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ANNEX 10

**ANNEX**

**FRANCE**

*to the*

**EU Anti-Corruption Report**

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## FRANCE

### 1. INTRODUCTION – MAIN FEATURES AND CONTEXT

#### *Anti-corruption framework*

**Strategic approach.** French national legislation covers a wide range of issues related to fighting corruption although there is no specific nationwide anti-corruption strategy. Issues related to corruption have been more prominent in recent years. In July 2012, following corruption allegations made during the presidential elections, the Jospin Committee was set up to prepare a reform on ethical standards in public life. To address what was described as a ‘crisis of trust’,<sup>1</sup> the Jospin Committee recommended a number of measures, including: limiting presidential immunity, strengthening the rules on financing of political parties and electoral campaigns, restricting multiple office-holding by politicians, and developing a strategy to prevent conflicts of interest. Building on those recommendations, a number of legislative proposals were submitted in 2013. The Government also proposed a comprehensive judicial reform, including of the prosecution service, but the discussion was suspended in mid-2013.<sup>2</sup>

**Legal framework.** France implemented a far-reaching legislative reform in 2007, following recommendations from the Council of Europe's Group of States against Corruption (GRECO) and from the Organisation for Economic Co-operation and Development (OECD). It included, a new anti-corruption law<sup>3</sup> composed of mostly criminal provisions. The law introduced seven new offences related to corruption, broadened the scope of previous offences, notably of trading in influence and of offences related to members of the judiciary, and also authorised the use of special investigative techniques in the investigation of corruption-related offences. While welcoming the reforms, the OECD, GRECO and United Nations recommended further amendments, including broadening the scope of trading in influence in connection with foreign public officials and members of foreign public assemblies, as well as extending prescription periods for bribery and trading in influence and reconsideration of rules regarding the jurisdiction.<sup>4</sup> More recent legislative reforms mark a new approach, they include laws recently adopted on conflicts of interest,<sup>5</sup> and provisions voted in November 2013 aimed at fighting financial crime in a more focussed manner.<sup>6</sup>

**Institutional framework.** The Central Service for Prevention of Corruption (SCPC),<sup>7</sup> established in 1993, analyses data on corruption in France and coordinates prevention

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1 Commission de rénovation et de déontologie de la vie publique: Pour un nouveau démocratique. (2012) p.3.  
<http://www.commission-rdvp.gouv.fr/>

2 <http://www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-constitutionnelle-portant-reforme-du-conseil-superieur-magistrature.html>

3 Loi no. 2007-1598 du 13 novembre 2007 relative à la lutte contre la corruption <http://www.textes.justice.gouv.fr/lois-et-ordonnances-10180/loi-relative-a-la-lutte-contre-la-corruption-13707.html>.

4 GRECO: Third Round Evaluation: Compliance Report on France: 'Incriminations' & Transparency of Party Funding', April 2011, p.6.; OECD Report: <http://www.oecd.org/daf/anti-bribery/Francephase3reportEN.pdf> and Review of implementation of the United Nations Convention against Corruption, Executive summary (France) adopted by the Implementation Review Group, Third session, Vienna, 18-22 June 2012. CAC/COSP/IRG/I/1/1/Add.3: <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1187226e.pdf>.

5 Loi organique et loi ordinaire du 11 octobre 2013 relatives à la transparence de la vie publique.

6 Loi 2013/1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière. JORF n°0284 du 7 décembre 2013 page 19941.

7 Loi n° 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques, dont les modalités d'application ont été fixées par le décret n° 93-232 du 22 février 1993.

policies.<sup>8</sup> Attached to the Minister of Justice and led by a magistrate, it presents the state of play on corruption, highlights selected issues, and provides recommendations in an annual activity report. Despite the valuable efforts of the SCPC, data on the scale of corruption networks and incidents is not collected systematically. Furthermore, many institutions do not have of structures available for the detection of corruption.<sup>9</sup> Over the years, there have been several plans to revise and expand its competences. The SCPC itself notes that its powers are no longer suitable to address the current need to prevent corruption, whether public or private, national or international.<sup>10</sup> The UNCAC report on France recommended exploring the possibility of citizens filing anonymous reports with the SCPC on suspicions of corruption, as well as allowing natural and legal persons to consult SCPC or similar services in case of suspicions.<sup>11</sup> The SCPC cannot investigate the allegations or remedy the injuries that the whistleblower may have been subject to.

