



FRANCE: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

December 2014

This report, submitted by France, provides information on the progress made by France in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 19 December 2014.

The Phase 3 report evaluated France's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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SUMMARY AND CONCLUSIONS – PHASE 3 WRITTEN FOLLOW-UP BY FRANCE

Summary of findings

1. In October 2014, France presented the Working Group on Bribery with its Written Follow-up Report, responding to the recommendations formulated by the Working Group during its Phase 3 evaluation of France in October 2012. Since Phase 3, France has opened 24 new procedures involving the bribery of foreign public officials, but no legal person has yet been convicted of this offence. Since Phase 3, only three more individuals have been convicted in two cases, resulting in fines ranging from EUR 5 000 to EUR 20 000. In addition, the number of acquittals, dismissals and case closures has risen significantly since Phase 3, from a total of 12 in October 2012 to 31 in October 2014 (including 11 new decisions in favour of legal persons).

2. The Working Group welcomes the responses provided by France in connection with the written follow-up exercise, and the efforts of the Ministry of Justice to provide the most up-to-date information about the 58 procedures initiated since the Convention entered into force in France. Of its 33 recommendations, the Group deemed that 4 had been implemented in full; 17 partially; and 12 recommendations remained non-implemented. Two of the Working Group's unimplemented recommendations (*Recommendations 1(c) and 5*) have been challenged by France, which considers that the existing legal framework is appropriate. In respect of seven other recommendations (*Recommendations 1(b), 1(d), 2(a)(i), 4(c), 4(g), 4(h) and 6¹*), France is presumably not planning any implementation measures.

3. Despite the increased volume of ongoing procedures, the enforcement of the foreign bribery offence still falls far short of the expectations expressed by the Working Group during Phase 3, given both the size of the French economy and the exposure of French companies to the risk of foreign bribery (*Recommendation 1(a)*). No legislative action has been taken, in respect of the bribery of foreign public officials committed by French nationals on foreign territory, to repeal the dual criminality requirement imposed by Article 113-6 of the Penal Code (*Recommendation 1(b)*). It should also be noted that no action has been taken to ensure that neither the case-law principle of “corruption pact” (including the need to demonstrate its prior existence) nor the interpretation of the principle of non-retroactivity of criminal law would, in practice, constitute obstacles to prosecution. Nor has the definition of “foreign public official” been clarified (*Recommendations 1(c) and 1(d)*). Lastly, the reform contemplated to expand the offence of trading in influence to encompass foreign bribery has not materialised (*Recommendation 1(e)*).

4. While it has been clarified that legal persons may be held liable for acts of bribery committed by an intermediary, including a foreign-based subsidiary, the authorities have taken no action to clarify requirements for the criminal liability of legal persons that would be in line with the 2009 Recommendation (Annex I). Furthermore, training efforts to raise awareness of the French judicial authorities on enforcing the criminal liability of legal persons in foreign bribery cases should be intensified (*Recommendations 2(a) and 2 (b)*). With regard to enforcement, the Working Group calls attention to the authorities' lack of initiative in cases involving French enterprises and proven or presumed instances of foreign bribery.

5. The Law of 6 December 2013 on action against tax fraud and serious economic and financial crime stiffened significantly penalties for the offence of bribing a foreign public official, raising the fine for natural persons to EUR 1 million, which can be increased to double the proceeds of the offence, and for

¹ Aspect of the recommendation involving protection of “the fundamental interests of the nation” in conjunction with requests for mutual legal assistance.

legal persons to EUR 5 million, which can be increased to ten times the proceeds of the offence (*Recommendations 3(a) and 3(b)*). Notwithstanding, there exists no sufficiently convincing practice that would demonstrate that these recommendations are being fully implemented. As for the use of confiscation measures (*Recommendation 3(c)*), there has yet to be any seizure or confiscation in a case of bribing a foreign public official, in contrast to other economic and financial offences. Apart from a practical guide for judges on seizure and confiscation which would include *e.g.* a reference to guidelines on how to quantify the proceeds of an offence (forthcoming, year-end 2014), no other action has been planned to encourage full use of the confiscation measures available.

6. The Working Group has studied the progress France has made with regard to investigations and prosecutions in foreign bribery cases. When the Phase 3 evaluation report was adopted, France had pledged to put an end to prior practices whereby the Minister of Justice would send individual instructions to public prosecutors. Article 30 of the Code of Criminal Procedure, as amended by the Law of 25 July 2013, abolished such instructions. The Working Group notes that one consequence of this will be to facilitate the granting of mutual legal assistance requests in foreign bribery cases (*Recommendation 6*). However, the reform of the status of the Public Prosecutor's Office, recently contemplated by the French authorities, and which would have allowed prosecutors to conduct their missions without being in any way influenced by those holding political power did not materialise, and the issue of these prosecutors' independence is still questioned by the Group (*Recommendation 4(a)*).

7. Prosecution in the wake of complaints by victims of foreign bribery offences is now possible in respect of such acts that are committed entirely or partially in France (owing to the repeal of Article 435-6 of the Criminal Code). Anti-corruption organisations were also given the right to file civil party claims. However, the Public Prosecutor's Office may only instigate proceedings for an offence committed abroad if a victim has filed a prior complaint or there has been an official accusation made by the authority of the country in which the offence was committed (Article 113-8 of the Criminal Code). No legislative reform has been undertaken to abolish this requirement, despite the authorities' announcement in October 2012 (*Recommendation 4(b)*). France has not changed the public disclosure rules relating to appearance on prior admission of guilt (CRPC) procedures and is planning no reform in this area (*Recommendation 4(c)*). Nor do the French authorities have any plans to make other expected amendments to ensure that the law governing "defence secrecy" requirements or the "blocking statute" do not raise obstacles to investigations or prosecution in foreign bribery cases (*Recommendations 4(g) and 4(h)*). Moreover, since the circular of 9 February 2012 restating guidelines of criminal policy, the French authorities have taken no action to clarify their country's criminal justice policy with regard to active bribery of foreign public officials with a view to encouraging systematic investigation of the liability of persons suspected of committing the offence (*Recommendation 4(d)*).

8. The Working Group has noted with satisfaction the establishment of a National Financial Prosecutor tasked *inter alia* with pursuing foreign bribery cases. A circular introducing the new National Financial Prosecutor was sent out on 31 January 2014 by the Ministry of Justice, stipulating the Prosecutor's area of competence and the criteria to be applied to the submission and circulation of information in cases likely to come under its jurisdiction. The Central Office for the Fight against Corruption and Financial and Tax Offences (OCLCIFI) is now in charge of investigating foreign bribery cases. For the Group, however, the question is whether sufficient resources are specifically allocated to investigations and prosecutions, and in particular to processing mutual judicial assistance requests (*Recommendation 4(e)*).

9. Lastly, the Working Group has noted the conclusions of the Committee for the Modernisation of Public Action in a report released in November 2013, which did not recommend altering the status of the criminal police by making it responsible to the judicial authority. The Working Group had recommended that France review the status of the criminal (judicial) police in order to ensure its capacity to conduct

investigations that are not influenced by the considerations mentioned in Article 5 of the Convention (*Recommendation 4(f)*).

10. In Phase 3, the Working Group had felt that the three-year statute of limitations applicable to bribery, running from the date on which the offence was either committed or, in cases of concealed offences, discovered, did not ensure enough time for investigation and prosecution and had recommended that France extend this statute of limitations to an appropriate period. With regard to applicable case-law, France considers that its statute of limitations does not hinder prosecution, and has therefore taken no action to implement *Recommendation 5*. With regard to mutual legal assistance, no measure has been taken to ensure that the granting of such assistance in foreign bribery cases not be influenced by considerations of national economic interest under the guise of protecting “the fundamental interests of the nation” (*Recommendation 6*).

11. Concerning the fight against money laundering, the guide to detecting potentially corrupt financial operations, co-authored by TRACFIN and the Central Corruption Prevention Department (SCPC), has been updated. However, France must pursue and intensify its actions to raise the awareness of professions that are required to detect acts that may specifically involve foreign bribery (*Recommendations 7(a) and 7(b)*). With regard to accounting rules, external auditing and corporate compliance programmes, the Working Group welcomes the adoption, on 18 April 2014, of a circular clarifying the scope of external auditors’ obligation to report criminal acts committed by foreign subsidiaries of companies they audit. France must, however, pursue its efforts to raise the awareness of French companies (*Recommendations 8(a) and 8(b)*).

12. Concerning tax measures, no initiative has been taken to encourage French Polynesia and Saint Pierre and Miquelon to apply the principle of the non-deductibility of bribes as soon as possible. In addition, the authorities should pursue their efforts to raise the awareness of tax officials in their role of detecting illicit transactions related to foreign bribery (*Recommendations 9(a) and 9(b)*).

13. Few awareness-raising actions have been taken by the Ministries of Economic or Foreign Affairs, in particular to heighten companies’ awareness of the risks of foreign bribery. It should be noted, however, that a workshop for chief economic officers has been scheduled for 2015 and a module on bribery incorporated into the initial and ongoing training programme for diplomats (*Recommendation 10*). Efforts in the realm of reporting acts of foreign bribery have been geared towards protecting whistleblowers in the private sector (*Recommendation 11(a)*). No warning and reporting mechanism has been put in place in government agencies to enable comprehensive enforcement of the provisions of Article 40, paragraph 2 of the Code of Criminal Procedure. The interpretation of the modalities to report allegations of bribery, which had already been raised during Phase 3, is still an outstanding issue (*Recommendations 11(b) and 11(c)*).

14. In respect of public advantages, no change has been made to allow all authorities mandated to approve public procurement contracts identified in Phase 3 to access the criminal records of legal persons (*Recommendation 12(a)*). COFACE and AFD have held training courses on corruption for their employees, and the induction process for Ministry of Defence officials authorised to issue arms export licences requires training in this area (*Recommendation 12(b)*). Lastly, although the legal arrangements governing arms export licences have been overhauled extensively since 2012, it is not certain that this has helped ensure that internal controls, ethics and compliance programmes or measures undergo thorough in-depth scrutiny (*Recommendation 12(c)*).

Conclusions

15. Based on the Working Group on Bribery’s observations regarding France’s implementation of the Phase 3 recommendations, the Working Group concludes that France has fully implemented Recommendations 4(f), 7(b), 8(a) and 11(a); that France has partially implemented Recommendations 1(a), 1(e), 2(a), 2(b), 3(a), 3(b), 4(a), 4(b), 4(e), 6, 7(a), 8(b), 9(b), 10, 11(c), 12(b) and 12(c); and that

Recommendations 1(b), 1(c), 1(d), 3(c), 4(c), 4(d), 4(g), 4(h), 5, 9(a), 11(b) and 12(a) have not been implemented. Follow-up issues remain relevant and will be examined, along with the implementation of non- and partially implemented recommendations, as part of the Working Group's future evaluations.

16. Given the deficiencies noted in the implementation of the Working Group's recommendations, the Group decided on 16 October 2014 that France was persisting in not adequately implementing the Convention, and accordingly it decided to publish a formal declaration (available online at the following link: <http://www.oecd.org/corruption/statement-of-the-oecd-working-group-on-bribery-on-france-s-implementation-of-the-anti-bribery-convention.htm>) stating that France was not sufficiently in compliance with the Convention and the 2009 Recommendation, and requesting expeditious implementation of the Convention. Another purpose of this declaration was to encourage France to pursue its reform efforts to bolster its arsenal against foreign bribery.

WRITTEN FOLLOW-UP TO PHASE 3 REPORT: FRANCE

PART I: RECOMMENDATIONS FOR ACTION

Recommendations for ensuring effective investigation, prosecution and sanctioning of bribery of foreign public officials

Text of recommendation 1(a):

1. Regarding the offence of bribery of foreign public officials, the Working Group recommends that France:

- (a) review its overall approach to enforcement in order to effectively combat international bribery of foreign public officials [Convention, Articles 1 and 5; 2009 Recommendation, V].

Actions taken as of the date of the follow-up report to implement this recommendation:

The examiners consider that the number of convictions in France for bribery of foreign public officials, particularly convictions of legal persons, is low (see report, page 11).

The number of proceedings initiated for bribery of foreign public officials in international business transactions has risen significantly since 2012.

Whilst the October 2012 report mentioned 33 proceedings initiated by France since 2000 (23 of them still ongoing), that figure had risen to 58 (38 of them still ongoing) by the date of submission of this report, which means an increase of **75% over two years (and 65% for ongoing cases)**.

