not direct addressees of the new standards, which is a lacuna, and all the consequences have not been drawn from the new provisions since gifts, hospitality and other benefits are not regulated in a clear and consistent manner. There is also a need for a system of sanctions within the parliament which would allow to draw adequate consequences from infringements and encourage compliance with the integrity-related mechanisms. Finally, on the topic of resources made available to parliamentarians, three areas appear to be particularly problematic in practice and call for swift improvements: the modalities for the hiring of parliamentary assistants and collaborators (due to risks of disguised lobbying, of fictitious jobs and the use of funds for unrelated purposes), the operational expenses allowances and finally the so-called parliamentary reserve (due to serious risks for the integrity).

3. As for judges and prosecutors, France has a long-standing and effective tradition in the area of recruitment and training of the vast majority of these categories of personnel (by means of high schools often cited as examples internationally), in the area of standards on professional conduct and impartiality as well as supervision (the Superior Council of Magistracy and its counterpart responsible for administrative court judges). Rules for the ethical conduct introduced in 2010 and 2011 and the long-standing publication of decisions and opinions rendered by the above bodies complement effectively the measures and the standards aimed at ensuring a high level of integrity and professionalism among magistrates in the judicial and administrative area can be seen as exemplary. All the French courts are not subject to similar arrangements, which has sometimes led to serious concerns in practice. This is particularly the case for members of the commercial courts and labour courts which are composed in first instance exclusively of lay judges, elected by their peers. Efforts and reforms are needed to increase professionalism and inspiration should be drawn from what already exists for career judges. Moreover, certain aspects related to the autonomy of career magistrates are preoccupying: there are risks of problematic interference of the executive in the disciplinary proceedings and appointment/career system of judges and even more, of prosecutors. This calls for improvements since the current situation can generate "reluctance" among practitioners when they deal with sensitive cases. In the same spirit, even though the power of the Ministry of Justice to give instructions in individual cases was completely abolished in fall 2013, its ability to obtain information in real time in sensitive cases, combined with inappropriate regulations on national security confidentiality lead to a situation which calls for additional improvements.

I. INTRODUCTION AND METHODOLOGY

4. France joined GRECO in 1999. Since its accession, this country has been subject to evaluation in the framework of GRECO's First (in January/February 2001), Second (in June 2004) and Third (in September 2008) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

5. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

6. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

7. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the Members of Parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

8. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2013) 3F) provided by France. In addition, a GRECO evaluation team (hereafter referred to as the "GET") carried out an on-site visit to France from 13 to 17 May 2013, which afforded the opportunity to collect a number of additional documents and information provided by the people with whom the team spoke and/or obtained from public sources. The members of the GET were Ms Rosa FREIRE PÉREZ, judge and lecturer at the Judicial School (Spain), Ms Maria GAVOUNELI, Professor in International Law, Faculty of Law, University of Athens (Greece), Mr Philippe POIRIER, Chair of Parliamentary Research Studies, Chamber of Deputies of Luxembourg, Coordinator of the European Governance Programme, University of Luxembourg, and Associate Professor of Political Science, Collège des Bernardins and University of Paris – Sorbonne (CELSA) (Luxembourg) and Mr Jacques RAYROUD, federal prosecutor, Public Prosecution Service of the Confederation (Switzerland). The GET was assisted by Mr Christophe SPECKBACHER from the GRECO Secretariat.

9. The GET met representatives, members, officials and senior figures from the Court of Cassation (First President, Principal State Prosecutor), the Conseil d'Etat (Vice-President), the Economic and Financial Unit of the Paris Regional Court, the *Conseil de Prud'hommes* (Industrial Relations Tribunal), the Senate (Ethics Committee, Bureau, the *Questure*, Secretariat General), the National Assembly (Department responsible for lobbyists and study group representatives, Commissioner for Ethical Standards), the Ministry of Justice (General Judicial Inspectorate, Directorate of Criminal Affairs and Pardons, Economic and Financial Law Office, Directorate of Judicial Services, Ethics Office, Judges' Conditions of Service Unit), Central Corruption Prevention Department,

and the National Judiciary College. The GET also met on an individual basis, members of parliament, and representatives of the National Conference of Public Prosecutors, the NGO Anticor, the French section of Transparency International, the Federation of Judges' Trade Unions and the French Bar Association.

10. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of France in order to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of the Country, which are to determine the relevant institutions/bodies responsible for taking the requisite action. France has no more than 18 months following the adoption of this report, to report back on the action taken in response.

II. CONTEXT

11. In the latest [Corruption Perceptions Index \(2012\)](#), reflecting public perception of corruption, published annually by the NGO Transparency International, France is ranked 22nd out of 174 countries with a score of 71 out of 100, i.e. in the upper part of the table. The ranking varies little from year to year and the situation is similar to that found in the [Eurobarometer survey published in 2012](#) on the perception of corruption: this shows that a majority of those questioned in France believe that there has been little change in the level of corruption over the last three years. A sizeable proportion (85%) of those questioned did not feel personally affected in their day-to-day lives, although the proportion of those who felt insufficiently informed of these issues was one of the two highest in the EU.

12. Among the 11 categories of persons working for the public institutions cited in the Eurobarometer 2012 survey, national and local politicians are perceived as being the most likely to be involved in the various forms of corruption or illegal financing. This is reflected in the causes of corruption, as out of all 27 countries surveyed, France is the one in which "links between business and politics are too close" and the fact that there is "a lack of transparency in public spending" feature most prominently among the main causes of corruption in general. According to the NGOs which the GET met, the public's level of confidence in the political authorities and their elected representatives is historically very low, with parliament being a particularly weak link in the political sphere. For its part, the GET observes that politico-financial scandals (involving political parties and elected representatives at national or local level) have in recent years continued to be a major source of public controversy. On occasion, this has at the same time included the functioning of justice, particularly regarding the politicisation and lack of independence of the prosecution service (with, in parallel, obstructions to the work of investigating judges), and the perception – including among some of the practitioners whom the GET met – that elected representatives convicted at first instance are generally acquitted on appeal (this is not supported by official figures, as the French authorities point out).

13. Those working in the judicial services are perceived as being among the least involved in corruption (8th out of the 11 categories, which include people working in the police services, public procurement officials, people working in the public health sector). Furthermore, surveys carried out at national level, entitled "Les Français et la justice" (French citizens and Justice) (the most recent of which date from [2008](#), [2011](#) and [2013](#)), show that judges and prosecutors are well perceived in terms of their qualities (respect for the law, ability/training, integrity, discretion, etc.). At the same time, however, confidence in the overall justice system has never been so low in terms of the criteria of independence vis-à-vis economic interests and the political authorities,¹ which would appear to tie in with the wave of public controversies, referred to in the paragraph above. Scandals relating to corruption in general, involving judges or prosecutors, dealt with by the courts are very rare according to those with whom the GET spoke: fewer than ten or so case in 50 years. It is a fact that the main areas of justice are spared from corruption, even though these figures provide only a partial view of the situation (to which, of course, must be added disciplinary cases). At the same time, the functioning of certain categories of court has been (and still is) the subject of public controversy: for example, two parliamentary inquiry reports have been written in 15 years on the commercial courts alone.²

¹ Reversing a 40-year constantly upward trend, from 2008, confidence in the justice system fell to its pre-1966 level.

² Cf. the critical report of the 1998 [National Assembly on the functioning of the commercial courts \(the "Montebourg Report"\)](#), and the more nuanced report, also by the National Assembly, of April 2013 on [the role of justice in commercial matters \(the "Untermaier report"\)](#), which also highlights the need to reform those courts.

14. The various controversies referred to above were the starting point for efforts to enhance the rules on integrity for members of the political class and the country's leaders, and for members of the judiciary: amongst these are the recent legislative and regulatory reforms (including in 2013), adoption of ethical standards, reform of the Judicial Service Commission.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

15. Measures to enhance integrity in the state institutions were among the planned activities of the previous government (in particular the handling of conflicts of interest) and the election promises of the current President of the Republic (adoption of a code of ethics, the end of concurrent mandates for ministers, and the end of concurrent mandates in practice for members of parliament from his party). [Two Bills](#), one of which prohibits the combination of a parliamentary mandate with a local executive position were tabled in April 2013 and could be passed by the end of 2013 by parliament.

16. Furthermore, following a highly publicised case concerning a minister, in spring 2013, the government also initiated two Bills on the financial transparency of politics: a) an ordinary law concerning the members of the government and members of local assemblies and executives; b) an Institutional Act (IA) concerning members of the National Assembly and senators (on account of parallelism of form since it necessitates amending other IAs, i.e. those having quasi-constitutional value). The two Bills were eventually passed on 17 September 2013. The IA provides for: a) increased incompatibilities for the position of member of the National Assembly or senator; b) revision of the existing system for declaring assets, activities, interests and income, with such information being made more public; c) establishing a supreme control authority to replace the independent commission set up in 1988; d) a number of new provisions regarding, in particular, the public nature of the "parliamentary reserve". In a [decision of 9 October 2013](#), the Constitutional Council approved the majority of the IA provisions concerning members of the National Assembly and senators with the exception of those a) reinforcing the ban on members of parliament commencing a consultancy activity which they had not engaged in before obtaining their term of office as member of the National Assembly or senator (by also prohibiting the commencement of any other professional activity); b) including the situation of children and parents in the declaration of professional activities (this does not concern the spouse or the declaration of jointly held assets); c) enabling the future supreme authority to supervise conflicts of interest on a more ad hoc basis. These two texts will become effective as of 1 February 2014.³

Overview of the parliamentary system

17. The French parliament is bicameral and is made up of the National Assembly and the Senate, which sit in separate locations. The National Assembly has much broader powers than those of the Senate (it alone can table a vote of no confidence in the government; in the event of disagreement with the Senate, the National Assembly has the "final say" in the legislative procedure; it has a predominant role in financial and budgetary matters). In recent years there has been a noticeable increase in supervision of the parliament (a larger number of committees of inquiry, establishment of several parliamentary task forces, an increase in the number of standing committees from six to eight, the setting up in the National Assembly of a public policy evaluation and monitoring committee, etc.). Since 1995, parliament has sat in a single ordinary session lasting nine months.

18. The 577 members of the Assembly are elected for a five-year term by direct universal suffrage. Although each member is elected in a single constituency, they each represent the entire nation. Since 2008, members of the Assembly who are appointed to a ministerial position may, upon expiry of that position, return to their seat as member of the Assembly. The Senate represents the local and regional authorities. The 348 Senators are elected by a college of around 150,000 grand electors, and one third are renewed every six years. There are certain ineligibility criteria.⁴ In practice, parliament is

³ This is the deadline laid down in the IA for all members of parliament to submit their new declarations. The necessary implementing decrees still have to be adopted and the Supreme Authority established.

⁴ Those who may be declared ineligible include persons who have contravened the regulations governing the financing of elections, members of the National Assembly who have failed to submit a declaration of assets in

heavily made up of individuals from the public service (those with whom the GET spoke estimate the current percentage to be 60% in the National Assembly and 50% in the Senate), which makes for a rather specific parliamentary culture.

Transparency of the legislative process

19. Article 33 of the Constitution stipulates that the sittings of the two Houses shall be public and that a verbatim report of debates shall be published in the Official Gazette. Sittings are broadcast by television channels and other media. The general public physically present in the House have access to working documents and voting takes place in public. Governmental bills, private member's bills, amendments to texts and debates are made available online once the texts have been registered in parliament. The composition of committees is also available online. Consultations of experts and others are occasionally organised by the working committees. Their sittings are not public, except for enquiry committees. Their working documents nonetheless remain publicly accessible, as well as their conclusions and composition.

Remuneration, economic benefits and parliamentary resources

20. Depending on the calculation method used in the official statistics, for 2009 the average annual salary of French citizens was €24 629 net (in other words, a little over €2 000 a month). Parliamentary allowances are laid down in Order No. 58-1210 of 13 December 1958 on allowances paid to members of parliament. The following table provides an overview (with recent data):

	Members of the National Assembly	Senators
Level of remuneration (gross monthly allowances)	<ul style="list-style-type: none"> - Basic allowance: €5 514.68 - Residence allowance (3%) €165.44 - Duty allowance (tax-free, 25% of the total) €1 420.03 Gross monthly total €7 100.15 (net: €5 246.81 after social security deductions) <ul style="list-style-type: none"> - combination with other mandate possible, capped at 1.5 times the basic allowance: €2 757.34 per month 	- Same as for members of the National Assembly
Other financial payments	<ul style="list-style-type: none"> - Operational expenses allowance (IRFM): €5770 gross – tax-free - Staff expenses: total monthly amount:⁵ €9 504 for 1 to 5 assistants recruited/paid for by the member (as employer); signed contracts essential for payment of allowance 	<ul style="list-style-type: none"> - IRFM (operational expenses allowance): €6 037,23 net – tax-free - Staff expenses: total monthly amount:⁶ €7 548 gross not including employers' contributions; amount paid even if no contracts are concluded or no assistants are taken on
Non-financial benefits	<ul style="list-style-type: none"> - free national rail travel (1st class plus couchette) and free travel on the Paris metro - use of 20 official vehicles with Assembly driver (in Paris) - reimbursement of taxi fares in Paris⁷ - reimbursement of a fixed number of flights between Paris and the member's constituency (80 for elected representatives in metropolitan France, fewer for other elected representatives) - provision of a personal office with telephone equipment and communications (subject to a fixed limit), correspondence expenses covered (excluding private correspondence) 	<ul style="list-style-type: none"> - same as for members of the Assembly but half the number of flights that are paid for + reimbursement of motorway tolls and hotel expenses (subject to a maximum limit) during sessions + loans to acquire a residence or constituency office (average amount of loans in 2008: €94 000 at 2% interest) (replaces the abolition in 2007 of the interest-free loan)

the appropriate form and within the deadline laid down, persons whose convictions carry with them a prohibition of being registered on the electoral roll or an additional punishment rendering them ineligible. Similarly, certain individuals may not be elected in any constituency in the area in which they perform or have performed their duties for less than one year; these include judges and certain civil servants with managerial or supervisory positions on behalf of the state.

⁵ If not all the amount is used, the remaining amount is returned to the National Assembly's budget or may be transferred by the member to his or her political group to pay the salaries of the group's staff.

⁶ If not all the amount is used, the remaining amount is returned to the Senate's budget or may be transferred by the Senator to his or her political group to pay the salaries of the group's staff.

⁷ Reimbursed upon submission of receipts, and subject to an annual ceiling.

	- salary advance to acquire a residence or constituency office (up to a maximum of €90 000 interest-free to be paid back over 10 years) (this replaces the abolition in 2007 of the interest-free loan)	
Other benefits	-special social security scheme providing health/death and family benefits, a pension scheme (calculated pro rata for the duration of the term of office – current average pension: €2 700 net) and assistance with returning to work (amount decreasing over a maximum of six half-yearly periods, with a payment of 100% of the parliamentary allowance only during the first six-month period, with a deduction of other duty allowances or capital income)	-same as for members of the Assembly (average monthly pension in 2011: €4 421 net) except no assistance for returning to employment

21. Reference should also be made to what is termed as the “parliamentary reserve”. This relates to the funds managed by ministers but the use of which is left to the political groups and members of parliament. The total amounts are unknown but according to the press, they range from €120-150 million made available by the Ministry of the Interior (€64 million for the Assembly, €56 million for the Senate). In the Assembly, following the controversies leading to the reforms in 2013, the amounts are divided first of all among the groups in proportion to their membership (€130 000 per member) which then redistribute them as they see fit; however, recently, official scales have been introduced in order to ensure a degree of equity. The members of the Assembly Bureau have an additional €140 000, the Deputy Speakers €260 000 and the Speaker €520 000. In the Senate, since 2013 a similar principle has been in force, with the distribution being proportional to the membership of the groups, but without any precise criteria thereafter, which explains why one senator may receive as much as ten times more than another.

22. The GET believes that the remunerations, allowances and other benefits, all taken together, put French members of parliament in a favourable situation at European level and, at all events, one which is likely to preserve their integrity and prevent, in principle, any corruption-related temptations. Indeed, the system is rather generous, since members are entitled to draw their remuneration and take advantage of the benefits even if they do not actually attend sittings: deductions are applied on certain benefits but are by and large minimal. Above all, the use of the resources referred to above is generally not particularly transparent and the regulations do not satisfy the requirements of sound financial management (“accountability”) which could give rise to clearly unacceptable practices. The GET has identified three areas it believes are especially problematic from the point of view of the present report.

23. The first concerns the use of parliamentary assistants and collaborators, an area in which there is considerable freedom, insufficient rules and a lack of statutes for the personnel concerned. In other countries there are restrictions (for example, a prohibition on employing family members and friends). This is not the case in France and it can happen that assistants are recruited from among lobbyists (who continue to carry out their normal activities part-time for instance) – cf. also paragraphs 48 et seq. on relations with third parties. However those with whom the GET spoke view this problem as less urgent than the problem of fictitious posts (sometimes, but not necessarily, linked to the employment of family members and friends). The GET also observes a difference in approach between the Assembly and the Senate. For the former, the amount is paid only in respect of contracts concluded, and for the latter the amount is paid systematically to the Senator to dispose of as he or she wishes – whether or not any assistants are taken on. The GET considers such a situation to be problematic from the point of view of accountability regarding the management of resources and could also result in personal enrichment from funds which normally should be used in the service of the state and in the general interest. At the time of the visit, certain officials expressed a desire to see such anomalies rectified and thought was being given to this matter. The GET considers that the above problems are of particular importance and need to be addressed with a legal framework for the hiring of assistants and collaborators which would provide for the following: a statute and accountable management of such

personnel, limiting risks of fictitious jobs and of hiring of inappropriate persons (relatives, persons connected with interest groups), rules of conduct for the personnel concerned and any other pertinent measure which limits risks for the integrity of the parliamentary work and the proper use of public funds. A recommendation to this end appears in paragraph 27 hereinafter.

24. The second area requiring improvement as soon as possible concerns the "operational expenses allowance" (IRFM) paid to each member of parliament without any requirement to account for how this net amount of €385 000 in the case of a 5-year term of office (representing 15 years of the average salary in France) is used: the amounts are paid without any requirement for justification or repayment in the event of non-use. The only limit in place is a prohibition to use these funds for the financing of election campaign activities. It was sometimes alleged that the majority of members of parliament use these amounts for purposes other than those strictly related to their duties (for example to cover private or family expenditure, or even to acquire residential property). This can increase the elected representative's assets and ultimately distort the asset declaration and control mechanism – cf. paragraph 53 below (as has already been pointed out by the National Authority for Financial Accountability in Politics).⁸ These amounts also do not undergo any scrutiny by the tax authorities as they are not subject to tax, and this is not without negative consequences for the monitoring of assets which relies increasingly on the powers of the tax authorities (cf. paragraphs 53 et seq.). The GET notes that among the other allowances paid are the duty allowance and residence allowance, and that offices together with the associated expenses (communications, mail, etc.) and travel within Paris are all paid for to a large extent. Above all, there is a system of loans or salary advance to purchase property for the member of parliament's activities. At the end of the day, the IRFM in many respects duplicates these allowances and benefits. Proposals have been made to address this situation (reducing the amount and/or its suppression through inclusion in the basic salary with additional payments subject to conditions/receipts and monitoring of the proper use of the money etc.) but these proposals had not been followed through as of the date of the visit. Such measures, which would logically imply the applicability of the control of the tax administration and the future Supreme Authority, are needed in the GET's opinion. A recommendation to this end appears in paragraph 27 hereinafter.

25. The third main area which has been the subject of growing controversies as new information has emerged in the course of 2013 is the "parliamentary reserve" (RP). This concerns funds managed by ministries but the use of which is left to the discretion of the members of the National Assembly and Senators, who in practice allocate it to activities or acquisitions in their municipality or to associations/foundations etc. which they support. As was mentioned during the visit, the RP has long been an opaque source of funding largely unknown for the public at large and for a considerable number of members of parliament themselves, and which has no legal foundation – it is basically a practice that has developed. Apparently, it was as a result of a citizen initiative in April 2013⁹ that the Ministry of the Interior's list of beneficiaries and the amounts in question were made public and published online (by the citizen initiative itself). This was how the general public became aware of its existence, in a context of controversy, including among the members of parliament. Parliament began reviewing the arrangements for the distribution of the RP among its members in order to limit any abuse (for example, the former Speaker of the Assembly had some €11.9 million for 2011). According to the information gathered by the GET during the visit, it is the Ministry of the Interior alone that is responsible for managing over €100 million, but in reality, other ministries have also been quoted as managing sums of money, the allocation of which is the responsibility of members of parliament (or indeed members of the executive),¹⁰ for

⁸ http://www.commission-transparence.fr/rapports/15iemeRapport_joe_20120125.pdf, (French only) in the conclusions.

