



Implementing the OECD Anti-Bribery Convention



Phase 4 Two-Year Follow-Up Report: France

This report, submitted by France, provides information on the progress made by France in implementing the recommendations of its Phase 4 report. The OECD Working Group on Bribery's summary and conclusions to the report were adopted on 6 March 2024. The Phase 4 report evaluated and made recommendations on 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*. The Phase 4 report was adopted by the OECD Working Group on Bribery on 9 December 2021

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Summary and Conclusions

In March 2024, France presented the OECD Working Group on Bribery (Working Group or WG) with its two-year follow-up report, describing the measures taken to implement the recommendations formulated during the [Phase 4 evaluation](#) in December 2021. In light of the information provided, the Working Group concludes that France fully implemented 13 recommendations, partially implemented 19 recommendations and did not implement 12 recommendations. The Working Group has decided to convert recommendations 3, 5.a, 5.b and 10.a into issues for follow-up.

Summary of the main findings¹

In its Phase 4 report, the Working Group had welcomed the notable progress made by France since Phase 3 in enforcing the offence of bribery of foreign public officials, as reflected in a significant increase in the number of investigations opened and the imposition of final sanctions in 14 cases, which add to the 3 cases that had led to the imposition of final sanctions at the time of the Phase 3 report. The Working Group now notes with satisfaction that since the adoption of the Phase 4 report (hereinafter "Phase 4"), France has continued to be proactive in pursuing foreign bribery cases and has continued to build on its implementation of the Convention by imposing final sanctions in eight additional cases since Phase 4, bringing to 25 the number of finalised foreign bribery cases since the Convention entered into force. Since Phase 4, eight legal persons have been sanctioned for foreign bribery, via a *Convention judiciaire d'intérêt public* (CJIP), in six cases, and three natural persons have received final sanctions in two other cases², taking the total number of foreign bribery sanctions in France since the Convention entered into force to 31 legal persons and 26 natural persons. There have been no final acquittals since Phase 4. The Working Group notes with satisfaction that the paradigm shift in the approach to corporate liability observed in the Phase 4 report, with priority given to resolving foreign bribery cases with CJIPs, has been confirmed over the last two years.

A significant number of **ongoing** cases has also been observed, and the Working Group is encouraged by this trend towards sustained enforcement. Two natural persons were convicted in first instance for foreign bribery and complicity of active foreign bribery and have appealed against this conviction. The acquittal of one legal person and three natural persons is currently the subject of a general appeal. Moreover, six cases are awaiting the hearing or the final decision in first instance (two of which were already pending in Phase 4). In addition, the number of investigations and judicial inquiries in progress continues to rise, suggesting that the Convention will continue to be implemented on a sustained basis. There are 18 judicial inquiries in progress (including three judicial inquiries opened since Phase 4 following preliminary investigations in progress at the time of Phase 4 or opened since Phase 4). Forty-one preliminary investigations are underway (including four preliminary investigations opened since Phase 4). There have been no dismissals for foreign bribery (partial or complete) and two cases have been closed without further action since Phase 4. However, two cases involving French companies included since

¹ The evaluation team for this Phase 4 two-year written follow-up evaluation of France was composed of lead examiners from Canada (**Mark Scrivens**, Senior Counsel, Department of Justice, and **Marianne Breese**, Counsel, Department of Justice) and Switzerland (**Olivier Bovet**, Economist, State Secretariat for Economic Affairs (SECO), **Maria Schnebli**, Federal Prosecutor for Economic Crime, Office of the Attorney General, and **Anastasia Zacharatos**, Lawyer, Federal Department of Justice and Police, Federal Office of Justice) as well as members of the OECD Anti-Corruption Division (**Sandrine Hannedouche-Leric**, Co-ordinator of the Phase 4 evaluation of France and Senior Legal Analyst along with **Solène Philippe** and **Anais Michel**, both Legal Analysts). See Phase 4 Procedures, paras 52-62 on the role of Lead Examiners and the Secretariat in the context of two-year written follow-up reports.

² These include two natural persons definitively convicted for foreign bribery in one case resolved by trial and one natural person convicted for complicity in foreign bribery through a CRPC in one other case.