The number of cases on which a final judgment had been given rose from three in 2012 (concerning a total of four individuals) to four convictions for this offence (concerning a total of five individuals). There is also a fifth case, not yet concluded, in which two individuals have been convicted of this offence, but the charges against a third accused are being considered separately. This person was acquitted on 24 June 2014 under the double jeopardy principle. The acquittal decision has been appealed by the public prosecutor's office.

With regard more specifically to legal persons, 21 legal persons are currently being prosecuted for foreign bribery: four companies have been referred to the criminal court (*tribunal correctionnel*), 14 have similarly been referred by order of an investigating magistrate, and three are the subject of an appeal).

The marked rise in these figures since 2012 reflects France's efforts in recent years to develop a policy of resolute criminal policy against foreign bribery.

This trend is likely to continue, and become even more obvious, as a result of recent procedural legislation giving anti-corruption organisations the statutory right to bring civil party claims in criminal proceedings, and to initiate criminal proceedings themselves, as well as a result of legislation on funding, with the appointment recently of a National Financial Prosecutor who has competence for the whole of France and has increased resources to combat corruption.

If no action has been taken to implement recommendation 1(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(b):

1. Regarding the offence of bribery of foreign public officials, the Working Group recommends that France:

(b) eliminate, as soon as possible, the dual criminality requirement set out in Article 113-6 of the Penal Code in relation to bribery of foreign public officials committed by French nationals outside French territory (that the acts are “punishable by the law of the country where the acts are committed”) [Convention, Article 1; 2009 Recommendation III (ii) and V].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

No law has been passed since the October 2012 report to amend Article 113-6 of the Penal Code.

It should be noted, however, that dual criminality does not require the offences to be identical.

Thus it is of little importance that foreign law qualifies the facts differently. For French law to apply, it is sufficient that the acts constitute a criminal offence in the foreign country. Moreover, the provisions of Article 113-6 of the Penal Code do not say that the matter must have been deemed an offence abroad in order for the condition of dual criminality to apply.

The examiners consider that this requirement is inconsistent with Commentary 3 to the Convention, which explains Parties’ obligations under Article 1. The Commentary states that the offence should not “*require proof of elements beyond those which would be required to be proved if the offence were defined as in this paragraph.*” The examiners emphasised that this paragraph stipulates that the definition should be “*autonomous*”, “*not requiring proof of the law of the particular official’s country*”.

This provision – which is applicable not just to foreign bribery offences but to all types of misdemeanour – does not pose any real difficulties in practice, since bribery of a foreign public official is necessarily a criminal offence under Article 16.1 of UNCAC (the “Merida Convention”), an instrument ratified by 169 countries.

Text of recommendation 1(c):

1. Regarding the offence of bribery of foreign public officials, the Working Group recommends that France:

(c) clarify by all appropriate means that no element of proof, other than those set out in Article 1 of the Convention is required to constitute an offence under Article 435-3 *et seq.* of the Penal Code with regard to bribery of foreign public officials, and in particular that the definition of “foreign public official” and the case-law principle of “corruption pact” do not, in practice, constitute such elements or obstacles to the criminalisation of the (i) offer or promise of pecuniary or other advantages; (ii) acts of bribery involving intermediaries; and (iii) payments to third parties [Convention, Article 1; 2009 Recommendation, III (ii) and V].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Regarding the difficulties in dealing with certain material elements which make up the offence of bribery, the report points to the narrow interpretation of the concept of foreign public official used by the French courts and the problems caused by the legal requirement to prove a “corruption pact”. Whilst acknowledging that these elements do not of themselves constitute a *prima facie* breach of the Convention, the examiners consider that they demonstrate a narrow interpretation of the offence which tends to prevail from the preliminary investigation phase, and which explains the extremely low number of final convictions for the offence of bribery of a foreign public official. The report thus made the recommendation to France that “*the criteria [...] which define foreign public officials and acts they perform must be interpreted in a sufficiently flexible and broad manner*”.

Regarding the definition of foreign public official:

The legality principle applying to misdemeanours and penalties and its corollary, the requirement of texts that are clear and precise, together with the principle of strict interpretation of criminal law, all of which are guarantors of individual freedoms, do not allow “*flexible and broad*” interpretation of the definition of a foreign public official and the acts they perform, as recommended by the examiners.

Thus the case highlighted on page 14 (paragraph 22), which was dismissed by an investigating magistrate, concerned an individual who was indeed a foreign public official, but before the existence of the foreign bribery offence in French law (prior to 30 September 2000). Therefore, he could not be prosecuted because the stricter criminal law was not retroactive.

Whilst that individual did indeed receive bribes at a later date, after the law came into force (*i.e.* after 30 September 2000), it must be noted that he no longer held the status of a foreign public official when he accepted these bribes.

Regarding the concept of a “corruption pact”:

The concept of a “corruption pact” in legal theory and practice makes reference to the existence

within a given case of an understanding between the two parties to the act of bribery, one who is passive and the other who is active.

What is then called a “corruption pact” is, in effect, the simple reality that one party agrees to do (or does) something in exchange for something promised (or delivered) by the other party.

That being the case, one must emphasise that it unnecessary in French law to prove the existence of a “pact” in order to criminalise the behaviour of the party who instigates bribery, whether in an active or passive role. It is enough to prove, for example, that he asked for a sum of money in return for performing a specific act. Whether or not his offer was accepted is immaterial.

Case law on the treatment of such offers is consistent, indicating clearly that the existence or otherwise of a pact in these circumstances is inconsequential (Crim. 10 June 1948: the bribery offence “does not require that the offer or promise of a bribe has been accepted; the offence is constituted as soon as the offender has made (...) the promise, offer, giving or gift within the purpose provided for in the law”; Crim. 16 October 1985).

Furthermore, for this reason, the offence of attempted bribery does not exist, because the facts which might equate to it already constitute an offence of bribery and are prosecuted as such.

In the view of French authorities, there is nothing in the law, case law nor legal theory which argues against prosecution for a simple solicitation or offer, regardless of whether or not the bribe was accepted.

The Ministry of Justice stresses these facts in the training it provides for judges. Discussions during these training sessions, has shown that this view has never been challenged nor subject to any difficulty of interpretation.

Similarly the Central Corruption Prevention Department (*Service Central de la Prévention de la Corruption*, SCPC), in its 2013 annual report (cf. report, box on page 107), urged legal practitioners to avoid using the term “corruption pact” because it leads to ambiguity.

No training material can be provided but the message communicated by the SCPC in its interventions is in line with the chapter on the issue of the “corruption pact” in its 2013 Annual Report. The SCPC recalls (pp. 106-107) that the term “corruption pact” may lead to confusion: the prosecution and conviction for active bribery is independent from those for passive bribery, since the remuneration of the briber can be made at any point in time. For that reason, the SCPC recommends to not apply the term. The Annual Report was circulated to all French criminal courts and is accessible to all magistrates through the Ministry of Justice’s intranet website. The Report was also uploaded for free on the website of its editor “La Documentation Française”.

This is a statement repeatedly made by the SCPC and the French authorities.

The Ministry of Justice transmitted the information on 22 June 2011 of the enactment of Law No. 2011-525 of 17 May 2011 on the simplification and improvement of the quality of legislation. The governmental dispatch clarifies that “*Article 154 [of said law] amends the Criminal Code in order to conform to our legislative framework to one GRECO recommendation [recommendation 1] which suggested that ‘France could wish to ensure that (...) a prior corruption pact is no longer required for purposes of prosecution...’*”. GRECO had indeed noted the lack of academic consensus with respect to the requirement of a prior corruption pact. Article 154 therefore aims at clarifying, by making it explicit in the law, the change introduced, equivocally according to parts of the doctrine, in Law No. 2000-595 of 30 June 2000 on corruption, that a solicitation, agreement, offer, proposal or acceptance of a bribe prior to the commission of the offence is no longer required. This clarification was also recalled in these terms in a

circular of 9 February 2012 on foreign bribery.

The SCPC recalls these elements of the “corruption pact” in numerous trainings it provides

In this respect, it is worth noting, as stated in recommendation 2b) that a multi-year training plan to raise awareness with anti-corruption stakeholders locally has been put in place. This joint training plan with the French National School for the Judiciary (ENM) and the SCPC aims at covering all French courts of appeals. The plan targets magistrates, investigators from the police and gendarmerie. Regional auditor’s courts magistrates are also associated. To this date, 9 courts of appeals have been visited.

In addition, the SCPC was invited in 2013 to participate in a specialised training in the area of economics and finance which was organised by the ENM as part of the training of magistrates.

The basics of bribery and trading in influence were also addressed to investigators of the National Police’s General Inspectorate as part of a series of training activities on probity conducted by the SCPC in the first half of 2014.

Text of recommendation 1(d):

1. Regarding the offence of bribery of foreign public officials, the Working Group recommends that France:

(d) ensure by all appropriate means that the interpretation of the principle of non-retroactivity of criminal law does not impede the prosecution and sanctioning of bribery of foreign public officials occurring after the entry into force of the offence in France [Convention, Article 1; 2009 Recommendation, V].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

This recommendation is elucidated in paragraph 22 (page 14) of the report, where the examiners point to a case “in which a subsidiary of a leading group in the energy and transport sectors was suspected of paying bribes to an African minister was dismissed [in France] on the basis of the principle of the non-retroactivity of criminal law, given that the former minister ceased to exercise his official functions at the time the bribes were paid, which occurred after the entry into force of the offence. While respecting *the rule of res judicata*, *the Working Group wonders whether this obstacle could have been overcome by an interpretation of this principle that allowed payments made after the end of the official term of the minister to be taken into account for acts committed while he was still in office. The fact that he had formed his own opposition party and was planning to stand in the next presidential election had no effect on the decision to dismiss the case, since no consideration was given to the possibility, described in Commentary 10 to the Convention, that an advantage promised or given to any person in anticipation of his or her becoming a foreign public official might fall within the scope of the offence.*”

The **principle that the more stringent criminal law does not apply retroactively** is, in fact, a

cardinal principle of French criminal procedure which, as always in criminal matters, is **interpreted strictly**.

It should be remembered here that these principles were deemed constitutional by the Constitutional Council, on the basis of the Declaration of the Rights of Man and of the Citizen of 26 August 1789 (Article 8).

As mentioned above, the case quoted on page 14 (paragraph 22), dismissed by an investigating magistrate, concerned an individual who had indeed been a foreign public official, but at a time when bribery of a foreign public official was not a criminal offence under French law (that is to say prior to 30 September 2000) and therefore he could not be prosecuted because the stricter criminal law was not applicable retroactively. Whilst that individual had indeed received bribes later, after the law came into force (that is to say after 30 September 2000), it must be noted that he no longer held the status of a foreign public official at the time he received the bribes.

The investigating magistrate thus applied the criminal law in this case in line with constitutional principles and centuries-old jurisprudence.

It cannot, therefore, be inferred from this decision that the courts' interpretation of the principle that the criminal law cannot be applied retroactively poses an obstacle to the prosecution and sanctioning of bribery of foreign public officials occurring after the entry into force of the offence in France. On the contrary, this decision is a perfect illustration of rigorous application of the principle that punishment is permissible only under a law that is drafted and enacted prior to the offence and legally applied.

Text of recommendation 1(e):

1. Regarding the offence of bribery of foreign public officials, the Working Group recommends that France:

(e) examine the possibility either of criminalising the bribery of a foreign public official sufficiently broadly, or of extending the offence of trading in influence, to avoid a difference of approach for the same acts of bribery based on whether the intended recipient is a French or a foreign public official [Convention, Article 1; 2009 Recommendation, III (ii) and V].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 1(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The French authorities are fully committed to combating economic and financial crime. Great importance has always been attached to strengthening the effectiveness of their anti-corruption tools and complying with international standards on the subject.

For example, progress achieved by Law No. 2013-1117 of 6 December 2013 on action against tax fraud and serious economic and financial crime (appoints a National Financial Prosecutor, allows anti-corruption groupings to bring civil party claims in criminal proceedings, increases penalties for bribery of

foreign public officials, etc.)

On the matter of whether trading in influence should also be criminalised in relation to foreign public officials, the Minister of Justice announced her wish, in a communiqué of 24 October 2012, to improve the efficacy of measures against international corruption and to make international trading in influence a criminal offence.

The French Parliament debated this issue in connection with the aforementioned law of 6 December 2013, and rejected the proposal through a process of democratic debate.