### *Opinion polling*

**Perception surveys.** According to the 2013 Special Eurobarometer,<sup>12</sup> 68% of respondents in the general population think that corruption is widespread in France (EU average: 76%). Furthermore, 62% of them believe that the only way to succeed in business is to have political connections (EU average: 56%), while 58% of the respondents consider that giving and taking of bribes and abuse of power for personal gain are widespread among politicians (EU average: 56%).

**Experience of corruption** According to the 2013 Special Eurobarometer, only 6% of French respondents felt personally affected by corruption in their daily lives (EU average: 26%), and 2% reported that they have been asked or expected to pay a bribe (EU average: 4%).<sup>13</sup>

**Business surveys.** 73% of French managers surveyed<sup>14</sup> and 75% of the respondents in the general population<sup>15</sup> believed that favouritism and corruption hamper business competition in France (EU average: 69%). 59% of French businesses (EU average: 43%) state that corruption is a problem for their company when doing business.<sup>16</sup> According to the World Economic Forum's Global Competitiveness Report 2013-14, France is ranked the 23<sup>rd</sup> most competitive economy out of 152 countries.<sup>17</sup>

### *Background issues*

**Private sector.** France has correctly transposed the provisions of the Framework Decision 2003/568/JHA on the definition of active and passive corruption in the private sector, as well

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8 <http://www.archives-judiciaires.justice.gouv.fr/index.php?rubrique=10774&ssrubrique=10832>.

9 See the 2011 report: "Rapport du Service central de prévention de la corruption" page 17.- original in French: <http://www.justice.gouv.fr/publications-10047/autres-rapports-dactivite-10287/rapport-du-service-central-de-prevention-de-la-corruption-2011-24367.html>.

10 [See the report of the SCPC \(2011\), see these points on page 9-10.](#)

11 Review of implementation of the United Nations Convention against Corruption, Executive summary (France) adopted by the Implementation Review Group, Third session, Vienna, 18-22 June 2012. CAC/COSP/IRG/I/1/1/Add.3: <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1187226e.pdf>.

12 2013 Special Eurobarometer 397.

13 2013 Special Eurobarometer 397.

14 2013 Eurobarometer o 374.

15 2013 Special Eurobarometer 397.

16 2013 Flash Eurobarometer 374.

17 [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf).

as on the penalties applicable to natural and legal persons.<sup>18</sup> In relation to the liability of legal persons, the legislation provides for both administrative and criminal liability for corruption-related offences. The penalties applicable to legal persons range from fines to disqualification from the activities in connection with which the offence was committed. The maximum fine for natural as well as for legal persons has been raised to EUR 1 million.<sup>19</sup> Previously, the UNCAC review in 2012 had concluded that the level of fines imposed on legal persons in practice remained low, and recommended reviewing the maximum level of fines.<sup>20</sup>

**Whistleblowing.** The anti-corruption law of 2007 introduced a provision in the Labour Code regarding protection of private-sector employees and of contractual staff within the public sector who report corruption in good faith.<sup>21</sup> If an employer imposes a disciplinary sanction, it must be demonstrated that the sanction is not linked to the whistleblowing. However, there is no specific provision to protect whistleblowers within the public service, nor on the practical implementation of the protection provided in the labour code. In its 2011 annual report, SCPC called for specific legislative and practical measures.<sup>22</sup> The act on the transparency of public life has recently introduced a ban on dismissing whistleblowers in the public administration.<sup>23</sup>

**Transparency of lobbying** is not expressly regulated by national law; there is no mandatory registration or obligation of public servants to report contacts with lobbyists. Nevertheless, the French Parliament adopted lobbying rules in 2009 that provide for voluntary inscription in a public register. The Senate put in place a similar measure. By the end of 2013, around 250 lobbyists were registered on the Parliament list<sup>24</sup> and just above 100 on the Senate list,<sup>25</sup> though this does not reflect the real extent of lobbying activities in France.

## 2. ISSUES IN FOCUS

### *Public procurement*

In 2011, public works, goods and services in France accounted for 18.5% of the GDP.<sup>26</sup> The value of calls for tender published in the Official Journal as a percentage of total expenditure on public works, goods and services was 18.3% in 2010.<sup>27</sup>

According to the 2013 Eurobarometer business survey on corruption,<sup>28</sup> 50% of respondents consider that corruption is widespread in public procurement managed by national authorities and 51% consider it widespread in public procurements managed by local authorities. In

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18 COM(2011) 309 final, Second Implementation report of FD 2003/568/JHA of 6 June 2011:

[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report\\_corruption\\_private\\_sector\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report_corruption_private_sector_en.pdf).