Phase 4 in the compilation of foreign bribery allegations maintained by the Working Group³ have not led to France opening an investigation. For one of them, an analysis of facts was carried out, following which the decision was taken not to open an investigation. The Working Group encourages France to review the remaining case carefully. **[recommendation 6]**

The sanctions imposed on legal persons in foreign bribery cases through the CJIP since December 2021 appear to have remained at high levels, with public interest fines ranging from a low of almost 3.5 million euros to a high of almost 155 million euros, giving a cumulative fine of almost 264 million euros over the period in question. However, the same cannot be said of the sanctions imposed on natural persons in trial resolutions during the same period, which have remained in the low range of penalties provided for in the law at the time of the events (before 2013).⁴ **[recommendation 8.a]** Moreover, France indicates that it fully uses the legal framework for seizing assets that are traceable to the proceeds of the offence. Despite these encouraging efforts, the Working Group notes that since the Phase 4 report, confiscation measures have only been applied in regards to a natural person in a case that is subject to appeal and that no confiscation measures were applied in the two foreign bribery cases that were resolved with sanctions without a CJIP.. **[recommendation 8.b]** An obligation to implement a compliance programme was imposed on two legal persons. The French Anti-Corruption Agency (AFA) has been appointed to monitor these programmes. Finally, one legal person was ordered to pay damages to anti-corruption associations.

The Working Group commends France for **implementing key recommendations** that allay the concerns, identified in Phase 4, that recent achievements - resulting from France's major overhaul of its institutional and legislative framework for combating serious economic crime - would be undermined by additional reforms or reforms still at the draft stage. In particular, the Working Group welcomes with relief the introduction into Article 75-3 of the Code of Criminal Procedure (CCP), at the end of November 2023,⁵ of several possibilities for **significantly extending the duration of preliminary investigations**, the limitation of which to two or three years by the Act on "confidence in the judiciary" adopted in 2021 had given rise to serious concerns. **[recommendation 10.b]** Similarly, with regard to the **AFA**, the Working Group notes that the concerns over the guarantees of independence and the preservation of the AFA's missions have been allayed. **[recommendation 18.a]** **The National Financial Prosecutor's Office (Parquet National Financier - PNF)**, its action and its role in investigations, prosecutions and non-trial resolution of foreign bribery cases have been preserved. **[recommendations 6 and 10.a]** In this respect, the Working Group welcomes the cooperation between the PNF and the AFA and encourages France to continue its efforts to ensure that the AFA's expertise is fully used both within and outside the framework of the CJIPs. **[recommendation 18.b]** France has also carried out a major new reform of its **whistleblower protection system** as part of the transposition of the European Union (EU) directive on whistleblowers,⁶ thereby remedying several of the shortcomings identified in Phase 4. The Working Group welcomes this reform and encourages France to continue its efforts to strengthen and clarify its whistleblowing regime and to promote it to the public. **[recommendation 3]**

That said, the Working Group continues to be concerned by the **resource issues** affecting the various components of the criminal justice system, and which are still prevalent. It invites France to continue its efforts in order to strengthen the resources allocated to specialised investigative departments and to all prosecutors, investigative judges and trial judges responsible for foreign bribery cases given the scale of the deficits identified in the Phase 4 report and the growing number of complex cases handled by these services **[recommendations 7.a, 7.b, et 7.c and 12.a]** As for the AFA, the Working Group is encouraged by the increase in the AFA's annual funding since 2021, as well as a slight increase in its human resources following a period with fewer staff. **[recommendation 18.a]**

The Working Group regrets that the French authorities have not yet taken concrete legislative measures

³ Foreign bribery allegations involving French companies in the compilation maintained by the Working Group based on press articles.

⁴ The four natural persons convicted in court (two of whom received final convictions) received prison sentences ranging from 12 to 36 months, three of which were suspended. Only one of them received a fine, which amounted to 30 000 euros.

⁵ The Ministry of Justice Orientation and Programming Act (LOPJ) which came into force on 22 November 2023.

⁶ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

to clarify the **corporate criminal liability framework** for foreign bribery, but is encouraged by the fact that France reports that it has initiated this work as part of ongoing negotiations on the anti-corruption directive at the EU level.⁷ **[recommendations 13.a and 13.b]** If no steps have been taken, or are envisaged, to re-examine the possibility of including natural persons within the scope of the CJIP or another non-trial resolution mechanism (besides the CRPC), the Working Group welcomes the reflection undertaken as well as the legislative developments seeking to mitigate the risk that the non-trial resolution of a case may be hindered when a CRPC that is submitted concomitantly with a CJIP is rejected. These steps should contribute towards better coordination between the non-trial resolution mechanisms applicable to natural and legal persons in foreign bribery cases. **[recommendation 11.b]**