The idea of such a reform has not been abandoned, but further in-depth study will be required before it is raised again. This work is ongoing.

Text of recommendation 2(a):

2. Concerning the criminal liability of legal persons, the Working Group recommends that France:

(a) clarify the requirements for the criminal liability of legal persons to: (i) ensure that their approach fully takes into account Annex I of the 2009 Recommendation; and (ii) that a legal person cannot escape liability for acts of bribery by making use of an intermediary, including a related legal person [Convention, Article 2; 2009 Recommendation, Annex I(B)].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Regarding recommendation 2(a)(i):

Firstly, the examiners ask France to (i) “clarify the requirements for the criminal liability of legal persons to ensure that their approach fully takes into account Annex I of the 2009 Recommendation”.

Note: Annex I to the 2009 Recommendation calls for “a flexible approach to the level of managerial authority of the person whose conduct triggers the liability of the legal person”.

A study of case law shows that judges are flexible in their interpretation of the definition of “organs” or “representatives” that can trigger corporate liability.

Thus case law understands:

- “organs” as meaning the manager, the board of directors or the company’s executive board, the CEO, the supervisory board, the general assembly of shareholders, etc.;
- “representatives” as meaning any person to whom power has been delegated by the company’s legal representative and who possesses the competence, authority and resources necessary for the

performance of his remit.

Regarding the concept of a “representative”, the *Cour de Cassation* has recently extended its definition to mean more than just someone to whom power has been delegated, since the High Court considers that the term applies to persons appointed as representatives by virtue of their status or qualities, that is to say employees with decision-making powers (Criminal Chamber, 11 October 2011).

The question has also been raised as to whether a *de facto* representative can trigger the criminal liability of a legal person. In a Criminal Chamber judgment of 13 April 2010, the High Court ruled this to be possible, saying that the “representative”, as defined in Article 121-2 of the Penal Code, could also be the legal person’s *de facto* manager and so could render it criminally liable (Criminal Chamber, 13 April 2010).

It should be noted, however, that whilst the wording of Article 121-2 of the Penal Code requires the offence to have been committed by a natural person in order to trigger the liability of the legal person on whose account the offence was committed, the *Cour de Cassation* conceded, in 2006, that “*it was not essential to identify the natural person when the offence could only be attributable to the legal person or be the result of the company’s business policy*” (Criminal Chamber, 20 June 2006). It thereby created a presumption that the offence had been committed by an organ or representative.

Thus these developments in case law fully satisfy this part of recommendation 2(a).

Regarding recommendation 2(a)(ii):

Secondly, France is asked to (ii) “clarify that a legal person cannot escape liability for acts of bribery by making use of an intermediary, including a related legal person”.

This recommendation is elucidated on page 21 of the report which reads “On the question of certain multinationals’ practice of decentralising compliance to foreign subsidiaries, prosecutors interviewed during the on-site visit said that in order to instigate proceedings against the parent company under such circumstances, it would be necessary to prove the company’s fraudulent intent in establishing such a practice. A large number of participants doubted that a parent company would be held liable for acts committed by a subsidiary, and France confirmed that there was no case law in this matter to date.”

On the matter of this recommendation, the law on conspiracy and complicity **which determines the liability of parent companies for actions of foreign subsidiaries** is very familiar to prosecutors and courts.

However, the *Chancellerie* (Central Administration of the Ministry of Justice) is keen to remove any ambiguity on this matter in relation to action against foreign bribery, and states expressly in its latest circular on criminal policy in this area (page 7) that “*legal persons may rendered criminally liable by the actions of a person to whom powers have been delegated, for instance the director of a foreign subsidiary*” (circular of 9 February 2012 “introducing new criminal provisions on international bribery, and restating guidelines of criminal policy”).

This reminder, communicated in a circular, fully satisfies this part of recommendation 2(a).

Text of recommendation 2(b):

2. Concerning the criminal liability of legal persons, the Working Group recommends that France:

(b) introduce ongoing training for the French law enforcement authorities relating specifically to enforcement of the criminal liability of legal persons in foreign bribery cases [Convention, Article 2; 2009 Recommendation, III (i), Annex I(D)].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Criminal Justice section of the French National School for the Judiciary (ENM) offers to professional judges sessions devoted wholly or partially to the issue of bribery, focusing on prevention, detection and enforcement.

In 2013, a total of 173 professional judges this underwent training. Note: bribery cases are a specialised area of litigation handled by a small number (8) of dedicated interregional jurisdictions (JIRS, *juridictions interrégionales spécialisées*), whilst seriously complex cases are dealt with centrally, as of March 2014, by the National Financial Prosecutor appointed under Organic Law No. 2013-1115 of 6 December 2013.

Action	Audience
National session “corruption, prevention, enforcement”	60
Regional sessions “corruption, prevention, enforcement”	32
National session “economic and financial criminal law level 1”	32
National session “economic and financial criminal law level 2”	31
Module of the cycle “further economic and financial law”	26
Training abroad for French magistrates	2
Total	

As of 2011, at the initiative of the Central Corruption Prevention Department (*Service Central de la Prévention de la Corruption*, SCPC), an annual continuing professional education course on “Bribery: detection, prevention, enforcement” has also been held by the French National School for the Judiciary (ENM) for the benefit of ordinary, administrative and financial judges, both French and foreign, police inspectors, customs inspectors and officers of the gendarmerie.

Also, as of 2012, the ENM and SCPC have agreed to a multiannual training programme designed to cover all appellate courts in France. In 2012, the regions covered were Aix-en-Provence, Douai, Lyons, Nancy and Paris. The programme continued in 2013, including Montpellier, Versailles, Bordeaux and Rennes.

The various sessions, both national and regional, address all of the issues involved in prosecuting bribery offences, from both theoretical and practical points of view. The sessions also include the criminal liability of legal persons.

The ENM also organises events on other specific topics.

Thus the subject of bribery is addressed in training courses on “economic and financial criminal law” (studies aimed at prosecutors, investigating magistrates and judges specialising in economic and financial

matters):

– in introductory sessions on economic and financial criminal law, by in-depth study of offences against integrity: bribery, favouritism, trading in influence, and illegal interest;

– in sessions of further study of economic and financial criminal law, in a three-day module entitled “public management and integrity” which looks at market regulation and procurement rules, analysis of integrity in auditing by financial authorities, and the specific features of investigation in this field.

In both cases, emphasis is also placed on the criminal liability of legal persons.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(a):

3. Concerning sanctions in cases of transnational bribery, the Working Group recommends that France:

(a) with regard to the penalties applicable to natural persons, (i) raise the maximum amount of the fines set out in Article 435-3 of the Penal Code, in particular to bring it into line with the amount of available fines for the offence of misuse of corporate assets; and (ii) ensure that the penalties imposed in practice are effective, proportionate and dissuasive [Convention, Article 3; 2009 Recommendation].

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding recommendation 3(a)(i):

Firstly, the examiners ask France to (i) “raise the maximum amount of the fines set out in Article 435-3 of the Penal Code, in particular to bring it into line with the amount of available fines for the offence of misuse of corporate assets”.

Under the terms of the Law of 6 December 2013, the penalties for natural persons convicted of bribing a foreign public official (Articles 435-1 and 435-3 of the Penal Code) have been increased significantly from EUR 150 000 to EUR 1 million.

The court also has the option of increasing this fine to two times the amount of the proceeds of the offence.

These fines are well in excess of the reference amount named by the examiners in the 2012 report, namely the value of the fine for misuse of corporate assets (EUR 375 000).

Regarding recommendation 3(a)(ii):

Secondly, the examiners ask France to (ii) “ensure that the penalties imposed in practice are effective, proportionate and dissuasive”.

The *Chancellerie* (Central Administration of the Ministry of Justice) constantly urges prosecutors to follow this is a course of action. .

Thus, the circular of 9 February 2012 (“Circular introducing new criminal provisions on international bribery, and restating guidelines of criminal policy”) states that “once the investigation has identified the constitutive elements of the offence of foreign bribery, prosecutors shall seek dissuasive penalties”.

General guidelines on criminal policy from this circular on the dissuasiveness of sanctions and the use of additional penalties are still applicable and will continue to be applied until the circular is rescinded.

Technical developments (allowing recognised anti-corruption organisations to bring civil party claims in criminal proceedings, the substantial increase in financial sanctions for foreign bribery, whistleblower protection, repealing Articles 435-6 and 435-11 of the Penal Code which gave the Public Prosecutor’s Office a monopoly on prosecutions for bribery of a foreign public official) were listed in the circular of 23 January 2014 introducing Law No. 2013-1117 of 6 December 2013 on action against tax fraud and serious economic and financial crime.

In addition, the jurisdiction of the new National Financial Prosecutor for foreign bribery was confirmed in a dedicated circular from the Minister of Justice on 31 January 2014.

If no action has been taken to implement recommendation 3(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(b):

3. Concerning sanctions in cases of transnational bribery, the Working Group recommends that France:

(b) with regard to the penalties applicable to legal persons, (i) raise the maximum amount of the available fine to a level that is effective, proportionate and dissuasive; and (ii) make full use of the additional penalties available in the law and, in particular, debarment from public procurement, in order to contribute to the application of sanctions that are effective, proportionate and dissuasive [Convention, Articles 2 and 3; 2009 Recommendation, III (vii) and XI (i)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding recommendation 3(b)(i):

Firstly, the examiners ask that France (i) “raise the maximum amount of the fine available under the law to a level that is effective, proportionate and dissuasive.”

Under the terms of the Law of 6 December 2013, which raises fines for natural persons, in conjunction with Article 131-41 of the Penal Code which stipulates that fines imposed on legal persons shall be five times as much (“the maximum fine which may be levied on legal persons shall be five times that imposed on natural persons under the rules punishing the offence”), the maximum fine has thus been increased from EUR 750 000 (5 x EUR 150 000) to EUR 5 million (5 x EUR 1 million).

The Law of 6 December 2013 also states that the amount of the fine imposed on a natural person may be twice the amount gained from commission of the offence, and this, by application of the rule of multiplying by five, means that this amount may be ten times the amount gained from commission of the offence in the case of legal persons.

The fines applicable to legal persons have thus been raised in such a way as to act as a deterrent to the commission of the criminal offence of bribery of a foreign public official.

Regarding recommendation 3(b)(ii):

The examiners also ask France (ii) “to make full use of the additional penalties available under the law and, in particular, exclusion from public procurement, in order to contribute to the application of penalties that are effective, proportionate and dissuasive”.

On this point, the circular of 9 February 2012 (“circular introducing new criminal provisions on international bribery and setting criminal policy guidelines”) specifies à propos legal persons that **“criminal liability of legal persons must be enforced in a discerning manner**, but must allow the imposition of **appropriate** penalties for the gravest acts of bribery perpetrated within a corporate entity whose business strategy is founded on use of these unlawful practices, **in the form of sizeable fines and additional deterrent penalties, such as debarment from public procurement”**.

The examiners noted the content of this circular in their report of October 2012 (pages 28 and 30) but expressed regret that no additional penalty had so far been demanded and imposed in cases of bribery of a foreign public official.

France would like to point out here that, under Law No. 2013-669 of 25 July 2013 on the powers of the Ministry of Justice and the Public Prosecutor’s office in criminal matters and public action, the Ministry of Justice may not give instructions to prosecutors, a prohibition announced in an earlier circular.

Thus the Ministry of Justice may issue general instructions to prosecutors, but it now cannot give instructions in individual cases.

Consequently, France has complied, in, the circular of 9 February 2012, with the examiners’ request that it make full use of additional penalties (notably debarment from public procurement). The law states, however, that the Government may not intervene in any way in a given procedure to demand a specific additional penalty.

If no action has been taken to implement recommendation 3(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(c):

3. Concerning sanctions in cases of transnational bribery, the Working Group recommends that France:

(c) make full use of the confiscation measures available in the law in order to contribute to the application of penalties that are effective, proportionate and dissuasive and, in this context: (i) develop a proactive approach to seizure and confiscation of the instrument and proceeds of the bribery of foreign public officials or assets of equal value, including in the context of proceedings involving legal persons; (ii) raise awareness among judges and law enforcement authorities of the importance of confiscating the proceeds of bribery of a foreign public official (especially where the perpetrator is a legal person); and (iii) develop and disseminate guidelines on methods for quantifying the proceeds of corruption offences [Convention, Article 3.3].

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding recommendation 3(c)(i):

Firstly, the examiners ask France to “(i) develop a proactive approach to seizure and confiscation of the instrument and proceeds of the bribery of foreign public officials or assets of equal value, including in the context of proceedings involving legal persons”.

