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Theme I

Third Evaluation Round

Evaluation Report on France on Incriminations (ETS 173 and 191, GPC 2)

(Theme I)

Adopted by GRECO
at its 41st Plenary Meeting
(Strasbourg, 16-19 February 2009)

I. INTRODUCTION

1. France has been a member of GRECO since 1999. GRECO adopted its first round evaluation report on France (Greco Eval I Rep (2001) 3F) at its 6th meeting (10-14 September 2001) and the second round evaluation report (Greco Eval II Rep (2003) 1F) at its 21st meeting (29 November - 2 December 2004). The aforementioned evaluation reports, and the corresponding compliance reports, are available on the GRECO web site (<http://www.coe.int/greco>).
2. The current third evaluation round, which started on 1 January 2007, covers the following themes:
 - **Theme I – Incriminations:** articles 1a and 1b, 2 to 12, 15 to 17 and 19.1 of the Criminal Law Convention on Corruption (ETS 173), articles 1 to 6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (incrimination of corruption).
 - **Theme II - Transparency of Political Party Funding:** articles 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns and – more generally – Guiding Principle 15 on financing of political parties and election campaigns.
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the “GET”), which carried out an on-site visit to France on 22-23 September 2008, comprised Mrs Muriel BARRELET, Lawyer, scientific adviser, Federal Office of Justice (Switzerland) and Mrs Anca JURMA, chief prosecutor at the national anti-corruption directorate of the prosecutor's office of the High Court of Justice and Cassation (Romania). The GET was assisted by Mr Christophe SPECKBACHER of the GRECO secretariat. Prior to the visit the GET received comprehensive replies to the evaluation questionnaire (Greco Eval III (2007) 4f, Theme I), and copies of relevant legislation.
4. The GET met representatives of the following authorities: Ministry of Justice, Ministry of Foreign Affairs, TRACFIN – the French financial intelligence unit, the central prevention of corruption department, various judges (prosecutors and court and investigating judges), the central directorate of police and the central anti-corruption brigade. There were also meetings with representatives of Transparency International. The GET regrets that it was unable to meet representatives of the legal profession or the academic world. However, after the visit these groups were able to offer their often very detailed views via a short questionnaire.
5. The current report on theme I of GRECO's 3rd evaluation round – corruption offences – is based on answers to the questionnaire and information supplied during the on-site visit. The main purpose is to assess the effectiveness of measures adopted by the French authorities to comply with the provisions referred to in paragraph 2. The report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to France on how to improve compliance with the provisions under consideration.
6. The report on theme II – transparency of political party funding – appears in Greco Eval III Rep (2008) 5F-Theme II.

II. OFFENCES

Description of the situation

7. France ratified the Criminal Law Convention on Corruption (ETS 173) on 25 April 2008 and it came into force in respect of France on 1 August 2008. France has entered two reservations, one on the offence of trading in influence¹, and the other on its jurisdiction².
8. France ratified the Additional Protocol to the Criminal Law Convention on Corruption (CETS 191) on 25 April 2008 and it came into force in France on 1 August 2008. France has not entered any reservations to the Protocol.

Bribery of national public officials (ETS 173, articles 1-3 and 19)

Definition of the offence

9. Active bribery of national public officials is a criminal offence under Article 433-1 of the Criminal Code and active and passive bribery of national judicial personnel under Article 434-9. These provisions concern active bribery in the proper sense of the term and responding to requests for bribes. Article 433-1 also includes a paragraph on active trading in influence by public officials.

Active bribery of national public officials: Article 433-1 of the Criminal Code

"Persons who unlawfully offer, at any time, directly or indirectly, benefits, promises, donations, gifts or any other advantages to persons exercising public authority, performing public duties or holding elective public office, for themselves or others, to induce them:

1. *to perform or refrain from performing actions in accordance with or facilitated by their duties, functions or office;*
2. *or to abuse their real or supposed influence to obtain from a public authority or department distinctions, employment, contracts or any form of favourable decision; shall be punishable by ten years' imprisonment and a fine of € 150 000.*

The same penalties shall apply to persons exercising public authority, performing public duties or holding elective public office who unlawfully request, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or any other advantages in exchange for performing or refraining from performing actions as specified in 1. or abusing their influence in the circumstances specified in 2."

Active and passive bribery of national judicial personnel: Article 434-9 of the Criminal Code

1. *Judges, jurors and any other persons sitting on a judicial body;*
2. *Officials of court registries;*
3. *Experts appointed either by a court or by the parties;*
4. *Persons entrusted with conciliation or mediation responsibilities by judicial or administrative courts;*
5. *Arbitrators carrying out their duties under domestic arbitration legislation;*
who unlawfully request or agree to, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or any other advantages in exchange for performing or refraining

¹ "In accordance with Article 37, paragraph 1, of the Convention, the French Republic reserves the right not to establish as a criminal offence the conduct of trading in influence defined in Article 12 of the Convention, in order to exert an influence, as defined by the said Article, over the decision-making of a foreign public official or a member of a foreign public assembly, referred to in Articles 5 and 6 of the Convention."

² "In accordance with Articles 17, paragraph 2, and 37, paragraph 2, of the Convention, the French Republic declares that it reserves the right to establish its jurisdiction as regards Article 17, paragraph 1.b, of the Convention, only when the offender is one of its nationals and the offences are punishable under the legislation of the country where they have been committed, and that it reserves the right not to establish its jurisdiction regarding the situations referred to in Article 17, paragraph 1.c, of the Convention."

from performing actions in accordance with or facilitated by their functions, shall be punishable by ten years' imprisonment and a fine of € 150 000.

The same penalties shall apply to persons who respond to requests from persons specified in 1 to 5 or who unlawfully offer, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or any other advantages to induce them to perform or refrain from performing actions in accordance with or facilitated by their functions.

When the offence specified in the first to the seventh paragraphs is committed by a judge to the benefit or detriment of a person undergoing criminal prosecution, the penalties shall be raised to fifteen years' imprisonment and a fine of € 225 000.

10. Article 434-9 also makes the passive bribery of national judicial personnel an offence. The more general offence of passive bribery of national public officials appears in Article 432-11 of the Criminal Code. The latter also includes a paragraph on passive trading in influence by public officials.

Passive bribery of national public officials: Article 432-11 of the Criminal Code

"Persons exercising public authority, performing public duties or holding elective public office who unlawfully request or agree to, at any time, directly or indirectly, offers, promises, donations, gifts or any other advantages, for themselves or others, in exchange for:

1. performing or refraining from performing actions in accordance with or facilitated by their duties, functions or office;

2. or abusing their real or supposed influence to obtain from a public authority or department distinctions, employment, contracts or any form of favourable decision;

shall be punishable by ten years' imprisonment and a fine of € 150 000.

Elements of the offence

National public officials

11. The terms used in the relevant articles of the Criminal Code (432-11 and 433-1) – persons exercising public authority, performing public duties or holding elective public office – encompass all national public officials, including judges. However, French legislation has opted for a more specific offence of bribing judicial personnel in section 2 of the Code – impediments to the administration of justice – as part of Chapter IV, entitled "infringements of judicial functioning", in order to bring together all the offences likely to interfere with the work of the courts. For judges, this offence takes precedence, in accordance with the general principle of law that special legislation excludes the operation of the general law.
12. According to the French authorities, all the categories of person mentioned in article 1 a and b of the Criminal Law Convention are covered by the aforementioned articles. "Persons exercising public authority" signifies all those with the power to make enforceable decisions concerning individuals and objects, which they use in the exercise of their duties, permanent or temporary and which have been delegated by the public authorities. This definition therefore encompasses the representatives of the state and of local and regional authorities, for example the President of the Republic, ministers and state secretaries, administrative public officials, members of certain professions such as solicitors and bailiffs (*officiers publics et ministériels*) and military officers. "Persons performing public duties" includes all those responsible for exercising duties or carrying out tasks for the purpose of satisfying the lawfully defined general interest but who do not have powers delegated by the public authorities, for example court-appointed administrators or journalists of a national television channel. The term "persons holding elective public office"

includes members of parliament (of the lower house and Senate) and members of regional, county and municipal councils³.

Promising, offering or giving (active bribery)

13. The aforementioned articles make it an offence to "offer ... benefits, promises, donations, gifts or any other advantages". According to the French authorities, this wording encompasses the notions of "promising, offering or giving" in the Convention. For example, the Court of Cassation confirmed an appeal court decision that a law student who had been required to resit his second year examinations and then sent a cheque for 10 000 francs to one of his examiners, accompanied by a letter asking for a mark of 13/20, had been guilty of bribing an official. (Cass. Crim. 16 Oct 1985 Gaz Pal 1986 1 152).
14. According to the French authorities, the offence is completed once an offer of a secret payment has been made. As a consequence, in the case of corruption there is no offence of attempted bribery. The withdrawal of the briber would therefore have no effect on the offence, even if it took place before an unlawful pact had been concluded.
15. The GET notes that Article 433-1 paragraph 2 also establishes a specific offence of active bribery in which the perpetrator has yielded, or responded favourably, to the requests of the person who is corrupted (the public official). This formulation is also to be found in the various offences of active bribery covering other categories of persons, such as foreign officials and corruption in the private sector. In the case of active bribery of national judicial personnel, it is also an offence to yield to a request from a judicial official, as it is to offer benefits, promises, donations and so on, but this is not covered by a specific paragraph of Article 434-9.