The Working Group also regrets that the French authorities have not taken up a number of recommendations calling on them to strengthen **guarantees of the independence** of the Public Prosecutor's Office. For example, the constitutional reform, the latest draft of which was initiated in 2019, has still not been completed, despite the pressing need to do so in light of the concentration of powers to investigate, prosecute and resolve non-trial foreign bribery cases (*comparution sur reconnaissance préalable de culpabilité* (CRPC) and CJIP) in the hands of the PNF. **[recommendation 9.b]** With regard to investigations and prosecutions, the opportunity to introduce in the law the clarifications expected from the Working Group in terms of reporting information from public prosecutors to the Minister of Justice, which arose with the text for “confidence in the judiciary”, approved at the end of December 2021, has not been taken and no project is underway to implement this recommendation. **[recommendation 9.a]** The Working Group notes that no disciplinary action has been taken against any prosecutors, including PNF prosecutors, following the investigation by the Justice Inspection (*Inspection générale de la Justice* – IGJ) and the opinions of the Supreme Council of Magistracy (*Conseil supérieur de la magistrature* - CSM) requested by the executive. In addition to these reassuring conclusions, France has taken welcome steps to preserve the role of the PNF and to ensure trust and calm in its relations with the Ministry of Justice. **[recommendation 10.a]**

Furthermore, while progress has been made in removing the obstacles to prompt and effective **mutual legal assistance** created by the blocking statute, progress remains limited with regard to the obstacles created by Article 694-4 CCP. **[recommendation 12.b]** No steps have been taken to clarify that the factors of Article 5 of the Convention should not be taken into account concerning declassification requests in the context of defence secrecy procedures so as not to impede foreign bribery investigations and prosecutions. **[recommendation 9.d]** Similarly, the Working Group is disappointed that no measures have been implemented concerning assertions of professional secrecy obligations to the AFA, which it had identified as an impediment to the identification of suspicious financial transactions during AFA audits. **[recommendation 1.b]**

In conclusion, the Working Group commends France for its significant efforts to implement a number of the key recommendations from its report, including by carrying out legislative reforms in a limited amount of time. It notes that the major problem of resources throughout the entire criminal justice system has not been resolved **[recommendations 7.a, 7.b, 7.c, and 12.a]** and that a number of reforms or developments currently underway - or not yet even being considered - warrant additional follow-up by the Working Group. This is particularly true of the still pending clarification of the liability of legal persons **[recommendations 13.a and 13.b]**, and the persistent limits - or seeming limits - on the independent enforcement of the foreign bribery offence **[recommendations 9.a and 9.b]**. The Working Group invites France to submit an additional written follow-up report to the Working Group in two years, i.e. in March 2026 about these recommendations. This report should also provide the Working Group with updated information on France's foreign bribery enforcement actions.

The Working Group's conclusions regarding the implementation of each recommendation covered in France's written follow-up report are presented in more detail below.

⁷ [Proposal for a directive](#) of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council.

Recommendations concerning the detection of foreign bribery

- ❖ *Recommendation 1(a) – Partially implemented.* In Phase 4, the Working Group had considered that clarification was required on the relationship between the reporting channels provided for under the Sapin 2 Act and the reporting obligations under article 40 CCP. The Working Group had also considered that the high threshold for referring cases to the Public Prosecutor's Office under Article 40 CCP was a serious impediment to the referral of foreign bribery cases to the PNF by officials subject to this reporting obligation. France has begun drafting a circular to clarify the relationship between the reporting obligation incumbent on public officials under Article 40 CCP and the reporting option available to them under Articles 6 and 8 of the Sapin 2 Act, which is encouraging. However, the content and impact of this circular can only be assessed after its publication, which is due in the first quarter of 2024. In addition, France has set up several awareness-raising, training and ethics monitoring projects dedicated to detecting and reporting foreign bribery allegations. Although these measures have helped to clarify reporting obligations and channels, they have not specified the thresholds for reporting credible allegations of foreign bribery under Article 40 CCP in order to ensure that these are not interpreted in an overly demanding manner and do not create obstacles to such reporting.
- ❖ *Recommendation 1(b) – Partially implemented.* In Phase 4, the Working Group had been encouraged by the initial reports of foreign bribery made by AFA to the PNF, while noting the existence of certain obstacles that could hinder the detection of suspected criminal acts. The Working Group had therefore recommended that France train AFA staff on the red flags for foreign bribery and take the necessary measures to ensure that companies' assertions of professional secrecy obligations (including lawyers' and auditors' professional confidentiality obligations and bank secrecy) would not impede the identification of suspicious financial transactions during AFA's audits. With regard to the training of AFA staff, the introduction of a legal watch system to keep abreast of changes in legislation and case law, particularly relating to criminal offences involving integrity violations, the results of which are circulated within the AFA, and the regular organisation of in-house workshops listing the various risk scenarios involving integrity violations, are welcome but do not sufficiently target foreign bribery or the need to encourage its reporting. On the other hand, no measures have been taken concerning the assertions of professional secrecy obligations to the AFA. France points out that: i) Article 4 of the Sapin 2 Act requires the person or persons legally responsible for the audited entities to provide the AFA with "any document" or "any useful information"; ii) since Phase 4, the entities subject to the Act have not attempted to argue that they were bound by professional secrecy during AFA's audits; and iii) the AFA has submitted several reports to the Public Prosecutor's Office, two of which are likely to constitute foreign bribery offences. This reassuring observation does not, however, constitute a sufficient change compared to the situation observed in Phase 4. The Working Group's recommendation - prompted in Phase 4 by the AFA Director's own statements - therefore remains unimplemented. However, it is becoming even more relevant in circumstances whereby the assertions of professional secrecy obligations that companies can invoke could be further extended, in particular with the recent legislative proposals aimed at guaranteeing the confidentiality of legal advice given by in-house lawyers which, while not strictly speaking a professional secret, would nonetheless allow a company to challenge a request for information from the AFA. France stresses, however, that guarantees are provided by these bills, which include a procedure for removing confidentiality as well introducing an obstruction offence in the event of fraudulent use of this confidentiality.
- ❖ *Recommendation 1(c) – Fully implemented.* In Phase 4, no foreign bribery cases had been detected by diplomatic and consular posts. Since then, France has analysed the reasons for this failure to detect foreign bribery using a survey of diplomatic and economic posts carried out by the Ministry for Europe and Foreign Affairs (MEAE) and the General Directorate of the Treasury (DG Trésor), the results of which showed the need for a "cultural shift" in this area. The MEAE and the DG Trésor have also taken various measures to raise awareness and provide training that specifically addressed foreign bribery, how to detect it and how to report it, aimed at all staff working abroad, including press services. At least one new case of foreign bribery, which is currently the subject of a preliminary investigation, has been detected by the MEAE since Phase 4.
- ❖ *Recommendation 1(d) – Not implemented.* In Phase 4, the Working Group had regretted that the extensive overhaul of the legal framework on arms exports after 2012 did not appear to have