⁹ <http://www.pour-une-democratie-directe.fr/>

¹⁰ There are also believed to be ministerial and presidential reserves.

example the Ministry of Agriculture. It is claimed that the Ministry of Foreign Affairs – another example – manages some €3.1 million.¹¹ At the time of the visit, debates in parliament referred to the uncertainty over the sums in question and the use to which they are put (of the €120-150 million known about, less than 10% would appear to make its way to associations).¹² The GET observes that the situation remains far from transparent despite the information that has gradually come to light: the Ministry of the Interior’s list is not exhaustive and not all the sums, beneficiaries and managing ministries are as yet precisely known as there are no consolidated listings. Those whom the GET met were unanimous in their criticism of the principle of the RP, and indeed questioned its continuation in view of the problems and risks (which have often proved all too real in recent years) brought about by the lack of transparency and the discretionary allocation of these amounts: cronyism, vote purchasing and support¹³ including among members of parliament, conflicts of interest – in particular on account of the funding of local authorities with a link to the elected representative or activities in which the representative or his or her family or acquaintances have interests – and also the funding of bodies with close ties to the political parties with the risk of an accumulation of amounts from various ministerial sources¹⁴ etc. The question of the legality (constitutionality) of the system was also raised in the talks and it was clearly stated that it was not the role of a given House to distribute funding to local authorities. Lastly, the GET was able to confirm that to date there was no control, whether internal in parliament or external, of the allocation of these amounts.

26. The Institutional Act on the financial transparency of politics, passed in September 2013, addresses this problem by making provision for the publication, in future, of, a) “subsidies for various types of work of local interest paid out of programmes under the responsibility of the Ministry of the Interior; b) all subsidies paid to associations”, including the beneficiary, the amount in question, the nature of the project being funded, and the name of the member of parliament. Parliament (or at least the Assembly) decided in spring to publish the extent of its use of the RP. The GET believes that the Institutional Act merely codifies the de facto situation which emerged in spring and has at last given a legal existence and an undoubtedly imperfect legal framework¹⁵ to a practice which quite clearly should have disappeared or should at the very least be subject to an ambitious reform, with a legal framework providing notably for the following: a) a transparent and fair distribution amongst parliamentarians of the use of the funds concerned; b) objective criteria for the attribution of the sums concerned to beneficiaries, which would limit risks of conflict of interest and the financing of structures which have a connection to the parliamentarian or his/her relatives; c) the full publication of beneficiaries and the sums paid via the various ministries; d) an audit of the use of these funds at the source and by the end user. A recommendation to this end appears in the following paragraph. Moreover, GRECO urges France to carry out an audit of expenditures related to the parliamentary reserve in recent years.

¹¹ http://www.lemonde.fr/politique/article/2013/09/07/reserve-parlementaire-les-3-millions-du-quai-d-orsay_3472674_823448.html

¹² http://www.lemonde.fr/politique/article/2013/04/18/a-quelles-associations-profite-la-reserve-parlementaire_3161735_823448.html

¹³ For example, for the municipal elections (for members of the National Assembly-mayors) or the elections to the Senate when most of the reserve is distributed to the “grand elector” authorities that will be voting.

¹⁴ http://www.lemonde.fr/politique/article/2013/09/07/reserve-parlementaire-les-3-millions-du-quai-d-orsay_3472674_823448.html; the Prime Minister’s departments also manage funds which are allocated to association-type bodies, including foundations headed by elected representatives or those with close links to the political parties: <http://questions.assemblee-nationale.fr/q13/13-95931QE.htm>

¹⁵ The risks of bias, cronyism, conflicts of interests deriving from public resources and the problems relating to local and regional authorities remain. The concepts of “various works of local interest” and “associations” used in the law are vague and will probably not put an end to the many uses made in practice of the RP, since the latter is also used for the purchase of real estate, furniture and works of art (such purchases are not “works” strictly speaking) or to finance foundations which are not association-type bodies legally speaking (foundations are covered by Law No. 87-571 of 23 July 1987 on the promotion of patronage, and not the 1901 law on not-for-profit associations – or the 1908 law in Alsace-Moselle).

27. As stated in the above paragraphs, the resources made available to members of parliament call for major reforms in order to ensure appropriate and responsible use of the sums involved and limit the risks of conflicts of interest and those relating to the integrity of members of parliament and, more generally, the parliamentary and political system. Consequently, **GRECO recommends 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.**

Ethical principles and rules of conduct

28. These types of rule are very recent. For a long time, the applicable rules in matters of conduct were very limited and took the form of prohibitions laid down in law, such as a) the ban on members of parliament exploiting their position in order to promote a financial, industrial or commercial undertaking, in violation of which the director of the company would face a six-month prison sentence and a fine of €3 750, and the member of parliament would be dismissed from office (ordered by the Constitutional Council, at the request of the Bureau of the assembly in question or the Minister of Justice – Articles L.O. 150 and 151 of the Electoral Code); b) the ban on members of parliament receiving the Légion d'honneur, the médaille militaire or any other decoration, except for valour in war or equivalent (in which case the emoluments relating to the Légion d'honneur and the médaille militaire may be combined) – Article 12 of [Order 58-1100 of 1958 on the functioning of the parliamentary assemblies](#).

29. The circumstances surrounding the drafting in 2010 and 2011 of rules of conduct are described in the first activity report of the National Assembly's Commissioner for Ethical Standards,¹⁶ a position created at that time, with its counterpart in the Senate, the Ethics Committee. Some information is available online regarding the ethical aspects of parliamentary activities.¹⁷ The following table gives an overview of these new principles:

Assembly	Senate
<p>The Code of Conduct of April 2011 comprises a preamble and six articles. It provides that <i>"in all circumstances, members of the National Assembly must uphold the public interest for which they have responsibility; compliance with this principle is a precondition for ensuring citizens' confidence in the activities of their representatives in the National Assembly; they are called upon to uphold six principles: Article1- The general interest: Members of the National Assembly must act in the sole interest of the nation and the citizens they represent, to the exclusion of any satisfaction of a private interest or acquisition of a financial or material benefit for themselves or their families; Article 2 -</i></p>	<p>On 18 May 2010, the Ethics Committee produce a document entitled "Ethical Principles" listing six principles serving as a reference for its opinions on parliamentary ethics: Dignity: this principle refers to conduct which shall ensure the probity, respectability and credibility of the parliamentary role; Independence: this principle refers to a state of freedom vis-à-vis private interests or foreign power; Integrity: this principle consists of</p>

¹⁶ http://www.assemblee-nationale.fr/qui/rapport_deontologue_2012.pdf; *conflicts of interest are a new concept in French law. (...) following several cases which raised questions over possible confusion between public and private interests, a task force on preventing conflicts of interests in public life was set up at the request of the President of the Republic [in 2010]. (...) However, this body's remit was restricted to those holding executive power, and the Prime Minister suggested that in parallel, each Assembly should deal with such issues in respect of its parliamentarians. The report submitted on 26 January 2011 by the Sauvé Committee [link to the report (in French only)] served as a basis for a bill tabled to the Bureau of the National Assembly the following July (AN No. 3838). In application of the principle of the separation of powers and independence, the parliamentary assemblies adopted different solutions, each having set up a pluralist working group at the initiative of their Bureau. Whereas the Senate opted for a parliamentary ethics committee, comprising one representative per political group, set up on 25 November 2009, the Assembly, on 6 April 2011, adopted a Code of Conduct for members of the National Assembly, and the position of Commissioner for Ethical Standards to ensure that the Code was upheld, and drew up a model declaration of interests. In order to avoid any suspicion, it was deemed preferable to appoint an independent figure rather than co-opting a member to fill the post.*

¹⁷ <http://www.assemblee-nationale.fr/qui/deontologie.asp>; http://www.senat.fr/role/comite_deontologie.html

Independence: Under no circumstances must members of the National Assembly find themselves in a situation of dependence upon a natural or legal person who could divert them from complying with their duties as set out in this Code; **Article 3 - Objectivity:** Members of the National Assembly may not take action in a personal situation except in consideration solely of the rights and merits of the person in question; **Article 4 - Accountability:** Members of the National Assembly shall be accountable for their decisions and actions to the citizens they represent. To this end, they must act in a transparent manner in the exercise of their duties; **Article 5 - Integrity:** Members of the National Assembly have a duty to disclose any personal interest that could interfere with their public activity and take all steps to resolve any such conflict of interest for the sole benefit of the general interest; **Article 6 - Exemplarity:** All members of the National Assembly shall, in the exercise of their office, promote the principles set out in this Code.

accepting no benefit in any form whatsoever, other than ceremonial gifts of low value, in exchange for a parliamentary act; **Attendance:** this principle refers to actual participation in the work of the Senate; **Equality:** this principle concerns the mode of operation of the Senate and the status of parliamentarians, in particular with regard to benefits; **Secularity:** this principle refers to the observation of strict religious neutrality in the Senate and in its functioning.

30. The Assembly therefore adopted a set of rules serving as objective guidelines for the conduct of members. The text is very concise, comprising just 6 Articles. These address in general terms all the situations that could give rise to problems, and insofar as the position of National Assembly Commissioner for Ethical Standards has been created to supplement on a case-by-case basis the approach to be adopted vis-à-vis the various situations, the GET can accept the fact that the text is no longer or more detailed. With regard to the Senate, however, the situation gives rise to more serious reservations: although the members of the Senate's Ethics Committee referred to an "Ethics Charter" during the discussions, this amounts merely to six very general guidelines designed primarily to guide the activities of the Ethics Committee. Moreover, the text does not address Senators as the intended recipients. Other than these few requirements or guiding principles, there are no more detailed ethical rules relating in a more practical way to the obligations of members of parliament regarding conduct characterised by integrity.

31. Furthermore, neither of the two assemblies has taken any special measure to formalise parliamentarians' commitment to these principles (for example, submission of a signed paper copy authenticating that they have read them and undertake to uphold them) and nothing has been done to inform the public, including social stakeholders and those representing economic and private interests who are frequent visitors to the assemblies. On the other hand, some institutional measures have been taken in both Houses to ensure the effectiveness of the ethical rules with the creation of the a) the National Assembly's Commissioner for Ethical Standards, and b) the Senate's Ethics Committee. At the National Assembly, the first Commissioner for Ethical Standards was appointed in June 2011, a university professor and specialist in parliamentary law, who was replaced in October 2012 by an individual deemed to have greater familiarity with the reality of parliamentary life (unanimously appointed). On 6 April 2011, the Bureau of the National Assembly adopted a decision comprising six articles,¹⁸ having immediate effect with the exception of Article 4: Article 1 established the position of National Assembly Commissioner for Ethical Standards "to ensure compliance with the principles set out in the Code of Conduct for members of the National Assembly"; Article 2 clarifies the appointment procedure (majority of three-fifths of the members of the Bureau and the agreement of at least one opposition group chair) and the duration of his or her office (length of the parliamentary term, non-renewable); Article 3 states the Commissioner's role: collecting and filing the declarations of interests given by the members of the Assembly at the start of their term of office; meeting with any member who so requests; submission of a public annual report comprising any proposals for improvements in the field of ethics; Article 4 establishes a system for declaring personal interests and those of families, gifts or benefits and travel, stipulating that a failure to provide such declarations, or the submission of false or incomplete declarations constitute breaches,

¹⁸ http://www.assemblee-nationale.fr/qui/bureau_deontologie.asp

which are dealt with in [Article 5](#). [Article 6](#) lays down the details for implementation of the system of declarations referred to in Article 4 following the next renewal of the Assembly (in practice, with effect from June 2012). [In the Senate](#), the Decree of 25 November 2009 instituted the Parliamentary Ethics Committee, a consultative body comprising a representative of each political group; it submits opinions, general or specific, at the request of the Speaker of the Senate or of the Bureau; it has a vice-Chair and four other members.¹⁹

32. The approach followed by the Senate therefore differs from that taken by the National Assembly, not only as there are no ethical rules for elected representatives, but also as there is no monitoring and the emphasis is placed primarily on the consultative dimension at the request of the Senate bodies (the French authorities underline that since opinions can be given in concrete cases, this can be used to provide personalised advice). The GET certainly welcomes these initial and still recent advances, but clearly the Senate must be more ambitious. The GET also points out that an institution's internal rules of conduct are of vital importance in the fight against corruption.²⁰ At present, the first priority is to rectify the lack of rules of professional conduct for Senators. **GRECO recommends that a body of rules of conduct/professional ethics applying directly to Senators be adopted, as is already the case for Members of the National Assembly.**

Conflicts of interests

33. According to the French authorities, little by little France is developing a system for preventing and managing conflicts of interest, including for members of parliament, to supplement the fundamental rules which traditionally addressed these issues – such as the fact that the funding of political parties by legal persons established under private law is prohibited, so as to prevent individuals or political parties being under an obligation to them.²¹

34. Several definitions have been given for conflicts of interest in the recent parliamentary deliberations and legislative work on these issues. While [the law of 11 October 2013 on transparency in public life](#) at last provided a legal definition for the purposes of the regulations applicable to members of the government, those holding an elective mandate at local level and those performing a public service, it did not do the same for members of the National Assembly and Senators. Accordingly, one needs to refer to the definitions provided by the Assemblies themselves. For example, Article 4 of the [Statement of the Bureau of the National Assembly of 6 April 2011](#) states that a conflict of interest is defined for the purposes of the annual declaration as relating to *"their personal interests, and those of their ascendants or direct descendants, their spouse, co-habiting partner or civil partner, such as to place them in a position of divided loyalties between their duties as a member of the National Assembly and a private*

¹⁹ Its first opinion was adopted on 5 October 2010 regarding the ethical consequences of certain aspects of the legislation concerning parliamentary incompatibilities. This opinion was submitted to the Chair of the Legislation Committee. A second opinion was adopted on 20 December 2011 on the conditions pertaining to the completion of the report of the joint Senate information group on the "Ombudsman" and on the evaluation of medicines. In addition, on a proposal from the Speaker of the Senate, the Senate Bureau decided to bring to the attention of the chairs of the political groups, the recommendations of the Ethics Committee on the conditions for drafting parliamentary reports. Discussions are currently taking place to "improve the pluralist and balanced composition of the Ethics Committee".

²⁰ Such rules a) provide guidelines for the expected conduct of those to whom they are addressed; b) inform the public thereof and consequently enlist the latter in the preservation of those rules; c) call to order the recipients where their conduct is questionable, though not such as to warrant criminal prosecution (or when the latter is impossible); d) make it easier to determine an intentional tort where any conduct has clearly violated internal rules that cannot be ignored – hence the importance of delivering those rules with a procedure which should ideally comprise a means for the recipient to provide a personal commitment (such as a signature)

²¹ The French authorities also cite the material status of members of parliament (cf. above) which ensures their financial independence, Institutional Order No. 58-1210 of 13 December 1958, which prohibits combination with other public revenue, but allows combination with retirement pensions, the ban on members of parliament using their position for promotional purposes, and the ban on decorations.

interest which, on account of its nature and intensity, could reasonably be regarded as liable to influence or be seen as influencing the performance of their parliamentary duties. Members of the National Assembly must declare any interest pertaining to an individual to whom they are close such as to place them in such a position.” The Senate, in a [general instruction of 14 December 2011](#) (Article XX bis) opted for the following definition for the purposes of the annual declaration: *“private interests which could exert undue influence on the way in which Senators perform the tasks relating to their office and which would therefore lead them to give greater prominence to their personal interest over the general interest. The following shall not be regarded as being of a kind giving rise to conflicts of interest: the interests at stake in decisions having a general scope and interests related to a broad category of individuals. They must also include in this declaration, established by Bureau decree, the interests held by their spouse, civil partner, co-habiting partner, ascendants and descendants.”*

35. In the view of the GET, these innovations should obviously be welcomed, although they are perhaps too recent to evaluate their full scope. It will be observed that while the two definitions are not restricted to personal interests (they include those of family members and acquaintances), they do differ on one key point, namely that objective impartiality is guaranteed only in the definition given by the Senate. It would also appear that the system for dealing with conflicts of interests set up by the Assemblies merges completely with the system for declaring interests and activities, looked at below (see paragraphs 53 et seq.). In this context, the declaration is based on the obligation provided for in the Electoral Code – at least in the light of the declaration form used by the Senate (which previously referred to Article LO 151-2). There is no system for the declaration of possible conflicts of interest which could arise from time to time in situations not related to the (strictly material) interests indicated on submission of the declarations. Accordingly, the response to a possible conflict of interest is first of all collective and not individual (intervention by the monitoring authorities). Secondly, the response remains exclusively collective insofar as the Institutional Act of October 2013 does not lay down any obligation of abstention or voluntary withdrawal as is currently the case for members of the government (subject to the adoption of a decree relating to them), local elected representatives and those performing a public service, in pursuance of [the law of 11 October 2013 on transparency in public life](#) (Articles 1 and 2). This law also stipulates that it is for the Assemblies themselves to supplement the mechanism with their own internal rules.²² The GET would have preferred the matter to be regulated in the law and for the members of the legislative not to be the subject of such specific treatment. However, it believes that this opportunity should be seized since at present, as far as it is possible to judge, neither of the two Houses has addressed the above issues. Finally, the argument for the potential unconstitutionality of a duty to withdraw, due to MPs’ constitutional right to participate in a vote, is difficult to support, in the GET’s view: what would be at stake is not the right to vote, but the way it is exerted by MPs. Furthermore, such a reading of the Constitution would contradict the very purpose of a system for the management of conflicts of interest and prevent any concrete consequence deriving from such situations. In view of the above, **GRECO recommends that the system for dealing with conflicts of interests of members of the National Assembly and Senators be supplemented by rules and guidance on when there may be an individual obligation, depending on the case, to declare a potential conflict of interests or to abstain from participation in parliamentary activities.**

²² It inserts Article 4 quater into [Order 58-1100 of 1958 on the functioning of the parliamentary assemblies](#), worded as follows: “The Bureau of each Assembly, following consultation of the body responsible for parliamentary ethics, shall determine the rules governing the prevention and handling of conflicts of interests. It shall ensure that they are upheld and monitor their implementation.”

Prohibition or restriction of certain activities

Gifts, donations and other benefits

36. For a long time, the applicable rules were minimal (see in paragraph 25, the prohibition of decorations, instituted in 1958). Since 2010 and 2012, the rules governing gifts, donations or other benefits for members of the National Assembly and Senators have been as follows:

	Members of the National Assembly	Senators
Limitations	- no specific limitations or prohibitions	- the decision by the Ethics Committee of 18 May 2010 lays down under "Integrity" the basic principle of prohibiting all benefits "in any form whatsoever, other than ceremonial gifts of low value, in exchange for a parliamentary act"
Declaration	- to the Commissioner for Ethical Standards: any "donation or benefit" of a value exceeding €150, from whatever source, and any travel carried out at the invitation – whether total or partial – of a natural or legal person (Article 4 of the Bureau decision of 6 April 2012); to be made within 30 days by analogy with the other obligations set out in the decision.	- to the Bureau: gifts, donations and benefits in kind, invitations to travel financed by bodies outside the Senate (except for invitations to cultural and sport events in metropolitan France and ceremonial gifts) of a value exceeding €150; to be made within 30 days (Article XX bis of the Bureau General Instruction, resulting from Decree 2011-313)

37. As shown above, the two Assemblies have only very recently issued regulations governing gifts, donations and other benefits, and they opted for a system relying primarily on declarations with submission of the information to the Commissioner for Ethical Standards of the National Assembly in one case, and to the Bureau of the Senate in the other. The information provided is not published. According to those with whom the GET spoke, this is a first step which will probably be further developed, as the field of gifts and other advantages is recognised as causing problems in practice.

38. The GET welcomes the introduction of these rules. It is clear that they should be regarded as a first step which does not yet clearly lay down a prohibition in principle, with exceptions (ceremonial gifts and those of low value). On this point, only the Senate has opted for such a principle (prohibition of any benefit which would represent a reciprocal arrangement), but not very adeptly or in any case in a way which requires clarification on account of contradictions in the mechanism.²³ Moreover, the Senate's regulations do not fully cover the origin of donations, since it concerns only donations from certain legal persons²⁴ (natural persons, including company directors are therefore not covered), while at the same time, the procedure in the National Assembly imposes a declaration regardless of the source (natural or legal person). Furthermore, the Senate's system does not require declarations of any invitation to cultural and sport events in metropolitan France, primarily for practical reasons as they are too frequent (and would generate too much information to be processed), according to the information given to the GET. Ultimately such an approach is tantamount to deliberately ignoring the problem instead of dealing with it.

