

FRANCE

Moderate enforcement

3.5% of global exports

Investigations and cases

In the period 2016-2019, France opened eight investigations, commenced seven cases and concluded nine cases with sanctions.

Following an investigation that started in 2016 (see case study in the *Exporting Corruption* report 2018), the French Financial Prosecutor concluded a Public Interest Judicial Agreement (*Convention Judiciaire d'Intérêt Public*, CJIP) with **Airbus** in January 2020. Through the settlement, which also involved British and US authorities, the company agreed to pay €3.6 billion (US\$4.1 billion) in global penalties. The largest share of a little over €2 billion (US\$2.3 billion) went to France in the form of a “public interest fine”. The CJIP covered Airbus operations in Middle East countries, China, South Korea, Nepal, Russia and Colombia.¹

Recent developments

The CJIP has proven an effective means of sanctioning legal persons involved in domestic and foreign bribery. Six CJIPs have been concluded since the tool was introduced, three of them in foreign bribery cases.² It has also provided an impetus for international cooperation, which manifested itself

both in the Airbus case³ – with a joint investigation team composed of the National Financial Prosecutor's Office (PNF) and the UK's Serious Fraud Office, and collaboration with the US Department of Justice – and in the Société Générale case.⁴

In June 2019, the French Financial Prosecutor and the French Anti-Corruption Agency published for the first time guidelines setting forth conditions companies must meet to be eligible to enter into a CJIP, as well as details about how financial penalties are determined.⁵

A 2018 decision by the Court of Auditors expressed concern about the inadequacy of the investigation services specialised in economic and financial crime.⁶ In response, in July 2019 the Central Directorate of the Judicial Police created a new sub-directorate for the fight against financial crime.⁷ The Ministry of Justice has also committed itself to addressing this issue in the recruitment of magistrates.⁸

The creation of a French Anti-Corruption Agency (AFA) by law in 2016 was a major landmark.⁹ In January 2020, the AFA launched a Multi-Year Anti-Corruption Plan, covering the period 2020-2022, built around four main priorities, including improving detection and international cooperation in anti-corruption efforts.¹⁰ In 2018, the AFA launched an international network of corruption prevention authorities from 20 countries and territories around the world, aiming to foster operational cooperation and information exchange.

A parliamentary report – the Gauvain Report¹¹ – was published in June 2019 on the impacts on French companies of extraterritorial legal action, including action related to foreign bribery enforcement. The report considered implementation of legal tools to

¹ <https://www.airbus.com/content/dam/corporate-topics/publications/press-release/2020/01/EN-Airbus-final-agreements-with-French-UK-US-authorities.pdf>; <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>

² A total of 11 CJIPs has been concluded in this timeframe, but the remaining five concern tax fraud offences: <https://www.agence-francaise-anticorruption.gouv.fr/fr/convention-judiciaire-dinteret-public>

³ <https://www.agence-francaise-anticorruption.gouv.fr/files/files/20200129%2520CJIP%2520AIRBUS%2520sign%25C3%25A9e.pdf>

⁴ https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/24.05.18_-_CJIP.pdf

⁵ <https://www.agence-francaise-anticorruption.gouv.fr/files/files/Lignes%20directrices%20PNF%20CJIP.pdf>

⁶ <https://www.ccomptes.fr/system/files/2019-03/20190204-refere-S2018-3520-lutte-delinquance-economique-financiere.pdf>

⁷ <https://www.ccomptes.fr/sites/default/files/2019-03/20190204-refere-S2018-3520-lutte-delinquance-economique-financiere-rep-mi.pdf>

⁸ <https://www.ccomptes.fr/sites/default/files/2019-03/20190204-refere-S2018-3520-lutte-delinquance-economique-financiere-rep-min-justice.pdf>

⁹ https://www.agence-francaise-anticorruption.gouv.fr/files/files/RA%20Annuel%20AFA_WEB_0.pdf

¹⁰ <https://www.agence-francaise-anticorruption.gouv.fr/fr/lancement-plan-pluriannuel-national-lutte-contre-corruption>

¹¹ <https://www.vie-publique.fr/sites/default/files/rapport/pdf/194000532.pdf>

protect French companies thought to be vulnerable, to help them resist legal action by foreign law enforcement authorities. Its recommendations include expanding the legal protection of internal communications and general company information.

Transparency of enforcement information

Under the Sapin II Law of 2016, the AFA is required to publish an annual activity report. This report includes a statistical analysis of breaches of probity by public- and private-sector actors, but corruption of foreign public officials is not the subject of specific statistics.¹² France also annually provides the OECD WGB with data on cases concluded. According to the annual report of the National Financial Prosecutor's Office (PNF) for 2018, France issued 103 requests for mutual legal assistance (MLA) and received 40 such requests.¹³ The PNF does not specify what responses were provided by French and foreign authorities to these requests.

Only 3 per cent of the 3 million court decisions handed down each year in France are accessible to the public.¹⁴ In 2016, the government adopted a Law for a Digital Republic, taking a big step towards fulfilling its promise to make all court decisions publicly and freely accessible.¹⁵ At the end of June 2020, a decree implementing the 2016 Law was enacted.¹⁶ This decree must still be further defined by another decree and its implementation is expected to be gradual over a period of years.¹⁷

Approved CJIPs are publicised via press releases, and the CJIP and the approval order are published on the AFA website.¹⁸

Beneficial ownership transparency

France has a central register of beneficial ownership information, but it is not currently open to the public.¹⁹ The register is expected to be open by the end of 2020, later than the deadline of January 2020 established by the 5th EU Anti-Money Laundering Directive. France transposed the Directive into law in February 2020. Around 70 per cent of entities subject to the scheme had declared their beneficial owners by January 2020, according to the National Council of Clerks of Commercial Courts (*Conseil National des Greffiers des Tribunaux de Commerce*).