contributed to the comprehensive review of compliance programmes when granting and monitoring arms export licences as recommended in Phase 3. The Working Group had stressed that the General Directorate of Armaments had not detected any foreign bribery cases despite the defence sector's exposure to the risks of bribery. The Working Group had also recommended that France ensure that companies sanctioned for foreign bribery could have their arms exports authorisations suspended. France has still not taken any steps to conduct an in-depth review of companies' compliance programmes when granting and monitoring arms export licences and considers that only the AFA would be in a position to carry out such a review as part of its ad hoc audits. With regard to the suspension of arms export licences for companies sanctioned for foreign bribery, the legislative framework has not changed since Phase 4.

- ❖ *Recommendation 1(e) – Partially implemented.* The Phase 4 report had noted a decline in the detection of foreign bribery by the tax authorities. The tax authorities and the PNF had begun to step up training and awareness-raising for tax officials in this area. However, the impact of these measures could not be assessed. Since then, France has reported that in 2022-2023 the anti-corruption contact person in the Directorate of National and International Audits made 18 presentations to the Directorate's field staff to emphasise their role in uncovering evidence of foreign bribery. However, it has not been established that this corresponds to an intensification of the tax authorities' efforts to raise awareness in this area, as expected in the context of this recommendation. The information provided on the nature and scope of the initiatives taken in this area by the Directorate of National and International Audits does not demonstrate that the recommendation has been fully implemented. In addition, France has not reported any concrete awareness-raising measures in its overseas territories. Lastly, although the transmission by the tax administration to its network of instructions for systematically reporting cases of application of the non-tax deductibility of bribes under Article 40 CCP is a positive measure, the procedures for disseminating this instruction seem to be ineffective (inclusion in the annual report on reporting under Article 40 CCP). Although France states that the detection and reporting of foreign bribery to the Public Prosecutor's Office is systematically discussed at regular meetings to raise awareness of Article 40 CCP among tax authorities, the scope of these initiatives is not clearly established. No reporting of this type has taken place since Phase 4.
- ❖ *Recommendation 1(f) – Partially implemented.* In Phase 4, no foreign bribery cases had been detected by Bpifrance, and the level of awareness of employees of the foreign bribery offence remained insufficient. Since then, France has taken steps to strengthen detection and reporting mechanisms and to ensure that bribery allegations are reported by Bpifrance to the Public Prosecutor's Office, in particular through the introduction of a system to help implement anti-corruption due diligence. Bpifrance has also taken steps to train and raise the awareness of its employees in detecting and reporting corruption, in particular through the adoption of new training tools and codes of ethics and good conduct. However, it has not been established that all these measures have specifically covered the foreign bribery offence. Bpifrance has still not detected any cases of foreign bribery since Phase 4.
- ❖ *Recommendation 1(g) – Not implemented.* The Phase 4 report had noted the lack of awareness among auditors regarding the importance of their role in detecting foreign bribery. The Working Group had therefore considered that an express mention of the foreign bribery offence in the "Professional practice guidance for auditors on reporting criminal acts to the Public Prosecutor" would help remedy this situation. No such reference has been included in the Professional practice. France reiterates its Phase 4 arguments that this text, by referring to "all categories of offence" and mentioning domestic bribery among the examples of offences "within the scope" of statutory auditors, encompasses sufficiently clearly the foreign bribery offence within the scope of the disclosure obligation. The fact that France relies on a reference to domestic bribery to support the position that the Professional practice refers sufficiently clearly to foreign bribery confirms the need for auditors to be made aware of the specificities of this offence.
- ❖ *Recommendation 1(h) – Fully implemented.* In Phase 4, the Working Group had commended France for its increased emphasis on self-reporting since Phase 3. Nevertheless, the low number of self-reports on foreign bribery cases had led the Working Group to recommend that France define, by any appropriate means, the framework and practical incentives for self-reporting. The publication by the PNF of new guidelines on 16 January 2023, and the creation of a fact sheet for magistrates are to be commended and allow the recommendation to be implemented. These documents clarify that self-