²³ There would seem to be a conflict of standards between the fundamental principles laid down in 2010 by the Ethics Committee – which stipulates a prohibition in principle for all donations which would constitute a reciprocal arrangement, without restricting the source thereof, and the 2011 rules issued by the Bureau, which simply requires that all benefits be declared where they come from bodies. This divergence may have practical consequences since the 2010 principle is intended to guide the Committee's action, which is required to take a stance on specific problematic situations. The Chair of the Committee, whom the GET met during the visit, believes that the text adopted by decision of the Ethics Committee on 18 May 2010 constitutes a "Code of Ethics".

²⁴ These are merely donations from "bodies". The concept is not further defined, but in any event it does not include certain categories of legal persons: corporations, associations, socio-professional or other organisations, probably those which represent particular interests and with which members of parliament deal regularly. This therefore excludes a whole series of donations, including, for example, those from natural persons or foreign states.

39. The GET also finds it a matter of regret that from the point of view of preventing corruption, the regulations of the two Houses do not prohibit gifts, donations, benefits and invitations above a given value (as far as the Senate is concerned, a prohibition was established but it is inconsistent, as seen above). The same holds true for financial contributions (including in the form of remuneration for services rendered) which are permitted under the rules in force, while they are already prohibited in principle for the majority of players in the other two branches (executive and judiciary) of state power. As things currently stand, benefits and financial contributions remain possible without limit and regardless of their source, which is at odds with the rationale behind strict regulation of political financing (which provides for ceilings on contributions and a prohibition of those from legal entities). To a certain extent, the regulations on gifts and other benefits could give rise to circumventing the regulations on political financing, which explains perhaps why, at the time of the visit, no financial donation had been declared in either House. It is a similar situation for the provision of a duty vehicle or accommodation: even though these benefits are provided and the texts – both in the Senate and the National Assembly – clearly cover all forms of “benefit”, they are apparently not declared in practice as this would immediately generate suspicions of corruption, as was sometimes explained to the GET. Such an interpretation of the situation is particularly problematic and it is clear that the systems in place do not achieve their objectives with regard to some of the advantages which could have the most influence on the conduct of members of parliament. In conclusion, the combination of the failure to publish declarations (which would enable the public to learn of the relationships forged during invitations) and the lack of appropriate rules creates a particularly problematic situation. Consequently **GRECO recommends 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).**

Incompatibilities

40. Incompatibilities are governed by the Electoral Code, which devotes specific chapters to them ([Articles LO137 to LO153](#) for members of the National Assembly, and Article [LO297](#) which makes Senators subject to the same regulations). These provisions were slightly amended under the October 2013 reform:

Incompatibilities (Electoral Code – Articles LO 137-146, LO 147-148, LO 151-153)
<p>A mandate as member of the National Assembly or as Senator is incompatible with:</p> <ul style="list-style-type: none"> - a mandate to another assembly or to the European Parliament, and with the office of President of the Republic (which case is not specified in law); - exercising more than one of the following mandates or functions: regional councillor, member of the <i>département</i> council, Paris municipal councillor, member of the Assembly of Corsica, member of the Assembly of Guyana, member of the Assembly of Martinique, councillor of a municipality with a population of 3 500 or more (possible concurrent exercise of a local executive function, e.g. Chair of a regional council, mayor, etc.); - the office of member of the Government; - duties in the Constitutional Council or the Economic, Social and Environmental Council, office of judge or prosecutor (since October 2013 this has also covered the offices of arbitrator, ombudsman and conciliator) and member of the Judicial Service Commission; - exercising non-elective public duties (entails secondment from the administration) apart from teaching; - temporary assignments decided by the Government, if for longer than 6 months; - managerial functions in public enterprises, including, since October 2013, as member of the governing board, or chairperson of an independent administrative or public authority; - managerial functions in specified private companies or enterprises enjoying benefits granted by the state or the public authorities (e.g. interest rate guarantees), companies with exclusively financial aims or publicly solicit investment, companies working mainly for or under the supervision of the state or a public entity and companies exercising specific profit-making real-estate activities.

41. The question of concurrent mandates has long been controversial, and has, over time, been regulated in such a way – as we can see above – that only one extra mandate

can be exercised in addition to a parliamentary mandate. However, the question is still under debate for a variety of reasons, such as: a) the risks of confusing the specific interests represented by the various mandates (cf. for example the above section on the parliamentary reserve) and alleged increasing parliamentary absenteeism (resulting from the combined workload where the parliamentarian is mayor of a sizeable town or city in addition to exercising various other functions), and lastly, the risks to integrity, which are considerably higher.²⁵ One should add that some mandates have a snowball effect on any decision-making functions which may be conferred on an elected representative, although this does not always constitute actual concurrent holding of mandates (e.g. the mandate of mayor in a sizeable town or city, which automatically means chairmanship of various public bodies involved in inter-municipal activities, cultural works, social housing, health etc.). This means that some elected representatives hold between 20 and 30 positions of responsibility by combining local and national mandates. Greater attention must clearly be paid to this phenomenon in France, and the GET would be in favour of initiating wide-ranging consultations on this subject.

42. The GET notes that in recent years, despite the legislature’s desire to prevent the plurality of contrasting types of functions in accordance with the separation of powers principle, a phenomenon has emerged of proliferation of “extra-parliamentary bodies” (EPBs), on which seats are reserved on an *ex officio*, statutory basis, for parliamentarians as appointed by their assemblies or assembly presidents. It is difficult to establish a typology of such bodies, but they are often regulatory, advisory or supervisory institutions (e.g. for specific public establishments) generally responsible for monitoring application of the law. According to estimates set out in the 2012 report of the first Commissioner for Ethical Standards of the National Assembly, the successive efforts at rationalisation since 2004 and 2006²⁶ have all failed because instead of reducing the number of such institutions, the latter’s numbers have been constantly increasing, totalling 200 today. The GET nevertheless welcomes the fact that the October 2013 reform prohibited plural remunerations (by banning parliamentarians from receiving, in addition to their parliamentary allowances, remunerations or allowances for functions in an EPB); the same applies to appointments for temporary assignments lasting less than 6 months (Articles – LO 144 and 145 revised of the Electoral Code). Here too, further thought needs to be given.

Accessory activities and employment after cessation of functions

43. Members of the National Assembly and Senators are free to exercise any type of accessory function, subject to any incompatibilities laid down (e.g. with ministerial or civil service functions) and specific restrictions or prohibitions:

Specific prohibitions (Electoral Code and other texts)
- press enterprises whose editors enjoy parliamentary immunity must appoint another member of staff as co-editor (in order to prevent a press organ from using the editor’s immunity to avoid prosecution in cases of press offences). The same applies to electronic public communication services (websites) (Section 6, Freedom of the Press Act of 29 July 1881)
- where parliamentarians exercise as lawyers, they are prohibited from defending cases against the state, national enterprises or public authorities or establishments; this prohibition applies to all members of the parliamentarian’s law firm (Article LO 149 Electoral Code).

²⁵ During a government question session in autumn 2012, one Senator pointed out that 55% of all parliamentarians exercised local executive functions. According to his estimates, and having looked into the number of parliamentarians convicted over the previous ten years or still being investigated for misappropriation of public funds or corruption, some 90 % of the latter exercised local executive functions. He drew the following conclusion: *parliamentarians who combine their national mandate with a local executive function are 7.4 times more likely to be involved in a corruption case than parliamentarians with no other mandate. In order to render public life more ethical, we should not let certain people accumulate too much power and end up thinking they are above the law.*
 Cf. <http://www.senat.fr/questions/base/2012/qSEQ12100190S.html>

²⁶ Law No. 2004-1343 of 9 December 2004 simplifying the relevant law; Decree No. 2006-672 of 8 June 2006 making the setting up of EPBs subject to a prior study.

- serving members of the National Assembly are prohibited from entering into consultancy activities, unless they already exercised such activities before their election. However, this prohibition does not apply to members of professions subject to a regulated status, such as the legal profession (Article LO 146.1 Electoral Code).

44. In its decision of 9 October last, the Constitutional Council deemed unconstitutional (as too general) a provision of the Institutional Act amending Article 146.1 of the above-mentioned Electoral Code with a view to prohibiting the commencement of any new professional activity after taking up office. The Government's idea was to limit the risks of "undue remuneration" for a parliamentarian in the form of employment, but also excessive overlapping of functions.

45. Discussions *in situ* confirmed that consultancy activities, whose exercise Article 146.1 seeks to regulate (limiting the risks of mandate-holders becoming influence-peddlers or of the consultancy activities serving to disguise certain payments), still posed problems because of the wide range of functions which legal and consultancy professionals now cover. In the GET's view, the above-mentioned Article 146.1 has potential which is crying out to be exploited, once the extent and the reality of the situation have been examined. Similarly, the question of "revolving doors" (pantouflage) for parliamentarians, which is not regarded as being particularly problematical in France, ought to be more closely examined because of the absence of applicable legislation. Some of those with whom the GET spoke mentioned occasional abuses in this field.

Contracts concluded with the public authorities

46. There are no prohibitions or limitations in this field. Given the socio-professional make-up of the assemblies, with a high proportion of people from the public service rather than the private economic sector, the risk of collusion in order to obtain or retain public contracts remains fairly low. The discussions *in situ* did not highlight any particular problems in this area.

Misuse of public funds

47. There are no prohibitions or limitations in this field, or if there are, they are currently rather ineffective. Misuse of certain parliamentary resources (vehicles, premises) is occasionally the subject of debate, as are the benefits granted to parliamentarians such as loans (which are sometimes not paid back and are difficult to recover), the payment of allowances despite absenteeism, or questions concerning parliamentary assistants, the IRFM (operational expenses allowance) and the parliamentary reserve as mentioned above. For some of these subjects, the improvements recommended in the present report should help limit the abuses and problems observed. However, the GET would like to see the assemblies imposing a general duty of discipline also in relation to the use of public resources provided for parliament and its members, non-compliance with which would lead to suspension or loss of certain benefits. This would help ensure that those concerned used public funds responsibly.

Misuse of confidential information; contacts with third parties

48. There are no prohibitions or limitations in matters of misuse of confidential information by members of the National Assembly and Senators. The GET has not been notified of any problems specifically related to this matter outside the framework of contacts with interest groups or lobbies.

49. Regulations were adopted on lobbying activities on 2 July 2009 (National Assembly) and 1 January 2010 (Senate). Where the Assembly is concerned, the General Instruction of the Bureau (Article 26) provides for the keeping of a public register by the Bureau (or delegation of this activity), setting out the names of representatives of public or private interests (lobbyists) with authorised access – at specified times – to designated parts of

the premises. They must provide the identification data required for registration and comply with a Code of Conduct, breaches of which can cause them to be removed from the register:

Code of Conduct for lobbyists with authorised access to the Assembly

1. Lobbyists shall provide the Bureau with the information required for conferral of rights of access to the premises of the National Assembly as defined in Article 26 paragraph III-B of the General Instruction of the Bureau. They must subsequently submit to the Bureau any further facts liable to modify or complement such information.
2. In their contacts with members of the National Assembly, lobbyists shall state their identity, the organisation for which they work and the interests which they are promoting.
3. They shall observe the rules on movement within the premises of the National Assembly as set out in the General Instruction of the Bureau. They shall be required to wear their badges prominently in the premises of the National Assembly.
4. They are prohibited from selling, or transferring in return for any kind of consideration, parliamentary documents or any other National Assembly document.
5. They are prohibited from using paper headed with the National Assembly logo.
6. Lobbyists shall refrain from any action to obtain information or decisions by fraudulent means.
7. Information provided to members of the National Assembly by lobbyists must be open, without discrimination, to all members, whatever their political affiliation.
8. Such information must not comprise deliberately incorrect data intended to mislead the members of the National Assembly.
9. Lobbyists are strictly prohibited from conducting any type of advertising or commercial activities in the premises of the National Assembly.
10. Lobbyists may not use the fact of being included on the list drawn up by the Bureau to promote advertising or commercial activities vis-à-vis third parties.

50. On 7 October 2009, the Senate Bureau adopted a first set of rules designed to improve the regulation of lobbying activities (subsequently expanded under a Questure decree of 1 December 2010): a) access to specified Senate premises subject to inclusion in a register consultable on the website, undertaking to comply with a Code of Conduct and wear a badge while inside the Senate premises (Article XXII bis of the General Instruction of the Bureau); b) this Code of Conduct lays down rules – failure to comply with which may result in withdrawal of the access permit to the Senate – concerning their professional conduct and relations with Senators; c) the Code of Conduct requires lobbyists to declare any invitations to outside functions which they send to Senators, their assistants and Senate civil servants and bodies.

51. The GET was also informed *in situ* of specific additional risks already identified by the first Commissioner for Ethical Standards of the Assembly in his report submitted in 2012 (which occasionally mentions the debates in the Senate),²⁷ concerning a) parliamentary colloquies: these are organised by consultancy and public relations companies and financed by enterprises, or economic/professional associations or groups, and are run in accordance with financial and material arrangements which are subject to terms and conditions (*vis-à-vis* choice of speakers, themes addressed, questions raised, allocation of speaking time, etc.) which are not very transparent and of which the parliamentarians in any case are not always aware. According to other individuals with whom the GET spoke, these colloquies are invoiced at abnormally high rates, whereas officially, parliamentarians taking part are not supposed to be paid personally for their involvement. Measures to combat such lack of transparency have reportedly been in the pipeline since 2001, but are apparently still ineffective; b) “parliamentarian clubs”: these have never been officially defined or regulated, and their status remains fairly vague. In practice, they are information and discussion groups or associations dealing with economic and societal questions, combining both parliamentarians and persons from outside. Most of them are set up on recommendations from consultancy and public relations companies or economic/professional groups or associations. The latter finance

²⁷ http://www.assemblee-nationale.fr/qui/rapport_deontologue_2012.pdf

the clubs, e.g. via subscriptions from member enterprises, which then help select the subjects for discussion. As has already been mentioned, in some cases these clubs can represent specific private interests rather than acting as a training and information resource for parliamentarians. As the GET itself has noted, some clubs occasionally bring in all the major enterprises in specified branches to discuss highly specific subjects (e.g. in May 2013 for a colloquy on biomass development was attended by various major business and development groups in the timber and biofuel branch, etc.).

52. During the visit, discussions were held in both Houses. For instance, a National Assembly think tank submitted 14 proposals for improving transparency in the activities of interest groups (restricting their freedom to come and go and requiring them to declare the purpose of their visit) and tightening up the regulations on such activities as parliamentary colloquies (with a view to prohibiting them). Those with whom the GET spoke stressed the need not to go too far with regulations, otherwise the interest groups would transfer their activities outside parliament, making them less transparent. The GET agrees, and would in any case encourage the Assembly and the Senate to actively continue this work on improving the regulations applicable to the various forms of lobbying activities and to regulate the use of preferential information by parliamentarians as necessary.

Declaration of assets, income, liabilities and financial interests

53. At the time of the visit, the system in force was fairly complex because of declarations at different levels applicable to members of the National Assembly and Senators, with various wordings, whereby "activities" and "interests" are sometimes used interchangeably. The following must be differentiated:

a) the procedure for declaring assets only, which was introduced in 1998 under the [Law on Financial Transparency in Politics](#) (which is geared to ensuring that the exercise of a parliamentary mandate, among other things,²⁸ does not facilitate undue accumulation of assets). The Commission for the Financial Transparency of Politics (CTFVP) was established under this Law. The procedure involves a mandatory declaration of assets at the beginning (within two months) and end of the mandate (one month before the end) to the CTFVP, in pursuance of the provisions of the Electoral Code concerning members of the National Assembly and – via a cross referral – Senators (cf. [Article L.O. 135-1](#) Electoral Code). This information remains confidential and its disclosure is subject to severe penalties;

b) the procedure requiring members of the National Assembly and Senators to declare their (paid and unpaid) activities within thirty days of taking office to the Bureau of their House (Article LO 151-2 Electoral Code, extended to Senators under Article LO 297 Electoral Code). This declaration procedure introduced under the Law of 14 April 2011 on the status of members of the National Assembly and Senators is sometimes referred to as "declaration of interests" by the Houses – in the Senate at least – and was originally intended to ensure the absence of incompatibilities; the Law does not specify the status (public or confidential) of the information, and excludes a number of activities relating to local mandates from the declaration procedure;

c) in pursuance of the above-mentioned declaration of activities (or interests): under a Bureau decision of 6/04/2012, the Assembly directly entrusted the reception and management of declarations to the Commissioner for Ethical Standards of the National Assembly; a standardised declaration form was drawn

²⁸ the procedure concerns several thousand members of the administration, including the members of the Government, [Members of the National Assembly, Senators](#), France's representatives in the European Parliament, local elected representatives, elected representatives in French Polynesia and New Caledonia, and senior managers of public sector organisations.

up to include information on paid and unpaid activities and on direct investments (worth over €15 000) in corporations; the information collected is not published; the Bureau of the Senate has retained the function of receiving and managing these declarations and has not delegated this task to the Senate Ethics Committee; the model form concerns paid and unpaid activities, the corresponding remuneration, investments worth over €15 000 held in corporations, and similar information on spouses/partners, ascendants and descendants; all this information is published on the Senate website apart from the financial data on the parliamentarian and any information on family members;

d) both Houses have supplemented the system described in indent c) above with a declaration of gifts and other benefits (to be submitted in a separate letter in the case of the Assembly, for instance), in accordance with the aforementioned provisions. This information is not published.

54. The above-mentioned arrangements for declarations were amended under the Institutional Act of October 2013 on transparency in public life (amending Articles 135-1 and 135-2 of the Electoral Code). From February 2014 onwards, parliamentarians will have to submit:

a) to the Supreme Authority for Transparency in Public Life (HATVP), replacing the CTFVP set up in 1988, a declaration of assets covering 10 separate sections, including: moveable and immovable goods, accounts and other real-estate values and financial products, "other goods" and liabilities; "moveable and immovable goods and foreign accounts". Assets held collectively or jointly owned must also be notified. The declaration must be submitted within two months of taking office, and any change in the situation must be reported within the same time-limit. A declaration must also be made at the end of the mandate, together with a summary of income received;

b) to the HATVP and the Speaker of their Assembly, a declaration of interests and professional (or unpaid) activities which the parliamentarian would like to retain. This declaration must include some ten sections mentioning paid activities currently exercised or exercised during the previous five years, including functions held on the managing boards of private or public bodies, consultancy activities, direct investments in corporate capital, voluntary or unpaid activities, and current activities exercised by the spouse or partner. Income must be notified (except for spouses and parliamentary assistants). The aforementioned end-of-mandate declaration must include information on interests.

55. The question of the public nature of future declarations has been extensively discussed, setting persons advocating general publication (particularly the Senate) against those recommending partial publication (mostly the Assembly). Since the lower House was responsible for the final adoption of the reform, the latter solution was adopted. Accordingly, declarations of assets, after verification by the HATVP within a 3-month deadline, will remain semi-confidential and can be consulted *in situ* with specified authorities, exclusively by voters from the elected representative's constituency, whereby disclosure of the relevant information is subject to a €45 000 fine. Declarations of interests and professional activities are consultable by the public immediately after their submission, on the website of the parliamentary chambers. Some items of information, including the identities of third parties, private addresses and the location of property, are not disclosed.

56. In the GET's view, the new procedure for declaration established after the October 2013 reform, which is to come into force in February 2014, undeniably represents progress, particularly the greater homogeneity in the information declared and the mode of publication (which will now depend less on individual wishes and the Rules of

Procedure of each House in connection with interests and activities). The information is also becoming more exhaustive, with the inclusion of information on parliamentarians' income (without which it is difficult to appraise the actual situation vis-à-vis their assets). Nevertheless, the GET regrets that the legislature finally opted for such a limited mechanism, allowing only citizens of a given constituency to consult the declaration of assets of the respective parliamentarian. In view of the possibilities provided by present-day technology for the capture and dissemination of pictures for instance, this might endanger the future sustainability of the mechanism. Furthermore, it runs counter to the social scrutiny aim of the reform (e.g. French people residing abroad would have to travel to Paris to consult the declarations whereas Internet allows for easy remote access to information) and to the transparency goal as conceived by GRECO. A reform is needed to ensure broad transparency including – as a logical consequence – the abolition of the current sanctions applicable in case of illicit disclosure. Therefore, **GRECO recommends that declarations of assets by Members of the National Assembly and Senators be made easily accessible to the public at large.**

Supervision and enforcement measures

Supervision

57. Incompatibilities are governed by a variety of procedures. In some cases the rules on incompatibility are applied automatically.²⁹ In connection with cases of incompatibility with private activities and non-elective public functions (in accordance with the activities declared by the parliamentarian): if the Bureau of the Assembly or Senate considers that there is doubt about the compatibility of the activities declared with the parliamentary mandate or in the event of a challenge on this subject, the Constitutional Council shall take the final decision, on a referral from the Bureau of the House concerned, the Justice Minister or the parliamentarian in question.