On page 32 of the report, the examiners comment that “the creation of the AGRASC is an instructive experience that France could share with other countries. Nevertheless, the examiners deplore that no seizure or confiscation penalty has been imposed to date in the context of transnational bribery proceedings”. Mention is made in particular of the Nigerian identity card case.

The examiners thus regret the fact that the development of asset seizures in cases of financial crime continues to be something that takes place mainly in the context of action against organised crime.

They also find it regrettable that, up to March 2012, value-based confiscation was limited to cases where the confiscated asset had not been seized or could not be produced, which imposed an excessively restrictive framework on this type of confiscation.

On the matter of this recommendation, France made a start on building a full panoply of seizure and confiscation measures in 2010, adding to it in 2012 and 2013.

Thus Law No. 2012-409 of 27 March 2012 broadened the scope of criminal seizures and confiscations, stipulating that, in future, value-based confiscation would apply to all assets and abolishing the proviso that the asset should not have been seized or could not be produced (Article 131-21, paragraph 9, of the Penal Code, as amended). This law also expressly formalises the principle of value-based confiscation (new Article 706-141-1 of the Code of Criminal Procedure).

Under the terms of this law, “asset-based confiscation”, hitherto confined to property owned by the convicted offender, has been broadened to include goods over which he has free disposal (Article 131-21, paragraphs 5 and 6, of the Code of Criminal Procedure, as amended).

The criticism that asset seizures in cases of financial crime are something that takes place mainly in the context of action against organised crime appears no longer justified in view of the practice currently

followed by the French courts.

There was, for example, wide media coverage of the seizures in February and again in July 2012 of ten or so luxury cars and a mansion on the avenue Foch in Paris's 16th *arrondissement*, assets valued at several million euros. Whilst these major seizures did not relate to foreign bribery in international business transaction, they were part of a case of "financial crime", investigated in Paris on charges of concealment and money-laundering, embezzlement and misuse of corporate assets laid against the entourage of an African head of state (the "ill-gotten gains affair"); this case clearly demonstrates that asset seizures in cases of financial crime are not made only in the context of organised crime but also in cases of economic and financial crime generally.

Moreover, figures published by the Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC) also show that asset seizures in cases of financial crime are considerable, a fact further borne out by the study of tax fraud statistics. Whilst the Agency currently manages assets to a total value of over a billion euros, more than 265 million of these (26.5% of the total) are assets seized in connection with tax fraud or money laundering.

To this date, no asset has been seized and managed by AGRASC in relation to a foreign bribery case.

Generally speaking, judges and law enforcement authorities are increasingly aware of the need to develop a proactive approach to the investigation of assets in relation not only to organised crime but also to complex economic and financial crime, the area in which seizures and confiscations are most likely.

Lastly, it should be noted that a series of provisions was added recently to the Code of Criminal Procedure by the Law of 6 December 2013 which seeks to facilitate co-operation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from or other property related to crime, pursuant to Council Decision 2007/845/JHA of 6 December 2007.

Note: in France, the agencies designated as asset recovery offices are the Criminal Assets Identification Platform (PIAC) of the Central Criminal police Directorate (DCPJ) and the Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC).

Henceforth these agencies can exchange information with competent foreign authorities, either information they hold themselves or information they can obtain, by means of online data search; warrants or other coercive measures are not needed (new Article 695-9-50 of the Code of Criminal Procedure). This provision materialises and provides a legal framework to a practice followed prior to December 2013.

In that framework, these services may obtain all useful information from any physical or legal person, whether state-owned or private, notwithstanding any professional secrecy, subject to provisions relating to the secrecy of correspondence between lawyers and their clients (Article 695-9-51).

Such exchanges of information are however regulated by Articles 695-9-40 section 1 and 2 which require the prior authorisation of a magistrate to have access to the requested information or to communication such information to the judicial police. The communication of information to foreign authorities shall be subject to such a prior authorisation from a competent French magistrate.

New article 695-9-53 of the Code of Criminal Procedure also allows to extend the application of these provisions to exchange of information between French asset recovery agencies and competent foreign authorities from State parties to any treaty providing for the detection, seizure and confiscation of crime proceeds.

Regarding recommendation 3(c)(ii):

Secondly, France is asked to “(iii) raise awareness among judges and law enforcement authorities of the importance of confiscating the proceeds of bribery of a foreign public official (especially where the perpetrator is a legal person)”.

In addition to the training and awareness-raising measures conducted by the SCPC and mentioned in connection with recommendation 2(b), which also address issues entailed in the recovery of the proceeds of bribery, the Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC) also offers training and conducts awareness-raising campaigns on the seizure of criminal assets (48 in 2012 and 43 in 2013), which benefited nearly 6 000 officials.²

A guide to investigating assets has been compiled and distributed to relevant members of the judiciary and law enforcement agencies. New tools for investigating and identifying criminal assets have also been developed, and these were introduced in March 2014 to replace older ones dating back to March 2007. The paper version of the guide was disseminated by MILDECA (Inter-ministerial Mission Against Drugs and Addictions). The guide has also been disseminated on the intranet for the benefit of investigators.

Officials at the Central Office for the Fight against Corruption and Financial and Tax Offences (OCLCIFF) set up within the Central Criminal police Directorate (DCPJ) by Decree No. 2013-960 of 25 October 2013 received special training in the seizure of criminal assets provided by the Criminal Assets Identification Platform (PIAC) of the Central Office for Fighting Major Financial Crime (OCRGDF).

Regarding recommendation 3(c)(iii):

Lastly, France is asked to “(iii) develop and disseminate guidelines on methods for quantifying the proceeds of corruption offences”.

The Ministry of Justice is currently working on a practical guide to seizure and confiscation for use by judges working in the front line. This guide is currently under development , and is expected to be published before the end of 2014.

This will address the issue of what method should be used to quantify the proceeds of corruption offences, including bribery.

If no action has been taken to implement recommendation 3(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

² 3 160 gendarmes, 1 910 police officers, 530 Ministry of Justice officials, 350 customs officers and 50 officials of the Interministerial Mission for Combating Drugs and Addictive Behaviours.

Text of recommendation 4(a):

4. Concerning investigation and prosecution, the Working Group recommends that France:

(a) pursue the changes initiated by the two circulars by the Minister of Justice concerning new relationships between the Ministry of Justice and prosecutors by progressing to amendment of the legal framework to (i) ensure that the Public Prosecutor's Office monopoly on the instigation of investigations and prosecutions, together with its role in the conduct of judicial investigations and the procedure for appearance on prior admission of guilt (CRPC), are exercised independently of the executive in order to guarantee that investigations and prosecutions in cases of bribery of foreign public officials are not influenced by factors prohibited by Article 5 of the Convention; and (ii) to break with past practices of individual instructions, as announced by the circular [Convention, Article 5 and 2009 Recommendation, V. and Annex 1(D)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Law No. 2013-669 of 25 July 2013 on the powers of the Ministry of Justice and the Public Prosecutor's office in criminal matters and public action formalised the policy guidelines set out in the two Ministry of Justice circulars referred to in recommendation 4(a). The provision that the Ministry of Justice may not give individual instructions to prosecutors has thus become a statutory prohibition.

Article 1 of the law completely rewrites Article 30 of the Code of Criminal Procedure, which now states that the Ministry of Justice must implement the criminal policy set by the Government and ensure that it is applied consistently throughout the territory of the French Republic. Paragraph 2 of the same article says that the Minister will issue general instructions to prosecutors. Its final paragraph states that he may not issue any instruction to them in individual cases.

This prohibition will ultimately be completed by the reform of the *Conseil Supérieur de la Magistrature* (Supreme Judicial Council, CSM) and by changes to the status of prosecutors, to ensure that their independence is guaranteed in the same way as that of judges (no legislative timetable as yet).

The Minister of Justice committed in its circular of 31 July 2012 not to overstep negative opinions of the CSM on proposal of appointment of public prosecutors.

In addition, in order to reinforce the independence of justice, the appointment of public prosecutors and the CSM, a draft constitutional law was proposed to the National Assembly on 14 March 2013.

To increase the legitimacy of the CSM, the draft proposes to change its composition (to include a majority of magistrates, qualified high-level personalities appointed by an independent commission, sole presidency by a qualified individual elected by the CSM in plenary setting, except when in disciplinary setting), and to change its prerogatives with respect to appointment and discipline of public prosecutors in particular (conforming advice on all appointments of public prosecutors, unified disciplinary regime for all magistrates, allowing the CSM in plenary to be seized ex officio on issues of independence of the judiciary and deontology of magistrates).

During debates in the parliament, the position of the government evolved on the issue of the composition of the CSM at parity between magistrates and non-magistrates, in order to reach consensus between politicisation and corporatism.

On 3-4 July 2013, the Senate adopted the provisions of the draft constitutional law relating to the

appointment of public prosecutors following a conforming advice from the CSM and empowering the CSM with a disciplinary role for prosecutors.

Further discussion on the draft constitutional law were suspended following debate in the Senate but may be re-opened in the near future.

If no action has been taken to implement recommendation 4(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(b):

4. Concerning investigation and prosecution, the Working Group recommends that France:

(b) accord the same rights to all victims of the bribery of foreign public officials, without differentiating between states, with regard to the instigation of criminal proceedings and bringing civil party claims and abolish the requirement of a prior complaint by a victim or his/her legal representatives or an official complaint by the country where the acts were committed, contained in Article 113-8 of the Penal Code [Convention, Articles 4 and 5, 2009 Recommendation, Annex 1(D) and Phase 2 recommendation 8].

Actions taken as of the date of the follow-up report to implement this recommendation:

Article 113-8 of the Penal Code remains in force (“In the cases set out under Articles 113-6 and 113-7 [i.e. where the acts in question are committed entirely abroad], the prosecution of misdemeanours may only be initiated at the behest of the public prosecutor. It must be preceded by a complaint made by the victim or his successor, or by an official accusation made by the authority of the country where the offence was committed.”). But the Law of 6 December 2013 repealed Articles 435-6 and 435-11 of the Penal Code which gave the Public Prosecutor’s Office a monopoly on prosecutions for bribery of a foreign public official, including cases where part of the offence is committed on French territory.

This legislative change is important because it does away with a procedural provision which applied only to the offence of bribery of a foreign public official, preventing victims from bringing a prosecution themselves because the Public Prosecutor’s Office had a monopoly on doing this. This article relating specifically to the offence of bribery of a foreign public official is now repealed. In concrete terms, this means that a victim can now sue for damages in criminal proceedings (“bring a civil party claim”) directly before an investigating magistrate or have a charge of bribery of a foreign public official laid directly before the court, which was not previously possible.

Moreover, the Law of 6 December 2013 explores new ways of bringing prosecutions for bribery of a foreign public official by allowing recognised anti-corruption organisations to bring civil party claims in criminal proceedings, even though they are not the victims of bribery themselves.

Consequently, all that remain now are the provisions of Article 113-8 of the Penal Code which apply to all offences, of all kinds, and in any case only to criminal facts committed entirely outside French territory and have no territorial connection, however slight, with France.

If no action has been taken to implement recommendation 4(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(c):

4. Concerning investigation and prosecution, the Working Group recommends that France:

(c) as necessary and in compliance with the relevant rules and procedures, make public by all appropriate means, and respecting the fundamental rights of the Defendant, certain elements of the CRPC, such as the terms of the agreement, especially the approved penalty or penalties [Convention, Article 3].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 4(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

In France, the first phase of the CRPC procedure, the “*penalty proposal stage*”, is not conducted in public in order to safeguard the defendant’s rights since the accused and his counsel may, at the end of this stage, opt to decline the proposal put to them by the Prosecutor General.

Stage two, however, the “*approval phase*” where a judge has to approve this proposal (or not), does take place in open court.

At this public hearing, and in accordance with Article 495-9 of the Code of Criminal Procedure, the judge is required to “*verify the reality of the offence and its definition in law*”.

In a prosecution for bribery of a foreign public official, the prosecution may also decide to add to his penalty proposal the additional penalty of display or dissemination of the judgment. In this case, the additional penalty must be approved by the judge.

To this day, no foreign bribery case has led to the opening of a CRPC procedure.