19 Loi 2013/1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière. JORF n°0284 du 7 décembre 2013.

20 Executive summary (France) adopted by the Implementation Review Group, Third session, Vienna, 18-22 June 2012. CAC/COSP/IRG/I/1/1/Add.3: <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1187226e.pdf>.

21 Article L.1161-1 of the Labour Code.

22 <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000499/0000.pdf>, p. 163.

23 “Dispositive d’alerte éthique” Loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique, Article 25, e <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056315>

24 ASSEMBLEE NATIONALE (2012) *Public Register of Lobbyists* <http://www.assemblee-nationale.fr/representants-interets/liste.asp>.

25 Senat: *Public Register of Lobbyists*. (2012) Available from: [http://www.senat.fr/role/groupes\\_interet.html](http://www.senat.fr/role/groupes_interet.html).

26 These percentages ranged from 17.7% in 2007 to 18.9% in 2010. [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/public-procurement-indicators-2011\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/public-procurement-indicators-2011_en.pdf)

27 [http://ec.europa.eu/internal\\_market/publicprocurement/docs/indicators2010\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/indicators2010_en.pdf).

28 2013 Special Eurobarometer 397.

particular, French respondents considered that the following practices were widespread in public procurement procedures: collusive bidding (55%) (EU average: 52%); conflicts of interests in the evaluation of the bids (53%) (EU average: 54%); unclear selection or evaluation criteria (50%) (EU average: 51%); abuse of negotiated procedures (49%) (EU average: 47%); specifications tailor-made for particular companies (47%) (EU average: 57%); abuse of emergency grounds to avoid competitive procedures (46%) (EU average: 46%); involvement of bidders in the design of the specifications (41%) (EU average: 48%); and amendments of contractual terms after conclusion of contract (41%) (EU average: 44%). The survey results, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerabilities to corruption in public procurement procedures. They indicate that the risk factors associated with public procurement mostly concern trading in influence and conflicts of interest.

Since 1 January 2012, contracting authorities have been required to accept electronic bids and applications for all contracts of EUR 90 000 or more, the use of e-procurement being an important prevention tool to reduce the risks of corruption and help further improve control mechanisms.<sup>29</sup> Furthermore, the Criminal Code includes a specific provision criminalising breaches of public procurement rules, known as ‘*délit de favoritisme*’.<sup>30</sup> Based on the jurisprudence, a breach of public procurement rules that cannot be qualified as corruption may still be punished as a ‘*délit de favoritisme*’.<sup>31</sup> However, the SCPC noted that between 2007 and 2010, no one served a prison sentence on the basis of this provision; there were 25 convictions that resulted in a suspended prison sentence and 20 cases in which fines were applied. The fines ranged from EUR 2 333 to 5 333.<sup>32</sup>

Guidance on how to apply this legislation is already in place. In late 2009, the Ministry of Economy and Finance published a Guide of Good Practices of the Public Procurement Code.<sup>33</sup> In 2012, an inter-ministerial Circular on the Guide of Good Practices was published,<sup>34</sup> which explained the scope of the legislation, the preparation and implementation of the procedure, the execution of public procurement and the arrangements applicable to contracting authorities.

The SCPC has however identified particular corruption risks in public procurement processes carried out at local level, and drawn attention to a number of cases in which senior officials, including presidents of local and regional administrations, have been convicted of corruption in this context.<sup>35</sup> On the preventive side, control mechanisms for local level procurement are not yet sufficiently strong and consistent countrywide and should be improved.

### ***Conflicts of interest and asset disclosure***

In its 2010 and 2011 annual reports, the SCPC analysed all aspects related to conflicts of interest, and concluded that the possibility of holding multiple mandates is one of the main factors conducive to corruption.<sup>36</sup> In 2012, the Jospin Committee highlighted the need to

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29 Annual Public Procurement Implementation Review 2012, SWD(2012) 342 final:

[http://ec.europa.eu/internal\\_market/publicprocurement/docs/implementation/20121011-staff-working-document\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/implementation/20121011-staff-working-document_en.pdf).

30 For conflicts of interests and corruption: Articles 432-11 to 13; 433-1 of the French Penal code; for favouritism: Articles 432-14.