58. Declarations of interests, gifts, travel and other benefits are, in principle, managed and supervised by the Bureau of the Senate and by the National Assembly's Commissioner for Ethical Standards. The latter is an independent official appointed by three-fifths of the members of the Bureau of the National Assembly, on a nomination by its Chair (and with the agreement of at least one Chair of an opposition group). He or she holds office for the duration of the legislature and his/her mandate is not renewable. He or she can be dismissed only in the event of incapacity or breach of obligations, on a decision taken under the same conditions as for the original appointment. If he or she notes a violation of the principles set out in the Code of Conduct, he or she must inform the member of the National Assembly concerned and the Speaker of the National Assembly. He or she must present the member with any necessary recommendations enabling the latter to comply with his or her duties. If the member of the National Assembly denies having breached his or her duties or considers that he or she does not have to observe the Commissioner's recommendations, the latter shall refer the matter to the Speaker of the Assembly, who must then ask the Bureau to reach a decision on the breach within two months. This referral is not made public. The Bureau can then interview the Member in question (such an interview is compulsory if the latter so requests). If the Bureau concludes that there has been a breach, it must make its

²⁹ This is the case for members of the National Assembly or Senators who are elected to another assembly and *de facto* cease to belong to the previous assembly. By the same token, on expiry of a thirty-day period, any member of the National Assembly or Senator who has been appointed as a member of the Government but who has not explicitly voiced his or her wish to resign from a ministerial post automatically ceases to belong to his or her House. If, owing to fresh elections, the holder of elective mandates comes to hold a prohibited number of concurrent mandates, this elected representative must, within thirty days of taking office as a parliamentarian (or, where his or her election is challenged, within thirty days following the Constitutional Council decision confirming his or her election as Senator), resign from one of the non-combinable mandates or functions. If he or she omits or refuses to regularise the situation, the Constitutional Council shall declare him or her as having resigned *ex officio* from the parliamentary mandate, at the request of the Bureau of the Assembly or Senate or of the Justice Minister.

conclusions public. It informs the member of the National Assembly, who must then take steps to comply with his or her duties (Article 5 of the Code of Conduct). Lastly, in the annual public report which he or she submits to the Speaker of the National Assembly and the Bureau, the Commissioner for Ethical Standards must make any appropriate proposals for improving compliance with the principles set out in the Code of Conduct and report on the general conditions of application of these principles, without referring to any individual case. With the exception of the aforementioned communication, the National Assembly's Commissioner for Ethical Standards and his/her assistants are bound by professional secrecy and may not mention any information ascertained in the exercise of their functions, failing which they are prosecuted in pursuance of the provisions of Article 226-13 of the Penal Code (a €15 000 fine)³⁰ and, in the case of the Commissioner, dismissed from his or her functions. Interviews conducted *in situ* are insufficient to secure a proper assessment of the extent to which the Bureau of the Senate and the Commissioner for Ethical Standards of the Assembly discharge their duties. While commendable efforts have apparently been expended to ensure that all parliamentarians submit their declarations of activities and interests and fill out the corresponding forms properly, the substantive work remains fairly limited, which is understandable since the institutions and functions in question are still very recent. The National Assembly's Commissioner for Ethical Standards has so far focused the role of the institution on giving advice and opinions, rather than on control.

59. Declarations of assets are examined by the Commission for the Financial Transparency of Politics (CTFVP), and, from February 2014 onwards, the Supreme Authority for the Transparency of Public Life (HATVP). The latter body appraises the variations in assets between the declaration submitted at the beginning of the mandate (or functions) and that submitted at the end of the mandate (or functions) and ensures that there has been no increase in assets stemming from the person's functions.

60. The HATVP will comprise a Chair appointed by Decree of the President of the Republic, on an opinion from the Law Committees of both parliamentary assemblies, six members from the ranks of the high courts of the State (Conseil d'État, Court of Cassation and Court of Audit), and 2 qualified persons appointed by the assemblies. They will be appointed for a six-year non-renewable term. The HATVP will be assisted by a secretariat whose size and resources have not yet been defined, and it will produce an annual report on its activities. The HATVP will be empowered to conduct verifications and request any necessary information from the tax authorities (including via international tax co-operation) – which apparently goes beyond the level of co-operation currently provided for between the CTFVP and the tax authorities. However, as is currently the case with the CTFVP, the HATVP will not be able to contact other authorities, even though the tax authorities would themselves seem to be limited in their supervisory activities, which do not cover all the sources of income for parliamentarians (in particular such non-taxable items as the operational expenses allowance). Nevertheless, the reform also does provide that the tax authorities can approach other institutions capable of providing necessary information to the HATVP. The HATVP shall also have the possibility to publish a special report when it comes across an infringement but if a parliamentarian is involved, the report shall be transmitted to the Bureau of the assembly concerned for any decision on a possible action. It shall act upon a request from the Prime Minister or either speaker of the Assembly and Senate, as well as upon its own initiative.

61. The HATVP will have no specific investigatory or sanctioning powers, as is currently the case with the CTFVP. It shall inform the assembly concerned if a deputy or senator does not comply with his/her duties (non-submission of declarations, incomplete data, lack of response to requests for information etc. – article 135-6 of the Electoral Code). It shall also forward a case to the prosecution service for the same reasons, or

³⁰ Article 226-13 Criminal Code: "Disclosure of information of a secret nature by a person holding such information either by status or profession, or by dint of a temporary function or mission, shall be punished with one year's imprisonment and a €15 000 fine".

where there is an unexplainable variation of assets). The HATVP will be empowered to address injunctions where a declaration of assets has not been submitted within the prescribed time-limit or is incomplete, or where the person in question fails to forward the information and clarifications requested. Failure to respond to directions or to communicate the information requested is liable to criminal sanctions (one year's imprisonment and a €15 000 fine, imposed by the court). These are new means of exerting pressure.

62. All in all, the GET notes with satisfaction that there are various means of ensuring the practical effectiveness of the rules on declarations of interests, activities and assets (bodies dealing with rules on conduct, bureaux of the Houses, specialist body responsible for the declaration of assets). Where the supervision of declarations of assets is concerned, in the Third Round evaluation report on France, GRECO already highlighted the shortcomings of the procedure (closely linked to the monitoring of political funding, according to the country's institutional rationale) and recommended reinforcing the CTFVP and its monitoring function. France ultimately took a different approach, consisting of setting up a new institution, but one which in fact operates along the same lines as the institution it is supposed to replace. The legislature therefore resorted to slight alterations in this field, and while there has been some undisputable progress, some new provisions do raise new questions. For instance, the Supreme Authority will have no sanctioning power and it remains unclear in which case and to what end precisely will it have to apply to the Bureaux of the Houses or directly refer a case to the public prosecutor's office. These changes, which occurred long after the on-site visit could not be fully assessed by the evaluators and some clarification might be required at least for the parliamentarians and the various actors concerned in order to avoid any unnecessary complication (or procedural mistakes) in the control mechanism. Since the question of reinforcing the CTFVP is still the subject of the Third Round Compliance Procedure, the GET will refrain from making any further observations on the situation.

Sanctions

63. The measures laid down are as follows, some of them having been reinforced under the October 2013 reform:

Members of the National Assembly	Senators
Breaches of the Assembly's Code of Conduct: publication of the Bureau's conclusions	[not applicable]
Conflicts of interests (activities) and incompatibilities	
<ul style="list-style-type: none"> - The Constitutional Council orders the resignation <i>ex officio</i> unless it is effected voluntarily by the person concerned. 	
Declarations	
<ul style="list-style-type: none"> - failure to submit the declaration (Article LO 128 Electoral Code): ineligibility for one year and, in the case of elected representatives, <i>ex officio</i> resignation; - any breach of the obligation of end-of-mandate declaration of assets subject to a fine of €15 000 (LO 136-2) - in the case of declarations submitted: any deliberate omission or fallacious declaration (Institutional Act No. 2011-410 of 14 April 2011 and Article LO 135-1 Electoral Code): three years' imprisonment and a fine of €5 000 and possible prohibition of civic rights and prohibition of holding public office. 	
Supervision	
<ul style="list-style-type: none"> - failure to communicate information to the Supreme Authority: 1 years' imprisonment and a fine of €15 000 	

64. Overall sanctions appear to be very strict, which may explain why they are not used in practice, as shown by the statistical overview below (see paragraph 66 and 67). The GET is surprised at the lack of genuine incentives and sanctions within the assemblies, including for compliance with such rules as those governing ethics and declarations of gifts and other benefits, and all the more so, given the vital role played by their subsidiary bodies in managing declarations of interests and activities. Furthermore, the HATVP must in future look to these bodies to decide on the continuation of any sanctioning procedure. If a given assembly were to refuse to transmit a case-file to the

judicial authorities, the violation might not even be punished in parliament. Such measures as exclusion or reduction of certain benefits/allowances, the exclusion from specified committees or certain responsibilities in the House would, firstly, have the advantage of filling a void, and secondly, of usefully supplementing the range of available criminal-law measures by providing for greater proportionality. This would also be a logical conclusion to be drawn from certain breaches regarding integrity in the exercise of parliamentary functions. Consequently, **GRECO recommends that the range of criminal-law measures be supplemented by internal disciplinary measures in the assemblies, in relation to possible breaches of the rules on the integrity of the members of the National Assembly and Senators.**

65. The French authorities also stress that in principle, the **offence of graft** (Article 432-12 paragraph 1 of the Criminal Code)³¹ is applicable. In the GET's view, however, this raises a number of uncertainties: while it is obvious that local/regional elected representatives must conduct duties of supervision, administration etc., this does not apply to parliamentarians, apart from those involved in the management of parliamentary resources and bodies. At most, graft might occur on the occasion of a vote or a collective decision, but in such cases the absolute immunity/inviolability protecting freedom of vote and expression could theoretically hinder to some extent a prosecution; the GET came indeed across such considerations when going through parliamentary material. This matter might warrant further in-depth discussions.

Statistics

66. The replies to the questionnaire show that no proceedings or investigations have been conducted over the last three years regarding the rules on conflicts of interests and declarations of assets. This partly contradicts the latest report from the CTFVP, for 2012, which appears to refer to the existence of such cases, particularly concerning interest-free or non-refunded loans which were submitted to the public prosecutor's office on the grounds of risks of a link to criminal offences.³² The same report also states that since its inauguration, the CTFVP has transmitted a total of 12 cases to the public prosecutor's office (16 at the time of the present evaluation), concerning a) unexplained changes in assets, and b) suspected criminal acts relating to the general duty to report (Article 40 of the Code of Criminal Procedure). None of these cases has led to judicial action.

67. The replies to the questionnaire also suggest that there has never been any instance of parliamentarians failing to submit their declarations. However, here again, according to the CTFVP activity reports, between 10 and 20% of elected representatives fail to submit their declarations in time, and the CTFVP must contact members of parliament by letter and telephone in order to receive the declarations.³³ In principle, non-declaration can lead the CTFVP to report the matter to the judicial authorities, which can result in revocation of the mandate. The CTFVP has hitherto clearly preferred to avoid such an outcome.

Immunity

68. Beyond the absolute immunity from liability which protects freedom of speech and voting, parliamentarians also enjoy inviolability for the duration of their mandate. Since the 4 August 1995 reform, the inviolability regulations no longer protect parliamentarians from prosecution (judicial investigation). On the other hand, parliamentarians cannot be

³¹ **432-12 paragraph 1 Criminal Code:** "The fact of a person holding public authority or discharging a public-service mission or a person holding an elective mandate taking, receiving or retaining, directly or indirectly, any type of interest in an enterprise or transaction for which, at the time of the act, he or she is wholly or partly responsible for ensuring supervision, administration, liquidation or payment, shall be punished by five years' imprisonment and a fine of €75 000".

³² 15th report published on 25 January 2012:

http://www.commission-transparence.fr/rapports/15iemeRapport_joe_20120125.pdf

³³ Ibid.

arrested or be subject to any other measure depriving them of or restricting their liberty (pre-trial supervision) without the authorisation of the Bureau of the House concerned, except in the case of an *in flagrante* crime or offence or a final sentence. Furthermore, detention, measures depriving members of parliament of or restricting their liberty, and prosecutions are suspended for the duration of the session if the Assembly so demands. Inviolability is exclusively linked to the person of the parliamentarian and is inoperative for less serious (petty) offences.

69. Requests for authorisation to arrest members of the National Assembly and/or measures depriving them of or restricting their liberty are submitted by the prosecutor general at the relevant court of appeal, submitted by the Justice Minister to the Speaker of the National Assembly, prepared by a Bureau delegation and then examined by the Bureau. Requests are not published and the utmost confidentiality is ensured when they are being considered. Only the Bureau's decision is published in the Official Gazette and the *Feuilleton*. The Bureau decides solely on the seriousness, fairness and sincerity of the request. The decisions issued since the 1995 constitutional review would suggest that the Bureau's discretionary powers allow it not only to accept or reject the request out of hand but also, where appropriate, only to accept specific parts of the said request. It is also possible to request suspension of any measures being implemented, under a separate procedure.³⁴

70. Several members of the National Assembly and Senators have had their immunity lifted in recent years, including under investigations for corruption, money laundering, embezzlement of public funds, influence peddling, etc. All recent cases of refusal to lift immunity would appear to have mainly been caused by strictly procedural problems, because the relevant request must clearly specify the measures envisaged and the grounds on which the House in question can reach a decision. The GET does, however, note that the request goes through several stages, especially when it is initiated by an investigating judge (competent principal state prosecutor and then the Ministry of Justice) and that this should in principle facilitate verification of the quality of the request, rather than causing risks of divergent positions between the public prosecutor's office and the investigating judge on the formulation of the request. The GET would recommend clarifying as far as possible the conditions for submitting requests for the lifting of immunity, for all practitioners of criminal justice likely to wish to submit such requests.

Advice, training and awareness

71. The general public has access to information on the rules mentioned in this report via the parliamentary websites (pages devoted to relevant questions provide a great deal of information, particularly on parliamentarians' professional ethics and obligations of declaration) and in the press. Members of parliament are kept informed via the applicable texts as distributed at the beginning of their term of office, and regular reminders are sent out by the relevant parliamentary bodies (Bureau, administrative officers, National Assembly's Commissioner for Ethical Standards, Senate Ethics Committee). Information is also provided online. Members of parliament can also consult the Assembly's Commissioner for Ethical Standards, whereby requests for consultation and any opinions given remain confidential and can be made public only by the member concerned. The GET was informed before the visit that Senators can contact the Ethics

³⁴ Requests for suspension of prosecution, measures depriving or restricting liberty or detention are addressed to the Speaker of the Assembly by one or more members of the National Assembly, distributed and then forwarded to the Commission set up under Rule 80 of the Rules of Procedure, which must interview the member in question or the colleague whom he or she has mandated to represent him or her, and submit a report. As soon as this report is distributed, the debate on the request must be included on the Assembly's agenda. The report is considered in session, followed by a limited debate, after which the Assembly reaches a decision. The Assembly's decision is binding on all administrative and judicial authorities. It results, for the duration of the session, in the suspension of all judicial proceedings and/or the lifting of pre-trial supervision and the release of the detained member.

Committee; however, as the GET's interviews have shown, this committee has no explicit individual advisory function and can only be formally applied to by the Bureau. In practice, the Senators in fact address queries to the Bureau. The GET's conversations also showed that members of parliament are only very gradually coming to accept the rules discussed in this report. In the GET's view, increasing the visibility, the capacity for action and the recognition of the ethics bodies would facilitate such acceptance: for example, the Assembly's Commissioner for Ethical Standards works in remote separate premises and, as stated above, the Senate Ethics Committee cannot act *ex officio*. These bodies and the Bureaux must make do with regulations which are often inadequate and specify obligations which often go beyond the wording of the texts, and frequently explain the various mechanisms for internal declarations or declarations to the CTFVP. Improving the rules in accordance with the recommendations set out in this report would facilitate the work of the competent bodies and promote the acceptance and understanding of the rules by the members of the National Assembly and Senators.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

72. The organisation of justice has these features: a) dual system of courts: the administrative courts and the ordinary courts are separate; where jurisdiction is difficult to determine, the *Tribunal des conflits* – which sits in the chambers of the Conseil d'État – considers the case;³⁵ b) the principle of two levels of jurisdiction; c) the principle of separation of the authorities responsible for prosecution (performed by the prosecution service) and trial (carried out by the judiciary proper), which is reiterated by the preliminary article of the Penal Procedure code. France also has the institution of investigating judge. The following table gives an overview of the principal courts (2011 figures):

	Ordinary courts	Administrative courts	Others
Total number	1 Court of Cassation, 36 Courts of Appeal and 1 Higher Court of Appeal, 161 regional courts and 4 courts of first instance, 307 district courts, 210 industrial relations tribunals (<i>Conseils de Prud'hommes</i>) and 6 labour courts, 135 commercial courts (3100 elected judges), 155 juvenile courts, 115 social security tribunals, 102 Assize Courts.	1 Conseil d'État 8 Administrative Courts of Appeal, 42 administrative tribunals, 1 State Audit Board, 22 regional audit boards	1 Constitutional Council 1 Jurisdiction Court

73. Jurisdiction is organised as follows:

Ordinary courts
<p>1. Civil, commercial and social security courts: their purpose is to rule on disputes involving private interests.</p> <p>1.1 Courts of first instance:</p> <p>The regional court (tribunal de grande instance – TGI) is the ordinary civil court, having jurisdiction in principle to deal, at first instance, with all disputes of a private nature, unless expressly deprived of jurisdiction by a specific provision of the law; for example, the law assigns the hearing of commercial cases to the commercial courts, and disputes concerning employment contracts to the industrial relations tribunal; likewise, civil claims of a value below €10 000 must be brought before the district court. Each TGI is headed by a presiding judge with general judicial functions like other judges (sitting on a bench to hear cases, for instance) and also specific judicial functions: issuing orders on applications (for example, authorising preventive attachment or rectification of a civil status document) or functions of summary jurisdiction (urgent procedure). The presiding judge also has extrajudicial functions such as compiling lists of criminal jurors and administrative functions with a view to the proper functioning of the court.</p> <p>The district court (tribunal d'instance - TI) is heir to the magistrates' courts (<i>justices de paix</i>) in which the magistrate was "an arbiter, more a father figure than a judge". This accounts for the fact that for a long time conciliation was a mandatory stage before the district court, that legal representation is not mandatory, and that it is a court which rules with a single judge.</p> <p>The community courts (juridictions de proximité) – <u>soon to be abolished</u> – were instituted by the law of 9 September 2002, amended by the Institutional Act of 26 February 2003 on the status of such courts and the law of 26 January 2005 which extended their competences and permitted community judges to sit as non-presiding judges at criminal court hearings. But they were to vanish on 1 January 2013 (law of 13 December 2011) with the attachment to the TGI of community judges, who would be given new assignments. Abolition has been postponed to 1 January 2015. At present the community courts are competent to try at first and last instance civil cases whose value does not exceed €4 000 (except for non-pecuniary applications originating in the performance of an obligation); they also have jurisdiction in respect of injunctions to pay and to perform. On the criminal side, they are competent to try the first four classes of petty offences (unlicensed hunting,</p>

³⁵ It consists of nine members: the president who is the Minister of Justice, four Court of Cassation judges and four members of the Conseil d'Etat.

disturbing the peace, minor assaults...). Their seats and their territorial jurisdiction coincide with those of the district courts. There are 672 community judges practising in 321 courts.

The **commercial courts** (tribunaux de commerce – TC) are specialist courts competent to try commercial cases at first instance, that is disputes relating to commercial dealings and commercial companies as well as to receivership and winding-up of enterprises.

There are 135 commercial courts whose jurisdiction does not necessarily correspond to an administrative district or to the area of jurisdiction of a TGI or a TI.

Each TC is headed by a president elected for four years. The latter holds administrative functions: directing and organising the court's staff, general discipline, presiding over the general assemblies, appointment of the divisional vice-president and president. He or she also performs specific judicial functions: orders under urgent procedure and on application.

The **industrial relations tribunals** (conseils de prud'hommes - CP) are courts consisting of elected judges whose role is conciliation in and determination of individual disputes arising from an employment or apprenticeship contract, with no limitation on the value of claims. It is mandatory for tribunal proceedings to begin with a phase of conciliation. Each CP is divided into five sections corresponding to different occupational activities: management, industry, commerce, agriculture, sundry activities. The CP can be convened in different configurations: administrative (general assembly) or quasi-judicial (offices of conciliation and determination, urgent procedures).