reporting is taken into account in the public prosecutor's decision to have recourse to a CJIP and is considered to be the most important of the mitigating factors taken into account in assessing the direct and indirect benefits used to calculate the public interest fine. Self-reporting could therefore reduce the fine by half. Since Phase 4, three CJIPs entered into in relation to foreign bribery offences have taken into account the self-reporting of the companies involved when calculating the public interest fine.

- ❖ *Recommendation 1(i) – Fully implemented.* In Phase 4, the Working Group had been encouraged by the PNF's recent approach for identifying foreign bribery allegations based on media sources but had noted that these developments were nevertheless limited given the size of the French economy and the number of cases reported in the media. The Phase 4 report stressed that since its creation in 2014, the PNF had opened eight preliminary investigations into foreign bribery cases involving major French groups based on media sources, mainly French but also foreign. In the Phase 4 follow-up report, the Working Group was informed of the opening of three additional preliminary investigations based on media sources, which is encouraging. Two of them had been opened before Phase 4 but had not been identified at the time. At least one of the two targets a major French group. A third preliminary investigation was opened in 2022 on the basis of media sources and targets a major French group. However, investigations into two cases added since Phase 4 to the compilation of foreign bribery allegations maintained by the Working Group have not been opened in France. France reports that after analysis one case was not investigated due to a legal issue relating to the disappearance of the legal person but does not provide any information on the other case. The PNF has therefore continued to use media sources to identify foreign bribery allegations, even though to a limited extent.
- ❖ *Recommendation 2 – Partially implemented.* The Phase 4 report had noted that TRACFIN's work in the area of foreign bribery-related money laundering focused on the laundering of bribes, leaving aside the laundering of the proceeds from foreign bribery (benefits). This view was reflected in its initiatives aimed at raising awareness in the private sector. Since then, although France has taken measures to raise the awareness of obliged entities of the need to detect instances that may involve foreign bribery, these efforts have been limited in scope⁸, and have not addressed the issue of the laundering of the proceeds of foreign bribery. The Phase 4 report had also noted the lack of information on the number of suspicious transaction reports related specifically to foreign bribery processed by TRACFIN's "integrity violations" unit. Since then, TRACFIN has taken steps to strengthen statistical monitoring of its activities related to foreign bribery. However, it has not been established that the new system for identifying "the nature of the offences referred to in all of the Service's judicial disseminations", which is still being validated internally, will also cover the information processed by the "integrity violations" unit itself, as expected under this recommendation.
- ❖ *Recommendation 3 – Fully implemented and converted to issue for follow-up.* In Phase 4, the Working Group had welcomed the strengthening of the whistleblower protection regime introduced by the Sapin 2 Act. However, this new system had weaknesses, and no foreign bribery cases had been detected by a whistleblower. Since then, as part of the transposition of the EU Whistleblowing Directive⁹, France has made further improvements to its legal framework in this area¹⁰, thus implementing the first point of the recommendation. These measures, which are to be commended, include harmonising the protection afforded under the general whistleblowing provisions of the Sapin 2 Act and the pre-existing sector-specific whistleblowing mechanisms; extending protections, in particular, to whistleblower "facilitators" and to persons connected to whistleblowers; improving the flexibility given to whistleblowers in the choice of reporting channels; introducing financial and psychological support measures, which can be activated before the judge's decision on the implementation of protection; strengthening the civil and criminal immunity of whistleblowers; and

⁸ Mainly: mention of the Working Group's evaluation and reference to a typical case of foreign bribery in TRACFIN's 2021 and 2023 activity reports, and a reference to foreign bribery at a meeting with statutory auditors in December 2022.