31 Code pénal Article 432-14.

32 <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000499/0000.pdf>.

33 <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021570204>, Circulaire du 29 décembre 2009 relative au Guide de bonnes pratiques en matière de marchés publics .

34 <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025364925&fastPos=1&fastReqId=997275869&categorieLien=id&oldAction=rechTexte>.

35 <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000499/0000.pdf> .

36 <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000499/0000.pdf>, page 77.

address conflicts of interest more vigorously through a comprehensive strategy.<sup>37</sup> Currently, between 70-80% of elected parliamentary officials hold at least one other office, a practice in line with French law.<sup>38</sup>

It is a criminal offence for public officials – including elected officials both at central and local levels – to take any illegal interest in an activity that they manage or supervise.<sup>39</sup> According to SCPC data, in 2009, defendants were found guilty in 42 cases; while in 2010, at least 28 (data was only partially available at the time of the SCPC report). Based on the partially available data from 2010, 13 convictions led to a suspended imprisonment sentence and nine to fines of EUR 2 167-5 400.<sup>40</sup> Revolving door practices are criminalized to some extent, as public officials must respect a three-year cooling-off period during which they cannot join a private company with which they concluded contracts or which was supervised by them while in the public position.<sup>41</sup> Convictions on such charges are rare; according to the SCPC, there was only one case in 2009.<sup>42</sup> France also criminalised ‘illicit enrichment’ under certain circumstances: this means accumulating wealth or sustaining a lifestyle without being able to justify its origins, and at the same time being in habitual relations with a person who commits serious criminal offences. This offence is punishable by three years of imprisonment and a EUR 75 000 fine.<sup>43</sup> Since 1988, 12 cases of illicit enrichment have been submitted to the public prosecutor, and all were dismissed.<sup>44</sup>

The National Assembly adopted in mid-September 2013 a legislative package on conflicts of interest.<sup>45</sup> The National Assembly also adopted two laws against holding multiple offices (“*non-cumul des mandats*”).<sup>46</sup> Furthermore, the Minister for the Public Administration has announced a draft law on the duties of public officials. This law aims in particular at better control of revolving door practices.<sup>47</sup>

The system of declarations of interests and assets is currently undergoing a major reform. France has an asset disclosure system covering, among others, candidates for the office of President of the Republic, members of government, the Senate, and the National Assembly, France’s Members of the European Parliament, Presidents of Regional Councils, Presidents of General Councils, other elected officials of local authorities, in particular those with a special status, and more recently, heads of public enterprises. Under the new legislation, by 1 February 2014, elected officials have to submit both declarations.<sup>48</sup> However, these declarations do not include data about assets held by their household or family members.<sup>49</sup> A reform introduced in 2011<sup>50</sup> made the submission of false asset declarations an offence. In its

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37 "Notre pays doit, pour toutes ces raisons, rompre avec sa vieille habitude du cumul des mandats." "Il est nécessaire de mettre en œuvre une stratégie globale de prévention des conflits d'intérêts, afin de garantir un exercice exemplaire des responsabilités publiques et de renforcer la confiance des citoyens dans leurs institutions." Commission de rénovation et de déontologie de la vie publique: Pour un nouveau démocratique. 2012 p. 54. et seq.; and p. 122. See also Proposition no. 15, propositions 20 et seq. <http://www.commission-rdvp.gouv.fr/>.

38 For the exact figures see: Commission de rénovation et de déontologie de la vie publique: Pour un nouveau démocratique. 2012 p.58. <http://www.commission-rdvp.gouv.fr/>

39 Article 432-12 of the Criminal Code.

40 <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000499/0000.pdf> , p.33.

41 Article 423-13 of the Criminal Code.

42 <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000499/0000.pdf>, p. 34

43 Article 321-6. of the Criminal Code, introduced by Law No. 2006-64 of 23 January 2006.

44 CTFVP (2012) 15ème Rapport annuel, op. cit., p. 6.

45 Loi organique et loi ordinaire du 11 octobre 2013 relatives à la transparence de la vie publique

46 [http://www.assemblee-nationale.fr/14/dossiers/non-cumul\\_executif\\_local\\_depute\\_senateur.asp#non-cumul\\_executif\\_local\\_depute\\_europeen](http://www.assemblee-nationale.fr/14/dossiers/non-cumul_executif_local_depute_senateur.asp#non-cumul_executif_local_depute_europeen).