The **agricultural land tribunals** (tribunaux paritaires des baux ruraux -TPBR), Articles L 492-1 to L 492-9 of the Rural Code (concerning contracts for leasing/farming of agricultural land). The *tribunaux paritaires des baux ruraux* are joint professional and lay bodies: unlike the commercial courts and the industrial relations tribunals on which no career judge sits (except for the adjudicator who is district court judge), the TPBR is presided over by the district judge. The territorial jurisdictions of the TPBR are moreover identical to those of the district courts. The presiding district court judge is assisted by four titular members, two representing the lessors and two representing the tenants. Each TPBR may be subdivided into two sections, one for adjudicating long-term leases, the other for ruling on share-cropping leases. The TPBR is convened in sessions and not continuously.

The **social security tribunals**, Art. L 142-1 et seq. of the Code of Social Security. There are two kinds of litigation, general and technical. General litigation concerns specifically legal issues between the social security bodies and their users (contributions, benefits, coverage, etc.). It is handled by the *tribunaux des affaires de sécurité sociale* (TASS). Technical litigation embraces strictly medical questions (invalidity, incapacity, medical treatment, spa treatment, etc.) and falls to the *tribunal du contentieux de l'incapacité* (TCI). The TASS are presided over by a serving or honorary member of the judiciary assisted by two appointed counsellors; they are therefore joint professional and lay bodies. The TCIs are composed of judiciary members, civil servants, employees, employers or self-employed persons, and doctors.

1.2 Courts of second instance: the Courts of Appeal

Each Court of Appeal has a territorial jurisdiction of varying size. Appeals can be filed only in cases involving sums of more than €4 000. Each Court is headed by a first president vested with judicial functions (orders under urgent procedure and on application) and administrative functions, particularly inspection of the courts of first instance under his or her jurisdiction, as well as by a general prosecutor.

2. Criminal courts: their purpose is to prosecute offences against criminal law and to impose penalties.

2.1 Ordinary criminal courts: Investigating authorities: at the first tier the *investigating judge*, at the second tier the court's *investigation division*. Trial courts: - for misdemeanours and petty offences, at first instance the *police court* and the *community court* for petty offences, the *criminal court* for misdemeanours; at second instance the *criminal appeal chamber*. For crimes, at first instance and at appeal, the *Assize Court*.

2.2 Specialised criminal courts: a) The *High Court* (which was called *High Court of Justice* until the constitutional law n°2007-238 of 23 February 2007), composed of parliamentarians appointed in equal numbers by both assemblies with the mission of trying the crimes of high treason by the President of the Republic; b) the *Court of Justice of the Republic*, responsible for trying crimes and offences allegedly committed by members of the government in discharging their office (Articles 68-1 and 68-2 of the Constitution); composed of twelve parliamentarians who are elected (six by the National Assembly, six by the Senate) and three senior Court of Cassation judges one of whom presides; any complaint must be considered by a petitions panel made up of three ordinary Court of Cassation judges, two members of the Conseil d'État and two senior members of the State Audit Board elected for five years by their peers; c) the military courts;³⁶

³⁶ In peacetime the *tribunaux aux armées* (Articles L.111-1 to L.111-18 of the Code of Military Justice - CJM) must administer military justice to the armed forces for offences committed outside the territory of the Republic. In wartime the *territorial tribunals of the armed forces* (Articles L.112-1 to L.112-26 of the CJM) would administer military justice in the territory of the Republic and the *tribunaux militaires aux armées* operating within or outside the territory of the Republic (L.112-27 to L.122-5 of the CJM).

The *tribunaux prévotaux* (Articles L.411-1 to L.424-3 of the CJM), held by the gendarmerie, established in wartime within the territory of the Republic and at all times when the forces operate outside the

d) the juvenile courts: the children's court (*tribunal pour enfants - TPE*): composed of a judge with two assistants who are ordinary citizens aged 30 years or over and known for the interest which they take in childhood issues; the *children's judge*: same jurisdiction as the TPE but not able to pass any sentence; the *juvenile division of the Court of Appeal*; the *Juvenile Assize Court*: for juveniles aged 16-18 years who have committed a crime.

3. Court of Cassation: the highest court of the judicial system. It is not a third tier of jurisdiction: it determines law, not fact. The Court may have all matters referred to it for opinion. It consists of five civil divisions (including one commercial and one social division) and a criminal division.

Administrative courts: The judicial bodies that settle public law disputes between a citizen and a public authority.

1. First instance: the *tribunal administratif* (TA): deals with all administrative litigation except where a legal text to the contrary assigns it to another administrative court; the TAs are composed of judges called "conseillers" placed under the authority of a president who combines administrative functions (organisation of hearings, discipline...) with judicial activities some of which are specific to him or her, such as summary procedures.

2. At second instance the *Cours administratives d'appel* are established, also consisting of "conseillers".

3. The highest level is the *Conseil d'État* whose president is the Prime Minister, with the Minister of Justice as deputy, but whose true control belongs to the vice-president. It is divided into sections (finance, home affairs, public works, social affairs, reports and studies, litigation) which a) deliver opinions (particularly on draft laws or decrees) b) deliver judgments on appeals. Depending on the subject-matter, it decides at first instance, at appeal and on points of law. The membership consists, from the bottom up, of *auditeurs*, *maîtres des requêtes* and *conseillers d'État*, themselves divided into two categories: on ordinary and extraordinary appointment, the latter being outside figures called upon to sit temporarily for a term of five years (Article L 121-4 to 8 of the Code of Administrative Justice).

4. "Financial" judicial authorities (administrative courts with special jurisdiction): a) The *State, the regional and the local audit boards* verify the accounts of the official accountants of the State and the local and regional authorities, assist parliament and the government in verifying the enforcement of the financial legislation, etc. In contrast to the other administrative courts, this one comprises a prosecution department headed by a principal state prosecutor. The first president, senior auditors, and middle-ranking and junior members all have life tenure; b) The *Court of financial and budgetary discipline* punish public commitments officers breaking the rules of budgetary law. Its powers are limited but it has the possibility to publish its sentences in the official journal. It has no staff of its own but is made up of audit board members.

There are numerous other administrative tribunals, not always easy to distinguish from plain administrative authorities or simple commissions, for example the *central social welfare commission* and *councils or chambers of professional associations* when they act as disciplinary bodies: for instance, decisions of the disciplinary chamber of the national doctors' association (which is presided by a member of the *Conseil d'Etat*) can be appealed before the *Conseil d'Etat* which acts as a cassation body in such cases.

Constitutional Council

Composed of nine members appointed for nine years by the President of the Republic, the Speaker of the Senate and the Speaker of the National Assembly plus currently three former Presidents of the Republic who are ex officio members (but the last who became a member has indicated his intention not to sit). No condition with regard to age or competence is stipulated. The office is incompatible with that of member of the government, the Economic, Social and Environmental Council and with any electoral mandate. During their term of office, councillors cannot be appointed to a public post. The President of the Council is appointed by the President of the Republic. It delivers decisions on review of the constitutionality of laws (it is mandatorily examining all constitutional laws and rules of parliamentary assemblies), and on the compliance with regulations of elections and referendums.

74. Career judges of ordinary courts, with few exceptions, are graduates of the Legal Service Training College (*École nationale de la Magistrature - ENM*) which they enter for the most part by competition or on the basis of qualifications. They are appointed by decree of the President of the Republic. The Judicial Service Commission (*Conseil supérieur de la Magistrature - CSM*), so composed as to have jurisdiction in respect of judiciary members (judges), has the power to make proposals for judges' posts on the

national territory; they try petty offences other than class 5 offences committed by anyone subject to the courts of the armed forces as well as breaches of the regulations on discipline committed by civilians and non-officer prisoners of war.

The *criminal courts* and *Assize Courts specialising in military prosecutions* which try military offences and offences against state security.

Court of Cassation, first presidents of Courts of Appeal and regional court presidents, i.e. some 400 posts. For other such posts the power of proposal rests with the Minister of Justice but the CSM delivers a binding opinion on the projected appointment. French administrative court judges come from the National Administrative College (from which senior state civil servants traditionally graduate) or are recruited through a specific competition for the administrative tribunals. In addition there are "external" recruitments: in the Conseil d'État, one-third of the members on ordinary appointment can be designated at the discretion of the government from among personalities outside the Council (Article L 133-3 of the Code of Administrative Justice); nonetheless, these appointments are submitted for opinion to the Vice-President of the Conseil d'État; this opinion is published at the same time as the act of appointment in the Official Gazette. In addition, there are the Conseil d'État members on extraordinary appointment who are outside personalities chosen because of their qualification in various fields, but they are appointed only for a term of five years and sit only on the administrative benches, never in the litigation section.

75. The French authorities stress that certain members of the ordinary courts have an atypical position due to their non-permanent functions: community judges (appointed by the public authorities but destined to disappear in 2015), judges of industrial relations tribunals (elected by their peers for a renewable term of 5 years), members of the agricultural land tribunals (elected by their peers for 6 years), members of the social security tribunals (appointed by the public authorities for 3 years), commercial (or "consular") judges (elected by their peers for 4 years with the possibility of 3 renewals), and members of the children's court (appointed by order of the Ministry of Justice for 4 years).

76. The GET also notes that there are courts which are designated improperly as "political courts" since they are dealing with cases involving elected officials whilst being itself composed partly of elected officials: this is the case of the High Court and of the Court of Justice of the Republic (CJR). These are criminal courts which depart from ordinary law insofar as they apply specific proceedings, deal with personalities (namely the President of the Republic and the government ministers), and their composition is made up of 12 parliamentarians as well as 3 Cassation Court judges, one of whom is chairing. The prosecution body to the CJR is the Prosecutor General to the Court of Cassation, assisted by a first prosecutor general and two general prosecutors. The commissions dealing with the examination of requests and the investigations are each composed of 3 judges from the Court of Cassation.

77. The GET observes that there are very many French courts which vary both in nature and in their modus operandi and the rules and conditions applicable to their members. As things stand, it is therefore difficult to paint an exhaustive and concise picture of the situation, which at all events would go beyond the inevitably limited scope of this report. The GET observes that some courts still lack relevant rules and in others, these have been introduced very recently. For example, there is no code of professional conduct for the members of the Constitutional Council, and it was not until October 2013 that rules on incompatibility of that office with any other secondary activity were introduced. The plan to introduce regulations on the management of conflicts of interest (bills tabled on 24 July by the government in the National Assembly) fills the gaps regarding judges who are judicial service members but not regarding the members of other tribunals. In the opinion of the GET, it would certainly be useful for the French authorities to make an inventory of the position in the justice system as a whole regarding the existence of relevant applicable rules.

78. Considering the importance in practice of the main ordinary courts, the attention of the GET was largely focused on them. Two categories of courts nevertheless deserve special attention having regard to their inadequacies and the controversies surrounding their operation; these result to a large extent from the fact that these courts make use of

panels composed exclusively of non-professional judges when first instance decisions are rendered. The first is the commercial courts, competent in particular to determine disputes between shopkeepers, banks or commercial companies, and to order measures of preservation, receivership or winding-up in respect of enterprises in difficulties (collective procedures). It should be pointed out that in the regions of Alsace and Lorraine, there are still some regional courts comprising commercial tribunals with a mixed composition (Metz, Thionville, Sarreguemines, Saverne, Strasbourg, Colmar, Mulhouse). The commercial courts are composed of appointed lay judges, who are unpaid and originate from the business world (they are elected by their peers). A certain number of cases end in conciliation (with a judgment on equitable rather than legal principles), which accounts for the fact that few appeals are lodged (these are heard by the courts of appeal). Several critical studies (including two parliamentary inquiry reports) have dealt with commercial justice, whose judges are exclusively elected by their peers (in the business world) and work without payment. The GET looked carefully at the findings of the parliamentary task-force on the role of justice in the commercial sphere, published by the National Assembly on 24 April 2013, suggesting in particular measures to ensure enhanced independence of commercial judges, adoption and dissemination of ethical rules, direct access by citizens to the national disciplinary board (currently composed both of professional and lay judges) which should be given independent punitive power, the establishment of a mechanism for a mandatory declaration of interest, and compulsory attendance by commercial judges at a free training course targeted to the requirements of the office (this training is optional at present).³⁷ The aforementioned recommendations coincide with the concerns of GRECO, and the GET gathered that this report might be followed by a reform. During its visit, the GET found that the present system did indeed raise doubts from the standpoint of its functioning, its independence and supervision as well as the prevention of conflicts of interest. The unpaid status is open to criticism, all the more so in implying that enterprises which employ commercial judges continue paying their salary for the time devoted to this activity, which raises serious fears regarding independence. It was also reported that supervision of commercial justice had not been a priority, sometimes owing to shortage of time (the general inspectorate of judicial services has reportedly participated actively in various working groups dealing with the commercial courts and one Inspector General has prepared a note about the ethical conduct expected by commercial judges). Likewise, the commercial judges' disciplinary board has reportedly never been convened. The State has therefore delegated an important slice of judicial activity (over 3,000 judges) to an almost entirely non-professional justice arrangement, without adequate control and without compulsory training, on the ground that the career judges were somewhat unfamiliar with commercial issues and unable to read accounting documents, and that, ultimately, this approach enabled to compensate for the insufficient number of magistrates needed to deal with this specialised area. A working group on commercial courts was established by the Minister of justice on 5 March 2013 and its sub-group "deontology, statute, training" has made proposals in those areas. Draft amendments to the commercial Code are being prepared by the Ministry of Justice to implement these proposals. The mixed composition with both lay judges and professional judges sitting on panels and the general statute of commercial judges are also discussed. The possibility of transferring cases from one court to another is being examined as well.

79. The second category of courts singled out by the GET is the industrial relations tribunals. Having jurisdiction over disputes relating to an employment or apprenticeship contract, these bodies are also composed of unpaid judges, two representing the employer community and two the employees. The role of these lay judges is to attempt conciliation between the parties and if unsuccessful to settle the disputes in first instance. If no majority of the tribunal comes out in favour of a solution, they call upon an adjudicator (district court judge). The GET was told that this tribunal's *modus operandi* raised significant questions, particularly regarding conflicts of interest and impartiality (in

³⁷ http://www.assemblee-nationale.fr/14/rap-info/i1006.asp#P302_56965

particular because each group of lay judges defends first and foremost the sectoral interests of its electors), and the lack of professionalism (one case was held up as a typical example of dysfunction, in which a lawyer was preparing to plead before a tribunal including his secretary just elected as a judge). Finally, these practitioners undergo no training for want of time or inclination (or because the employees' representatives are accountable to their employers), and this may cause problems when freshly elected judges completely unfamiliar with the functioning of the institution are sitting. It would appear that there are plans to amend the mechanism for the appointment of members of these courts.

80. The GET considers that a speedy reform of these two categories of courts is imperative. The appointment of a career judge to preside over the court of first instance in order to ensure compliance with the procedural rules (particularly as regards the rules of challenge), and making training compulsory both for the employers' and for the employees' representatives, could form part of the necessary measures for ensuring proper functioning, guaranteeing impartiality and guarding against any conflict of interest. Rules governing professional status and conduct and more effective supervision should accompany this reform. **GRECO recommends that a reform be carried out in respect of commercial courts and industrial tribunals with a view to strengthening the independence, impartiality and integrity of lay judges.**

The principle of independence

81. The principle of independence³⁸ a) is constitutionally guaranteed (Article 64): "*The President of the Republic shall be the guarantor of the independence of the judicial authority*". This principle also appears in the [amended order of 22 December 1958 on the status of the judiciary](#) regarding its members serving temporarily as district court judges or non-presiding judges on regional court benches: Article 41-14 indicates that these officers "*may engage in an occupational activity concurrently with their judicial duties, provided that the activity is not such as to impair the dignity of the office and its independence*"; b) is reflected in the principle of secure tenure and the rules on promotion and discipline. Secure tenure means that a judge cannot be the subject of an individual measure (dismissal, suspension, transfer...) except in the cases and under the conditions prescribed by the law. Secure tenure is mentioned in Article 64 of the Constitution, paragraph 4: "*Judges shall be irremovable from office*" and in Article 4 of the amended [order of 22 December 1958](#): "*A judge cannot, without consenting, receive a new appointment even by way of advancement*". This also applies to administrative judges even though the irremovable nature of their tenure is not specifically cited: "*When performing their functions as judges in an administrative court, members of the benches of administrative tribunals and administrative courts of appeal cannot, without consenting, receive a new appointment even by way of advancement*" (Article L 231-3 of the Code of Administrative Justice). Members of the Conseil d'État are de facto irremovable by virtue of an age-old custom albeit not specified by any statute; other judicial officers also benefit explicitly from security of tenure, such as State Audit Board members for example: "*Members of the Audit Board have the status of judicial officers. They are and remain irremovable from office*" (Article L 120-1 of the Code of Financial Courts). c) gives rise to the prohibition of instructions being issued to judges by anyone whatsoever (in contrast with the traditional situation of prosecutors which has nevertheless undergone amendments at a very recent date (cf. part V below).

82. Where the members of administrative courts are concerned, the principal rules governing the discharge of their office are similar to those of judicial court judges. Administrative court judges enjoy a guarantee of secure tenure embodied in the law of 6

³⁸ A proximate concept should be distinguished, that of the independence of the courts, guaranteed by Article 16 of the 1789 Declaration of the Rights of Man and the Citizen (guarantee of rights and separation of powers). It signifies that "*neither the legislator nor the government, nor any administrative authority*" can encroach on the functions of the courts (Constitutional Council, decision no. 2007-551 DC, 1 March 2007).

January 1986. The practical management of the profession is ensured by the Vice-President of the Conseil d'État, and not by the Ministry of the Interior as was the case until 1990, which constitutes an additional guarantee of independence. As to the members of the Conseil d'État (the highest administrative court), their status apparently secures them only limited guarantees; no security of tenure is prescribed, for example. The independence of these judges is nevertheless protected by custom; management of the Conseil d'État is accordingly carried out internally, and the advancement of its members occurs solely on the basis of seniority.

Recruitment, career and conditions of service

Recruitment

83. Career judicial officers (which includes prosecutors) must meet the general requirements for entry to the civil service : a) French nationality, b) enjoyment of their civil and civic rights, c) be of good moral character, d) have fulfilled the requirements regarding national service, e) be physically fit; f) hold a diploma certifying training of a duration equivalent to at least four years' post-baccalaureate study (although this is not stipulated in all the routes into the profession).

84. Judicial service members are recruited by competition or on the basis of qualifications (Article 18-1 of the [amended order of 1958](#)) as for example doctors of law holding another advanced studies diploma. But they may also fill a post directly, generally after a probationary traineeship (Articles 22 to 25-4 of the [order of 1958](#)), a) either permanently (for example lawyers or chief registrars subject to certain diploma requirements as well as seven years of effective service, and also law faculty lecturers who have taught for ten years); b) or temporarily for a term of a number of years.

85. Except in the above-mentioned cases, officers are part of the judiciary without limitation of duration. They are appointed by decree of the President of the Republic and belong to the state civil service but are subject to a specific Statute. Every (career) officer appointed to his or her first post must swear an oath³⁹ before the Court of Appeal, otherwise the judicial acts which he or she might perform will be void.

86. In virtually all cases, including principal state prosecutors since 2008, the Judicial Service Commission (Conseil supérieur de la magistrature - CSM) makes proposals or delivers opinions, either binding or advisory.

87. The CSM was created just after the Second World War and radically reformed thereafter. Since 2008, the CSM has been divided into three bodies under the chairmanship of the first president of the Court of Cassation and its principal state prosecutor: a body competent in respect of judges in matters concerning their appointment and discipline (presided over by the first president of the Court of Cassation), a body competent in respect of prosecutors, also as concerns their appointment and discipline (presided over by the principal state prosecutor attached to the Court of Cassation), a plenary presided over by the first president of the Court of Cassation, competent to deal with requests made by the President of the Republic (when acting as guarantor of judicial independence) or by the Minister of Justice. The CSM comprises, besides the first president and the principal state prosecutor of the Court of Cassation, twelve judicial service members (six for each of the bodies competent in respect of judges and prosecutors) and eight outside personalities: two nominated by the President of the Republic, the President of the Senate and the President of the National Assembly, one by the National Council of Bar Associations, and one elected by the Conseil d'État. Law officers form a numerical minority in the bodies competent for

³⁹ On their first appointment, judicial service members swear this oath before the Court of Appeal: "I swear to fulfil my functions faithfully and well, scrupulously to preserve the secrecy of deliberations, and in all respects to conduct myself as a worthy and sincere officer" (Article 6 of the [amended order of 22 December 1958](#)).

appointments and are on a par with the other non-judicial members in the bodies competent for discipline. The CSM is financially independent.

88. Judges are appointed by decree of the President of the Republic (Article 65 of the Constitution): a) at the CSM's proposal to the President of the Republic, for high judges (some 400 posts such as senior Court of Cassation judges, first presidents of Courts of Appeal and regional court presidents); b) at the proposal of the Minister of Justice to the President of the Republic, after the CSM's binding opinion, for other judges.