Request or receipt of any undue advantage, or the acceptance of an offer or a promise (passive bribery)

16. The aforementioned articles make it an offence to "request or agree to [in French *agréer*] (...) offers, promises, donations/gifts or any other advantages". According to the *Trésor* dictionary, the French term "*agréer*" means "to welcome favourably" [in French *accueillir favorablement*], "to accept". Thus, André VITU (JCP T IV art 432-11 fasc 10) states that "agreeing to" offers implies *acceptance of the principle as well as the material receipt of the gifts or donations announced in the offers that have been made*.

Any undue advantage

17. The term "undue advantage" does not appear explicitly in the French incriminations, which refer to "offers, promises, donations, gifts or any other advantages". The term "any other advantages" (in French "*avantages quelconques*") encompasses both material advantages and immaterial ones, such as promises of sexual relations or votes.
18. The expression unlawfully (in French "*sans droit*") appears in the definition of all the corruption offences. How this should be interpreted was considered in a parliamentary debate on the draft legislation to transpose the OECD and EU conventions. According to the then minister of justice, the expression "unlawfully" meant that there was no foundation or justification for the advantage in any existing legislation, regulations or case-law. The expression is therefore similar to the notion in Article 122-4 of the Criminal Code, whereby "persons performing actions that are

³ JCP T.IV. Art 432-11 fasc. 10- André VITU

authorised by legislation or regulations are not criminally liable for them". There are no examples of court decisions in which public officials have successfully maintained that advantages received were legally permitted. In contrast, this ground of defence has already been rejected in two cases concerning the bribery of national public officials. For example, the Court of Cassation has found that an elected member's soliciting of funds to finance political activities, in order to act in accordance with his duty, was necessarily "unlawful". It concluded that since elected members' soliciting of funds for the purposes of political financing was irregular if the sum concerned exceeded the maximum specified in Act 90-55 of 15 January 1990, it could not be argued that it was nevertheless lawful for an elected member to seek political funding (Crim 30 June 1999 B crim no. 168).

Directly or indirectly

19. These terms appear explicitly in the various articles referred to.

For themselves or others

20. The term "for themselves or others" appears in the wording of the different offences. This means that an offence has been committed even if the benefits procured by the person giving the bribe have benefited not the recipient himself but a third party, such a relative or friend, or a political party, association or company. The recipient does not therefore have to have gained personally from the transaction.

To perform or refrain from performing actions in the exercise of their duties

21. The French wording varies slightly according to the offence but the main elements are always the same: "performing or refraining from performing actions in accordance with or facilitated by their duties, functions or office" (Articles 432-11, 433-1 and 434-9). According to legal theory⁴, this formulation encompasses not only actions that post-holders themselves, either individually or together with others, are responsible for performing, but also ones where they are involved in the preparation, but which they cannot perform themselves, and ones which their duties require them to abstain from performing.

Committed intentionally

22. Even though the notion of intention does not appear as such in the wording of the offences, according to paragraph 1 of Article 121-3 of the Criminal Code, an offence can only take place if there was intention to commit it. Such general intent to deceive, or bad faith, applies to all serious and lesser offences. The Court of Cassation has also stated on a number of occasions that the fact that the perpetrator of a breach of a legal provision acted in full knowledge of the facts entails the guilty intent required by Article 121-3 of the Criminal Code (Crim 25 May 1994). It automatically follows that persons performing public duties who agree to act or refrain from acting in, or in connection with, the performance of their duties because they have been offered some form of remuneration are motivated by bad faith.

Penalties

23. French law distinguishes three types of offence (Article 111-1 of the Criminal Code): a. crimes, or serious offences, punishable by ten years' to life imprisonment; b. lesser indictable offences,

⁴ JCP T.IV. Art 432-11 fasc. 10- André VITU

punishable by up to ten years' imprisonment, and c. minor offences, punishable only by fines. In French law, all bribery and trading in influence offences are lesser offences except the passive bribery of a judge to the benefit or detriment of a person undergoing criminal prosecution (Article 434-9), which because of its gravity is deemed to be a serious offence.

24. Concerning individuals: judges found guilty of a serious offence of corruption are punishable by a primary penalty of 15 years' imprisonment and a fine of € 225 000. In every other case, perpetrators are punishable by a primary penalty of up to 10 years' imprisonment and a fine of € 150 000. There is no lower limit to the periods of imprisonment or fines, which may be alternatives or combined. This means that the penalties can vary greatly. In all cases, the perpetrators may be liable to the following additional penalties: exclusion from business activities, loss of civic, civil or family rights for up to 5 years; disqualification from public office or duties or the occupational or social activity in, or in connection with, the exercise of which the offence was committed (temporary – for up to five years – or definitive); confiscation of the object used in or intended for use in committing the offence, the direct or indirect proceeds of the offence and possessions the origin of which the offender is unable to justify; publication and dissemination of the decision handed down; exclusion from French territory for foreign nationals found guilty of the active bribery of judicial personnel. These additional penalties are provided for in articles 432-17 for the passive bribery of national public officials, 433-22 and 433-23 for the active bribery of national public officials and 434-44 and 434-46 for the active and passive bribery of national judicial personnel. These additional penalties, which must be ordered by the trial court, are supplemented by ancillary penalties that automatically accompany convictions for corruption or trading in influence. This applies to the electoral ineligibility resulting from Article L 7 of the electoral code⁵, specific professional and occupational disqualifications in the monetary and financial code (L. 500-1) or Act 70-09 on the profession of estate agent (art. 9) and disqualification from management in the insurance code (L 322-2).
25. The penalties for legal persons convicted of corruption offences are: a. five times the fines payable by individuals, that is € 750 000, or € 1 125 000 for the one form of bribery that constitutes a serious offence; b. up to five years' disqualification from performing the activity in connection with which the offence was committed, either directly or indirectly; judicial supervision; closure of the establishments, or one of them, in which the offence was committed; exclusion from public procurement; ineligibility for public funding; a ban on issuing cheques or using payment cards; confiscation of the object used in or intended for use in the commission of the offence, the direct or indirect proceeds of the offence and assets whose origin the perpetrator is unable to justify; publication or dissemination of the decision handed down, in accordance with Article 131-35. These additional penalties are specified in Article 433-24 of the Criminal Code in the case of active bribery of a national public official and Article 434-47 in the case of active and passive bribery of national judicial personnel.
26. By way of comparison, the misappropriation and embezzlement of assets by a person exercising public authority is punishable by up to 10 years' imprisonment and/or a fine of € 150 000 (Article 432-15 of the Criminal Code). Similarly, the penalties for fraud committed by persons exercising public authority or performing public duties in or in connection with the exercise of their duties are seven years' imprisonment and a fine of € 750 000. Extortion by a public official (Article 432-10 of the Criminal Code) and unlawful receipt or acceptance of an interest (article 432-11) both carry principal penalties of five years' imprisonment and/or a fine of € 750 000.

⁵ Under Article 7, persons who have had final convictions for, in particular, the offences of corruption or national trading in influence are excluded from the electoral register for five years, from the date the conviction became final. This results in loss of the right to vote and therefore ineligibility. Under Article L 130 of the electoral code, the period of ineligibility is twice that of the exclusion from the electoral register. Such exclusion also entails the lapse of any elected offices currently held.

Statistics and judicial decisions, case-law

27. The following statistics on final decisions are available

Provisions	Convictions 2004	Convictions 2005	Convictions 2006
Active bribery of national public officials: (art. 433-1 Criminal Code)	60	56	63
Passive bribery of national public officials: (art. 432-11 Criminal Code)	44	51	48
Active bribery of national judicial personnel: (art. 433-1 Criminal Code)	1	0	0
Passive bribery of national judicial personnel: (art. 433-1 Criminal Code)	0	0	0

28. The GET observed on the spot that traditionally in all bribery cases the courts required evidence of a corrupt agreement prior to the benefit granted and its "remuneration". However, the Court of Cassation's case-law had become more flexible and a prior corruption agreement was deemed to exist when a) the benefit granted to the person receiving the bribe after the action or decision in question was simply the fulfilment of a promise made earlier (*Cass. Crim, 16 December 1997, no. 96-82-509*); or b) benefits were received sufficiently frequently for them to have necessarily preceded the actions of the person giving the bribe and established the identity of the recipient (for example *Cass.crim, 12 May 1998, no. 96-83.366*); and additionally c) the trial court has unfettered discretion to assess the circumstances and conclude that there was a prior agreement. For example, in the case of mortuary employees who directed the families of deceased persons to a particular undertakers in exchange for invitations to a restaurant and retrospective commissions, the Court of Cassation confirmed the appeal court's finding that the decline in the firm's turnover following the hospital employees' suspension was sufficient to establish that there had been a prior corruption agreement between the latter and that firm (*Cass.crim., 29 September 1998, no. 97-84.164*). The GET was unable to determine whether these judgments and the subsequent insertion of the words "at any time" into the legislation on corruption has removed the need to establish evidence of a corruption agreement or simply the fact that it was a prior agreement.