⁹ [Directive \(EU\) 2019/1937](#) of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

¹⁰ [Act No. 2022-401 of 21 March 2022 aimed at improving protection for whistleblowers; Implementing decree 2022-1284 of 3 October 2022; Organic Act No. 2022-400 of 21 March 2022 reinforcing the role of the Defender of Rights office with regard to whistleblowing.](#)

extending the offence of discrimination to discrimination against whistleblowers. A more in-depth analysis of the new system will have to be carried out in Phase 5 in order to determine whether other concerns identified in Phase 4 have been resolved (in particular, the potentially demanding conditions for the application of the protections, which may exclude mere suspicions of foreign bribery). Regarding the second point of this recommendation, France has strengthened the role of the position of the Defender of Rights in the whistleblower protection system, and it is now empowered, for example, to issue opinions on whistleblower status. Finally, with regard to the third part of this recommendation, France reported on measures to increase public awareness of the importance of whistleblowers, especially in combating corruption, via its website, social networks and contacts with civil society. At least one new case of foreign bribery has been detected by a whistleblower since Phase 4, and the number of reports received by the AFA, including from whistleblowers, has increased significantly since 2021, which is encouraging. The Working Group will continue to monitor developments relating to the new whistleblower protection system, including the effectiveness of the protection afforded, the adequacy of the resources allocated to the Defender of Rights, and efforts to increase public awareness.

- ❖ *Recommendation 4(a) – Fully implemented.* In Phase 4, the Working Group had considered that France needed to (i) increase the resources allocated to the French Development Agency (AFD) Group's investigation function, (ii) improve the effectiveness of its oversight mechanisms and (iii) ensure that AFD Group staff receive targeted training on foreign bribery risks. By increasing the resources of the investigation function from two to three permanent staff (in addition to employing temporary staff and external investigators) and by attaching the function directly to the AFD's General Management to ensure its independence from operational departments, France has addressed the first part of this recommendation. Regarding the second part of the recommendation, the AFD has validated a revised version of its procurement guidelines for projects financed in foreign countries, including a revised model statement of integrity to be signed by all bidders and attached to their technical and financial offer. This statement now contains a paragraph requiring the tenderer to declare any use of a commercial intermediary/agent, and the nature and amount of the related service. The new version of the guidelines came into force on 1 February 2024.¹¹ The new targeted approach to training, based on the extent of staff members exposure to the foreign bribery risk and their role in implementing the prevention and detection programme (in addition to the annual e-learning courses on bribery, which are compulsory for all employees), has also addressed the third part of the recommendation by ensuring that training on foreign bribery is more widely available.
- ❖ *Recommendation 4(b) – Partially implemented.* During Phase 4, the Working Group had noted that, when awarding contracts, only final convictions were taken into account and that exclusion from contracts financed by AFD was not automatic in the event of a final conviction for bribery (with certain exceptions) and depended in particular on the robustness of the compliance programme. The AFD has since revised its guidelines with regard to the criteria for ineligibility of bidders for a contract financed by the agency in foreign States in order to include in their statement of integrity not only final convictions but also non-trial resolution judicial measures.¹² This new version of the guidelines came into force on 1 February 2024. However, given the limited geographic scope of the inclusion of non-trial resolutions (France refers only to CJIPs and CRPC), this recommendation remains partially implemented.

Recommendations regarding enforcement of the foreign bribery offence

- ❖ *Recommendation 5(a) – Fully implemented and converted to issue for follow-up.* The concerns expressed in Phase 3 regarding the search for a corruption pact to establish the offence (created by case law and not found in the statute) had been reiterated in Phase 4 on the basis of decisions of French courts transmitted by France in cases resolved since Phase 3 and discussions during the on-site visit with academics, non-governmental organisation (NGO) representatives and defence lawyers

¹¹ [Directives pour la passation des marchés financés par l'AFD dans les États étrangers | AFD - Agence Française de Développement](#)

¹² [Directives pour la passation des marchés financés par l'AFD dans les États étrangers | AFD - Agence Française de Développement](#)

who had pointed out that the courts and investigative judges continued to seek out evidence of a corruption pact. France has since introduced the clarification measures for judges recommended by the Working Group at two events: in-service training provided by the French National School for the Judiciary (ENM) on bribery of foreign officials, on 2 December 2022, which is permanently available to all magistrates on the ENM's online platform; and a seminar organised by the Directorate of Criminal Affairs and Pardons (DACG), on 25 January 2023, which brought together prosecutors, investigators, judges and other practitioners in the field of international bribery. While it is true that France is pursuing its efforts to clarify this issue, its impact will only be confirmed by case law developments and the Working Group is therefore converting this recommendation into an issue for follow-up.