Text of recommendation 4(d):

4. Concerning investigation and prosecution, the Working Group recommends that France:

(d) formally clarify, by circulars or any other official means, France's criminal justice policy with regard to bribery of foreign public officials in order to ensure a determined commitment on the part of public prosecutors and criminal police officers placed under their authority to systematically investigate the liability of persons suspected of committing the offence, including on the basis of information spontaneously transmitted by foreign authorities, mutual legal assistance requests and credible allegations that are reported to them or that come to their attention in the performance of their duties [Convention, Article 5; 2009 Recommendation, XIII (i) and (ii) and Annex 1(D)].

Actions taken as of the date of the follow-up report to implement this recommendation:

The circular of 9 February 2012 is perfectly clear on this point.

It calls on prosecutors "to require, either in the initial indictment (*réquisitoire introductif*) or in a supplementary indictment (*réquisitoire supplétif*), the investigation of legal persons if the terms of Article 121-2 of the Penal Code are seen to be met. Whilst this text means that legal persons can be held criminally liable only if it is established that the offence was committed on their behalf by their organs or representatives, it is important to note that the case law of the Cour de Cassation interprets this idea broadly, in a manner that makes it easier for the legal person itself to be held liable. Thus the Cour de Cassation considers that legal persons can be rendered criminally liable by the actions of persons to whom powers have been delegated, for example the director of a foreign subsidiary, or even where the natural person committing the bribery offence is unnamed, once it is certain that the offence was committed by an organ or representative of whatever kind. This would apply if it were established that the decision to offer a bribe could have been taken only by a director, because of the company's in-house procedure for approving expenditure."

The determination of prosecutors to prosecute such cases is apparent from the very marked increase in the number of proceedings conducted in recent years, as was pointed out in the response to recommendation 1(a).

Prosecutors also conduct investigations on the basis of information spontaneously transmitted by foreign authorities, mutual legal assistance requests and credible allegations that are reported to them or that come to their attention in the performance of their duties, as noted from the updates provided by France at the June 2014 Tour de Table.

If no action has been taken to implement recommendation 4(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(e):

4. Concerning investigation and prosecution, the Working Group recommends that France:

(e) issue a comprehensive reminder to all jurisdictions that the Paris jurisdiction and the Central Anti-Corruption Brigade have jurisdiction over all cases of bribery of foreign public officials and, in this context, (i) ensure that resources are in place in each appellate jurisdiction such as to allow Prosecutors General to identify cases suitable for referral to the Paris jurisdiction, including by holding regular meetings with the relevant decentralised units of the judicial police; and (ii) ensure that sufficient resources are allocated to investigations and prosecutions, in particular to the Financial Section of the Paris Regional Court and to the Central Brigade, including for processing mutual legal assistance requests [Convention, Articles 5 and 9; 2009 Recommendation, II, V and XIII, Annex 1(D) 2) and 3); Phase 2 recommendation 10].

Actions taken as of the date of the follow-up report to implement this recommendation:

Under the ordinary law and the Organic Law of 6 December 2013, the judiciary now has a National Prosecutor for Economic and Financial matters, with a specialist remit for bribery and tax fraud.

This new institution has shared jurisdiction with the regional courts of general law for the offences of bribery of foreign public officials specified in Articles 435-1 to 435-10 of the Penal Code, which previously came under concurrent jurisdiction with the Paris Tribunal of First Instance by virtue of the old Article 706-1 of the Code of Criminal Procedure.

This highly technical litigation is thus handled by a **readily identifiable interlocutor with a specialised competence**, thereby ensuring that prosecutions will be more effective and conducted in a uniform manner across the whole of France.

The new National Financial Prosecutor, the **main point of contact for national investigation agencies and foreign judicial authorities**, will provide a stable and sustainable interface for mutual assistance on criminal matters, ensuring that the information needed to combat bribery of foreign public officials is exchanged faster and more efficiently.

The National Financial Prosecutor is based in Paris, with its own premises and dedicated team.

In order to ensure that this service and the whole criminal prosecution system, including investigating magistrates and first instance and appeal judges, can function properly, staffing levels have been considerably increased, with the creation – in due course – of approximately 50 judicial officers' posts (including 22 prosecutors and 10 investigating magistrates) and specialist assistants.

Since the start of its activities on 1 February 2014, Financial Prosecutor's Office saw its staff double in September, going from 5 to 10 prosecutors (1 State prosecutor; 1 adjunct; 6 deputies; 2 assistant prosecutors).

In addition, the new President of the Paris Court of First Instance announced at its opening session in September 2014 that cases submitted to the National Financial Prosecutor would be decided from 2015 onwards by a new dedicated Criminal court in order to allow for faster trial date setting.

Finally, 13 investigation teams are habilitated for joint financial investigations (JIRS).

The National Financial Prosecutor can also rely on a new investigative department: the Central Office for the Fight against Corruption and Financial and Tax Offences (OCLCIFI). This replaces the former National Financial and Tax Investigation Division (DNIFI), with an increased staff that have specialised expertise in investigating cases of corruption and tax fraud.

The National Anti-Corruption Brigade (BCLC) was one of the brigades within the DNIFI in charge of corruption investigations, in particular. When created in October 2013, the OCLCIFI took over from the DNIFI, and therefore the BCLC, in terms of competences and attributions. The BCLC no longer exists.

The OCLCIFI is made up of two operational brigades in charge of investigations, including the National Anti-Corruption and Organised Crime Brigade (BCLCF), one unit of which is the central anti-corruption unit in charge of foreign bribery investigations (both those ongoing since the creation of OCLCIFI and those newer investigations conducted for the National Financial Prosecutor's Office).

Formed by a decree of 25 October 2013, the OCLCIFI has seen an almost doubling of its staff, who are either police officers or financial civil servants who are qualified tax investigators, to currently reach 86 staff members.

The Office consists of:

- a National Brigade for Combating Corruption and Financial Crime (BNLCF) which is divided into:
 - a Central Anti-Corruption Section (22 staff including a chief adjutant and a major of the Gendarmerie)
 - a National Finance Sector (15 staff)
- a National Brigade for Combating Tax Crime (BNRDF) which has four sections and a staff of 49.

A circular introducing the new National Financial Prosecutor was sent out on 31 January 2014 by the Ministry of Justice, outlining developments in its area of competence and the criteria to be applied to the submission and circulation of information in cases likely to come under her jurisdiction.

Additional dedicated resources have not been *per se* allocated to the treatment of mutual legal assistance requests.

However, the National Financial Prosecutor has been created precisely to increase its role and visibility in interacting with investigation services and foreign authorities in the fight against corruption.

If no action has been taken to implement recommendation 4(e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(f):

4. Concerning investigation and prosecution, the Working Group recommends that France:

(f) within the overall review of the remit of the Public Prosecutor's Office, give thought to the status of the judicial police in order to ensure its capacity to conduct investigations that are not influenced by the considerations mentioned in Article 5 of the Convention; [Convention, Article 5 and Commentary 27; 2009 Recommendation, Annex 1(D)].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 4(f), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Attaching the criminal police to the judicial authority might be one way of improving the conduct of this kind of investigations.

It would, however, require a major reform entailing numerous administrative and operational difficulties.

It would enable the Public Prosecutor's Office to set priorities for action by the departments and units of the criminal police and the resources allocated to them, but it would also mean that the Public Prosecutor's Office would be required to manage the career progression and training for police officers and gendarmes.

Moreover, the overlap between criminal police duties and those of the administrative law enforcement agency – which exists in most police forces or gendarmerie units performing criminal police duties – is such that attaching the criminal police to the judiciary would seem to be particularly problematic, unless it was limited to those forces that perform criminal police duties only

This solution was not adopted by the Committee for the Modernisation of Public Action, whose report was published in November 2013.

In any event, the judicial authority does not intend to look into the allocation of resources to investigation services.

Text of recommendation 4(g):

4. Regarding investigation and prosecution, the Working Group recommends that France:

(g) clarify by all means that the law governing classification of information covered by defence secrecy cannot impede the investigation and prosecution of foreign bribery cases and that the provisions of Article 5 of the Convention are taken into account in decisions to classify or, even more so, to declassify information necessary for investigations and prosecutions of foreign bribery [Convention, Article 5].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 4(g), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Note: Article 5 of the Convention provides that “Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved”.

Under Article L2312-4 *et seq.* of the Defence Code, French courts may ask for information covered by national defence secrecy to be declassified in connection with proceedings being heard before them.

The court sends a written substantiated request to the administrative authority which classified the document. The latter then refers the matter immediately to the Advisory Committee on National Defence Secrecy (CCSDN), an independent administrative authority.

Within two months of referral, the CCSDN delivers its opinion on declassification, which may be in favour, partially in favour, or against. This opinion is advisory and not binding on the Ministry concerned.

From the arguments put forward by the requesting judge, the Committee is able, firstly, to check that it is appropriate to refer the matter to the Committee because the information whose declassification is requested is indeed relevant to the proceedings; and, secondly, to examine the documents presented for its appraisal so that it can decide which ones may help the court arrive at the truth in the case before it. The opinion is delivered with due regard for the administration of justice (*mission du service public de la justice*), respect for the presumption of innocence and the rights of the defence, and respect for France’s international commitments as well as the need to safeguard France’s defence capability and the safety of its personnel.

The CCSDN forwards its opinion to the minister concerned as the classifying authority. Within 15 clear days of receiving the Committee’s opinion, the Minister gives a decision on whether or not the documents in question are to be declassified.

When relevant, each item of information declassified is marked explicitly as having been declassified, showing the date of the Minister’s decision.

Court cases about economic or financial offences make up 19% of all the declassification requests referred to the CCSDN since it began work in 1999.

This number is on the rise: over the last three financial years for which figures are known (2010, 2011 and 2012), the proportion has been 31%, with a total of 17 referrals of economic and financial cases.

Careful examination of the CCSDN’s activity since its inception shows that a significant proportion of its opinions are in favour of total or partial declassification (76% of opinions in favour). This percentage has remained steady since the CCSDN began work (77% over the last three years for which figures are known).

Higher still is the percentage of opinions which the administrative authorities have opted to follow (100% of opinions acted on by all ministries together over the last three years for which figures are

known).

207 opinions have been rendered since 1999 by CCSDN on declassification.

76% favourable opinions (whether partially or totally) were rendered, including 44% for total declassification and 32% for partial declassification.

These indicators point to a position of balance on the part both of the CCSDN, which delivers opinions overwhelmingly in favour of a (total or partial) lifting of defence secrecy, and of ministers, who follow the opinions delivered almost as a matter of course.

Consequently, France's national legal rules for safeguarding national defence secrets are not an obstacle to criminal investigations and prosecutions, notably in cases of transnational bribery, and the provisions of Article 5 of the Convention are indeed taken into account in proceedings to classify or declassify information needed for the conduct of criminal procedures. Domestic law has reconciled the need to safeguard national defence secrecy with the need of the courts to arrive at the truth.

Text of recommendation 4(h):

4. Concerning investigation and prosecution, the Working Group recommends that France:

(h) take all appropriate steps, including potentially amending the "blocking statute", to ensure that the conditions governing access to information in the possession of French companies under this law do not stand in the way of foreign authorities' ability to investigate and prosecute the bribery of foreign public officials [Convention, Article 5].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 4(h), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Communicating detailed reports to foreign authorities on a company's structure, business policy and overall operations is not without its problems in terms of safeguarding a country's economic interests and, more generally, business confidentiality. For this reason, many countries, including France, have adopted "blocking statutes".

France adopted the Law of 26 July 1968 (amended by the Law of 17 July 1980) on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to natural or legal persons.

Under this law, no one – except under international treaties or agreements – may communicate to a foreign public authority any document or information of an economic, commercial, industrial, financial or technical nature where such communication may be damaging to the sovereignty, security, essential economic interests of France or to public order. This is a general, very broadly-based text which is applicable regardless of any judicial proceedings.

Transactional procedures such as deferred prosecution agreements (DPA) or non-prosecution

agreements (NPA) count as foreign judicial and administrative procedures for the purposes of the blocking statute.

In recent prosecutions of French companies for bribery of a foreign public official, however, a pragmatic and balanced solution was found which allowed these procedures to operate smoothly whilst, at the same time, complying with the blocking statute. Thus three French companies have been, and two of them still are, the subject of monitoring under DPAs signed with the US authorities (Technip, Alcatel-Lucent and Total).

In concrete terms, the DPA between the company and the US authorities (Department of Justice and the Securities and Exchange Commission) expressly requires all communications passed to the US authorities by the independent monitor to be channelled through a “French government agency”, the Central Corruption Prevention Department (SCPC), which is tasked with ensuring that the documents passed on do not infringe the terms of the blocking statute.