47 Projet de loi relatif à la déontologie et aux droits et obligations des fonctionnaires Ministère de la fonction publique.

[http://www.fonction-publique.gouv.fr/files/files/statut\\_et\\_remunerations/statut\\_general/pdf/deontologie-projet-de-loi.pdf](http://www.fonction-publique.gouv.fr/files/files/statut_et_remunerations/statut_general/pdf/deontologie-projet-de-loi.pdf)

48 Loi n° 2013-907 and loi organique n° 2013-906 du 11 octobre 2013 relative à la transparence de la vie publique.

49 Décision n° 2013-676 DC du 9 octobre 2013.

50 Law No. 2011-410 of 14 April 2011:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023877019&dateTexte=&categorieLien=id> and

latest activity report, the Commission for Financial Transparency in Politics (CTFVP) called for the reinforcement of its investigative powers, for example by imposing financial sanctions for a refusal to swiftly disclose tax records.<sup>51</sup> Under the 2013 Act on Transparency in Public Life, the CTFVP has been replaced by an independent body responsible for monitoring declarations, the '*Haute autorité pour la transparence de la vie publique*'.<sup>52</sup>

### ***Foreign bribery***

While the French authorities have a track record of investigating into high-profile cases in France, there is less evidence of fighting corruption in international business transactions. The SCPC and the OECD Working Group on Bribery called for increased efforts to prevent corruption in international business transactions made by private and public companies.<sup>53</sup>

The OECD has voiced its concerns about prosecuting international corruption offences, and highlighted that, in 2000-2012, only 33 investigations were launched, a number which is “low in relation to the size of the French economy and the exposure of French companies to the risk of transnational bribery”. The OECD also noted that the courts had ruled on a “very low number of convictions for bribery of foreign public officials”, namely five, of which one is currently being appealed.<sup>54</sup> Furthermore, the OECD noted that penalties did not appear to be effective, proportionate or dissuasive. For instance, the cases in which natural persons were convicted, suspended prison sentences and fines of at most EUR 10 000 were imposed.<sup>55</sup> However, a number of foreign bribery investigations have made progress recently: a case on the UN’s Oil-for-Food programme in Iraq went to court, and in another case, pre-trial investigations reached a new stage concerning allegations of bribery related to defence contracts.<sup>56</sup>

The OECD identified a number of potential underlying reasons for the shortcomings. For instance, France has jurisdiction on corruption offences only if either the offender or the victim is a French national. Additionally, the act must constitute an offence both in France and in the country where it was committed. The OECD sees the requirement of dual criminality as a substantial obstacle to prosecution.<sup>57</sup> In terms of substantive criminal law, OECD considered that the definition of a ‘foreign public official’ is too narrow, which could be remedied for instance by extending the offence of trading in influence. The OECD also

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Law No. 2011-412 of 14 April 2011 on simplifying the provision of the Electoral Code and financial transparency in politics:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023877131&dateTexte=&categorieLien=id>

51 Commission pour la transparence financière de la vie politique; 15ème Rapport annuel, JO of 25 January 2012, p. 11:

[http://www.commission-transparence.fr/rapports/15iemeRapport\\_joe\\_20120125.pdf](http://www.commission-transparence.fr/rapports/15iemeRapport_joe_20120125.pdf)

52 Loi organique et loi ordinaire du 11 octobre 2013 relatives à la transparence de la vie publique

53 Phase 3 report on implementing the OECD Anti- Corruption Convention on France, October 2012., Recommendations and follow up on France (2012), para 183.: "However, the Working Group continues to be concerned by the very low number of convictions in France for bribery of foreign public officials since the entry into force of the offence more than twelve years ago – a total of five of which just one, under appeal, holds a legal person liable. In view of the very important role its companies play in the international economy, France appears particularly exposed to the risk of bribery of foreign public officials. The Working Group's concern is all the more acute insofar as, despite foreign judgments involving certain French companies, France does not seem to have pursued criminal action in such cases as vigorously as expected."

54 Phase 3 report on implementing the OECD Anti- Corruption Convention on France, October 2012., Recommendations and follow up on France (2012).

55 Phase 3 report on implementing the OECD Anti- Corruption Convention on France, October 2012., para 10. The case involving the legal person is subject to appeal, therefore neither the conviction nor the level of sanctions are final.