- ❖ *Recommendation 5(b) – Fully implemented and converted to issue for follow-up.* In Phase 4, the examiners had regretted that no action had been taken since Phase 3 to implement the recommendation regarding the ability to hold criminally liable of foreign bribery authors of third-party payments. In particular, the report had noted that the sanction of such payments was not either demonstrated by convictions at trial. The effort made to train judges is to be commended, and the seminar held on 25 January 2023 also reminded all members of the judiciary and other practitioners in the field of international bribery that it was irrelevant whether the bribe was paid to the recipient or to a third party. However, the fact that the French authorities indicate that both a preliminary investigation and a judicial inquiry are underway which would punish this type of payment under the offence of passive bribery or money laundering of bribery of a foreign public official by a criminal gang, while helping to demonstrate the desire to use alternative offences, does not demonstrate the possibility of punishing payments to third parties under the foreign bribery offence. The Working Group is therefore converting this recommendation into an issue for follow-up.
- ❖ *Recommendation 6 – Fully implemented.* In the Phase 4 evaluation, the Working Group had commended France for its notable progress in enforcing the foreign bribery offence since Phase 3. The Working Group had recommended that France take all necessary measures to enable the various components of the criminal justice system to pursue the enforcement of the foreign bribery offence in order to increase the number of cases resolved which remained relatively low, especially for legal persons, in relation to France's economic situation and trade profile and the number of cases reported in the media. Since Phase 4, France has continued to be proactive in pursuing foreign bribery cases, imposing final sanctions in eight additional cases, bringing to 25 the number of foreign bribery cases finalised since the Convention entered into force. The Group is also encouraged by the large number of ongoing cases and believes that this trend towards sustained implementation will continue. Further details on the figures can be found in the introduction to this document. The figures show that France's efforts to enforce the foreign bribery offence observed in Phase 4 are continuing. The Working Group welcomes this confirmation that the notable progress observed in this respect during the Phase 4 evaluation is now well established. The Working Group will continue to monitor closely the enforcement of the foreign bribery offence.
- ❖ *Recommendation 7(a) – Partially implemented.* In Phase 4, the Working Group had welcomed the creation of a specialist criminal investigation department dedicated to combating economic and financial crime (the Central Office for Combating Corruption and Financial and Fiscal Offences - OCLCIFF) and the fact that it had been assigned a clearly identified lead role in investigating foreign bribery cases, but had been seriously concerned by the significant lack of resources allocated to it. The Working Group observes that, France has made efforts to strengthen the law enforcement ecosystem in which the specialised OCLCIFF investigators operate, and that measures have been taken to help the investigators concentrate their efforts on investigative acts requiring their particular competences. However, the resources allocated to the specialised investigation departments, in particular the OCLCIFF and the National Brigade for Combating Corruption and Financial Crime (BNLCCF), remain insufficient. OCLCIFF staff numbers have fallen since the Phase 4 evaluation, from 84 to 67, including 33 personnel assigned to the BNLCCF. Despite the low number of applications, France has indicated that 15 personnel are expected to join the OCLCIFF by July 2024, including five within the BNLCCF. Nonetheless, these recruitments do not fully compensate for the loss of 17 posts within the OCLCIFF since the Phase 4 evaluation and confirm the lack of attractiveness of investigative positions in this field. The recruitment of investigative assistants and retired police officers, as well as the supporting efforts of other units or offices of the Sub-Directorate for Financial Crime, do not adequately compensate for the structural lack of resources within the

OCLCIFI and in particular the BNLCCF. In its 2021 activity summary¹³, the PNF stressed that "while the reduction in the duration of preliminary investigations to two years, extendable by one year, as introduced by the Act for "confidence in the judiciary", will clearly have a major impact on the PNF's ability to initiate public prosecution in cases within its remit (84% of its investigations are conducted as preliminary investigations), it is to be feared that the repercussions will be even more constraining for the police, gendarmerie, finance and customs investigation departments, which are already considerably overstretched and will in future have to sustain a rate of activity that is hitherto unknown and incompatible with their current staffing levels." (Cf. recommendation 10.b). It is premature to fully assess the impact of the National Police reform on foreign bribery investigations, particularly for the decentralised services that investigate foreign bribery cases alongside the OCLCIFI. With regard to training, measures designed to improve certain training courses with a view to making the duties of specialised investigators more attractive and retaining investigating officers are of interest but are in the process of being developed and have not yet been launched. In any case, these measures, even when in place, will only indirectly address the problem of the structural lack of resources, identified by the Working Group as paramount in the Phase 4 report.