This solution makes it possible to reconcile imperatives which appear at first sight to be contradictory – the interests of the company and the essential economic interests of France, on the one hand, and, on the other hand, the smooth operation of the monitoring procedure and the necessary and consequent requirement of transparency with regard to the US authorities.

To date, this co-operation between the SCPC and the US authorities seems to be working to the full satisfaction of both sides.

Text of recommendation 5:

5. Concerning the statute of limitations, the Working Group recommends that France take necessary measures to extend, to an appropriate period, the statute of limitations applicable to the offence of bribery of foreign public officials [Convention, Article 6; Phase 2 recommendation 9].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Current legislation and jurisprudence on the matter are entirely satisfactory and no legislative action is required (*cf.* case law on suspensions of the limitation period and delaying the point from which it runs in cases of undiscovered or concealed offences).

This is, in effect, very old and well established case law, described by the Plenary Assembly of the *Cour de Cassation* itself as rules that are “*long-standing, familiar, constant and based on precise and objective criteria*”.

It is worth pointing out here, as indeed the examiners do in the report, that no procedure for bribery of a foreign public official has been closed or dismissed in France to date.

It is thus reasonable to consider that the limitation period for criminal prosecution is long enough and is not an obstacle to prosecution, and, therefore, that it complies fully with Article 6 of the OECD

Convention which says that “Any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.”

Text of recommendation 6:

6. Concerning mutual legal assistance, the Working Group recommends that France take all necessary measures to ensure that investigations conducted by the criminal police under the supervision and direction of the Public Prosecutor’s Office before the opening of any formal criminal proceedings are not influenced by the identity of the natural or legal persons involved and, more generally, that decisions to grant mutual legal assistance in foreign bribery cases are not influenced by considerations of national economic interest under the guise of protecting “the fundamental interests of the nation” [Convention, Articles 5 and 9].

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding concerns of interference by the executive in the execution of requests for mutual legal assistance (see paragraph 157 of the Phase 3 report), Article 30 of the Code of Criminal Procedure, in the version published further to Law No. 2013-669 of 25 July 2013, expressly forbids the Minister of Justice to issue instructions in individual cases. This ban extends to procedures opened with a view to executing any request for mutual legal assistance by a foreign judicial authority.

With respect to the second part of this recommendation, no special measures have been taken since the Phase 3 report. It should be noted, however, that no request for mutual legal assistance made to France since that report has been refused on the grounds set out in Article 694-4 of the Code of Criminal Procedure.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation 7(a):

7. Concerning money laundering, the Working Group recommends that France:

(a) pursue and increase its efforts to raise awareness of professions required to detect acts that may involve foreign bribery [2009 Recommendation, III (i)].

Actions taken as of the date of the follow-up report to implement this recommendation:

The issue of bribery is routinely raised as part of the ongoing remit of Tracfin, the French financial intelligence unit, to raise awareness amongst professionals required to report suspicious transactions.

Cases of bribery detected by Tracfin have risen significantly since 2011 (by 75% between 2011 and

2012), reflecting greater awareness and alertness amongst professionals required to report on this specific risk following the emphasis on warning criteria detailed in Tracfin's 2012 Annual Report.

Tracfin may also be impelled to take targeted awareness-raising measures in response to specific circumstances, for example as was the case during the events of the "Arab Spring". On that occasion, Tracfin was the first agency to urge all reporting professionals to apply additional measures of vigilance (Article R561-20 of the Monetary and Financial Code) to all persons referred to in Article L561-10, paragraph 2 and Article R561-18 of the Monetary and Financial Code having links with Tunisia (16 January 2011). This appeal was subsequently echoed by several of the world's financial intelligence units, notably FinCEN³. It was repeated during the events in Egypt (15 February 2011) and Libya (26 February 2011).

Given the current political situation in Ukraine, Tracfin has also urged people to be alert (28 February 2014). These calls for special vigilance have, in practice, enabled France to be quick off the mark in imposing sanctions against individuals featuring on the European Union's "lists", and to anticipate subsequent legal action.

If no action has been taken to implement recommendation 7(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(b):

7. Concerning money laundering, the Working Group recommends that France:

(b) consider a review of the money laundering methods and schemes that could be used in instances of transnational bribery review and share, if appropriate, the results of this review with private-sector professionals who are in a position to detect foreign bribery [Convention, Article 7].

Actions taken as of the date of the follow-up report to implement this recommendation:

Together with the SCPC, the financial intelligence unit Tracfin has produced a guide to detecting potentially corrupt financial operations. The guide was first distributed in 2008.

As of mid-June 2014, a new edition of this guide, extensively recast and updated, has been available from the websites of the Ministry of Justice and the Ministry of Finance and Public Accounts. The guide presents red flags and typologies based on practice, for use by both financial and non-financial professions.

Hard copies of this guide are distributed at various training and awareness-raising events organised by the SCPC and Tracfin. Tracfin takes part in training and awareness-raising events for persons involved in the criminal prosecution system and co-operates in bribery-related operations in France and abroad.

³ Financial Crimes Enforcement Network: a unit of the US Treasury responsible for combating financial crime and money laundering which also acts as a financial intelligence unit.

If no action has been taken to implement recommendation 7(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(a):

8. Regarding accounting rules, external audit and corporate compliance programmes, the Working Group recommends that France:

- (a) support existing initiatives to train statutory auditors in the detection of bribery and the obligation to report criminal acts, ensuring that, in accordance with the provisions of ISA 500, such training also extends to criminal acts committed by the foreign subsidiaries of companies that they are responsible for auditing [2009 Recommendation, III (i), X B. (v)].

Actions taken as of the date of the follow-up report to implement this recommendation:

This recommendation is elucidated on page 56 of the report which says “The examiners are pleased with the efforts to train statutory auditors in their obligation to report criminal acts to the Public Prosecutor’s Office. They note, however, a certain amount of confusion among statutory auditors regarding the scope of this obligation, notably with respect to criminal acts committed by the foreign subsidiaries of companies that they are responsible for auditing.”

The Ministry of Justice, being aware of this issue, has set up a working group comprising representatives of the French body of statutory auditors (CNCC) and the authority for external oversight of the profession (the High Council of Statutory Auditors, H3C) to monitor auditors’ obligation to report criminal acts.

This working group has had fruitful discussions and provided timely clarification of points of law that were previously poorly understood by these professionals. Its work formed the basis of a circular on these matters drawn up by the Ministry of Justice and distributed to prosecutors on 18 April 2014.

On the specific question of extending the obligation to report criminal acts committed in foreign subsidiaries, the circular expressly states that “*where the auditor becomes aware, in the exercise of his remit to sign off the consolidated accounts, of criminal acts committed within an entity forming part of the area of consolidation, he must disclose these to the competent prosecutor*”.

On the basis of this working group’s findings and in addition to the circular, the H3C has defined and distributed to members of the profession a guide to “good professional practice” (GPP) which encourages auditors to report criminal acts, even where these are committed abroad. The GPP provides that, where an auditor becomes aware of criminal acts committed “*within an entity forming part of the area of consolidation and which come to his notice during his audit of the consolidated accounts or directly related procedures*”, he must “*disclose them, especially if they are likely to affect the consolidated accounts or render the entity he audits, or its directors, liable*”.

If no action has been taken to implement recommendation 8(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(b):

8. Concerning accounting rules, external audit and corporate compliance programmes, the Working Group recommends that France:

(b) increase efforts to raise awareness among French companies of the need to take account, in their compliance programmes, of the role of their foreign subsidiaries and promote the adoption and implementation of compliance programmes in SMEs involved in international trade, according to the specific circumstances of each one [2009 Recommendation X. C. (i) and (v); Annex II].

Actions taken as of the date of the follow-up report to implement this recommendation:

(1) Increase efforts to raise awareness among French companies of the need to take account, in their compliance programmes, of the role of their foreign subsidiaries

Awareness-raising and training measures focusing on bribery risk have formed part of the SCPC remit from the very start, and they are aimed at both the public and private sector.

Thus the SCPC helps to raise awareness amongst economic stakeholders, who are directly concerned by the risks entailed in bribery. In order to make the corporate sector more aware of the need to prevent it, the SCPC has, as of the last quarter of 2012, introduced a two-pronged strategy:

- active involvement of the SCPC in various forums on corruption prevention organised by institutional networks (International Bar Association, “Treaty” workshops organised by the Ministry of Foreign Affairs and the *Institut des Hautes Études Judiciaires*, *Cercle de la Compliance*, *Cercle Libraci*, Anti-Corruption Committee of the French Council of Investors in Africa (CIAN)) and/or training organisations (C5 Incorporated, Marcus Evans Events);
- implementation, jointly with the corporate sector and/or its representatives, of measures to raise awareness of and support action against corruption in the private sector.

Other meetings have included:

- in the fourth quarter of 2012, a meeting with senior lawyers from the main employers’ organisations (MEDEF and CGPME) ;
- in July 2013, a meeting with the Director-General of the Paris Île de France Chamber of Commerce and Industry;
- in May 2013, a meeting with the Competition Authority, whose remit is to safeguard free competition and help markets to be competitive at European and international levels;
- in the second quarter of 2013, a meeting at the National School for Competition, Consumer Affairs and Fraud Control (ENCCRF), with competition inspectors undergoing initial training.

The SCPC has also formed a working group comprising the main private-sector professional bodies, representatives of several companies listed in the CAC 40 index, government authorities (representatives of the Ministries of Justice, Foreign Affairs and Economic and Financial Affairs), and legal experts. The

aim of this group is to identify areas in which French companies can improve the prevention of bribery and corruption in their business transactions both domestically and internationally. This working group met in late 2012 and 2013.

The issue of subsidiaries is one which the SCPC addresses in its contacts and meetings with the business world and in its work on foreign bribery.

The General Directorate of the Treasury is also keen, when meeting with the corporate world, to stress the importance of introducing sound compliance programmes for action against corruption, and it encourages businesses to include the role of their foreign subsidiaries when they give thought to this.

(2) Promote the adoption and implementation of compliance programmes in SMEs involved in international trade, according to the specific circumstances of each one

It is essentially the larger companies which have compliance programmes at present. As part of the work of the aforementioned working group, the General Confederation of Small and Medium-Sized Enterprises (CGPME) has collaborated with the SCPC on ideas for developing compliance in the private sector. This work will continue in 2014.

If no action has been taken to implement recommendation 8(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(a):

9. Concerning tax measures to combat bribery of foreign public officials, the Working Group recommends that France:

(a) urge French Polynesia and St Pierre and Miquelon to apply the principle of the non-deductibility of bribes as soon as possible [2009 Tax Recommendation I(i) and Phase 2 recommendation 13].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 9(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Owing to the status of French Polynesia and St Pierre and Miquelon and the autonomous tax status of both territories, the French authorities have no power of injunction over their tax decisions. The territories themselves have sole competence in these matters.

Consequently, the French authorities cannot act on their behalf and undertake to add a provision equivalent to Article 39-2bis of the General Tax Code (GCI) to their tax laws.

This being so, high-level contacts will be initiated to ask the authorities in French Polynesia and

St Pierre and Miquelon to amend their legislation.

Text of recommendation 9(b):

9. Concerning tax measures to combat bribery of foreign public officials, the Working Group recommends that France:

(b) pursue efforts to raise the awareness of tax officials in their role of detecting illicit transactions related to the bribery of foreign public officials, both in mainland France and in the overseas territories, and take all appropriate steps to promote the exchange of information in the possession of tax authorities for use by law enforcement authorities, notably through reporting under Article 40 of the Code of Criminal Procedure [2009 Tax Recommendation VIII (i)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Under Law No. 2013-1117 of 6 December 2013 on action against tax fraud and serious economic and financial crime and Organic Law No. 2013-1115 on the National Financial Prosecutor, creation of the office of a specialist financial prosecutor with competence for the whole of the national territory will make it possible to apply a criminal policy that is consistent and co-ordinated with the work of the tax authorities.

Furthermore, an inter-ministerial circular on action against tax fraud, signed on 22 May 2014 by the Minister of Finance and Public Accounts, Minister of Justice and State Secretary for the Budget, lays down detailed conditions for implementation of the aforementioned law of 6 December 2013.

This circular, widely distributed to tax inspectors, advocates more regular contacts between the tax authorities and prosecutors. It points to the need for more rigorous implementation of the provisions of Article 40 of the Code of Criminal Procedure, with a view to more effective action against economic and financial crime.