Bribery of members of domestic public assemblies (Article 4, CETS 173)

29. There is no offence exclusively concerned with bribing members of parliament. The members of the national public assemblies – the deputies and senators – are vested with elective public office. Their corruption is therefore covered by the aforementioned articles 432-11 and 433-1 of the Criminal Code and the offences are established in the same way. The expression "person holding elective public office" used in these articles refers to parliamentarians (members of the assembly and of the senate) as well as persons who are members of regional, county or municipal assemblies¹¹. For instance, were convicted on the basis of the above provisions a chair-¹² and deputy chairperson¹³ of a county council, as well as the member of a municipal council¹⁴.

¹¹ JCP T IV. Art 432-11:fasc 10 par André Vitu

¹² Crim 09 novembre 1995, Bull. crim. n°346

¹³ Crim. 16 mai 2001, Bull. crim. n°124

¹⁴ Crim. 29 mai 1886 (under the provisions of the former Criminal Code which, however, also used the notion of "elective public office").

Bribery of foreign public officials (Article 5, CETS 173)

30. There are no declarations or reservations to Article 5 concerning the offence of bribing foreign public officials. The offences covered by articles 435-3 and 435-9 concern active bribery in the strict sense and responding to requests for bribes.

Passive bribery of foreign public officials Article 435-1 of the Criminal Code

"Persons exercising public authority, performing public duties or holding elective public office in a foreign state or in a public international organisation who unlawfully request or agree to, at any time, directly or indirectly, benefits, promises, donations, gifts or other advantage, for themselves or others, to induce them to perform or refrain from performing actions in accordance with or facilitated by their duties, functions or office shall be punishable by ten years' imprisonment and a fine of € 150 000."

Active bribery of foreign public officials: Article 435-3 of the Criminal Code

"Persons who unlawfully offer, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or other advantages to persons exercising public authority, performing public duties or holding elective public office in a foreign state or in a public international organisation, in exchange for performing or refraining from performing actions in accordance with or facilitated by their duties, functions or office shall be punishable by ten years' imprisonment and a fine of € 150 000.

The same penalties shall apply to persons who respond to requests from persons specified in the first paragraph who unlawfully request, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or other advantages in exchange for performing or refraining from performing such actions."

Passive bribery of foreign judicial personnel: Article 435-7 of the Criminal Code

" 1. Persons exercising judicial functions in a foreign state or in or attached to an international court; 2. Officials of foreign or international court registries; 3. Experts appointed by such courts or by the parties; 4. Persons entrusted with conciliation or mediation responsibilities by such courts; 5. Arbitrators carrying out their duties under the arbitration legislation of a foreign state; who unlawfully request or agree to, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or any other advantages in exchange for performing or refraining from performing actions in accordance with or facilitated by their functions, shall be punishable by ten years' imprisonment and a fine of € 150 000.

Active bribery of foreign judicial personnel: Article 435-7 of the Criminal Code: "Persons who unlawfully offer, at any time, directly or indirectly, benefits, promises, donations, gifts or other advantages to 1. Persons exercising judicial functions in a foreign state or in or attached to an international court; 2. Officials of foreign or international court registries; 3. Experts appointed by such courts or by the parties; 4. Persons entrusted with conciliation or mediation responsibilities by such courts; 5. Arbitrators carrying out their duties under the arbitration legislation of a foreign state; to induce them to perform or refrain from performing actions in accordance with or facilitated by their functions shall be punishable by ten years' imprisonment and a fine of € 150 000.

The same penalties shall apply to persons who respond to requests from persons specified in the first paragraph who unlawfully request, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or other advantages in exchange for performing or refraining from performing such actions."

31. The offences of active and passive bribery of foreign public officials are defined in the same way as the corresponding domestic offences. Since the language is the same, it is unnecessary to expect any differences in their application. The offences include all persons exercising public authority, performing public duties or holding elective public office in foreign countries. As at domestic level, there are two specific offences of active and passive bribery of foreign and international judicial personnel.

32. The applicable sanctions are similar to those provided for corruption of domestic public officials, except the additional penalty of exclusion from French territory which is linked to the status of the person convicted. Perpetrators who are individuals are punishable by 10 years' imprisonment and/or a fine of € 150 000 as the principal penalty, plus the additional penalties specified in Article 435-14 of the Criminal Code: loss of civic, civil or family rights for up to 5 years; disqualification from public office, confiscation of the object used or intended for use in the commission of the offence, publication and dissemination of the decision handed down; exclusion from French territory. Under Article 435-15 of the Criminal Code, legal persons committing corruption offences are liable to a. five times the fines payable by individuals, that is € 750 000; b. up to five years' disqualification from performing the activity in connection with which the offence was committed; judicial supervision; closure of the establishments, or one of them, in which the offence was committed; exclusion from public procurement; ineligibility for public funding; a ban on issuing cheques or using payment cards; confiscation of the object used in or intended for use in the commission of the offence, the direct or indirect proceeds of the offence and assets whose origin the perpetrator is unable to justify; publication or dissemination of the decision handed down, in accordance with Article 131-35.
33. There are no statistics as yet on offences of international corruption (or trading in influence), because prior to the anti-corruption legislation of 13 November 2007, the only relevant offences concerned the bribery of officials of the European Communities and of European Union member states and members of European Community institutions, and the bribery of foreign and international public officials and the active bribery of foreign or international judicial personnel in the context of international commercial transactions.
34. There have not yet been any final convictions for the bribery of foreign public officials. However, 20 investigations have been initiated into alleged active bribery of foreign public officials in the context of international commercial transactions. Of these, two resulted in a discharge, one was discontinued, one is being prosecuted and will shortly be reheard on appeal and eleven are still the subject of judicial investigations.

Bribery of members of foreign public assemblies (Article 6, CETS 173)

35. Members of foreign public assemblies are treated as public officials, within the meaning of articles 435-1 and 435-3 of the Criminal Code. These articles use the term "persons exercising public authority and other public officials exercising public authority, performing public duties or *holding elective public office* in a foreign state". The ingredients of the offence of and the penalties applicable to the bribery of national public officials therefore apply also to the bribery of members of foreign public assemblies. As noted above, there have been no final judgments concerning the bribery of members of foreign public assemblies.

Bribery in the private sector (Articles 7 and 8, CETS 173)

Definition of the offence

36. Active bribery in the private sector is an offence under Article 445-1 of the Criminal Code, which covers active bribery in the strict sense (paragraph 1) and responding to requests for bribes (paragraph 2). These provisions are fundamentally very similar to those on the bribery of public officials.

Active bribery in the private sector - Article 445-1 of the Criminal Code

"Persons who unlawfully offer, at any time, directly or indirectly, benefits, promises, donations, gifts or other advantages, for themselves or others, to persons who do not exercise public authority, perform public duties or hold elective public office but who hold a managerial position or undertake other work, in an occupational or social capacity, for an individual or legal person or for any other body, in exchange for performing or refraining from performing actions in accordance with or facilitated by their activities or duties, in breach of their legal, contractual or professional obligations, shall be punishable by five years' imprisonment and a fine of € 75 000.

The same penalties shall apply to persons who respond to requests from persons specified in the first paragraph who unlawfully request, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or other advantages in exchange for performing or refraining from performing an action specified in the first paragraph, in breach of their legal, contractual or professional obligations."

37. Passive bribery in the private sector is an offence under Article 445-2 of the Criminal Code.

Passive bribery in the private sector: Article 445-2 of the Criminal Code

"Persons who do not exercise public authority, perform public duties or hold elective public office but who hold a managerial position or undertake other work, in an occupational or social capacity, for an individual or legal person or for any other body, and who unlawfully request or agree to, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or any other advantages in exchange for performing or refraining from performing actions in accordance with or facilitated by their activities or duties, in breach of their legal, contractual or professional obligations, shall be punishable by five years' imprisonment and a fine of € 75 000.

Elements of the offence

Persons who direct or work for private sector entities

38. The term persons who direct or work for private sector entities is covered by the words "persons who ... hold a managerial position or undertake other work, in an occupational or social capacity, for an individual or legal person or for any other body". The private sector is defined firstly in contrast to the public sector. The person concerned must not exercise public authority or perform public duties. Thus, persons operating in the private sector but performing public duties are covered by the offences in articles 432-11 and 433-1 of the Criminal Code. It is then made clear that the private sector is not confined to commercial activities but extends to all occupational and social activities, such as non-profit making ones. This wording ensures that all forms of bribery are offences, under either these provisions or those covering the bribery of public officials.

Promising, offering or giving (active bribery)

39. As with the active bribery of public officials, Article 445-1 uses the words "offer ... benefits, promises, donations, gifts or other advantages". Again as with the bribery of public officials, when the person offering the bribe has responded to a request from the person bribed this is a separate offence (paragraph 2 of Article 445-1).

Request or receipt of any undue advantage, or the acceptance of an offer or a promise (passive bribery)

40. As with the passive bribery of public officials, Article 445-2 uses the words "request or agree to... benefits, promises, donations, gifts or other advantages".

Any undue advantage

41. As with public sector bribery, the offence of bribery in the private sector uses the notion of advantages received "unlawfully". As noted above this covers benefits, promises, donations, gifts or any other advantages. The scope of these terms is discussed under the bribery of a public official (see paragraphs 13 to 16).

Directly or indirectly; For themselves or for anyone else; To act or refrain from acting; Committed intentionally

42. As with public sector corruption, the offences of active and passive bribery in the private sector refer explicitly to these ingredients and use the terms "directly or indirectly", "for themselves or others", and "performing or refraining from performing actions in accordance with or facilitated by their activities or duties". The notion of intention does not appear in the relevant French legislation but intention is a necessary element of the offence, in accordance with the general provisions of the Criminal Code (see paragraph 22).