A national register of foreign trusts involving a French tax resident, kept by the tax authorities, was created by Law n° 2013-1117 of 6 December 2013 on the fight against tax fraud and serious economic and financial crime. French legislation also provides that the administrator of a trust is required to declare "information relating to the surname, first names, address, date, place of birth and nationality of the beneficial owners of trusts, who are understood to be all natural persons having the capacity of administrator, settlor, beneficiary and, where applicable, protector, as well as any other natural person exercising effective control over the trust or performing equivalent or similar functions".²⁰ However, in October 2016, the Constitutional Council held that public access to such information was an infringement of the right to privacy disproportionate to the objective pursued. The register of data on the beneficial owners of trusts is therefore not accessible to the public.²¹

Inadequacies in legal framework

Existing legal tools must be refined and adapted to enable victims of corruption to obtain compensation

¹² <https://www.agence-francaise-anticorruption.gouv.fr/fr/rapports>

¹³ https://www.tribunal-de-paris.justice.fr/sites/default/files/2019-01/PNF_synthese%202018.pdf

¹⁴ https://www.lemonde.fr/les-decodeurs/article/2018/06/28/l-ouverture-des-donnees-judiciaires-ouvre-un-marche-ou-s-agitent-de-nouveaux-acteurs_5322679_4355770.html

¹⁵ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033202746&categorieLien=id>

¹⁶ https://www.legifrance.gouv.fr/affichTexte.do?sessionId=FFBE338A2FAC3A10FDEDEBE7A2456567.tplgfr43s_1?cidTexte=JORFTEXT000042055251&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000042055246

¹⁷ <https://www.dalloz-actualite.fr/flash/un-pas-pour-l-open-data-des-decisions-de-justice#.Xv7jnm0zbIV>

¹⁸ <https://www.agence-francaise-anticorruption.gouv.fr/fr/convention-judiciaire-dinteret-public>

¹⁹ <https://www.infogreffe.fr/rbe>

²⁰ <https://www.legifrance.gouv.fr/affichCodeArticle.do%3B?cidTexte=LEGITEXT000006069577&idArticle=LEGIARTI000024416683>

²¹ <https://www.conseil-constitutionnel.fr/decision/2016/2016591QPC.htm>

for damage caused by the corruption of foreign public officials. The status of victims of corruption, the damage caused and the place of the victim in the new legal mechanisms have yet to be defined. Anti-corruption associations have legal standing to be *partie civile* (civil party) in corruption cases, but this does not fully address the lack of recognition of the status of victims of corruption.

Inadequacies in enforcement system

Despite some functional guarantees of independence, the AFA is subject to dual supervision – by the Ministry of Justice and the Ministry of Budget – which may undermine its credibility, as already pointed out by Transparency International France in 2016.²² Lack of independence is also an issue of concern for the Public Prosecutor's Office, causing a suspicion of political interference in many court cases. A complete overhaul of the procedures for appointing and managing the careers of magistrates is needed to address this issue.²³

The glaring lack of resources devoted to the fight against economic and financial crime is regularly criticised. A recent parliamentary report, for example, highlighted the shortage of staff in the PNF and recommended that more judges, clerks and court assistants be recruited without delay.²⁴ A Council of Europe report of October 2018 also pointed out the lack of resources of the judiciary.²⁵

A recent report by Transparency International France noted that “there can be no real independence without strengthening the means allocated to justice: human and financial resources and the removal of legal obstacles to justice”.²⁶

Issues remain with the implementation of the CJIP. There has been a lack of self-reporting by companies – none of the three CJIPs concluded in foreign bribery cases were the result of voluntary disclosure to French authorities. There is a risk that the CJIP becomes a tool for risk management by a company once an investigation has been opened, instead of an incentive to self-report and to raise standards. It has also been difficult to assess the CJIPs concluded by the authorities, because most of

the content has been shielded by secrecy requirements. The summaries made available provide insufficient information to evaluate them.

Recommendations

- Publish statistics and information on cases that have reached a final decision
- Promptly set up a publicly accessible beneficial ownership information register
- Strengthen protections of whistleblowers, using the transposition by France of the EU Whistleblower Protection Directive as an opportunity for legislative action
- Strengthen the independence of the French Anti-Corruption Agency and of the Public Prosecutor's Office
- Define the notion of victim of corruption and adapt French legal tools in an effort to more effectively repair the damages caused by corruption
- Adopt further guidelines on the CJIPs in order to encourage voluntary disclosures by companies and to promote transparency about CJIP negotiations and final agreements
- Increase the budget allocated to the fight against financial crime
- Promote and evaluate efforts to increase the specialisation of investigative services in financial and economic crimes.

²² <https://transparency-france.org/wp-content/uploads/2016/12/Analyse-de-la-loi-Sapin-2-apr%C3%A8s-d%C3%A9cision-CC-V7.pdf>

²³ <https://transparency-france.org/actu/un-an-apres-lelection-presidentielle-lethique-et-la-transparence-de-la-vie-publique/#.XI0SICFKjIU>

²⁴ http://www.assemblee-nationale.fr/dyn/15/rapports/cec/115b1822_rapport-information.pdf

²⁵ <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>

²⁶ <https://transparency-france.org/actu/un-an-apres-lelection-presidentielle-lethique-et-la-transparence-de-la-vie-publique/#.XI0SICFKjIU>