89. Integrity and requisite qualifications are verified on recruitment. Vetting is conducted prior to recruitment of judicial officers and of community judges (prompting consultation of the police and gendarmerie records). Furthermore, there is verification of the requirements laid down by paragraph 3 of Article 16 of the [amended order of 22 December 1958](#), namely "enjoy one's civic rights and be of good moral character", which presupposes that the person concerned has no criminal record.

90. Administrative judges, recruited from among graduates of the National College of Administration, by specific competition or by secondment, or else on the basis of professional experience acquired in certain civil service appointments, are themselves civil servants by nature and therefore subject to strict conditions of integrity on entering the civil service. Members of the Conseil d'État constitute a separate group from that of the other administrative judges, but their recruitment is also carried out via the National College of Administration as well as "externally", thereby enabling personalities with varied experience to enter the Conseil d'État.

91. The GET was able to appreciate the full relevance and quality of the training provided by the ENM, which certainly stands out as a model beyond national boundaries. The GET also observes that a certain number of judicial officers are recruited and employed under arrangements departing from those generally applicable to members of the judicial service. The GET also notes that French justice makes use of temporary judges appointed (for a maximum term of five years) by secondment from one administrative department to the Ministry of Justice or to exercise the functions of judge on special appointment to the Court of Cassation. This also applies to officers recruited (for 7 years at the most) under Articles 41-10 et seq. of the order of 1958 from, amongst others, the members or former members of the independent legal and judicial professions subject to a legislative or regulatory status (or holding a protected title, lawyers for instance) and able to substantiate at least seven years of professional practice. They can only be assigned as district judges or non-presiding judges on a regional court (TGI) bench. This recruitment is unique in that these temporary judges may engage in a professional activity alongside their judicial functions. Nevertheless, safeguards are provided, for example where they are lawyers, bailiffs or notaries they cannot perform their judicial functions in the district of the TGI where they are resident for professional purposes, and cannot deal with a dispute linked to their professional activity or if they maintain or have maintained working relations with one of the parties to the dispute. Their recruitment is carried out collectively by the promotions board and their appointment procedure is the one used for judges. They must also take probationary training and then swear the oath of the judges to whom they are assimilated as regards rights and duties. In the opinion of the GET, these guarantees are adequate in principle, subject to their being adequately and coherently placed under the same rules safeguarding integrity as for members of the judicial service (their parallel professional activity might in fact raise questions). The French authorities may wish to satisfy themselves that such is the case.

Career and conditions of service

92. Where members of the judiciary are concerned, advancement depends chiefly on seniority in grades and steps, and is the subject of a publication ("promotion table") in

order to avert any favouritism or arbitrariness. The table is compiled and decided each year by the promotions board.⁴⁰ Decrees on appointment are issued by the President of the Republic, on a binding opinion or proposal of the Judicial Service Commission (CSM), and may be appealed against by an application to set aside before the Conseil d'État.

93. Notwithstanding the security of judges' tenure, articles 28-2 and 28-3 of the Order n°58-1270 of 22 December 1958, the chair of a regional court or a prosecutor cannot exert the same functions for more than 7 years, and a district court judge, an investigating judge, a juvenile court judge, a probation judge cannot remain on the same post for more than 10 years. A judge may also be moved or withdrawn as a penalty at the conclusion of disciplinary proceedings.

94. The salary of judges (and prosecutors) is fixed by the government according to a grading and indexing system. The gross basic salary varies from €2 100 to €5 000 per month, according to grade and seniority. For supervisory functions (e.g. court president) the gross salary ranges from €5 100 to almost €7 000 per month. In addition there is a residence allowance, a duties allowance and an adjustable bonus (5-15% of the basic salary). In total, the net monthly remuneration received by a judge ranges from €2 633 to about €8 800. Certain court presidents benefit from an official residence and possibly a chauffeur-driven vehicle. The suppression of official residences is planned in the mainland territory for September 2015. The public can find out about judges' salary via the Internet sites. Verifications in respect of remunerations and incidental benefits rest with the taxation authorities.

95. The situation of administrative judges is to a large extent similar to that of ordinary court judges. Members of administrative tribunals and courts of appeal have formed a single category since a law of 1987. The category of administrative judges is structured in three grades: counsellor, first counsellor and president. Their career path is the same at either of the two levels of jurisdiction. Advancement is by seniority. Career management and disciplinary procedures are carried out by a Supreme Council for administrative tribunals and administrative courts of appeal, similarly to the CSM.

Case management and procedure

Assignment of cases on the list

96. Rules are laid down regarding assignment of cases among the respective (ordinary) courts, both according to criteria of general jurisdiction (substantive, territorial, founded on the importance of the litigation, the persons or interests involved etc.), and according to practical considerations (e.g. based on the connection between or inseparability of facts). In the courts, the allocation of files between the various chambers is based on their specialisation and the nature of the case. Where a court has multiple chambers which have similar jurisdiction (for instance for civil cases), the distribution of cases is done randomly. Within a given chamber, files are then allocated by consensus: the presidents assign the cases according to individual workload, competences, experience, etc. Investigating judges are also assigned cases automatically in relation to regular sessions which they are required to hold, in liaison with police activities in particular.

Reasonable time

97. Depending on subject-matter, the principle of reasonable length of proceedings is embodied in various texts or secured by various means. For instance, the preliminary article of the Penal Procedure Code provides that in respect of persons prosecuted a final

⁴⁰ It comprises 20 members most of whom are elected by their peers – certain persons are ex officio members: the oldest divisional presiding judge of the Court of Cassation who is its president, the Inspector General of Judicial Services, and the Director of Judicial Services.

judgement shall be rendered within a reasonable amount of time. In case of non-compliance with this principle, the person concerned may lodge a complaint against the State on the basis of article L 141-1 of the Code on judicial organisation, which provides that the State is bound to provide compensation for any damage incurred as a result of the justice system's malfunction. The principle of reasonable duration of proceedings is also a requirement under articles 5.3 and 6.1 of the European Convention on human rights and fundamental freedoms, which was signed and ratified by France. More generally, the Compendium of the Judiciary's Ethical Obligations published in 2010 extensively refers to the duty of diligence.

Transparency

98. The principle of transparency is normally an essential principle of procedure. The principle of openness to the public applies to all categories of courts, whether ordinary, administrative or other. The publicity of hearings and decisions is considered as a fundamental legal principle and it is enshrined in the texts applicable to the different branches of legislation. Possible exceptions are strictly enumerated (for instance in civil matters when it comes to divorces, or in criminal matters if there is a danger for the serenity of hearings or for reasons of good morale).

Ethical principles and rules of professional conduct

99. With regard to compendia of rules of professional conduct, the situation may be summed up as follows:

Courts	Relevant text	Staff concerned
Ordinary courts	Compendium of the Judiciary's Ethical Obligations, 2010	-Judges and prosecutors (<i>magistrats</i>); - not explicitly covered: staff sitting as judges without having <i>magistrat</i> status (non-presiding judges, etc.)
Administrative Courts	Ethics Charter for Members of the Administrative Courts, 2011	- All members and officers of administrative tribunals, administrative courts of appeal and the Conseil d'État - civil servants seconded to perform similar functions - not explicitly covered: members of financial courts and various other sectoral courts

100. The [Compendium of the Judiciary's Ethical Obligations](#) was produced and published on 10 June 2010. The text, in over 40 pages, lays down a series of basic rules more specifically embodying the principles of independence, impartiality, integrity, compliance with the law, consideration of others, discretion and restraint. The compendium sums up the principles long current in France. The Conseil d'État produced and published in 2011 an Ethics Charter for Members of the Administrative Courts, which may be consulted on its site.⁴¹ This very detailed and exhaustive Charter deals, in separate chapters, with the following concerns: general principles, independence and impartiality, prevention of conflicts of interest in the performance of functions, duty of restraint in public statements, professional secrecy and discretion, obligation of exclusiveness and secondary activity. These two texts have not been given normative scope.

101. A representative of the bar told the GET that, even without yet having sufficient hindsight, he had observed that since the compendium had come into force, the work culture had changed; for example, it would seem that judges and prosecutors were more heedful of litigants and citizens, and there was now more widespread respect between judges and parties. In the opinion of the GET, the effort made over the last few years by the various French courts to adopt and publish rules of professional conduct deserves to be emphasised. In general, these have been developed wisely and amply meet the concerns of GRECO, with a slight reservation for the CSM compendium of ethical duties which could be more specific regarding gifts by mentioning the limit to permissible

⁴¹ http://www.conseil-etat.fr/media/document/RH/mep_charte_deontologie_web.pdf

ceremonial gifts. The supplementary publication of disciplinary opinions or rulings constitutes an excellent approach from the preventive standpoint.

Conflicts of interest; declaration of assets, income, liability and interest

102. Where members of the judiciary are concerned, at the time of the visit there was no legal definition and/or typology of conflicts of interest although the Order of 22 December 1958 contains numerous rules intended to guard against any conflict of interest in the discharge of judicial office. Regarding the Compendium of the Judiciary's Ethical Obligations, the term appears in the chapter on integrity in a subsection entitled "Probity": the officer's attention is drawn to the fact that his authorised "*extrajudicial activities*" "*liable to create a conflict of interest should be avoided*". Moreover, again in this part of the compendium on integrity, the idea of conflicts of interest is alluded to though not explicitly identified: "C 19 *As a precaution and to comply with legal texts, members of the judiciary shall not handle cases that directly or indirectly involve either themselves or their close circle of relations. In such cases, they shall not wait for their disqualification but shall refrain from intervening in any proceedings of this nature or involving a party with whom their relationship is one of friendship, proximity or intimacy*". Generally speaking, in judicial circles conflict of interest is referred to only obliquely whether through regulatory provisions or from the angle of disciplinary sanctions.⁴²

103. Legislation is currently being drafted with a view to amplifying the rules applicable to judicial service members: on 24 July 2013 the government tabled in parliament a bill for an institutional act and an ordinary law on reinforcing the ethical obligations of judicial service members. The first text aims a) to embody in their regulations a definition of conflicts of interest and an obligation to have an ethical interview with the objective of guarding against conflicts of interest; b) to require them to forestall situations of conflicting interests and, should they arise, to end them. It gives a definition of conflict of interest identical to the one stipulated for senior public officials; c) to introduce an ethical interview for all judges and prosecutors who have a judicial activity (the interview is to take place upon their taking up new functions and may be repeated on the initiative of either person participating); d) to impose the obligation for judicial service members above a certain rank to declare their assets to an *ad hoc* committee on taking up and leaving office (the committee will assess the variation in assets over that period and if it discovers developments for which it has no satisfactory explanations, may forward the file to the tax authorities; it will be chaired by an honorary member of the judiciary).

104. The aim of the second text is to: a) include in Article L. 111-6 of the Code of Judicial Organisation a new ground for challenges making it possible to cover in addition and more generally cases not specified in this article (particularly where a relative is concerned); b) amend Article L. 111-7 of the Code of Judicial Organisation to include for judges (paragraph 1) and prosecutors (paragraph 2) the replacement of any member of the legal service who considers that there is a ground for a challenge, or whose conscience dictates that he or she withdraw. The GET greatly appreciates these

⁴² Accordingly, the Code of Civil Procedure in the chapter entitled "Withdrawal" provides in Article 339 that "*Judges who consider that there are grounds on which they may be challenged or who in all consciousness believe they should withdraw shall arrange to be replaced by another judge designated by the president of the court where they sit*". In the following chapter on challenge, Article 341 lists the eight grounds for challenging a judge; these include the fact of the judge or the judge's spouse having "*a personal interest*" in the dispute or being responsible for administering the property of one of the parties. The judge must signify within eight days his or her acceptance of the challenge, or the grounds for opposing it (Article 347). The Code of Judicial Organisation (Article L 111-6 et seq.) and the Code of Criminal Procedure (Articles 688 et seq., see above) have roughly the same provisions. Likewise, the Codes of Civil Procedure (Articles 556 et seq.) and of Criminal Procedure (Articles 662 et seq.) mention transfer on the ground of justifiable suspicion. These various procedures are founded on the idea that it is expedient to permit action to be taken by a person before the courts who has serious cause to believe that a judge or a court will not rule with complete independence and impartiality. However, the notion of conflict of interest is never explicit.

developments, which compensate for certain shortcomings and take account of societal and economic changes. They should be completed speedily and, as there are no indications of hostility to the reform, the GET refrains from making any recommendation on the questions of management of conflicts of interest (except in relation to the reform of certain categories of courts, recommended at the beginning of this chapter).

105. For administrative judges, the path chosen is different and since 2011 has followed from the Ethics Charter for Members of the Administrative Courts. This sets up an ethical interview mechanism, recommended in the context of the organisation of work and providing that any member of administrative justice may at any time have an interview enabling them to disclose their interests or activities past or present of a pecuniary, professional, family or personal kind liable to affect, even in appearance, their impartiality or independence to such an extent that it would not suffice for them merely to abstain in a specific case.

Challenge or withdrawal

106. These provisions are found primarily in the criminal and the civil spheres. Thus a judge can be relieved of a case at the end of the challenge procedure (Article 668 of the Code of Criminal Procedure - CPP) if a party doubts the judge's impartiality, for example in the case of certain bonds of kinship or as a spouse. A court can also be relieved of a case before it if its impartiality is contested (Article 662 CPP). Lastly, cases can be referred from one court to another for purposes of the proper administration of justice (Articles 43, 665 paragraphs 2 to 4 CPP) at the request of the principal state prosecutors attached to the Court of Cassation or to the court of appeal concerned: for example, where an elected representative or a senior official is to be tried by the court located in the area where he or she serves or where the facts implicate as perpetrator or victim a judge or prosecutor, a lawyer or police or gendarmerie officer having habitual relations with the court through their functions or duties. In other areas, challenge by a party is also possible in civil litigation for the same reasons as above (Articles 339 et seq. of the Code of Civil Procedure, Articles L 111-6 et seq. of the Code of Judicial Organisation).

107. As stated in paragraph 103, the government tabled draft legislation on 24 July 2013 to prevent the conflicts of interests affecting judicial judges, introducing conflict of interests as a general ground for replacement of the judge at his or her own request or at the request of a party to the proceedings.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

108. The rules governing incompatibility are set out in the amended [order of 22 December 1958](#) and, amongst other things, prohibit a) all members of the national legal service from holding another public office (including membership of various elected bodies) and from any other professional or remunerated activity other than scientific, literary or artistic work (unless authorised by individual exemptions); b) all members or former members of the national legal service from working as a lawyer, notary, bailiff, commercial court registrar, court-appointed administrator or liquidator in the area of a court where they have practised in the last five years. Even in the event of leave of absence, a member of the national legal service who wishes to work in the private sector must inform the Minister of Justice, who may object to that activity in certain cases (adverse effect on the proper functioning of the justice system, risk of bringing the national legal service into disrepute). Finally, when a member of the national legal service requests secondment or leave of absence in order to work in a profession or in gainful employment, either as an employee or otherwise, the Judicial Service Commission (CSM) gives its opinion (Article 72 of the same order).

109. The exercise of the office of a member of the administrative court service in principle excludes any other remunerated activity. This principle is set down in the 2011 Ethics Charter. The exceptions, subject to authorisation, mainly relate to legal expert or consultancy work, and to teaching and training activities. Certain accessory political activities are also regulated: for example, under the heading of "Political and voluntary activity", provision is made for a member of the administrative court who stands for an elective office to follow custom and inform in advance the President of the Conseil d'État or the president of the court, who have the capacity, in respect of major responsibilities within a political party or in the team of a candidate for national elective office, to invite the persons concerned to consider taking leave of absence. Restrictions are also imposed on the exercise of certain voluntary activities incompatible with the office held.

Gifts

110. None of the regulations examined by the GET deals with the subject of gifts and other advantages. In some cases, only the ethical rules recently introduced deal with the subject. Chapter B 24 of the Compendium of the Judiciary's Ethical Obligations deals with gifts: "Members of the judiciary shall not accept any gifts or donations liable to undermine or cast doubt upon their impartiality, in particular those offered at events linked to their professional life". Subsequently, in the chapter on probity and integrity (C 24), it is stated that "Members of the judiciary may not use their status to obtain any favours or advantages whatsoever for themselves, their acquaintances or their close circle of relations".

111. The GET particularly appreciates the approach of the 2011 Ethics Charter where members of the administrative court service are concerned. The acceptance of gifts is regulated more specifically, and the procedure relating to acceptable gifts is specified. It is, for example, prohibited for members of the administrative courts to request administrative distinctions for themselves, to accept for themselves or for a third party an advantage which may bring – or appear to bring – influence to bear or an undue advantage, or any gifts or donations in the exercise of their duties. Gifts of a value of less than €100 are nevertheless acceptable if made within the formal context of a visit or an exchange between courts or public authorities, although it is specified that it is preferable for these not to become personal property.

112. The GET nevertheless noted that the symbolic honours awarded in France – such as the *Ordre National du Mérite* and the *Ordre National de la Légion d'Honneur*, to name just the two most widespread among members of the national legal service – are for many beneficiaries socially important and prestigious. Nor is the advantage purely symbolic (their children have special access to certain educational institutions in the capital city; there is also an associated small financial allowance, but the French authorities explained that it cannot be attributed to judges and prosecutors). The GET points out that, in accordance with both the letter and the spirit of the Council of Europe instruments, any advantage, including promotion or an honorary distinction, is potentially sensitive and needs to be the subject of domestic regulation. As indicated in the chapter on members of parliament, the latter are not entitled in France to accept honorific distinctions. As for judges, international standards such as the Bangalore Principles (principle 4.16) refer to the need for cautiousness in this area. In France, the fact that a judge (or a prosecutor) accepts or is given such an official decoration, usually on a decision by the relevant ministry or the President of the Republic, has sometimes been criticised and debated in specific circumstances. The ethical rules already referred to regulate this aspect only imperfectly and only in respect of certain courts; it is clear that a new rule should therefore apply to the members of the highest possible number of courts. In fact, an attempt was made in 2011 to pass legislation prohibiting the award of certain honorary titles to members of the national legal service for the sake of

independence and the clear appearance of impartiality⁴³. The GET also wonders about the negative message potentially sent in some cases by the absence of any decoration. This question deserves reconsideration. **GRECO recommends that the criteria for the awarding of official honorary decorations and distinctions of judges be reviewed in order to reduce any perceived risks for their independence and impartiality.**

Financial interests

113. All members of the national legal service are entitled to hold financial interests of any kind. As stated in paragraph 103, the government tabled draft legislation on 24 July 2013 to improve the management of conflicts of interests affecting judges, introducing a) conflict of interests as a general ground for the replacement of the judge at his or her own request or at the request of a party to the proceedings; and b) a declaration of assets when a judge takes up and leaves office. The definition in the draft is extensive and takes account, in principle, of financial interests, and this is welcome.

Post-employment restrictions

114. As already indicated, a) former members of the national legal service may not work as a lawyer, notary, bailiff, commercial court registrar, court-appointed administrator or liquidator in the area of a court where they have ceased to practise for less than five years; and b) a member of the national legal service who temporarily suspends his or her professional activity (leave of absence) and wishes to work in the private sector has to inform the Minister of Justice, who may object to that activity for the reasons indicated (if "it conflicts with honour or probity", etc.). The CSM issues an opinion on the subject. In the GET's opinion, the situation is not always very clear in respect of former judges or others (members of administrative courts in particular) who offer their services to law firms where their experience and network of contacts (including within ministries, where they may have worked during a secondment), may be highly sought after. The work of lawyers and counsel has changed a great deal in recent years, and it is probably easy to circumvent the restrictions, some of which are severe (such as the prohibition on members of the national legal service practising as lawyers). This subject deserves the attention of the French authorities.

Contacts with third parties, confidential information

115. When taking office, all judges swear that they will "scrupulously preserve the confidentiality of deliberations". This rule also applies to trainee judges (*auditeurs de justice*) (in pursuance of the 1958 order) required to co-operate with them. According to the explanations provided by the French authorities, in the context of the disputes and cases with which members of the legal service deal, there is no reason for them to communicate informally with "third parties", since they are in contact only with those persons who are parties in a given case. At most, "third parties" may be invited to contact a lawyer. Very occasional exceptions may exist, for instance for prosecutors (communication with persons or institutions participating in the work of the justice system, general communication with the public – see Part V). The French authorities say that there are no specific rules on misuse of confidential information.

116. The Ethics Charter for Members of the Administrative Courts deals at length with issues relating to the confidentiality of deliberations, professional discretion, and so on, principles which supplement the official rules which already exist. The Compendium of the Judiciary's Ethical Obligations does also provide, under the chapter "discretion and reserve", for the need to safeguard the confidentiality of judicial debates and procedures

⁴³ <http://www.leparisien.fr/espace-premium/actu/les-magistrats-garderont-leurs-medailles-14-12-2011-1767497.php>

one is dealing with, and not to divulgate information they have acquired thereby, even in an anonymous or anecdotal manner.