In the course of business activity; In breach of their duties

43. As noted earlier, articles 445-1 and 445-2 of the Criminal Code define private sector corruption in terms not of a commercial activity but of a set of criteria whereby those concerned are "persons who do not exercise public authority, perform public duties or hold elective public office but who hold a managerial position or undertake other work, in an occupational or social capacity, for an individual or legal person or for any other body". This also enables the legislation to cover non-profit making bodies.
44. According to the legislation, those who perform or refrain from performing actions in accordance with or facilitated by their activities or duties, must do so "in breach of their legal, contractual or professional obligations". This clarification was made to comply with Community requirements in the Council framework decision of 22 July 2003 on combating corruption in the private sector. However, the French authorities stress that the wording used is fully consistent with the notion of duties in Convention CETS 173.

Penalties

45. The same penalties apply to active and passive bribery in the private sector. When the perpetrator is an individual, the principal penalties are five years' imprisonment and a € 75 000 fine. Article 445-3 of the Criminal Code provides for the following additional penalties: loss of civic, civil or family rights for up to 5 years; disqualification from public office or duties or the occupational or social activity in, or in connection with, the exercise of which the offence was committed (temporary – for up to five years – or definitive); confiscation of the object used in or intended for use in committing the offence, the direct or indirect proceeds of the offence and possessions the origin of which the offender is unable to justify; publication and dissemination of the decision handed down. The penalties for legal persons are: a. five times the fines payable by individuals, that is € 375 000; b. up to five years' disqualification from performing the activity in

connection with which the offence was committed; judicial supervision; closure of the establishments, or one of them, in which the offence was committed; exclusion from public procurement; ineligibility for public funding; a ban on issuing cheques or using payment cards; confiscation of the object used in or intended for use in the commission of the offence, the direct or indirect proceeds of the offence and assets whose origin the perpetrator is unable to justify; publication or dissemination of the decision handed down, in accordance with Article 131-35.

Statistics and judicial decisions

46. No relevant case-law has been reported. The following statistics on convictions are available

Provisions	Convictions 2004	Convictions 2005	Convictions 2006
Active bribery in the private sector (art. 445-1 Criminal Code)	2	7	14
Passive bribery in the private sector (art. 445-2 Criminal Code)	7	18	15

Bribery of officials of international organisations (article 9 of CETS 173) and bribery of members of international parliamentary assemblies (article 10 of CETS 173)

47. The bribery of officials of international organisations and of members of international parliamentary assemblies is an offence under the provisions of the Criminal Code applicable to foreign public officials, namely articles 435-1 for passive and 435-3 for active bribery. The arrangements and penalties are exactly the same. Those who are corrupted are defined as "persons exercising public authority, performing public duties or holding elective public office in a foreign state or in a *public international organisation*". The definition used is the same as for public officials under domestic law, which therefore covers officials ("persons exercising public authority [or] performing public duties") and elected members (persons "holding elective public office"). According to the French authorities, this encompasses a broader category of persons than simply those with the status of international civil servant and therefore covers all those referred to in articles 9 and 10 of the Criminal Law Convention. Article 435-5 of the Criminal Code also specifies that bodies created under the Treaty on the European Union, such as Eurojust, must also be considered to be public international organisations.

48. Before the Act of 13 November 2007, the only offences concerned the active and passive bribery of officials of the institutions of the European Union and the active bribery of international public officials in connection with international commercial transactions. No convictions were handed down for these offences. There is still no case-law on the new offences of active and passive bribery of officials of international organisations and members of international parliamentary assemblies, introduced by the legislation of 13 November 2007.

Bribery of judges and officials of international courts (Article 11 of CETS 173)

49. Articles 435-7 and 435-9 are specifically concerned with, respectively, the offences of active and passive bribery of judges and officials of international courts. The offences follow the same pattern as other offences of active and passive bribery, with the same ingredients of the advantages, their offering or receipt, the beneficiaries, the form taken by the consideration, and so on.

Passive bribery of foreign and international judicial personnel: Article 435-7 of the Criminal Code

"1. Persons exercising judicial functions in a foreign state or in or attached to an international court;
2. Officials of foreign or international court registries;
3. Experts appointed by such courts or by the parties;
4. Persons entrusted with conciliation or mediation responsibilities by such courts;
5. Arbitrators carrying out their duties under the arbitration legislation of a foreign state; who unlawfully request or agree to, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or any other advantages in exchange for performing or refraining from performing actions in accordance with or facilitated by their functions, shall be punishable by ten years' imprisonment and a fine of € 150 000."

Active bribery of foreign and international judicial personnel: Article 435-9 of the Criminal Code

"Persons who unlawfully offer, at any time, directly or indirectly, benefits, promises, donations, gifts or other advantages to

1. Persons exercising judicial functions in a foreign state or in or attached to an international court;
2. Officials of foreign or international court registries;
3. Experts appointed by such courts or by the parties;
4. Persons entrusted with conciliation or mediation responsibilities by such courts;
5. Arbitrators carrying out their duties under the arbitration legislation of a foreign state to induce them to perform or refrain from performing actions in accordance with or facilitated by their functions;
shall be punishable by ten years' imprisonment and a fine of € 150 000.

The same penalties shall apply to persons who respond to requests from persons specified in the first paragraph who unlawfully request, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or other advantages in exchange for performing or refraining from performing such actions."

50. The French authorities state that the words "holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party" do not appear as such in the legislation, but that paragraphs 1 and 2 of articles 435-7 and 435-9 of the Criminal Code cover exactly the same persons.
51. There are no court judgments or case-law on the bribery of judges and officials of international courts.

Trading in influence (Article 12 of CETS 173)

Reservation

52. In accordance with Article 37, paragraph 1, of the Convention, the French Republic reserves the right not to establish as a criminal offence the conduct of trading in influence in order to exert an influence over the decision-making of a foreign public official or a member of a foreign public assembly, referred to in Articles 5 and 6 of the Convention.

Definition of the offence

53. Trading in influence is an offence under various provisions of the French Criminal Code, including the aforementioned articles 432-11, paragraph 2, on the passive bribery of national public officials and 433-1 (paragraph 1.2) on the active bribery of national public officials. These concern trading in influence by a public official with regard to another public authority or department (see paragraphs 9 ff).

54. Meanwhile, Article 433-2 covers active and passive trading in influence between individuals aimed at national authorities. Paragraph 2 is concerned with "spontaneous" active trading in influence and cases in which individuals respond to the solicitations of persons claiming to exert influence.

Active and passive trading in influence between individuals aimed at national authorities: Article 433-2 of the Criminal Code

Persons who request or agree to, at any time, directly or indirectly, benefits, promises, donations, gifts or other advantages, for themselves or others, to abuse their influence, real or supposed, to obtain from a public authority or department distinctions, employment, contracts or any other favourable decision shall be punishable by imprisonment of five years and a fine of € 75 000.

The same penalties shall apply to persons who respond to requests specified in the first paragraph or who, at any time, directly or indirectly, unlawfully offer other persons benefits, promises, donations, gifts or other advantages for themselves or others to abuse their influence, real or supposed, to obtain from a public authority or department distinctions, employment, contracts or any other favourable decision.

55. There are specific provisions of the Criminal Code concerned with trading in influence aimed at national judicial personnel (Article 439-1), passive and active trading in influence – spontaneous or accepted – aimed at international public officials or elected members of international organisations (articles 435-2 and 435-4), and active (spontaneous or accepted) and passive trading in influence aimed at international judicial personnel (articles 435-10 and 435-8).

Active and passive trading in influence between individuals aimed at national authorities: Article 434-9 of the Criminal Code

Persons who request or agree to, at any time, directly or indirectly, benefits, promises, donations, gifts or other advantages, for themselves or others, to abuse their influence, real or supposed, to obtain from one of the persons specified in Article 434-9 a favourable decision or opinion, shall be punishable by imprisonment of five years and a fine of € 75 000.

The same penalties shall apply to persons who respond to requests specified in the first paragraph or who, at any time, directly or indirectly, unlawfully offer other persons benefits, promises, donations, gifts or other advantages for themselves or others to abuse their influence, real or supposed, to obtain from one of the persons specified in Article 434-9 a favourable decision or opinion.

Passive trading in influence aimed at international public officials or elected members of international organisations

Article 435-2 of the Criminal Code: Persons who request or agree to, at any time, directly or indirectly, benefits, promises, donations, gifts or other advantages, for themselves or others, to abuse their influence, real or supposed, to obtain from persons exercising public authority, performing public duties or holding elective public office in a public international organisation distinctions, employment, contracts or any other favourable decision shall be punishable by imprisonment of five years and a fine of € 75 000.

Active trading in influence aimed at international public officials or elected members of international organisations

Article 435-4 of the Criminal Code: Persons who, at any time, directly or indirectly, unlawfully offer benefits, promises, donations, gifts or other advantages to other persons, for themselves or others, to abuse their influence, real or supposed, to obtain from persons exercising public authority, performing public duties or holding elective public office in a public international organisation distinctions, employment, contracts or any other favourable decision shall be punishable by imprisonment of five years and a fine of € 75 000.