If no action has been taken to implement recommendation 9(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10:

10. Concerning raising awareness of the offence of bribery of foreign public officials, the Working Group recommends that France reinforce its existing activities in order to ensure that officials of the Ministry of Foreign Affairs and of the General Directorate of the Treasury are suitably aware of the offence and of their role in raising awareness of the risks among companies [2009 Recommendation III (i) and (iv)].

Actions taken as of the date of the follow-up report to implement this recommendation:

The General Directorate of the Treasury plans to organise another workshop or presentation at the next meeting of Economic Department Heads and Regional Economic Department Heads which is scheduled for January 2015. This will provide an opportunity to reinforce the knowledge of these officials of the Convention and more generally with the concept of bribery of foreign public officials, alert them to their role in making French companies operating abroad more aware of the issues, and exchange views with the office following the activities of the OECD Working Group.

In the case of officials from the Ministry of Foreign Affairs, a diplomatic telegram is sent each year to all diplomatic and consular stations, reminding them of France's obligations to combat bribery and corruption and make them aware of the foreign bribery issue.

In 2015, moreover, initial training by the Diplomatic and Consular Institute (IDC) will include a training module on bribery.

In the second part of the training seminar for over 30 new Ambassadors (19-23 January 2015), the SCPC will organise an exceptional one-hour session to discuss the fight against corruption.

Similarly, new awareness-raising activities will be held in the first half of 2015 for the following professionals:

- New deputy heads (approximately 30 staff) in March / April 2015;
- New deputy consul-generals (15-20 staff) in June 2015;
- New deputy directors, assistant-directors and heads of mission (approximately 20 staff) to benefit from a mid-level advanced module from the IDC in Spring 2015;
- New A category staff (60-70 diplomats) to benefit from initial training from the IDC in April-July 2015.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(a):

11. Concerning the reporting of transnational bribery, the Working Group recommends that France:

- (a) persevere in its efforts to raise the awareness of large, medium-sized and small companies of the protection the law affords to private-sector whistleblowers [2009 Recommendation, III (i) and IX (i) and (iii)].

Actions taken as of the date of the follow-up report to implement this recommendation:

The SCPC, in the training and awareness-raising events it organises for the private sector, routinely reminds participating companies of the terms of Law No. 2007-1598 of 13 November 2007 on the fight

against corruption, which provide legal safeguards for private-sector whistleblowers.

The SCPC also raises the awareness of companies on the benefits of “professional whistleblower systems” and the conditions in which such systems may be used, in accordance with the rules drawn up by the Commission on Information Technology and Liberties (CNIL).

The SCPC undertakes awareness-raising activities for companies as well as training for state-owned entities and public officials. The SCPC speaks regularly in forums and seminars organised for the private sector (such as MEDEF, Cercle de la Compliance, Cercle Ethique, LIBRACI, Club Montesquieu, the American Bar Association and CIAN).

This information appears each year in the SCPC’s Annual Report (in 2012, at pp. 125 et seq. <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000011/0000.pdf>; in 2013, Chapter III and pp. 136 et seq., <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000380/0000.pdf>).

The following activities may be listed.

- Meeting of the Working Group on French Companies and Corruption: Risks and Challenges in Paris on 23 November 2012;
- Meeting of the Working Group on French Companies and Corruption: Risks and Challenges in Paris on 18 January 2013;
- France and the Fight Against Corruption: Next steps following the OECD report?, Cercle de la Compliance, Paris 20 February 2013;
- Representation in the anti-corruption commission of CIAN in Paris on 2 July 2013.

According to CNIL, some 3 000 companies now have a “professional whistleblower system”.

Law No. 2013-1117 of 6 December 2013 on action against tax fraud and serious economic and financial crime also added a new Article 40 paragraph 6 to the Code of Criminal Procedure, naming the SCPC as a potential interlocutor for whistleblowers⁴.

Between 1 January and 17 September 2014, the SCPC received 37 reports from individuals on allegations of fraud which were usually transmitted to territorially-competent public prosecutors, including two reports possibly involving foreign bribery.

However, no request for intervention of the SCPC was made in that timeframe on the basis of new Article 40 section 6 of the Criminal Procedure Code.

If no action has been taken to implement recommendation 11(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

⁴ Article 40 paragraph 6 of the Code of Criminal Procedure says: “*The person who reports an offence or a crime committed in his company or administrative department shall, if he so requests, be put in touch with the central anti-corruption service [SCPC] when the offence reported falls within its area of competence*”.

Text of recommendation 11(b):

11. Concerning the reporting of transnational bribery, the Working Group recommends that France:

(b) ensure that appropriate measures are in place to encourage reporting under Article 40.2 of the Code of Criminal Procedure, in particular by concluding protocols for reporting bribery offences between law enforcement authorities and relevant government sectors, accompanied by ongoing training for officials [2009 Recommendation, IX].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Law of 29 January 1993 gave the SCPC the remit of centralising information on bribery. To that end, the SCPC maintains regular contacts with the various government departments in order to be informed of the anti-corruption measures they put in place; this is done through an annual questionnaire which is sent to various ministries, administrative entities, institutions and inspectorates.

As of the first quarter of 2014, 132 questionnaires had been sent and 49 replies received, a response rate of 37%. Forty of these responses reported that measures were in place to prevent offences against public integrity. 24 companies had a code of conduct or ethics. Interestingly, a declaration of interests is already used in 27 companies.

As far as the SCPC is aware, no protocols for reporting bribery offences have been concluded between government departments and the judicial authorities. Every government department and, more generally, all authorities subject to Article 40, paragraph 2, of the Code of Criminal Procedure⁵ must abide by the law. This principle is intrinsic to the status of a civil servant and forms an integral part of officials' initial training.

Codes of ethics seem to have been preferred by all stakeholders. Such codes are now very widespread in administrative departments and serve the same purpose as protocols for reporting offences, namely to facilitate the passing of information to the judicial authority. The authority of these codes, which serve in part to educate and which outline the law, is derived from the fact that they are distributed to all officials concerned.

If no action has been taken to implement recommendation 11(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

⁵ Any constituted authority, any public official or civil servant who, in the performance of his duties, becomes aware of a crime or misdemeanour must report it without delay to the Prosecutor General and pass all relevant information, minutes and documents to this judge.

Text of recommendation 11(c):

11. Concerning the reporting of transnational bribery, the Working Group recommends that France:
- (c) reinforce the reporting framework in place in the French Development Agency (AFD), COFACE, and UBIFRANCE and work towards aligning this with Article 40 of the Code of Criminal Procedure [2009 Recommendation, IX].

Actions taken as of the date of the follow-up report to implement this recommendation:

UBIFRANCE has a charter of values and code of conduct which is handed out to all staff. It is also available online from its Intranet site. This charter tells staff how they must behave in response to approaches by third parties, especially offers of money, gifts and other benefits, clearly indicating what they must do and what they must not do. The charter explicitly states that “Our Agency subscribes to the principles which governed the adoption of the OECD Convention of December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions, ratified by France in May 1999.”

UBIFRANCE is currently in talks with the NGO Transparency International, looking at how best to incorporate a module on bribery in international trade into the training it gives to its teams in France and abroad. This awareness-raising will result in advice and recommendations about the risks of bribery, to be passed on to companies by those of our staff who deal with the corporate world. In the International Organisations and Donors (OIBF) Department at UBIFRANCE, a similar exercise is under way on the risks entailed in public procurement.

In the case of COFACE, its specific charter of ethics, applicable to public procurement, is a synopsis of the provisions on combating bribery of foreign public officials in international business transactions, as set out in the relevant 2006 OECD Recommendation, namely:

- obligation to provide information;
- duty to verify at the stage of guaranteeing operations;
- obligation of enhanced due diligence (party concerned has been “blacklisted”, previously convicted of an offence, suspected of bribery, etc.);
- obligation of due diligence in the monitoring and follow-up of contracts then obligation of due diligence at the pay-out and recovery stage;
- creation of an anti-bribery committee whose principal role is to notify the government administration (General Directorate of the Treasury) of “credible” or acknowledged cases of bribery.

More precisely, the system revolves around:

1. procedural rules: for each product managed by the Public Guarantees Directorate, there are procedural rules detailing the checks which must be done when the application is processed, when the policy or approval is issued, and then subsequent risk assessments and checks on pay-outs and settlements (*Assurance Prospection*, or marketing exploration insurance). The decision-

making stages whereby information is passed to the General Directorate of the Treasury, checks are carried out and files are tracked are identified. These include verification against “blacklists”⁶ and checklists for each procedure, which must be filled out by the manager in charge and must be placed in the file.

2. a declaration by exporters and/or applicants that they have not and will not engage in bribery, have not been convicted of a bribery offence and are not on a “blacklist” held by an international financial institution at the time of making their application for insurance.
3. giving of promises and general policy terms: the general terms of every policy include an article on bribery. The same applies to promises (credit insurance only).
4. specific letters of commitment signed by the exporters and/or banks insured.

COFACE can also search the ATLAS database to see if its prospective clients are on the lists of the five international financial institutions: World Bank, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and Inter-American Development Bank

In December 2013, a detailed “know your customer” procedure was introduced. This requires a number of documents about the applicant and the signatory to be sent to COFACE, and it is part of the anti-corruption policy operated by the company.

Regarding the French Development Agency (AFD), since its hearing before the OECD Working Group in April 2012, the AFD has tightened its rules on combating bribery, fraud, anti-competitive practices, money laundering and terrorist financing, through a broad reorganisation of its financial security arrangements, in order (i) to limit its risks in an international climate of rising financial crime and (ii) to support the French authorities in the promotion of good anti-corruption practice.

This reorganisation culminated in the adoption of a basic defining text entitled “AFD and PROPARCO General Policy on Combating Corruption, Fraud, Anti-Competitive Practices, Money Laundering and Terrorist Financing”, presented to the Agency’s Board of Directors in November 2012. The document summarises a number of pre-existing internal procedures. It introduces a range of innovative measures, the most important of which concern its scope (formally and uniformly applying to the AFD and its private-sector subsidiary PROPARCO), the types of offence concerned (bribery between private persons, fraud, anti-competitive practices along the lines of the World Bank’s “sanctionable practices”), rules for dealing in-house with suspected offences (organisational changes, broader and more precisely defined scope), and requirements which the AFD will place on clients in the public contracts it is likely to be financing (new exclusion criteria and checks). This document is available on the AFD website.

It has prompted a number of procedural and contractual changes. One of these is the adoption of a *modus operandi* for staff who have doubts or suspicions about a prospect or other party who is a potential risk in terms of bribery, fraud, anti-competitive practice, money laundering or terrorist financing (ML/FT). This document is a guide to how staff should behave in better anticipating and handling doubtful or suspect cases. It is intended to serve as a specific practical tool for staff over and above existing procedures for combating corruption, fraud, anti-competitive practices and AML/FT.

In 2013, the AFD referred two cases to the Prosecutor General on the basis of Article 40, paragraph 2, of the Code of Criminal Procedure.

⁶ For example, lists of the World Bank, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank and consolidated watch list (Fircosoft/EU-OFAC/USA).

If no action has been taken to implement recommendation 11(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(a):

12. Concerning public advantages, the Working Group recommends that France:

(a) take the necessary steps to give all authorities mandated to approve public procurement contracts access to the criminal records of legal persons [2009 Recommendation XI (i)].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 12(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Certificate No. 2 of the criminal record (*casier judiciaire*) of legal persons is delivered on the basis of Articles 776-1 and R79 8° of the Code of Criminal Procedure to the following French awarding authorities:

- state administrations: central government, agencies of the State, public-law entities;
- local government bodies: municipalities, *départements*, regions and their public-law entities;
- SNCF, EDF, GDF and the Banque de France (R79 8° of the Code of Criminal Procedure).

These provisions apply to all French awarding authorities. By extension, certificate No. 2 of the criminal record is also delivered to the European institutions in their capacity as awarding authorities.

Article 776-1 of the Code of Criminal Procedure, in the version published further to Law No. 2010-853 of 23 July 2010, authorises delivery of this extract from the criminal record to foreign awarding authorities under the terms of international agreements or acts based on the Treaty on the Functioning of the European Union.

Regulations on fighting corruption in public procurement have not been modified since 2012. As European directives on public procurement and concession contracts were being negotiated, amendments to public procurement laws had been postponed to take into account the transposition of these directives of February 2014 (2014/23, /24 et /25/UE).