Supervision and enforcement

Supervision

117. Overall supervision is exercised firstly by heads of courts (presidents, for instance) over the proper operation of their department. Furthermore, the persons in charge of courts of appeal have an administrative supervision role, including the power to inspect lower courts.

118. Where judges are concerned, there is a department within the Ministry of Justice which is responsible for general supervision of the operation of the courts: the Inspectorate-General of Judicial Services (IGSJ). Its role and responsibilities are precisely specified in Order n°2010-1668 of 29 December 2010 and it includes the permanent inspection of the various judicial institutions and courts of first and second instance. The IGSJ also evaluates the activity, the functioning and the performance of the courts, services and bodies subjected to its supervision including the performance of staff. It may formulate any observation and recommendations that it sees fit. Amongst its non-programmed duties, it conducts administrative investigations into courts' failings, but without the power to open such investigations of its own volition. It takes action only at the request of the Minister of Justice. Once a matter has been referred to it, the IGSJ is free to choose its own working method and enjoys complete independence to draw up its findings and conclusions. It may not refuse to open a procedure. Its investigations take place before any disciplinary proceedings. It reports on its inspections to the Minister of Justice. Except in cases of abuse or misuse of authority, the disciplinary body cannot appraise judges' judicial acts, in order to comply with the principle of the independence of the activity of court (decision of the CSM of 8 February 1981). Only for the past few years has the IGSJ audited the activities of certain courts, particularly the commercial courts, a fact which surprised the GET, given that the operation of those courts has been the subject of strong criticism for at least the past 15 years.

119. The general disciplinary system relating to judges is governed by the [Order of 22 December 1958](#), as amended, Chapter VII, Articles 43 to 66 of which state that: a) A disciplinary offence is "any failure by a member of the national legal service in terms of the duties of that status, honour, sensitivity or dignity". Furthermore, "It is a failure in terms of the duties of his or her status if a member of the national legal service seriously and deliberately breaks a procedural rule which constitutes an essential guarantee of the parties' rights, a violation established by a court decision which has become final". Finally, the following detail is added: "An offence shall be assessed, for a member of the prosecution service or of the central administrative authority of the Ministry of Justice, in the light of the obligations which derive from his or her hierarchical subordination"; b) disciplinary authority is exercised by the CSM in respect of judges, and by the Minister of Justice in respect of members of the prosecution service; c) there is a scale of sanctions (cf. below, under "Sanctions").

120. Disciplinary proceedings are taken by the CSM when it receives reports of disciplinary offences from the Minister of Justice, court presidents or principal state prosecutors. Disciplinary sanctions are imposed on judges by the competent section of the CSM, with the possibility of an appeal on points of law to the Conseil d'État. The competent section of the CSM issues opinions only on cases involving prosecutors, with any sanctions being imposed by the Minister of Justice (an appeal on grounds of abuse of authority is possible to the Conseil d'État). The proceedings comprise an inquiry, a report and a public hearing.

121. Subsequent to the constitutional reform of July 2008, members of the public may also complain to the CSM if they consider that a member of the national legal service has committed a disciplinary offence, and provision is made for admissibility conditions and for a complaints investigation procedure. Where a complaint is declared admissible, the Commission asks for comments and any useful material from the head of the court where the subject of the complaint works, then forwards the file to the competent section of the CSM.

122. Disciplinary proceedings before the section of the CSM responsible for cases against judges are not chaired by the President of the Republic or the Minister of Justice, but by the President of the Court of Cassation. The CSM may start proceedings against judges on matters referred by the Minister of Justice, a president of a court or higher court of appeal, or on a complaint from a member of the public. The procedure entails communication of the file to the judge concerned, the appointment of a rapporteur to carry out any inquiry needed, and the possible protective suspension of the judge concerned. When the inquiry has been completed, or if there is no need for an inquiry, the judge concerned is given a hearing, if necessary with the assistance of his or her lawyer. The deliberations take place in camera, and then the decision, for which reasons are given, is delivered in public. The sanction is decided by the majority of votes. The only appeal possible is to the Conseil d'État, which has decided that the disciplinary section of the CSM is an administrative court. According to the activity report of the CSM available at the time of the visit, its disciplinary section dealing with judges had delivered 13 decisions on the merits of cases in 2010 and three in 2011 (the section dealing with prosecutors had delivered one opinion on the merits of a case in 2010 and three in 2011).

123. Disciplinary proceedings against administrative court judges (like those for judges' career management) are the responsibility of a supreme council for administrative courts and administrative courts of appeal (*Conseil supérieur des tribunaux administratifs et cours administratives d'appel*), which is modelled on the CSM. Membership of the council is determined by the Code of Administrative Justice, and members of the government and the President of the Republic are not members. It is chaired by the Vice-President of the Conseil d'État. It is monitored by the inspectorate responsible for the administrative courts. The set-up is similar to the CSM, except that there is no involvement of the political authority.

124. The replies to the questionnaire indicated that breaches of the rules prohibiting or restricting certain activities could give rise to criminal and disciplinary proceedings taken via ordinary procedures (including those in disciplinary matters already seen above). On the other hand, the situation is not always clear in respect of the set of mechanisms studied in this chapter, intended to ensure the integrity of the judges of the various types of courts. Where professional ethics and gifts, for example, are concerned, the GET was unable to establish with certainty the extent to which the supervisory bodies could require compliance with the various standards and penalise non-compliance, particularly through disciplinary action. The Compendium of the Judiciary's Ethical Obligations is clearly regarded by those to whom the Group spoke as general guidance, not subject to sanctions. Some of those with whom the GET spoke argued that, in principle, the official general rules already covered the whole range of situations, and therefore the general mechanisms were applicable.

125. Where other mechanisms are concerned, their final adoption should be awaited. The draft legislation tabled by the government on 24 July 2013 to reinforce the ethical obligations of judges introduces various new provisions, including the setting up of an ad hoc committee to assess the variation in assets over the period between the taking up and leaving of office, which would, if it found changes for which it did not have satisfactory explanations, be able to send the file to the tax authorities. This would be chaired by an honorary judge. The GET is satisfied with this arrangement in the light of

the very low level of corruption perceived in the French justice system. That said, as these texts also require the judge to put an end to any occasional conflict of interest (and/or to withdraw from such cases), it is still uncertain whether a possible occasional conflict of interest could also be resolved if necessary through compulsion and the general disciplinary mechanisms.

126. The GET also notes that disciplinary procedures relating to judges involve an assortment of parties from different backgrounds, and this is likely to give rise to confusion and time wasting as procedures are duplicated, and comprises a risk of diverging opinions. The GET was told, for example, of a case in which the Minister of Justice had referred the matter simultaneously to the president of the court of appeal and the Inspectorate General of Judicial Services. The former had very speedily concluded that referral to the CSM was unnecessary. After several years of proceedings, the Minister of Justice had nevertheless decided to report the matter to the CSM, which ultimately concluded that no disciplinary offence had been committed. Some representatives of the CSM complained that they had no other means of investigation during disciplinary proceedings than an interview of the complainant and the judge. The GET considers that, in the light of disciplinary practice in recent years and of the risk of the mechanisms being used to bring undue pressure to bear on judges and prosecutors, 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 recommends 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.**

Sanctions

127. In addition to the warning which may be given outside the context of disciplinary action by court presidents, principal state prosecutors or the heads of the central authority, disciplinary sanctions include, starting with the least severe: a reprimand recorded on the file, transfer to a different post, removal from certain duties, prohibition of acting as sole judge, decrease in salary step, suspension from duties with full or partial loss of salary, downgrading, compulsory retirement, dismissal. These sanctions cannot be imposed in combination, with the exception of transfer to a different post, which may be combined with a number of them.

Enforcement and immunity

128. There is no specific criminal procedure for judges, who do not enjoy any immunities.

129. The criminal offences relating to corruption and trading in influence have not been amended since GRECO's [Third Evaluation Round report](#) of February 2009. As stated therein, there are in France offences of corruption and trading in influence specifically with reference to judicial personnel – Articles 434-9, 434-9-1 and 435-2 of the Criminal Code (the concept of “judicial personnel” encompassing “Judges, jurors and any other persons sitting on a judicial body”).

Statistics

130. According to the replies to the questionnaire, there were no disciplinary proceedings in the past three years for non-compliance with the rules on conflicts of interest, incompatibilities, confidentiality of information, gifts or other mechanisms dealt with in this chapter. The discussions held *in situ* suggested that the cases dealt with by

the courts for acts connected with forms of corruption remain very rare (less than a dozen cases known to date), and that the French justice system, at least where its courts are concerned, is known for its integrity. The GET notes on the other hand that there is a higher number of disciplinary cases relating to requirements in terms of probity – those relating to the courts are listed on the CSM website – which might not reflect the actual situation. According to the “National Integrity System” report published in 2011 by Transparency International France, based on numerous interviews with practitioners and specialists, “offences by members of the legal service usually result from a sequence of failings, and prosecution remains exceptional”.⁴⁴ The IGSJ, for its part, was unable during the discussions to supply conclusive information about its workload, the most frequent deficiencies, and so on. Its annual activity report contains little or no information about its inspection activities. The same is true of the other departments of the Ministry of Justice which have a general monitoring role. The GET would consider it appropriate for the heads of units and bodies responsible for disciplinary issues and questions of integrity to remain vigilant in this respect, and to do so for all categories of courts, especially those with a problematic reputation.

Advice, training and awareness

131. For initial, compulsory and in-service training, France’s Legal Service Training College deals with professional ethics from various angles: the oath, responsibility, the Compendium of Ethical Obligations, case-law and disciplinary procedures. It also covers the ethics of the legal professions, independence and impartiality. This initial theoretical training takes place over a period of 31 months (on a course relating to the chosen judicial role) and is common to all legal trainees, the aim being to develop a capacity to identify, accept and implement the ethical rules. The sessions which take place during in-service training (participation in which is on a voluntary basis) also include subjects connected with the combating of corruption. The sessions last between two and five days and are a recent innovation, but they are repeated every year (one session per year).

132. In the administrative courts, the code of professional ethics has introduced an ethical college which since 2011 has been responsible for providing information at any time to members of the administrative courts about the application of the principles of good practice.

133. For its part, the CSM is currently considering the setting up of a warning system, whereby any member of the legal service in doubt about the proper conduct of his or her duties could have a discussion with a unit which could offer advice. The GET is pleased to note that, where judges are concerned, the discussions on this subject did not end with the 2010 publication of the Compendium of Ethical Obligations.

134. The draft legislation tabled in parliament on 24 July 2013 on the subject of judges’ ethics is intended in particular to put in place benchmarks for ethical issues, something which, like the aforementioned initiative, is to be welcomed. The GET hopes that use will be able to be made thereof at any time (this is not entirely clear from the draft legislation). On the other hand, the discussions *in situ* confirmed that no specific measures have been taken a) to inform the public of the conduct expected of judges (and prosecutors), for example by making the ethics texts visible and accessible in courtrooms; or b) to explain the operation of the system introduced in 2008 for referral by members of the public to the CSM, and particularly the specific conditions laid down for such referrals (time limits, grounds for complaint, etc.) – although the system was effectively introduced in January 2011. Consequently, complaints have reached various parties other than the CSM, generally poorly worded or inadmissible. In the GET’s opinion, it would be worth carrying out more proactive informational activities.

⁴⁴ Page 75 of the report

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Brief overview of the public prosecution service

135. Prosecutors and the prosecution service form part of the national legal service (cf. Article 1 of the [Order of 22 December 1958](#), but they do not enjoy guarantees of independence and security of tenure. The prosecution service is not strictly speaking an autonomous institution. It is organised on a hierarchical basis. Each member of a prosecutor's office must obey his or her superior within that office or be liable to a disciplinary sanction. The prosecutors' offices at courts of first instance (headed by a state prosecutor) are subordinate to the principal state prosecutor's office (headed by a principal state prosecutor at each court of appeal), which is directly subordinate to the Minister of Justice. Principal state prosecutors are themselves subordinate to the Minister of Justice. One of the reasons generally given to explain this hierarchical subordination (with the Minister of Justice at the apex) is that, because of the principle of discretionary prosecution, only subordination to a politically responsible authority makes possible a criminal law policy which is consistent nationwide and confers legitimacy on each prosecutor's office.

136. In the GET's opinion, provided that it is not dependent on the Minister of Justice (a question examined below), the hierarchy within each prosecutor's office is not open to criticism if its reason is to guarantee unity of doctrine in dealing with procedures and to avoid the spending of a great deal of prosecutors' time on dealing with a case on the basis of an incorrect legal premise or, conversely, their failure to prosecute a case which should have been prosecuted. One speaker quite rightly summed up the situation by saying that "It is the principal state prosecutor's duty to wake up any prosecutor who is asleep".

Relations with political authority

137. A major reform, putting a final end to the giving of instructions in individual cases (hitherto, only positive instructions with a view to the starting of a prosecution were allowed) came with the passage of [Law No. 2013-669 of 25 July 2013 on the powers of the Minister of Justice and members of the prosecution service in respect of crime policy and the taking of public action](#). This confirmed the personal commitments in this respect made by the present Minister of Justice in a circular dated September 2012. Consequently, the Minister may now only issue general instructions (relating to crime policy and the consistency of public action in France).

138. It has also been decided that principal state prosecutors are in future to submit to the Minister an annual report on their general activities, so that he or she can report to parliament on the conduct of crime policy in general.

139. Those changes were also taken into account, to a certain extent, in the regulation of relations within the prosecutor's office. Principal state prosecutors continue to benefit from their right to issue instructions and the prohibition of the impeding of criminal action (former Article 30 of the Code of Criminal Procedure, CPP) vis-à-vis the individual prosecutors under their authority (Articles 36 and 37 of the CPP). This has to be regarded as a corollary to the aforementioned principle of discretionary prosecution, those instructions having to be given in writing and included in the file.

140. The GET notes that the possibility for the Minister of Justice to give instructions to the prosecution service, which derived from Article 30 of the CPP, has been the subject of much comment over many years. Withdrawal of this possibility was advocated for several years, particularly by the CSM (e.g. in its 2005 Activity report), and had been the subject of recommendations by GRECO as long ago as 2001 (one never fully implemented) and by the OECD. The lack of independence of the prosecution service also underlay a

decision of the European Court of Human Rights (*Moulin* case, of 23 November 2010). Several people explained to the GET that although this possibility of giving instructions had not been regularly used, its very existence helped to diminish the credibility of the prosecution service and the French justice system, which had a poor public image. Criticism had also been voiced about the lack of promptness sometimes shown by the prosecution service in respect of the opening of politically sensitive cases, and about its lack of interest in demanding that they be referred or in conducting prosecutions, reportedly a consequence of the hierarchical link between the prosecution service and the Minister of Justice. While, in recent years, there have been some convictions in sensitive cases, that was due to the intervention of "civil parties", who had referred the matter to an investigating judge (although the GET was told that complaints in which "civil parties" took part were few and far between in the corruption sphere). Finally, even if only positive instructions remained, the maintenance of this link with political authority could in practice lead to delaying tactics within the prosecution service (and, in occasional cases, sometimes also loyalty to the President of the Republic himself).

141. It was with satisfaction, therefore, that the GET learnt that Law No. 2013-669 of 25 July 2013 on the powers of the Minister of Justice and members of the prosecution service in respect of crime policy and the taking of public action had been passed in July 2013 (published on 26 July 2013), and that the power of the Minister of Justice to issue instructions has been completely withdrawn.⁴⁵ Amongst the legislative and constitutional amendments intended to strengthen the role and status of the prosecution service was also a reform of the CSM in terms of its membership and a harmonisation of the appointment method and disciplinary arrangements for prosecutors with those of judges. However, this reform was deferred after its examination by the Senate.

142. The GET was told by several persons that although the aforementioned reform had been adopted, the prosecution service would still be suspected of subordination to the executive, as manifested in many other ways: sensitive cases were monitored by the executive, "confidentiality" was given as the reason for not providing information to investigators, and pressure was created (whether or not deliberately) by the capacity to appoint prosecutors (even against the wishes of the CSM) and to sanction them in the event of any failure in their duties (prosecutors, unlike judges, have no guarantee of security of tenure). The concentration of these different powers gives the Minister of Justice an ascendancy over the prosecution service which is difficult to reconcile with the autonomy required by the sometimes exclusive or monopolistic task entrusted to prosecutors by the Code of Criminal Procedure (because of the slippage in the centre of gravity of the criminal investigation procedure from the investigating judge to the prosecutor since 2002/2004). Another question that arises is that of the resources of the prosecution service, and ultimately, as emphasised in the chapter of this report on members of parliament, the general feeling was expressed by various people that MPs convicted at first instance of misconduct tended to be acquitted on appeal (no official figures are available however). Whatever the reasons for this state of affairs – whether actual or perceived – may be, the situation calls for greater freedom for the prosecutor's office from political authority. Below, some priority lines of reform are identified, and these are measures widely advocated by persons from various backgrounds met on site.

Recruitment, careers and conditions of service

143. Since all are part of a single national legal service, prosecutors are recruited in the same way as judges (see Part IV), through competitive examination or on the basis of qualifications (Article 18-1 of the amended order of 1958), their initial training takes place at the ENM, etc. Application conditions are the same and, as members of the national legal service, they are part of the judiciary for an unlimited period, appointed by Presidential decree and members of the national civil service. They are required to swear

⁴⁵ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027751362>

the same oath before the court of appeal. As members of the judiciary, they are subject to the same monitoring of their capacities and morality as judges (including the vetting process).

144. The Judicial Service Commission (CSM) (which has a special section to deal with prosecutors) issues an advisory opinion on proposed appointments, in favour or against, extending, since 2008, to the appointment of principal state prosecutors, who are appointed in the Council of Ministers. Such opinions are not binding on the Minister of Justice. The current Minister of Justice, however, has publicly pledged to be guided by the opinions of the CSM in respect of all appointments to the prosecution service, including those of principal state prosecutors.

145. Pay and promotion arrangements for prosecutors are those of the national legal service (cf. Part IV), but with certain specific features: appointment decrees are issued by the President of the Republic on the basis of an advisory (and not a binding) opinion of the CSM where prosecutors and (since 2008) principal state prosecutors are concerned. The draft constitutional law tabled on 14 March 2013 provides that in future, the appointment of prosecutors shall be made upon a binding opinion of the CSM. The French authorities underline that there is currently a political consensus on this reform, which was approved in first reading by the two houses of parliament.

146. Prosecutors do not have the security of tenure enjoyed by judges. As the principle governing the prosecution service is that of indivisibility, each member represents the whole, and the members of the service are interchangeable. Provision is made for the rotation by the Order of 22 December 1958, as amended, which provides that the state prosecutor of a court (such as a TGI) cannot hold that office for more than seven consecutive years (Article 28-2).

147. In the opinion of the GET, the continuing difference between the method of appointment of judges and prosecutors does not really lend itself to providing sufficient guarantees of independence, or to absolving it from any criticism in the light of the French context described at the beginning of this chapter. The persons to whom the GET spoke highlighted the fact that too much authority is left to the Minister of Justice in the judge and prosecutor appointment process, and that there is a lack of transparency in respect of the filing for the highest posts in the prosecution service. The lack of transparency seems to have been resolved by the recent publication of the posts opened to competition at the top level, and the appointment method is about to be amended, as indicated earlier. These two improvements are welcome given the lack of independence of the prosecution service to which the European Court pointed in its judgement of 23 November 2010 (*Moulin v. France* case), echoing the recommendations already made by the CSM in 1998 (and reiterated in 2001, 2003-2004 and 2005). The CSM supports the full bringing into line of the appointment arrangements for prosecutors on that of judges (at least for principal state prosecutors at the Court of Cassation and courts of appeal, and for all state prosecutors), i.e. appointment on a proposal by the CSM, and – for other prosecutors – appointment on a proposal by the Minister, but with the binding opinion of the CSM. The GET shares these concerns. It considers that the increase in powers given to the prosecution service makes it an essential player in criminal procedure, with the sole authority to decide on the opening and extension of investigations. This vital role requires candidates to be selected on the basis of a procedure which is independent of the government and the civil service. While the commitment by the Minister of Justice to follow CSM opinions for all appointments to the prosecution service constitutes an important step, which the GET applauds, it remains necessary for it to be enshrined through an amendment of the law.