The same penalties shall apply to persons who, at any time, directly or indirectly, respond to requests from other persons for benefits, promises, donations, gifts or other advantages for themselves or others to

abuse their influence, real or supposed, to obtain from one of the persons specified in the first paragraph a favourable decision or opinion.

Active trading in influence aimed at international judicial personnel: Article 435-10 of the Criminal Code

Persons who, at any time, directly or indirectly, unlawfully offer benefits, promises, donations, gifts or other advantages to other persons, for themselves or others, to abuse their influence, real or supposed, to obtain a favourable decision or opinion from persons specified in Article 435-9 who are employed in or attached to an international court or are appointed by such a court shall be punishable by imprisonment of five years and a fine of € 75 000.

The same penalties shall apply to persons who, at any time, directly or indirectly, respond to requests from other persons for benefits, promises, donations, gifts or other advantages for themselves or others to abuse their influence, real or supposed, to obtain from one of the persons specified in the first paragraph a favourable decision or opinion.

Passive trading in influence aimed at international judicial personnel: Article 435-8 of the Criminal Code

Persons who, at any time, directly or indirectly, unlawfully request or agree to benefits, promises, donations, gifts or other advantages from other persons, for themselves or others, to abuse their influence, real or supposed, to obtain a favourable decision or opinion from persons specified in Article 435-7 who are employed in or attached to an international court or are appointed by such a court shall be punishable by imprisonment of five years and a fine of € 75 000.

Elements and aspects of the offence

"asserts or confirms that he or she is able to exert an improper influence over the decision-making [of public officials]"

56. This is reflected in the wording "abuse their influence, real or supposed, to obtain a favourable decision or opinion" from a public official. According to the French authorities, the offence is therefore slightly broader in so far as it also concerns the influence claimed by the intermediary as well as that exerted by him or her.
57. Favourable decisions may take the form of positive or negative actions, so long as they favour the beneficiary. For example, the Court of Cassation found that an individual who thought that he had breached exchange control regulations and paid sums of money to a senior tax official in payment for the supposed influence he could bring to bear to prevent a prosecution was guilty of active trading in influence (Cass Crim 20 March 1997. Bull crim 1997 no. 117).

"whether or not the influence is exerted or the supposed influence leads to the intended result"

58. The French authorities stress that it is immaterial whether the influence has actually been exerted. The offence of trading in influence is fully and immediately completed when the offer is made or the remuneration requested. The same applies to whether or not the sought-after result is achieved. Here, the courts have established the principle that the outcome is irrelevant⁶.

Other elements of the offence

59. The elements of the offences of bribery, such as nature of the benefit, the element of intention, the form taken by the offer, the beneficiary and so on, generally apply to active and passive

⁶ Judgment of the criminal bench of the Court of Cassation of 20 March 1997, according to which the favourable decision expected from the trading in influence need not be useful in practice or have any real purpose.

trading in influence under the various articles concerned. They also apply in the same way to active and passive trading in influence.

Penalties

60. The penalties applicable to trading in influence are more or less the same as those that apply to bribery. When the perpetrator is an individual, the principal penalties in every case are imprisonment and a fine. These penalties then vary according to the status of the intermediary who is requested. When the latter is a public official (Article 432-11 and 433-1), the penalties may be ten years' imprisonment and a € 150 000 fine. When the status of the intermediary is not specified, the principal penalties are five years' imprisonment and a € 75 000 fine. The additional penalties that may be imposed are the same as for bribery offences. As with the other offences, in the case of legal persons, the applicable fines are five times those specified for individuals.

Statistics and judicial decisions

61. The following statistics on convictions for trading in influence are available

Provisions of the Criminal Code	Convictions 2004	Convictions 2005	Convictions 2006
Active trading in influence by a national public official (art. 433-1)	13	22	11
Passive trading in influence by a national public official (art. 432-11)	13	15	21
Active trading in influence between individuals (art. 433-2)	13	6	18
Passive trading in influence between individuals (art. 433-2)	12	13	7
Active trading in influence aimed at national judicial personnel (art. 434-9-1)	Offence introduced by the Act of 13 November 2007: No statistics yet		
Passive trading in influence aimed at national judicial personnel (art. 434-9-1)	Offence introduced by the Act of 13 November 2007: No statistics yet		
Other cases: Trading in influence exerted on decision making by a foreign public official or a member of a foreign public assembly	Not an offence		

Bribery of domestic arbitrators (Articles 1 to 3 of CETS 191)

62. The active and passive bribery of domestic arbitrators is an offence under Article 434-9 (see paragraphs 9 ff; the elements of the offence and the penalties are the same). This covers "judicial personnel" in general, which includes five categories of persons, including "arbitrators carrying out their duties under domestic arbitration legislation". The French Criminal Code therefore reflects Protocol CETS 191. According to the French authorities, the wording is understood to mean that French citizens who bribe arbitrators who are applying French arbitration law would be guilty of bribing national judicial personnel. If, however, they bribe an arbitrator who is applying another country's arbitration law in France the offence under French law would be bribery of a foreign arbitrator.

63. Prior to the anti-corruption law of 13 November 2007, French legislation used a territorial criterion, namely where they carried out their work, to distinguish between national and foreign arbitrators. To comply with the Protocol, the law has replaced the territorial criterion with a material one – the applicable procedural law. Owing to the recency of this change, there is not yet any case-law on the subject.

Bribery of foreign arbitrators (Article 4 of CETS 191)

64. The passive and active bribery of foreign arbitrators is covered by articles 435-7 and 435-9 of the Criminal Code, on the bribery of foreign or international judicial personnel. These articles also use the notion of "judicial personnel", including the category "arbitrators carrying out their duties under domestic arbitration legislation". The ingredients of the offence and the penalties applicable to the bribery of foreign judicial personnel therefore apply to foreign arbitrators (see paragraphs 30 ff). There are no court decisions/case-law on the bribery of foreign arbitrators.

Bribery of domestic jurors (Article 1, section 3 and Article 5 of CETS 191)

65. Article 434-9 of the Criminal Code on the active and passive bribery of national judicial personnel includes jurors in the first category of persons covered ("judges, jurors and any other persons sitting on a judicial body". In practice, this concerns citizen jurors or their substitutes sitting in the assize court of first instance or appeal. The ingredients of the offence and the penalties applicable to the bribery of national judicial personnel (see paragraph 10) therefore also apply to the bribery of domestic jurors. There are no court decisions/case-law on the subject.

Bribery of foreign jurors (Article 6 of CETS 191)

66. According to the French authorities, the bribery of foreign jurors is covered by articles 435-7 and 435-9 of the Criminal Code, on the bribery of foreign or international judicial personnel (see paragraphs 30 ff). The same ingredients and penalties therefore apply. Unlike the aforementioned provisions relating to domestic jurors, articles 435-7 and 435-9 make no explicit reference to the notion of jurors, but to the category of "persons exercising judicial functions in a foreign state or in or attached to an international court". The French authorities state that juror will therefore be interpreted in accordance with Article 1.3 of Protocol CETS 191. There are no court decisions/case-law on the subject.

Other issues

Participatory acts

67. Under the general part of the Criminal Code, complicity is an offence and accomplices to an offence are liable to the same penalties as the perpetrators (Article 121-6). Article 121-7 states that complicity is applicable to lesser and serious offences, and thus to the various offences of bribery and trading in influence, and defines it as follows: "Persons who knowingly aid or abet the preparation or completion of an offence are accomplices to that offence. Persons who, by means of gifts, promises, threats, orders or abuse of authority or power, have incited to or given instructions for the commission an offence, are also accomplices". Additionally, Article 113-5 of the Criminal Code specifies that "French criminal law is applicable to anyone in the territory of the Republic found guilty of complicity in a lesser or serious offence committed abroad if it is an offence in both French and the relevant country's law and the foreign court's judgment is final".

Jurisdiction

68. The rules governing jurisdiction in France are laid down in Article 113 of the Criminal Code. For example, jurisdiction applies to offences committed in national territory, and this includes acts taking place in France that constitute one of the elements of an offence (Article 113-2). Jurisdiction also extends to acts of complicity taking place in France where the serious or lesser

offence has been committed abroad, so long as there is dual criminality and the foreign court has handed down a final judgment (Article 113-5).

69. France has entered a reservation on jurisdiction⁷, because it considers the notion of "involvement" in Article 17 paragraph 1.c of the Convention rather vague from the standpoint of French law. It has also therefore chosen to retain the wording of Article 113-6 and 113-7 of the Criminal Code. Under Article 113-6 of the Criminal Code, French law is applicable outside French territory to *serious* offences committed by French nationals (thus excluding the great majority of bribery and trading in influence offences, most of which are lesser offences- see paragraph 71) and to lesser offences committed by French nationals, but only if they are offences under the legislation of the country where they are committed.. However, French law is still applicable to serious and lesser offences committed abroad by French nationals if the victim was also a French national at the time of the offence (Article 113-7).
70. There are no relevant court decisions/case-law concerning jurisdiction to try corruption offences.