Text of recommendation 12(b):

12. Concerning public advantages, the Working Group recommends that France:

(b) provide specific training to the staff of agencies mandated to provide public advantages on the due diligence procedures that need to be undertaken when providing such advantages [2009 Recommendation XI (i)].

Actions taken as of the date of the follow-up report to implement this recommendation:

In the case of COFACE, all staff undergoes an e-learning training on combating corruption and money laundering/terrorist financing. First introduced in 2008, it was updated in 2012 and is compulsory for all staff. In addition:

- The COFACE ethics handbook (Staff and Occupations, 2008) incorporates the code of conduct for COFACE staff, sets out the ethical rules applicable to everyone and then the specific rules applicable to each of the major occupations within the Group concerned with credit insurance, company data, ratings and scores, and recovery.
- The COFACE guide to combating money laundering and terrorist financing (03/2007) defines money laundering and terrorist financing and describes the relevant legislation. It explains COFACE's exposure to money laundering and terrorist financing risks, how COFACE is organised to prevent them and the procedural rules for dealing with them.

COFACE considers the fight against corruption as essential in its activities and as stated above has incorporated the issue in its procedures to provide guarantees.

In addition to due diligence and written verifications described under recommendation 11c) and the training of COFACE in recommendation 12b) beneficiaries must commit in writing, at the time of their request and again at the guarantee-granting stage, that the company or staff working for them in the operation have been convicted by a domestic court or been subject to administrative measures for foreign bribery in the previous 5 years. Should any misstatement be brought to the attention of COFACE, the concerned guarantee would cease to apply.

Employees of the AFD undergo compulsory training in the combating of money laundering, terrorist financing, and bribery and corruption. This training takes the form of e-learning, the basic course of instruction on this subject; it consists of a number of sessions providing practical instances of bribery as applicable to projects funded by the AFD, plus conventional classroom training which also addresses this topic.

By 2012, 116 AFD staff had completed this training in the classroom setting and 1 390 had done it via the e-route (ongoing or completed) since the training first started in March 2011. In 2013, 181 staff had been trained in the classroom setting and 1 039 via the e-route (ongoing or completed).

The AFD is also currently working with a leading civil society anti-corruption specialist on the introduction of a training module on how to detect and handle suspicious circumstances likely to arise in projects funded by the AFD. This module is expected to come on-stream before the end of 2014.

If no action has been taken to implement recommendation 12(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(c):

12. Concerning public advantages, the Working Group recommends that France:

(c) strengthen arrangements within the General Directorate for Armament (DGA) to ensure that (i) internal controls, ethics and compliance programmes or measures undergo thorough scrutiny when application is made for prior approval by the Ministry of Defence and an arms export licence, and (ii) that the eligibility of companies to export arms be suspended if they are convicted of bribery of foreign public officials [2009 Recommendation X. C. (vi.); XI. (i)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding the thorough scrutiny of internal controls, ethics and compliance programmes or measures when application is made for prior approval by the Ministry of Defence and an arms export licence:

The provisions of Law No. 2011-702 of 22 June 2011 reforming export controls on arms and similar military equipment came into force on 30 June 2012. This law introduces, in particular, the concept of the licence, a single authorisation needed before orders can be accepted and military equipment dispatched.

Each request is studied, under the supervision of the General Secretariat for Defence and National Security (SGDSN), by a group of representatives of the Ministry of Defence (General Directorate for Armament/GDA, the Strategic Affairs Directorate/DAS, and the Chiefs of Staff) and by the Ministry of Foreign Affairs, Ministry for the Budget, and the Ministry of Economic Affairs. This multiplicity of actors ensures that licence applications are judged each on their own merits and on a range of criteria. In this way, each administration is able to offer for scrutiny all useful information it may have about the company and thus about its compliance programmes.

Under this new process, it is no longer the DGA which notifies the grant of a licence; the Prime Minister (SGDSN) grants it and the Minister in charge of the Directorate-General of Customs and Indirect Taxes (DGGI) notifies it.

The new system of export controls introduces a “post-clearance audit”, based on the record of actual exports. This record provides full linkage between licences granted and all features of military equipment that leaves France: consignees, quantities, prices paid, etc.

These data may be backed up by direct on-the-spot checks of the exporter, consisting of closer analysis, at his own premises, of the documentation for each item being exported.

Articles R2335-37 and R2335-38 of the Defence Code stipulate, in particular, that checks on natural or legal persons holding export licences issued by the government must be conducted by officials duly authorised by decision of the Minister of Defence. This authorisation is preceded by training, which includes familiarisation with the legal risks and awareness-raising on the combating of bribery and corruption. Officials are then required to swear an oath before the court of first instance.

Note: Law No. 2011-702 of 22 June 2011 also introduces new provisions which give additional

guarantees of the reliability of French exporters. It provides for the (voluntary) certification of enterprises following an in-depth audit of their internal procedures, based on assessment criteria and a questionnaire drawn up by the European Commission (Commission Recommendation 2011/24/EU of 11 January 2011).

Regarding the possibility of suspending export licences, Article L2335-4 of the Defence Code states that any authorisation (“licence”) to export military equipment to a country that is not a Member State of the European Union may be suspended, amended, revoked or withdrawn “if necessary in order to honour France’s international commitments, safeguard essential security, public order or public safety interests, or if the terms of the licence are not met” (articles L2335-4 or L2335-12; R.2335-15, R.2335-27, R.2335-39 or R.2335-45, subject to applicable licenses).

Article L2335-12 of the Code sets out identical provisions for intra-EU transfers of defence-related products.

Article R2335-15 of the Defence Code sets out the procedure for implementing Article L2335-4. Decisions are taken by the Prime Minister, after consultation of the ministers permanently represented on the inter-ministerial committee established by the decree of 16 July 1955 and, in the case of individual or global export licences, after consultation of the minister responsible for customs. In an emergency, the Prime Minister may suspend a licence without delay. However, licences may be amended, revoked or withdrawn only after the holder has had a period of 15 days in which to comment on the matter.

Article R2335-27 of the Defence Code sets out identical provisions for the suspension, amendment, revocation or withdrawal of transfer licences.

Inasmuch as France has made an international commitment to combat bribery of foreign public officials, formalised in the Convention of 21 November 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions, this is enough of a reason to suspend, amend, revoke or withdraw an export or transfer licence.

Consequently, French law already allows the suspension, if necessary with immediate effect, of arms export or transfer licences held by companies or individuals convicted of bribery of foreign public officials.

In the past two years, the following licences were affected: several amendments were made to prior approvals (taking into account changing international circumstances in target countries), approximately 20 withdrawals (=permanent suspension) of prior approvals against a company having violated the terms of the licence. No suspension, temporary by definition, has been imposed due to the irrelevance in the case (no urgency or decision to take permanent measures).

If no action has been taken to implement recommendation 12(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

13. The Working Group will follow up the issues below, as case law and practice develop, to ensure:

(a) that the definition of “without right” is not interpreted more restrictively than the definition of “improper advantage” in the Convention and therefore does not require proof that a law in force in the country of the recipient of the bribe prohibits that person from receiving a bribe [Convention, Article 1].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The above wording is not especially problematic in the current practice of the courts and has not prompted any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report.

And as the Phase 3 report says, no problems were mentioned by prosecutors, investigating magistrates or judges at the time of the on-site visit.

Text of issue for follow-up:

13. The Working Group will follow up the issues below, as case law and practice develop, to ensure:

(b) (i) the extent of recourse to the offence of misuse of corporate assets in cases involving elements of transnational bribery, on the basis of data that France should collect and analyse; and (ii) whether liability of legal persons can be established, in practice, in foreign bribery cases where natural persons are prosecuted for misuse of corporate assets, to determine whether this represents an obstacle to liability of legal persons in France for the offence of bribery of foreign public officials [Convention, Articles 1 and 2].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There are currently several cases ongoing or about to be closed in which the prosecutor or investigating magistrate has taken the view that, in law as in practice, **a legal person could be held criminally liable in cases of foreign bribery even where the prosecution for misuse of corporate assets was brought against a natural person.**

This was illustrated as such in several cases as part of France’s update to the June 2014 Tour de Table.

It is thus clear that the fact of indicting a natural person for the offence of misuse of corporate assets is not, in law or in practice, an obstacle to legal persons being held liable in France for the offence of bribery

of foreign public officials.

Text of issue for follow-up:

13. The Working Group will follow up the issues below, as case law and practice develop, to ensure:

(c) the development of ongoing foreign bribery cases against legal persons [Convention, Article 2].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As stated at the meeting in June 2014, **21 legal persons** are so far the subject of proceedings for bribery of a foreign public official, which are nearing completion:

Four companies have been indicted by the prosecution for referral to the criminal court.

Fourteen companies are the subject of a referral by an investigating magistrate to the criminal court.

Three companies are the subject of an appeal.

The marked rise in these figures since 2012 reflects France's efforts in recent years to develop a policy of resolute criminal sanctions against foreign bribery.

Text of issue for follow-up:

13. The Working Group will follow up the issues below, as case law and practice develop, to ensure:

(d) that sanctions applied in the context of the procedure of appearance on prior admission of guilt are effective, proportionate and dissuasive [Convention, Article 1].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

To date, there has been no case of bribery of a foreign public official leading to a procedure of appearance on prior admission of guilt.

Text of issue for follow-up:

13. The Working Group will follow up the issues below, as case law and practice develop, to ensure:

- (e) the application of the procedure of appearance on prior admission of guilt in foreign bribery cases [Convention, Articles 3 and 5; and 2009 Recommendation, Annex 1, D].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

To date, there has been no case of bribery of a foreign public official leading to a procedure of appearance on prior admission of guilt.

Whilst Article 27 of Law No. 2011-1862 of 13 December 2011 on allocation of court cases and simplification of certain court proceedings extended this procedure to offences punishable by a 10-year imprisonment – including the offence of bribery of a foreign public official – the circular of 9 February 2012 makes it clear that the classic route of prosecution before the criminal court is to be preferred.

Thus the circular says that “given that the first phase of this procedure does not take place in open court, use of the procedure of appearance on prior admission of guilt to prosecute the offence of bribery of foreign public officials must be **strictly limited to the simplest cases**, in which the corruption pact is an isolated event, **outside the established commercial practices of the company in question**. Prosecutors shall not use the procedure of prior admission of guilt where the circumstances of the offence and the character of the offender warrant a public hearing before the criminal court. This may be the case when facts are complex, and also when public interest makes it appropriate to have the case referred to the criminal court.”

Text of issue for follow-up:

13. The Working Group will follow up the issues below, as case law and practice develop, to ensure:

- (f) that statistics are collected on incoming and outgoing requests for mutual legal assistance executed directly between prosecutors [Convention, Article 9].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Since the Phase 3 report was published, there have been changes to the law to facilitate the collection of statistics on judicial co-operation in criminal matters.

In particular, Article 34 of Law No. 2013-1117 of 6 December 2013 on action against tax fraud and serious economic and financial crime now requires the Government to submit an annual report to Parliament on the implementation of judicial co-operation agreements on the combating of tax fraud and economic and financial crime to which France is a party.

This report will indicate the number of international letters rogatory sent by French magistrates in connection with action against tax fraud and economic and financial crime, listing the types of cases involved and stating how long it took to obtain a reply from the countries concerned and how detailed their replies were.

Text of issue for follow-up:

13. The Working Group will follow up the issues below, as case law and practice develop, to verify:

(g) measures taken to encourage reporting under Article 40 of the Code of Criminal Procedure.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As stated in the section on recommendation 11(b), compliance with Article 40 of the Code of Criminal Procedure is a principle which forms an integral part of the initial training given to civil servants.

Government departments and officials are increasingly resorting to codes of ethics, charters or guides to raise awareness of ethical issues among all their staff, as well as issues encountered in connection with bribery and corruption.

In 2014, in its annual survey of government departments and officials, the Central Corruption Prevention Department (SCPC) received 40 responses which cited measures to prevent offences against public integrity, 24 of them citing a code of conduct or similar.

By way of example, the Ethics Charter of the General Directorate for the Treasury, accessible to all staff on the Directorate's Intranet site, draws attention to Article 40 of the Code of Criminal Procedure and the obligations it places on public officers and civil servants. The same is true of the ethics code of the General Directorate of Public Finances.

And as stated in the reply to recommendation 9(b), the inter-ministerial circular of 22 May 2014 on the combating of tax fraud, widely distributed to tax inspectors, points to the need for a more rigorous implementation of the provisions of Article 40 of the Code of Criminal Procedure, with a view to more effective action against economic and financial crime.