148. The CSM also considers that, as a corollary to the amendment of the arrangements for appointing prosecutors, the disciplinary procedure for prosecutors should be aligned with that applicable to judges, with sole authority to conduct an inquiry being vested in

the CSM section which deals with prosecutors. Other stakeholders and persons met *in situ* take the view that this would not be desirable, particularly with a view to a possible future clear separation between the careers of judges and prosecutors to take effect from their first assignment, which would bring the benefit of a better distinction between the two kinds of judicial functions and reduce the perception of a confusion of interests between prosecuting and the issuing of judicial rulings. The GET is not in a position to weigh up adequately the merits of either option, but given the efforts needed to restore the credibility of the prosecution service, reform of the disciplinary arrangements is at least worth considering. The French authorities underline that the French government has chosen the first approach since the draft constitutional law of 14 March 2013, which was mentioned earlier, foresees that the CSM will have the responsibility for the disciplinary supervision in respect of the prosecutors; there is also a political consensus on this matter with the recent adoption of the draft, in first reading, by both houses. In view of the considerations contained in the above paragraphs, **GRECO recommends 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).**

Case management and procedure

149. Prosecutors represent the interests of society and act on behalf of the state. As already indicated, French criminal procedure is based on the principle of discretionary prosecution, tempered by, for example, the fact that the judge retains a fundamental role and is not bound by the prosecutor's submissions (a principle which draws on the model of inquisitorial procedure, as opposed to the adversarial model). The prosecutor's function dovetails with that of the investigating judge, although referral to the latter is less and less frequent since the reforms of 2002/2004 (referral is mainly in respect of serious and complex offences, or where in-depth inquiries are necessary; referral remains mandatory for the most serious offences – those called "crimes").

150. Cases are always assigned within the prosecution service firstly on the basis of general responsibilities (geographical, material, etc.). Cases are then assigned to individual prosecutors by the state prosecutor or a Head of section to his or her deputies according to workload and to the specialisation or experience of each.

151. A prosecutor may decide in the light of a file a) that an offence has been committed, and begin the process of prosecution (if the suspect's identity and address are known, and if no provision of the law prevents the initiation of public action, one example being the expiry of the time limit); b) to take an alternative course of action to prosecution (...); c) to discontinue the proceedings. Among the reasons which may justify discontinuation are the compensation of the victim by the offender, a very low level of damage, rectification of an administrative situation. Discontinuation is an administrative decision which may be reviewed at any time until the time limit for prosecution has expired. Furthermore, an appeal against a discontinuation decision may be made to the principal state prosecutor by any person who reported the facts. This principle of discretionary prosecution can apply only at the stage at which prosecution is being started, as once it has begun, following referral to an investigating judge, for instance, the prosecutor can no longer halt it.

Reasonable time; transparency

152. Several systems exist to ensure that cases are dealt with within a reasonable time: a) the preliminary article in the Code of Criminal Procedure (CPP) states that "The accusation... should be brought to final judgement within a reasonable time"; b) the

Compendium of the Judiciary's Ethical Obligations, of 2010, makes many references to the duty to take care; c) obligation incumbent on police officers to report to the prosecutor within six months after the opening of a preliminary inquiry; d) a requirement for promptness derives from Article 220 of the CPP specifying that "The president of the investigating chamber sees to the proper operation of the investigating chambers within the area of jurisdiction of the court of appeal (and) takes action to ensure that proceedings do not suffer any undue delay".

153. Similarly, as stated in Part IV on judges, the public nature of proceedings is a fundamental principle of criminal procedure, one reaffirmed in the case-law of the Court of Cassation, Conseil d'État and Constitutional Council. This principle of public policy allows no exceptions, other than in the limited cases specified by the law (such as protection of the interests of a minor).

154. The GET notes that, in recent years, there have been controversies about the slow progress of cases in French courts, as in those of other countries, not fully accounted for in the statistics communicated to the GET.⁴⁶ This question needs to be correlated with that of resources. As the work done under the aegis of the Council of Europe has shown – particularly the 2012 report of the European Commission for the Efficiency of Justice (CEPEJ) – the resources allocated to the justice system are still at too low a level. That has a negative impact in particular on prosecutors' work. As a result, the number of cases dealt with by each prosecutor in France is by far the highest anywhere in Europe, to quote just one example.⁴⁷ The on-site discussions showed that there is a growing awareness of the problem and of the requirements for justice to be delivered promptly. Supervision of the functioning of the prosecution service was reformed in the summer of 2013, with annual activity reports being presented by the prosecuting authorities to the Ministry of Justice (and by the latter to parliament), and this will also serve the cause of promptness and that of overall transparency in the operation of the justice system.

155. At the same time, several people to whom the GET spoke emphasised the continuing increase in prosecutors' workload as a result of the 2002/2004 reforms (entailing fewer referrals to the investigating judge), of the increase in reported offences and of the greater complexity of certain cases. Many related administrative tasks have been added to that workload. Yet the number of prosecutors remains highly insufficient despite the overall increase in the last decade (between 2002 and 2013, the number of staff to the prosecutors' offices to the Regional courts – including prosecutors – has increased from 1 123 to 1 512 and the staffing of general prosecutors' offices has increased from 305 to 459). In addition to this, there are some doubts associated with the retirement of numerous prosecutors in the years ahead, that there might not be enough staff trained by the ENM to take their place. Some people expressed their frustration at feeling that urgent management of cases and the lack of resources assigned to investigations meant that they could not do all the work that was to be done, and said that they were under pressure from delays in the processing of procedures. Some expressed the fear that, notwithstanding widely acknowledged and applied integrity requirements, the combination of a need for speed and a lack of resources leads not only to errors, but also to failures to apply the principle of discretionary prosecution, with cases being discontinued too systematically, or priority being given to straightforward cases to the detriment of complex and sometimes sensitive cases, particularly in the political/financial sphere. This even gave rise to proposals for the introduction of mandatory prosecution (in place of the principle of discretionary prosecution), in order to restrict these risks. The GET also notes that the allocation of sufficient financial and human resources to enable the prosecution service to perform its

⁴⁶ In criminal cases, the average time which elapses between the offence and the decision (2009 figures) is 11.3 months in the regional criminal court and 33.9 months in the criminal courts dealing with more serious offences, but the GET noted cases which had lasted up to 11 or 12 years, relating to matters concerning corruption or secret political funding.

⁴⁷ http://www.coe.int/T/Dghl/cooperation/cepej/evaluation/2012/Rapport_fr.pdf

role in appropriate working conditions is, in the eyes of the Council of Europe, one of the guarantees of the independence of prosecution service activity (which is also an important subject in the context of this evaluation). It is clear to the GET that, although the budget of the Ministry of Justice rises slightly from year to year, a particular effort needs to be made where the prosecution service is concerned in order to reconcile the requirements of quality and promptness of justice: the prosecution service needs to be given greater human, financial and other resources to enable it to perform its tasks with both promptness and quality. These issues do not fall within the scope of the present evaluation round but they deserve nevertheless the urgent attention of the French authorities.

Ethical principles and rules of conduct

156. The Compendium of the Judiciary's Ethical Obligations, published on 10 June 2010 and quoted in Part IV on judges, also applies to prosecutors, with some adjustments because of the effects of the principle of hierarchical organisation.

Challenge or withdrawal

157. The general rules allowing a case to be moved to another court – particularly with a view to an outward appearance of impartiality – were described in Part IV. A particular characteristic of the status of prosecutors is that they can neither be challenged (in pursuance of Article 669 (second paragraph) of the CPP) nor be held responsible for their actions, since members of the prosecution service cannot be prosecuted or convicted in respect of what they have said or the decisions they have delivered in the course of their duties. However, the sole purpose of their non-liability is to protect the authority and unity of public action, so it is not applicable in the event of personal error. Draft legislation was tabled by the government in parliament on 24 July 2013 in order to introduce challenges and withdrawals in the event of conflicts of interest (also see the paragraphs below on conflicts of interest, declarations of assets, etc.). This is clearly a move in the right direction.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities; Restrictions applicable after prosecutors have left office

158. The rules already mentioned in relation to judges, including the incompatibility arrangements set out in the order of 22 December 1958, are applicable: some examples are the prohibition of the holding of another public office and the prohibition of any other professional or remunerated activity, unless authorised by the prosecutor's superiors, the incompatibility of the office of a member of the legal service with membership of various elected bodies, the prohibition of working as a lawyer, etc., in the area of a court where they have practised for fewer than five years, and so on. As already indicated, in the opinion of the GET these rules are strict and satisfactory, subject to a few reservations relating to the effectiveness of the system in some specific cases (referred to in Chapter IV).

Gifts

159. The situation is as already described with reference to judges: a) the Compendium of Ethical Obligations states that: "Members of the judiciary shall not accept any gifts or donations liable to undermine or cast doubt upon their impartiality, in particular those offered at events linked to their professional life", and that "Members of the judiciary may not use their status to obtain any favours or advantages whatsoever for themselves, their acquaintances or their close circle of relations"; b) as already stated, a former member of the national legal service may not work as a lawyer or in certain other legal

professions. The GET will not reiterate here the comments already made about these provisions in Chapter IV on judges.

Contacts with third parties, confidential information

160. Unlike judges, prosecutors are first and foremost subject to the rules of criminal procedure in this context, which protect the proper conduct of inquiries. Article 11 of the Code of Criminal Procedure, for instance, states that: "the inquiry and investigation proceedings are secret". This requirement applies not only to the prosecutor (and to the investigating judge), but also to anyone with a role in these phases of the procedure (police officers, registrars, interpreters, lawyers, and others). Subject to certain conditions, inquiry and investigation information may be passed to authorised persons and institutions for the purposes of the inquiry. Non-compliance is punishable by a one-year prison sentence and a fine of €15 000. The same article provides that the state prosecutor, on his or her own initiative or at the request of the investigating judge or of a party, may authorise the disclosure of general information about a case in order to avoid the risk of ill-founded rumour or speculation (for example in the context of communication with the public and the media). Furthermore, prosecutors remain subject to the general rules relating to members of the national legal service as a whole, and particularly the requirement for confidentiality derived from their oath.

161. The GET notes that the use (and possible misuse) of confidential information is an issue which has not been fully resolved. This highlights some peculiarities of the French justice system and practice. While the reform has achieved its aim of eliminating the giving of instructions by the Minister of Justice, it has to be said that it has not changed the hierarchical link placing the prosecution service under the authority of the Minister of Justice, or the obligation incumbent on principal state prosecutors to inform the Minister of Justice, at their own initiative or on request, of not only the progress of specific cases, but also the ongoing progress of inquiries in such cases. This also extends to the inquiries conducted by investigating judges, since through them the members of the prosecution service may keep themselves informed of the steps taken in the proceedings.

162. Some practitioners pointed out that this channel of information would have led on several occasions to abuse by political leaders, who have at the same time used or misused "national security" as an excuse for impeding inquiries (and sometimes forcing prosecution to be dropped) in sensitive cases or major corruption cases. Sometimes, "national security confidentiality" has been repeatedly and unexpectedly invoked on an ad hoc basis as an inquiry progresses. In the GET's view, the way national security confidentiality is regulated concerning classification and the declassification procedure raises numerous questions in its current form, such as to cast doubt on the independence of prosecutors and investigating judges. For one thing, the declassification of documents is ultimately left to the discretion of ministers, members of the executive whose interests sometimes diverge from the interests of justice, thereby potentially obstructing criminal investigations. The decision-making process involves an *Advisory committee on national security confidentiality* (CCSDN) but it renders only an opinion, which can be favourable or unfavourable and may not be followed by the executive (according to figures made available after the visit, a favourable opinion for full or partial disclosure was given in respect of 50 out of the 60 recent requests, and the executive has followed it in 100% of cases concerning the defence ministry but the figure is 93% if all ministries are considered together). In the GET's view since disclosures authorised can be partial only, a decision of declassification can leave obstacles in place in spite of appearances. For another thing, the extension of confidentiality to places, the list of which is not easily accessible, and the need for the prosecution service or an investigating judge to apply to the chair or deputy chair of the CCSDN, the only persons empowered to consult the documents concerned and to extract any information relevant to the investigation (although they are unfamiliar with the inquiry), constitute an additional obstacle. The absence of remedies and consequent lack of access to a court to challenge the minister's

assessment cause concern to the GET, more particularly so because it has been told that the list of protected places includes firms largely engaged in private activities (the GET was told, for instance, that the list might contain pharmaceutical, gas and oil firms).⁴⁸ The Constitutional Council itself considered, in November 2011, that certain aspects of national security confidentiality (the way places are designed as "classified") were unconstitutional because they were inconsistent with the right to a fair trial or the principle of the separation of powers. The consequences of this decision of 2011 still seemed unknown at the time of the visit and in any event, it does not sort out the various issues. The GET takes the view that, as a result of the recent abolition of instructions in individual cases, the ability of the minister to be informed in detail about individual cases needs to be better regulated in order to avoid suspicions of disguised orders. Current arrangements regarding "national security confidentiality", as already stated, remain a possible obstacle to the autonomy of prosecutors and independence of investigating judges. In view of these considerations, **GRECO recommends i) that the capacity of the Minister of Justice to ask or obtain information in a particular case be regulated precisely as to its purposes; ii) that a clear limit be set on "national security confidentiality", accompanied by a procedure enabling undue impediments to be avoided to inquiries relating to cases of national or international corruption.**

Conflicts of interests; declarations of assets, income, liabilities and interests

163. The rules relating to incompatibilities and to the accessory activities of criminal court judges, and the current drafts as described in Part IV, also apply to prosecutors. As already stated, the government tabled in parliament on 24 July two draft laws to reinforce the ethical obligations of members of the judiciary (who include prosecutors). These texts are intended to define conflicts of interest (and to introduce an interview on the subject of ethics), to put an end to such conflicts, amongst other things through withdrawal, and to introduce a requirement for prosecutors of certain levels in the hierarchy or overall responsibilities to submit a declaration of assets.

164. The aim of the second text is to a) include in Article L. 111-6 of the Code of Judicial Organisation a new ground for challenges making it possible to cover in addition, and more generally, the cases not specified in that article (particularly where a relative is concerned); b) amend Article L 111-7 of the Code of Judicial Organisation to include for judges (paragraph 1) and prosecutors (paragraph 2) the replacement of any member of the legal service who considers that a ground exists for a challenge, or whose conscience dictates that he or she should withdraw. The GET very much appreciates these developments, which compensate for certain shortcomings and take account of societal and economic changes. The GET again applauds this initiative, intended to apply to both judges and prosecutors. It rectifies a significant defect in respect of prosecutors, since it appears from the information conveyed by the French authorities that it has hitherto been impossible for prosecutors to be challenged.

Supervision and enforcement

165. The draft legislation tabled by the government on 24 July 2013 to reinforce the ethical obligations of members of the judiciary provides for the setting up of an ad hoc committee which will assess the variation in assets over the period between the taking up and leaving of office and, in the event that it finds changes for which it does not have satisfactory explanations, will be able to send the file to the tax authorities. This committee will be chaired by an honorary member of the judiciary.

⁴⁸ The GET is just as concerned by the fact that national security confidentiality can in no circumstances be lifted in response to a request from a foreign court. It considers that, at the very least, the interests of the foreign proceedings (especially if they relate to a serious offence such as corruption) should be weighed up against the need to protect national security confidentiality.

166. As stated in chapter IV on judges, most of the rules already described above relating to ethics or to the management of conflicts of interest are either very recent or still in the process of being introduced, and it is not always easy to determine to what extent the supervisory/monitoring mechanisms are/will be applied in every case. General arrangements are in place at various levels, however.

167. Firstly, the principle of hierarchical organisation of the prosecution service implies general supervision by a prosecutor's superior, and the work of each member of the national legal service is assessed every other year, and whenever promotion is applied for, by the head of his or her court. Secondly, principal state prosecutors at courts of appeal bear a general responsibility for the smooth running of the services under their authority, and the activity reports to be submitted to parliament in future should, if need be, instil responsibility into the heads of units where their general duty of supervision is concerned.

168. In respect of disciplinary authority, a warning may be given outside the framework of disciplinary action by principal state prosecutors to the prosecutors under their authority. Otherwise, disciplinary measures (reprimand, transfer to a different post, decrease in salary step, etc.) are the same as those referred to in Chapter IV. Disciplinary authority in respect of prosecutors is exercised by the Minister of Justice (and not the CSM). The section of the CSM which deals with prosecutors issues only opinions, and it is the Minister of Justice who has power to impose sanctions (an appeal on the ground of abuse of authority may be made to the Conseil d'État). The procedure is the same as for judges (inquiry, report, public hearing). Disciplinary action before the section of the CSM which deals with prosecutors, takes place with the principal state prosecutor at the Court of Cassation presiding. Cases are referred to the CSM by the Minister of Justice or by the principal state prosecutor at the court of appeal to which the prosecutor concerned is attached, or, as for judges, action is taken on the basis of a complaint by a member of the public, a possibility introduced in July 2008 and constituting a potentially effective safeguard. It should be noted that the situation is not the same as for the section which deals with judges, for Article 65 (eighth paragraph) of the Constitution does not describe the section which deals with prosecutors as a "disciplinary board": in practice, in this case, the CSM is a mere advisory body tasked with expressing an "opinion" and indicating its reasons, an opinion which, while it may be mandatory prior to any decision by the Minister of Justice, is not binding on the Minister (who may decide that the prosecutor concerned has done nothing wrong or who may, on the other hand, decide that a fault has been committed where the CSM sees none). When the Minister of Justice intends to impose a more severe penalty than that proposed by the CSM, he or she must refer the matter back to the CSM for a further opinion. The final decision being taken by the Minister of Justice, i.e. an administrative authority, it may be the subject of an appeal for abuse of authority to the Conseil d'État.

169. In all other respects, the prosecuting authorities, just as the judges and the courts, may be subject to monitoring by the Inspectorate General of Judicial Services, as it was mentioned earlier.

170. The GET notes that there are supervisory mechanisms at various levels. In view of the critical situation of the prosecution service vis-à-vis the government, the GET makes some recommendations about the disciplinary system applicable to prosecutors (cf. paragraph 148 above). As it was also pointed out, a draft constitutional law was tabled on 14 March 2013, which would give the CSM the disciplinary power in respect of prosecutors.

Enforcement and immunities

171. As already stated, there is no specific criminal procedure for members of the national legal service, who do not enjoy any immunities.

Sanctions

172. The sanctions applicable in pursuance of the order of 22 December 1958, as amended, Chapter VII, Articles 43 to 66, have already been quoted: a) a warning which may be given by principal state prosecutors (and by managers or heads within the central authority); b) otherwise: a reprimand recorded on the file, transfer to a different post, removal from certain duties, suspension from duties with full or partial loss of salary, downgrading, compulsory retirement, dismissal. The responsible section of the CSM issues opinions only on cases involving prosecutors, with any sanctions being imposed by the Minister of Justice (an appeal on grounds of abuse of authority is possible to the Conseil d'État).

173. There are no statistics for the past three years relating to cases concerning the aforementioned mechanisms. As indicated in Chapter IV, the CSM nevertheless publishes a recapitulation on line of all the cases decided to date, detailing whether the person concerned is a judge or a prosecutor. Several cases relating to shortcomings in terms of integrity are listed there.

Advice, training and awareness

174. The activities in terms of initial and in-service training to which Part IV refers also concern prosecutors, and the reader is referred back to that part.

VI. RECOMMENDATIONS AND FOLLOW-UP

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

Regarding members of parliament

- i. 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 (paragraph 27);**
- ii. that a body of rules of conduct/professional ethics applying directly to Senators be adopted, as is already the case for Members of the National Assembly (paragraph 32);**
- iii. that the system for dealing with conflicts of interests of members of the National Assembly and Senators be supplemented by rules and guidance on when there may be an individual obligation, depending on the case, to declare a potential conflict of interests or to abstain from participation in parliamentary activities (paragraph 35);**
- iv. 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) (paragraph 39);**
- v. that declarations of assets by Members of the National Assembly and Senators be made easily accessible to the public at large (paragraph 56);**
- vi. that the range of criminal-law measures be supplemented by internal disciplinary measures in the assemblies, in relation to possible breaches of the rules on the integrity of the members of the National Assembly and Senators (paragraph 64);**

Regarding judges

- vii. that a reform be carried out in respect of commercial courts and industrial tribunals with a view to strengthening the independence, impartiality and integrity of lay judges (paragraph 80);**
- viii. that the criteria for the awarding of official honorary decorations and distinctions of judges be reviewed in order to reduce any perceived risks for their independence and impartiality (paragraph 112);**
- ix. 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 (paragraph 126);**

Regarding prosecutors

- x. 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) (paragraph 148);

- xi. i) that the capacity of the Minister of Justice to ask or obtain information in a particular case be regulated precisely as to its purposes; ii) that a clear limit be set on “national security confidentiality”, accompanied by a procedure enabling undue impediments to be avoided to inquiries relating to cases of national or international corruption (paragraph 162).**

176. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of France to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2015. These measures will be assessed by GRECO through its specific compliance procedure.

177. GRECO invites the authorities of France to authorise, at their earliest convenience, the publication of this report.

About GRECO

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

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

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