56 Transparency International's report on the enforcement of the OECD Anti-Bribery Convention

[http://www.transparency.org/whatwedo/pub/exporting\\_corruption\\_country\\_enforcement\\_of\\_the\\_oecd\\_anti\\_bribery\\_conventio](http://www.transparency.org/whatwedo/pub/exporting_corruption_country_enforcement_of_the_oecd_anti_bribery_conventio).

57 Phase 3 report on implementing the OECD Anti- Corruption Convention on France, October 2012., Recommendations and follow up on France (2012).

found that the criminal liability of legal persons may be circumvented by using intermediaries (including related legal persons). Finally, it pointed to a number of difficulties encountered by the prosecution in cases concerning the defence sector due to limited access to classified information.

### ***Prosecution of corruption***

The National Integrity System assessment of Transparency International on France notes that, in general, law-enforcement authorities are well-trained, and the level of integrity is fairly high.<sup>58</sup> There are, however, isolated corruption cases involving highly ranked police officers. Efforts to centralise knowledge and coordinate action against corruption led to the creation of the Central Brigade for the Fight against Corruption (BCLC) in 2004.<sup>59</sup> Its staff includes people from the national police and gendarmerie, as well as from the Ministry of Economy. This facilitates sharing of experience and technical knowledge, and makes it easier to access the databases of the different authorities. Research suggests that some regions face particular challenges with respect to corruption and organised crime, and the efforts of the local authorities have gained support of the Minister of Justice.<sup>60</sup>

Recent years saw high-level cases, investigations and prosecutions into allegations of corrupt practices, illegal party funding and favouritism.<sup>61</sup> The existence of such investigations is a sign of efforts to detect, prosecute and adjudicate cases even when high-level decision-makers are involved. This is at least partly due to initiatives such as the BCLC as well as to the French system of independent investigative judges. Furthermore, mechanisms and structures exist to ensure sufficient specialisation of the prosecution and of the judiciary to cover corruption cases.

#### ***Good practice - JIRS – 'juridictions interrégionales spécialisées'***

*The eight inter-regional specialised courts (JIRS), located in Paris, Lyon, Marseille, Lille, Rennes, Bordeaux, Nancy and Fort de France, consist of prosecutors and investigating judges. They specialise in organised and financial crime, but also in complex cases that require the use of specific expertise. The JIRS are responsible for the investigation, prosecution, preliminary inquiry and judgment of the most complex cases, and have access to innovative investigative techniques such as infiltration, wiretapping, and the use of joint investigation teams from several countries. Judges are supported by specialised assistants in technical matters. They come both from the private (accountancy experts, etc.) and the public sector (tax inspectors, customs officers, officials from the Bank of France, etc.).*

In 2013, the National Assembly adopted an act setting up a specialised financial prosecutor service with jurisdiction at national level in corruption and major tax fraud cases.<sup>62</sup> According to this act, the specialised national financial prosecutor is appointed for seven years, and will work under the coordination of the Prosecutor General.

58 [http://issuu.com/transparencyinternational/docs/2011\\_nisfrance\\_en?e=2496456/3025518](http://issuu.com/transparencyinternational/docs/2011_nisfrance_en?e=2496456/3025518).

59 A pending reform would integrate the Brigade into the future "Office central de lutte contre la corruption et la fraude fiscale". See "Projet de loi relatif à la lutte contre la fraude fiscale et la grande délinquance économique et financière".

60 Center for the Study of Democracy: Examining the links between organised crime and corruption. Commissioned by the Directorate General Justice, Freedom, and Security (2010). Motivated by the increase in intensity of organised crime, the Minister of Justice announced on 26 November 2012 a new global criminal policy for Corsica, including measures against economic and financial crime.

61 As an example, three successive French presidents had to face investigative measures related to allegations of corruption. One former President was convicted in first instance on corruption charges and agreed to pay compensation.

62 Loi 2013/1117 du 6 décembre 2013 relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière. JORF n°0284 du 7 décembre 2013 page 19941.