Statute of limitation

71. With the exception of the passive bribery of judges to the benefit of persons undergoing criminal prosecution⁸, all the bribery and trading in influence offences are classified as lesser indictable offences in French law⁹. For the sole corruption offence classified as a serious offence the limitation period for prosecution is ten years¹⁰. For all other bribery and trading in influence offences the limitation period is 3 years, in accordance with Article 8 of the Criminal Code.
72. To supplement the traditional rules in the Criminal Code for suspending or interrupting the limitation period, the courts have made the situation more flexible by deferring its starting point. For example, the Court of Cassation has ruled that bribery is an offence committed in a single act that is completed when the agreement is concluded between the two parties, but one that is renewed each time the agreement is executed. It has also stated that the starting point for the limitation period is deferred to the day of the final payment or the final receipt of the items promised, that is the undue advantage given to the public official or alternatively the action or failure to act of the bribed public official. The Court of Cassation has further deferred the starting point of the limitation period in cases of collusion: when successive agreements between the corrupt parties concern successive contracts as part of a single collusive agreement, the deferral of the starting point of the limitation period to the date of the final delivery of the items promised in connection with the most recent contract also applies to the first contract. In addition, the Court of Cassation (decision of 13/03/2008) has applied to trading in influence the jurisprudence

⁷ : "In accordance with Articles 17, paragraph 2, and 37, paragraph 2, of the Convention, the French Republic declares that it reserves the right to establish its jurisdiction as regards Article 17, paragraph 1.b, of the Convention, only when the offender is one of its nationals and the offences are punishable under the legislation of the country where they have been committed, and that it reserves the right not to establish its jurisdiction regarding the situations referred to in Article 17, paragraph 1.c, of the Convention."

⁸ See the final paragraph of Article 434-9 of the Criminal Code.

⁹ Article 381: "Lesser offences shall be heard by the regional criminal court. Lesser offences are ones that are punishable by imprisonment or a fine equal to or in excess of € 3750."

¹⁰ Article 7 of the Code of Criminal Procedure:

"In the case of serious offences and subject to Article 213-5 of the Criminal Code, proceedings may be taken up to ten years from the day the offence was committed if, during this period, no measure of investigation or prosecution has been initiated. If such a measure has been initiated, the limitation period will only expire ten years after the date of the last measure. This applies even to persons not involved in the measure of investigation or prosecution. The limitation period for the prosecution of serious offences specified in Article 706-47 of this Code and the offence specified in Article 222-10 of the Criminal Code, when they are committed on minors, is twenty years and only starts when the latter reach the age of majority".

according to which, in case of dissimulation, the starting point for the limitation period is deferred to the day of discovery or registration of the offence.

73. Legislation is currently being drafted to change the rules on limitation periods to make them longer.

Defences

74. There are no specific grounds of defence for bribery and trading in influence.

Other aspects

75. In France, criminal proceedings may be conducted at the request of the prosecutor or the investigating judge. Under Article 435-6 of the Criminal Code, the offences in articles 435-1 to 435-4 (active and passive bribery of foreign public officials, and active and passive trading in influence aimed at international public officials or elected members of international organisations) can only be prosecuted at the request of the state prosecution service, except when benefits, promises, donations, gifts or any other advantages are either offered or granted to persons working in one of the member states of the European Union, or in connection with the European Communities or a body created in application of the Treaty on the European Union, or are requested or accepted by such a person, to obtain a favourable decision or in exchange for performing or refraining from performing actions in accordance with or facilitated by their duties; in those situations, the proceedings can be conducted by the investigating judge at the request of the prosecutor.

III. ANALYSIS

76. In recent years France has made a number of amendments to its legislation to bring it into line with international treaties on corruption offences¹¹. The most recent ones, culminating in the Act of 13 November 2007, have harmonised these offences and no longer draw a distinction according to whether the actions took place within or outside the European Union and whether or not they concerned international commercial transactions. Generally speaking, the GET considers that France has an effective and comprehensive legal armoury that enables it to respond, in very large measure, to the requirements of the Criminal Law Convention on Corruption (ETS 173). Nevertheless, certain aspects are still problematic, such as, for example, bribery agreements, the limitation period, and the rules governing jurisdiction when the offence is committed abroad. The GET wondered why, despite the economic weight of France and its close historical links with certain regions of the world considered to be rife with corruption, it has not yet imposed any penalties for bribing foreign public officials. The French authorities explain this situation by the recent implementation of the law of 13 November 2007, the length of criminal investigations and the complexity of mutual legal assistance with certain regions of the world.
77. The GET bears in mind that one of the aims of the authors of the Criminal Law Convention on Corruption was to dissociate the active (promising¹², offering or giving) and passive (requesting or receiving advantages, or accepting an offer or a promise) elements of corruption in order to facilitate the independent prosecution of either or both parties, without the automatic need for an

¹¹ The Act of 30 June 2000 introduced modifications into French legislation linked to ratification of the European Union Treaty of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and the OECD Convention of 17 December 1997 on combating bribery of foreign public officials in international business transactions.

¹² In the French version of the Convention the notion of "promising" is conveyed by the term "*proposer*".

agreement between them (or the automatic need to produce evidence of such an agreement). Hence the use of the terms "give", "offer", "receive" and "request"¹³.

78. French legislation recognises this distinction between active and passive corruption. The GET also notes that it has created a specific offence of active bribery that consists in responding to a request, that is accepting a promised bribe. However, a recurrent problem that emerged from discussions with those professionally involved was that, in practice, to prosecute corruption cases successfully it was necessary to establish, *in every case*, that there had been prior agreement between the corrupt parties.
79. Admittedly, in order to make it easier to establish that corruption had occurred, the 2000 legislation introduced into the definition of the various offences concerned the principle that the advantage could be promised or sought "at any time", precisely to obviate the requirement for the agreement between the parties to precede the actions of the person who had been bribed, whether this be a public official or employee of the private sector. Furthermore, this point of view was reiterated in a circular of 2001 which was disseminated among legal professionals. However, according to some of those whom the GET met, the 2000 reform would not have fully succeeded in practice in removing the prior agreement requirement because the use of French words "*pour que*", "*afin que*" or "*en vue de*" in the French Criminal Code indicates that the advantage has been offered *in order that* the public official will act in a certain manner, which means that the words "at any time" lose all their effect. Some of those spoken to said that for the sake of clarity and to give this amendment its full weight, it would have been better to specify that the advantage was offered to induce the official to act, but also as recompense for the official's having acted, in a particular way. In reality, it is difficult to imagine an offer being made to a public official *after* the sought after act has taken place. Nor is the literature always consistent (or up to date) on this point¹⁴. The GET was told that no final judgments had been handed down to confirm that the 2000 amendment has indeed abolished the requirement. With a view to increasing consistency and legal security, the French authorities may wish to take the necessary measures such as circulars and training to make it clear in the country's internal legal order, that prior agreement between the parties is no longer necessary for the purposes of prosecuting bribery and trading in influence offences, in accordance with the law of 2000 and the Convention ETS 173.
80. The situation regarding the notion of bribery/corruption agreement as such is very unclear. Its meetings on the spot and the literature it examined have led the GET to conclude that there are two main strands of thought, neither of which can be said to take precedence over the other. According to the first, argued particularly by the Ministry of Justice, bribery agreements are above all material evidence of a link between an unlawful advantage emanating from, or to be conferred by, the person giving the bribe and the consideration provided by, or expected from, the person bribed. According to this approach, it may take the form of an offer or request – the terms of a deal in some ways – that need not necessarily have been accepted. According to the second approach, adopted by some professionals and legal opinion and the central corruption prevention

¹³ See in particular paragraphs 32, 39 and 41 of the explanatory report to the Criminal Law Convention.

¹⁴ In this connection, the most recent edition of Dalloz (commentary on the Criminal Code, Art. 432-11, N 15) states that the offence of bribery is only established if the agreement between the persons offering and receiving the bribe preceded the act or failure to act that it was intended to reward. Meanwhile, "Droit pénal des affaires" (Lamy, 2005) states that the 2000 legislation acknowledged existing case-law but is unsure whether it abolished the requirement for an agreement or for the latter to come first (point 640, page 260). Further on, however (point 651, page 266), it states that in corruption cases it is necessary to establish that there was a bribery agreement and that this preceded the handing over of the advantages.

department¹⁵, and the one that appears the most evident to the GET, bribery/corruption agreements are first and foremost evidence of a meeting of minds and thus of criminal intent on the part of the parties concerned. The GET considers that this approach leaves little scope for bribery that one of the parties has not accepted, even though in French practice it is possible to bring a prosecution for bribery when it has not produced the desired result or the undue advantage has not actually been received. It believes that whether or not there is a meeting of minds should not necessarily be a factor in determining the legal status of the parties' actions¹⁶.