The operational independence and capacity of French prosecution services has been analysed in detail by different anti-corruption monitoring institutions. As pointed out by the UNCAC review, prosecutors have discretionary powers and are placed, through their hierarchical position, under the Minister of Justice. The UNCAC review recommended guaranteeing their independence and analysing the implementation of the principle of discretionary prosecution in order to avoid any possibility of political interference in decisions taken by State Prosecutors.<sup>63</sup> Similarly, the OECD called for additional guarantees to safeguard the impartiality of prosecutors.<sup>64</sup> In response to these recommendations the criminal procedure code was amended in July 2013 to clearly state that the Minister of Justice cannot give instructions to prosecutors in individual cases.<sup>65</sup>

A public study released by the National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'homme – CNCDH*), recommended a number of measures to further protect the independence of state prosecutors and to enhance the Superior Judicial Council (CSM).<sup>66</sup> On 13 March 2013, the Government tabled a draft constitutional law aimed at strengthening the independence and authority of the CSM, aligning nomination and disciplinary procedures of state prosecutors to that of judges.<sup>67</sup>

French institutions dealing with corruption cases have faced important cuts in their budgets and human resources. For example, despite ongoing investigations into major corruption cases, the financial sections of the Paris Economic and Financial Unit (*'pôle financier'*) have lost one third of their magistrates.<sup>68</sup> In 2012, the OECD called upon France to provide adequate resources for investigating and prosecuting corruption cases.<sup>69</sup> Additional resources have already been secured for the police and the JIRS located in Marseille.<sup>70</sup>

### *Financing of political parties*

France has a mixed public-private system for financing political parties and electoral campaigns. Rules on party and electoral campaign funding<sup>71</sup> were put in place in 1988, and were subsequently amended in 1990 and 1995,<sup>72</sup> partially as a response to a number of cases in relation to financing of electoral campaigns that emerged at the time.<sup>73</sup> As pointed out by GRECO, this legislation establishes five main principles: first, that holders of certain posts or elected offices are required to file a statement of their assets, secondly, a limitation of campaign spending for candidates in legislative and presidential elections, thirdly, an upper

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63 UNCAC Implementation Review (2011) Résumé analytique : rapport de la France. Vienna : UN, p. 5.  
<http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1186620f.pdf> .

64 Phase 3 report on implementing the OECD Anti- Corruption Convention on France, October 2012, p. 5.

65 Loi no 2013-669 du 25 juillet 2013 relative aux attributions du garde des sceaux et des magistrats du ministère public en matière de politique pénale et de mise en oeuvre de l'action publique.

66 CNCDH (2013), Avis sur l'indépendance de la justice, JORF n°0176 of 31 July 2013 [WWW] Legifrance.

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027778844&dateTexte=&categorieLien=id>.

67 <http://www.legifrance.gouv.fr/affichLoiPreparation.do?idDocument=JORFDOLE000027174144&type=general>

68 Association Française des magistrats instructeurs (AFMI) (2011) Les enquêtes économiques et financières sont en danger à Paris: [http://www.afmi.asso.fr/com\\_detail.php?num=43](http://www.afmi.asso.fr/com_detail.php?num=43).

69 OECD (2012) Phase 3 Report on Implementing the OECD Anti-Bribery Convention in France, p. 43.

70 Réunion de ministres sur l'agglomération marseillaise. Relevé de conclusions 6th September 2012 [http://www.gouvernement.fr/sites/default/files/dossier\\_de\\_presses/09.06\\_releve\\_de\\_conclusions.pdf](http://www.gouvernement.fr/sites/default/files/dossier_de_presses/09.06_releve_de_conclusions.pdf). Réunion du 22 octobre 2012 sur la lutte contre la criminalité en Corse. Relevé de conclusions , 22 October 2012 [http://www.gouvernement.fr/sites/default/files/dossier\\_de\\_presses/10.22\\_releve\\_de\\_conclusions\\_-\\_reunion\\_sur\\_la\\_lutte\\_contre\\_la\\_criminalite\\_en\\_corse\\_-\\_releve\\_de\\_conclusions.pdf](http://www.gouvernement.fr/sites/default/files/dossier_de_presses/10.22_releve_de_conclusions_-_reunion_sur_la_lutte_contre_la_criminalite_en_corse_-_releve_de_conclusions.pdf)

71 Law No. 88-226 and Law No. 88-227 of 11 March 1988:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069060&dateTexte=20110106>

72 Law No. 90-55 of 15 January 1990 and Law No. 95-65 of 19 January 1995.

73 GRECO (2009) Third Evaluation Round. Evaluation Report on France Transparency of Party Funding (Theme II). Strasbourg: Council of Europe, 19th February, 36 p:  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282008%295\\_France\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282008%295_France_Two_EN.pdf).

limit on donations to candidates and parties, fourthly, financial participation by the state via the funding of parties and the reimbursement of campaign expenses, subject to accounting supervision, and finally, the sanctioning of violations. The control of party financing lies with the National Commission for Campaign Accounts and Political Funding (CNCCFP).

The current legal framework on elections and financial transparency in politics was introduced in 2011, following some of GRECO's recommendations.<sup>74</sup> The procedures governing the financing of electoral campaigns were simplified, and the new legislation brought senatorial elections within the scope of the rules. The new legal framework clarified the role of accountants responsible for electoral campaign accounts, as well as the date of submission of electoral campaign accounts. Also, CNCCFP was given the power, under the supervision of a judge, to reduce a candidate's state reimbursement in case of irregularities below the threshold for the dismissal of the entire electoral campaign account. Recently adopted legislation has moreover reduced the maximum limit for personal donations to parties to EUR 7 500 (for all parties combined) per year. CNCCFP will receive every year a list of those persons who donated at least EUR 3 000 for a political party.<sup>75</sup>

The current legal framework still appears insufficient on certain points. GRECO's 2011 compliance report highlighted the need to address its recommendations on the activities of third parties, the transparency of political parties' financial information in election campaigns, the role of party agents and the rules governing party members' and elected representatives' subscriptions.<sup>76</sup>

The French authorities have recognized that the capacity of CNCCFP to effectively supervise party and campaign financing is not yet sufficient.<sup>77</sup> GRECO's 2011 compliance report also concluded that CNCCFP had few legal resources and limited access to documentation on parties' accounts. According to GRECO, the CNCCFP *'does not review parties' expenses, cannot demand the submission of certain documents and does not have the authority to verify supporting documents or conduct on-site checks, and cannot call on the assistance of the judicial investigation services if it has any serious doubts.'*<sup>78</sup> Two years later, in 2013, GRECO once again noted its disappointment because its recommendations had not been implemented. In the context of the transparency of political funding it noted that while a number of the planned legislative amendments have finally materialised, France did not remedy weaknesses previously recalled by GRECO, and no real progress has been made since 2011. This statement also applies to reinforcing supervision by CNCCFP.<sup>79</sup>

### 3. FUTURE STEPS

Petty corruption does not appear to pose a problem in France. Conversely, French politics has been subject to allegations of corruption and nepotism, extending to high-ranking politicians

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74 Loi organique n° 2011-410 du 14 avril 2011 : <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023877019&dateTexte=&categorieLien=id> and n° 2011-412 du 14 avril 2011 on simplifying the provision of the Electoral Code and financial transparency in politics: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023877131&dateTexte=&categorieLien=id>

75 Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique, as amended by loi n°2013-907 du 11 octobre 2013 - art. 15.

76 GRECO (2011) Third Evaluation Round. Compliance Report on France. Strasbourg : Council of Europe, 1st April, see especially pp 10-17.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282011%291\\_France\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282011%291_France_EN.pdf).

77 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)1\\_France\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)1_France_EN.pdf), p. 14.

78 Idem, p. 14.

79 Second Compliance Report on France; Greco RC-III (2013) 3E;

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282013%293\\_Second\\_France\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282013%293_Second_France_EN.pdf). The following interim report, adopted in December 2013, has not been made public.

and public officials. French authorities have acknowledged underlying problems, by introducing an agenda to address what the Government described as a 'crisis of trust'. Although France recently put in place legislative measures concerning conflicts of interest, corruption-related risks in the public procurement sector and in international business transactions have not been addressed. Party funding remains an area in which legislative improvements would contribute to integrity.

The following points require further attention:

- Conducting a comprehensive assessment to identify specific risks at local level and set priorities for anti-corruption measures related to control mechanisms in **public procurement**. Pursuing the ongoing reforms on asset disclosure and conflicts of interest concerning **public officials**.
- Improving the legislation on **foreign bribery**, including the rules on dual criminality and jurisdiction, as recommended by the OECD, GRECO and the UNCAC review mechanism. Increasing the effectiveness of investigations and prosecutions of foreign bribery cases.
- Monitoring the implementation of legislation seeking to protect the operational **independence of prosecutors** and pursuing current efforts to enhance further their statutory independence. Assessing whether additional resources are needed to investigate, prosecute and adjudicate corruption cases.
- Addressing GRECO recommendations on **party funding** concerning activities of third parties, the transparency of financial information in election campaigns, the role of party agents and the rules governing party members' and elected representatives' subscriptions. Strengthening the supervisory functions and capacity of the National Commission for Campaign Accounts and Political Funding.