81. In this regard, the articles of the French Criminal Code establishing the various offences of active and passive bribery and trading in influence include most of the material elements required by the Criminal Law Convention. However, by opting to define active bribery in terms of offering and passive bribery as requesting or agreeing to (...) benefits, promises, donations, gifts or other advantages, French legislation has opted not to make explicit offences of, respectively giving and receiving any undue advantage. As was frequently confirmed in conversations, the notion of offering (in French *proposer*) covers that of giving. However it remains debatable whether the term *agreeing to* (in French *agréer*) offers, promises, donations and so on covers the simple notion of receiving an advantage, a notion that is intended to facilitate prosecution in the absence of any prior request or formal acceptance¹⁷.
82. Besides, because of the secret nature of bribery, there are rarely written documents providing evidence of the criminal intentions or actions of the parties (or of just one of them). The cases discussed during the visit had generally been successfully prosecuted thanks to the availability of evidence such as exchanges of faxes and correspondence, or even confessions. It is important that evidence (whether or not of an agreement) should also be adducible from the circumstances of the case. The French authorities must therefore continue the practice whereby the courts can use a range of indicators to establish evidence of corruption from objective factual circumstances (see, for example, the case-law of 29 September 1998 reported in paragraph 28).
83. The interlocutors of the GET stressed that in practice it was very difficult for prosecutors to build up a case to bring charges of bribery, and that to secure a conviction, they often brought other charges, such as misuse and concealment of the misuse of company property¹⁸ (Articles 241-3-4 and 241-6-3 of the Commercial Code), favouritism and taking unlawful advantage of an interest, often in conjunction with the notion of complicity. These offences are preferred because it is easier to prove that they have been committed than it is to establish bribery, thanks above all to the traces left by illegal financial flows and the fact that criminal intention can be deduced from the fact of the case. In the case of corruption prosecutions, however, there is always the need to establish the existence of an agreement, and even a prior agreement. The GET notes however that although certain prosecutors and investigating judge have sometimes become specialists in offences such as misuse of company property or favouritism, these offences probably do not

¹⁵ 2004 report of the central corruption prevention department, chap. VIII, page 224, discussing the consequences of the 2000 amendment: "however, it is still necessary to establish the existence of such an agreement, *this meeting of minds*". See also footnote 14, which refers to an agreement between the persons offering and receiving the bribe.

¹⁶ See footnote 13.

¹⁷ According to the explanatory report to the Criminal Law Convention, "the word "receipt" means keeping the advantage or gift at least for some time so that the official who, having not requested it, immediately returns the gift to the sender would not be committing an offence under Article 3".

¹⁸ It is very surprising to discover that the relevant case-law reveals great creativity in the way the law has been interpreted. For example, to enable actions typical of corruption to be successfully prosecuted as misuse of company property, the Court of Cassation has ruled that the use of a company's funds was not in that company's interests if its managing director used them to commit an act in breach of criminal law (giving a bribe). In contrast, the case-law on bribery is circumscribed by very strict and narrow conditions, such as the need for evidence of a prior agreement, which makes it difficult to establish this type of offence.

apply to all cases of bribery, carry lighter penalties than bribery offences and do not carry the same negative image as do convictions for bribery.

84. In the light of the foregoing, the GET considers that efforts are needed to clarify the factual and mental elements of the offences of bribery and trading in influence, so that they can be more easily applied. It therefore recommends **to take the necessary measures, such as circulars, training or, if necessary, amendments to legislation, in order to i) make it clear to or remind those concerned, as necessary, that the offences of bribery and trading in influence do not necessarily require an agreement between the parties; ii) ensure that the various offences of passive bribery and trading in influence cover all the material elements included in the Criminal Law Convention on Corruption (ETS 173), including that of "receiving "**.
85. The current situation also raise questions from another standpoint, that of gifts, bonuses and other benefits that public officials may receive. According to the second round evaluation report, Article 432-11 of the Criminal Code, on the passive bribery of national public officials, is an important element of the policy for controlling benefits or advantages received. However, given the uncertainties concerning corruption agreements and whether they had to precede any passing of bribes, and the problems with the notion of "receipt", the GET doubts whether Article 432-11 is sufficiently effective as a means of dealing with gifts. In particular there is no general ban on gifts, which makes it difficult to draw the line between courtesy gifts and benefits and advantage intended or likely to influence public officials' actions. At present, apart from cases where the payment of an official in exchange for an act is repetitive, there is no offence of a *posteriori* bribery (and nor is it a requirement of the Criminal Law Convention). The professionals whom the GET met all agreed that benefits received by public officials after carrying out (or refraining from carrying out) some act could not lead to prosecution unless there was a prior agreement. In view of the foregoing, it would certainly be desirable, in order to facilitate bribery prosecutions, to review the regulations on gifts and other advantages in the public sector, and to make a *posteriori* bribery an offence, even though this is not required by the Council of Europe Criminal Law Convention. Finally, those whom the team met during the visit thought that the legislation on corruption should be updated to take account of such notions as Illicit enrichment and abuse of functions, as they appear in the United Nations Convention against Corruption. The French authorities might also wish to introduce these notions into domestic law.
86. The notion of undue advantage does not appear as such in French legislation, which relies on the notion of advantages received or given "unlawfully". The GET does not consider this difference to be important and believes that the two notions are equivalent, given the broad interpretation that seems to be given by the French courts.
87. The offence of private sector bribery in French legislation corresponds to the requirements of articles 7 and 8 of the Convention. Indeed, it goes even further by including the activities of non-profit making bodies, which increases the value of this offence, given the variety of means and operating methods likely to be used in practice.
88. Since 2000, the French authorities have made considerable efforts to enact legislation on corruption to comply with the international conventions to which France is a party, and with the laws and regulations of the European Communities. To that end, the various types of bribery offence are now concentrated in the Criminal Code, according to criteria reflecting the social values affected, such as threats to public administration, the work of the courts and public confidence. The one exception is bribery of electors, which because of its very specific subject matter – the purchasing of votes – remains in the Electoral Code. When bribery in the private

sector was introduced in the Criminal Code in 2005 as a general offence, the Code already included the specific offence in Article 441-8 of bribery to secure a declaration or certificate containing incorrect information. The penalties for this offence are much lower than those for the general offence of bribery in the private sector. Curiously, Article 441-8 uses the term "attempt", which is incompatible with the general principle in French law on corruption that bribery attempts are treated as completed offences. The French authorities have stated that in practice, since the advent of the general offence of bribery in the private sector, Article 441-8 has ceased to be applied by the courts. Nevertheless, in the interests of consistency and harmonisation, the GET recommends **that in any future reform of the Criminal Code, the French authorities consider whether it would be appropriate to bring the offence in Article 441-8 of the Criminal Code - bribery to secure a declaration or certificate containing incorrect information – into line with the other bribery offences, if that offence still serves any useful purpose, given its very specific subject matter.**

89. Trading in influence is an offence in France in both its active and passive forms, including situations where the influence is only supposed, not real, and not actually exerted. However, it is not a criminal offence when it applies to decision making by a foreign public official or a member of a foreign public assembly. In this regard, France has entered a reservation to Article 12 of Convention ETS 173. The French authorities justify this with the argument that trading in influence is little known in the other Council of Europe member states and that, in these circumstances, making it an offence in France would have placed French businesses and nationals at a disadvantage *vis-à-vis* nationals of countries where it was not an offence. The GET thinks that making trading in influence an offence in every country is an important means of improving the transparency and impartiality of public decision making and eliminating the risk of corruption attached to it. Moreover, most on-site discussions showed that, generally, the majority of persons seeking to corrupt used subtle methods and employed intermediaries who were not always easy to apprehend by means of complicity in active bribery. Finally, the fact that France has decided that a particular form of conduct – trading in influence to secure a favourable opinion from a public authority – may be either lawful or criminal, depending on the nationality of the official representing the public authority, raises certain questions regarding the fairness of the law. The GET therefore recommends **to consider criminalising trading in influence in connection with foreign public officials or members of foreign public assemblies and thus withdrawing or not renewing the reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173).**
90. The problem of the aforementioned unfavourable legal treatment of foreign officials is compounded by the fact that there are procedural restrictions on the criminal prosecution of corruption offences by, or on the decision of, foreign public officials or international employees. For example, under Article 435-6 of the Criminal Code, the offences in articles 435-1 to 435-4 (active and passive bribery of foreign public officials, and active and passive trading in influence aimed at international public officials or elected members of international organisations) can only be prosecuted at the request of the state prosecution service, "except when bribes are either offered to or requested by persons working in one of the member states of the European Union, or in connection with the European Communities or a body created in application of the EU Treaty". The GET finds it difficult to accept this unequal treatment between international organisations and also between parties to the Criminal Law Convention according to whether or not they are EU member states. The GET notes the information supplied by the French authorities on the justice ministry circular of 21 June 2004¹⁹. However it also bears in mind the

¹⁹ The circular requires from prosecutors to adopt in practice the same admissibility conditions as those required for a complaint from a party claiming damages concerning French public officials and not to refuse to order an investigation for reasons linked to national economic interests.

criticism made by the majority of persons it met that there were insufficient effective means of detecting corruption offences, and even that there had been some deterioration in the situation, particularly regarding the detection of corruption linked to public procurement contracts. In this regard, it notes that while the 2007 legislation substantially widened the scope of corruption offences, it also introduced a procedural obstacle to criminal prosecution of these new offences. Therefore, the French authorities may wish to eliminate the unequal conditions governing prosecution of the offences of active and passive bribery of foreign public officials, and active and passive trading in influence aimed at international public officials or elected members of international organisations.

91. Turning to penalties, the GET welcomes the fact that direct or "disguised" amnesties no longer benefit persons convicted of corruption (according to police representatives, the most recent dated back to 1993). Such measures, which can allow a sense of impunity to become established, would now be politically very risky. The maximum penalties for corruption are generally 10 years' imprisonment and a fine of € 150 000 (except in the case of bribing a judge, which carries a maximum term of fifteen years). Theoretically fines and terms of imprisonment may be combined, and further complemented by additional penalties. As such, the penalties laid down for individuals appear to be consistent with the requirements of Article 19 of ETS 173.
92. The GET notes that France does not have minimum penalties for corruption, except in the case of a repeat offence when, under the new Act of 10 August 2007, courts are required to impose minimum sentences of imprisonment (1 year if the offence is punishable by 3 years, 2 years if it is punishable by 5 years, 3 years if it is punishable by 7 years and 4 years if it is punishable by 10 years). They can make exceptions, but have to justify them. In the other cases involving first offenders the courts have discretion to sentence according to the situation and level of guilt. Judges are theoretically able to hand down € 1 fines and/or one day's imprisonment, which can lead to serious disparities in the treatment of comparable bribery cases. Pending the unified computerisation of judicial statistics – a project that has been planned for several years but which should be finalised in 2009 – there are no detailed and consolidated statistics on the subject covering all the penalties imposed in the various regions (which can vary significantly). It is difficult to analyse the penalties applied when the available statistics give no information on the positions occupied by public officials convicted of bribery, the size of bribes received or requested or other details that might indicate the gravity of the offences committed²⁰. Nevertheless, some practitioners said that it appeared from their own information that terms of imprisonment were rarely handed down and when they were the sentence was suspended. The most common sentences are therefore fines, and here again they are generally well below the maxima specified.
93. As well as the principal penalties of imprisonment and fines, there are additional penalties such as loss of civic, civil or family rights, disqualification from public office or professional or social duties in connection with which the offence was committed, confiscation and publication of the judgment (Article 432-17 Criminal Code). According to those spoken to, however, these are not systematically ordered, and this applies particularly to ineligibility, even when this would have been justified to remove an elected member convicted on matters of integrity from the management of public affairs.
94. Additionally, according to information received in discussions, it appears that fines imposed are not always enforced. Judges have stated that the Treasury is responsible for collecting these

²⁰ The GET was told that the central corruption prevention department (SCPC) has only recently started to show an interest in these statistics. The ones in its 2007 report only cover the Paris region, where the courts are all connected up to a joint database. The data have not been analysed in this report.

finances and that they were not kept informed of the enforcement of these measures. Examples of cases, including certain major ones²¹, in which the fines were not recovered by the Treasury were cited in the on-the-spot discussions. The GET is concerned about this situation and recommends that the French authorities **take all necessary steps, in consultation with the institutions concerned, to ensure that the penalties imposed are properly enforced as regards corruption and trading in influence.**

95. Another issue raised by several interlocutors concerned the limitation period for cases of bribery and trading in influence. The three year period specified in law for this category of offence is now considered to be inadequate, given the special difficulties encountered in detecting and establishing proof of these offences. The courts have relaxed these conditions, as described in the descriptive part of the report (see paragraph 72), to make it possible to defer the starting point of the limitation period in cases involving a succession of payments or collusive agreements. The GET has been told that a recent decision of the Court of Cassation concerning misuse of company property has moved the starting point of the limitation period from the time when the offence was committed to when it was discovered. This case-law has not as yet been extended to cases of bribery and trading in influence, which also fall into the category of "hidden offences". The decision has also been criticised by a section of the political world, which considers it a threat to legal security. The GET believes that the effective prosecution of corruption offences requires a sufficiently long limitation period to counteract their covert nature and the difficulties of adducing evidence. According to the French authorities, draft legislation would extend the limitation period from 3 to 7 years for offences punishable by over three years' imprisonment and from 3 to 5 years for those punishable by under three years. This initiative, which would bring the French limitation periods into line with those most other European countries, deserves support. The GET therefore recommends **to extend the limitation period for bribery and trading in influence offences, as planned.**
96. In the case of offences committed abroad, France recognises its jurisdiction under articles 113-6 ff of the Criminal Code when the perpetrator is a French national, if the act is also an offence under the legislation of the country where it was committed (Article 113-6), when the victim is French (Article 113-7) or when the foreign perpetrator is in France and cannot be extradited (Article 113-8-1). France's reservation concerning Article 17 of the Criminal Law Convention relates to two points of jurisdiction: Article 17 paragraph 1b, since France's jurisdiction only applies if the perpetrator is a French national and there is dual criminality, and Article 17 paragraph 1c, which it considers too vague to allow its application. On this last point, France has therefore denied itself a means of protecting national interests by choosing not to give itself jurisdiction to prosecute, for example, foreign companies that have bribed French public officials abroad. With regard to complicity in a principal offence committed by a French person abroad, jurisdiction is recognised if the principal offence is punishable in France and in the country where it was committed, and has been established by a final decision in the foreign courts (Article 113-5 of the Criminal Code). This provision makes it very difficult to prosecute acts of complicity that also include, for example, the instigation by the parent company in France of a corruption offence committed by a local branch abroad.
97. It appears to the GET that, quite apart from the restrictions inherent in the dual criminality requirement (covered by the reservation), France applies other limits to the application of the principle of jurisdiction based on nationality. Under Article 113-8 of the Criminal Code, offences committed abroad can only be prosecuted at the request of the state prosecution service and must be preceded by a complaint from the victim or his or her beneficiaries, or an official report

²¹ Particularly the "Elf" case.

by the authorities of the country where the offence was committed. In the absence of such a complaint or report, the French authorities are unable to prosecute the offence, and this was confirmed by the persons the team met and the legal theory supplied. The victim's complaint is unimportant in practice because according to legal theory in French law it is usually the foreign state that is concerned. An official report is therefore a precondition of criminal proceedings. The report must be issued by the foreign government, its prosecution service or an investigating judge. The police authorities have no competence in this matter²². These restrictions, which are incompatible with Article 17 of the Convention, are not the subject of the reservation, which on this point is confined to dual criminality. Certain persons confirmed that it is difficult to apply these provisions on jurisdiction, particularly when the perpetrator is a legal person. As indicated earlier (see paragraph 76), there have been no convictions so far for bribing foreign public officials, despite the fact that France is a major commercial and industrial power, which raises questions as to whether the obstacles in the way of recognising jurisdiction could possibly dissuade prosecutions. Legal theory has occasionally stressed that acts of corruption committed by French persons abroad cannot be prosecuted, thus offering French companies "exceptional guarantees". The GET therefore recommends to i) **abolish the condition that the prosecution of acts of corruption committed abroad by French nationals must be preceded by a complaint or an official report (Article 113-8 Criminal Code); ii) abolish the condition that the principal offence committed abroad must have been established by a final decision of the foreign courts (Article 113-5 Criminal Code) and iii) consider withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173).**

IV. CONCLUSIONS

98. Following various changes to the law on corruption, the most recent of which was in December 2007, France has a well developed legal framework in this area. Generally speaking, the GET considers that France has an effective and comprehensive legal armoury that enables it to respond, in very large measure, to the requirements of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). The various forms of corruption and categories of persons specified in these international instruments are covered by the relevant French legislation. France also uses these criminal provisions, which has permitted the development of a case-law on the subject.
99. Nevertheless, the GET's investigations show that the legal system still suffers from some handicaps and could be further strengthened. For example, considerable uncertainties remain as regards the concept of corruption agreement, in particular as to whether proof of the existence of an agreement must be established in every case. Moreover, France has severely restricted its jurisdiction and its ability to prosecute cases with an international dimension, which given the country's importance in the international economy and the scale of many of its companies is very regrettable. Two reservations have been made to the Convention, which the country is invited to lift or not renew. Other possible improvements concern the length of the limitation period for prosecutions of lesser offences of corruption and trading in influence, as well as the fact that the fines levied in this type of case are not always collected in practice.
100. In the light of the foregoing, the GET makes the following recommendations to France:
- i. **to take the necessary measures, such as circulars, training or, if necessary, amendments to legislation, in order to i) make it clear to or remind those concerned,**

²² Alexis Blois, *Infraction de corruption d'agent public étranger et procédure pénale nationale* (the offence of bribing a foreign public official and national criminal procedure), in RDAI/IBLJ no. 2, 2006, p.222.

as necessary, that the offences of bribery and trading in influence do not necessarily require an agreement between the parties; ii) ensure that the various offences of passive bribery and trading in influence cover all the material elements included in the Criminal Law Convention on Corruption (ETS 173), including that of "receiving " (paragraph 84);

- ii. to consider, in any future reform of the Criminal Code, whether it would be appropriate to bring the offence in Article 441-8 of the Criminal Code - bribery to secure a declaration or certificate containing incorrect information – into line with the other bribery offences, if that offence still serves any useful purpose, given its very specific subject matter (paragraph 88);
- iii. to consider criminalising trading in influence in connection with foreign public officials or members of foreign public assemblies and thus withdrawing or not renewing the reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 89);
- iv. to take all necessary steps, in consultation with the institutions concerned, to ensure that the penalties imposed are properly enforced as regards corruption and trading in influence (paragraph 94);
- v. to extend the limitation period for bribery and trading in influence offences, as planned (paragraph 95);
- vi. i) to abolish the condition that the prosecution of acts of corruption committed abroad by French nationals must be preceded by a complaint or an official report (Article 113-8 Criminal Code); ii) to abolish the condition that the principal offence committed abroad must have been established by a final decision of the foreign courts (Article 113-5 Criminal Code) and iii) to consider withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 97).

101. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the French authorities to present a report on the implementation of the above-mentioned recommendations by 31 August 2010.

102. Finally, GRECO invites the French authorities to authorise publication of this report as soon as possible.