- ❖ *Recommendation 7(b) – Partially implemented.* In Phase 4, the Working Group had welcomed the creation of the PNF but had nevertheless been seriously concerned that the PNF's resources were not sufficient nor commensurate with the complexity and increasing number of cases for which it was responsible. The Working Group had notably pointed out that each prosecutor was responsible for approximately 38 cases, whereas the original impact assessment estimated that their individual caseloads should not exceed eight "highly complex cases". The resources allocated to the PNF in terms of personnel and specialised expertise have increased slightly since Phase 4, with the recruitment of two additional magistrates and two specialist assistants. The PNF also has two legal assistant positions. However, as of 31 December 2023, the PNF, with its 20 magistrates, was handling 781 cases, corresponding to a ratio of 39 cases per magistrate, meaning that their workload has increased slightly since Phase 4. While there has been a genuine increase in the number of magistrates since Phase 4, this is still insufficient given the scale of the shortfall identified in the Phase 4 report and the growing number of complex cases handled by the PNF. This shortfall was, for a time at least (see amendment to Article 75-3 CCP which came into force on 22 November 2023 under Recommendation 10. b) further exacerbated, as the PNF emphasised in its 2021 activity summary, by the reduction in the duration of preliminary investigations to two years, extendable by one year, as introduced by the Act on "confidence in the judiciary", which the PNF anticipated would clearly "[have], a major impact on the PNF's ability to initiate public prosecution in cases within its remit (84% of its investigations are conducted as preliminary investigations)", a situation in turn amplified by the even more constraining repercussions for already overstretched investigation departments (see recommendation 7.b).¹⁴ The Working Group is encouraged by the ambitious objective of creating new posts for magistrate and assistants for the five-year period 2023-2027. However, pending the realisation of this objective and precise information as to its possible impact on the PNF's resources, this objective cannot be considered, at this stage, to be contributing to the implementation of this recommendation. As regards the training of specialised prosecutors, numerous courses and seminars have been organised by the ENM, some in collaboration with the Directorate of Criminal Affairs and Pardons (DACG), thereby addressing the second part of the recommendation. 71 prosecutors took part in these training courses in 2023.
- ❖ *Recommendation 7(c) – Partially implemented.* In Phase 4, the Working Group had welcomed the recent efforts to strengthen the resources and specialisation of courts dealing with foreign bribery cases. It had been concerned, however, that trial judges and investigative judges still did not have the necessary resources to deal with these complex cases within a reasonable timeframe and with the appropriate degree of specialisation. Since then, the 2022 statistics provided by France show that the number of investigative judges has not changed. The number of trial judges also remains identical to the figure provided in December 2022. It is difficult to see any clear changes since the Phase 4 report. In Phase 4, the two chambers specialising in economic and financial matters (11th and 32nd Correctional Chambers of the Judicial Court of Paris) were each made up of six presiding judges and ten assessor judges. Fourteen trial judges are currently assigned mainly to these two specialised

¹³ See the [2021 activity summary of the National Financial Prosecutor's Office](#).

¹⁴ See the [2021 activity summary of the National Financial Prosecutor's Office](#).

chambers. Analysis of any developments differs depending on whether the statistics concern assessor judges (where an increase could be highlighted) or assessor judges and presiding judges (where a reduction should be noted). In any event, the increase in the number of judges would be limited at best, both in terms of numbers and specialisation, given that the recommendation targeted an increase in the resources of investigators and investigative judges and trial judges. While the increase in the number of specialist assistants since Phase 4, particularly assistants with accounting and financial skills, represents a positive development, a slight decrease in the number of assistants can be observed between 2022 and 2023 (from eight to seven). With regard to training for judges, the ENM has organised numerous seminars and courses, some in collaboration with the DACG, which is to be commended. 24 trial judges and 16 investigative judges took part in these training courses in 2023.

- ❖ *Recommendation 8(a) – Not implemented.* The Phase 4 report had noted that the sanctions imposed on natural persons for foreign bribery (excluding CRPCs) since Phase 3 had all remained within the low range of sanctions available at the time the offences were committed, and that almost all of the prison sentences handed down were suspended, despite the invitation in the Belloubet circular to impose sanctions in accordance with Article 3 of the Convention in 2020¹⁵. The information available on the sanctions imposed since December 2021 does not reveal any significant change and cannot be used to conclude that they have been effective, proportionate and dissuasive. Since Phase 4, four natural persons have been convicted of foreign bribery or complicity in foreign bribery in two cases. The two natural persons who were finally convicted received suspended prison sentences that were much shorter than the maximum in force at the time of the offences. Two other natural persons were convicted in first instance only (an appeal is pending). The first received a fine well below the maximum in force at the time of the offences, as well as a suspended prison sentence of less than the maximum in force at the time. The second received a prison sentence, also for a period well below the maximum in force at the time.
- ❖ *Recommendation 8(b) – Not implemented.* The Phase 4 report had noted that since Phase 3 confiscation orders had rarely been issued against natural and legal persons sanctioned for foreign bribery in the context of a trial resolution. The situation has not changed. Confiscation measures (although non-final) have only been imposed on one of the two natural persons convicted of active foreign bribery in one of the three cases that have resulted in (final or non-final) sanctions for this offence, outside the CJIP framework, since the Phase 4 report. While useful awareness-raising campaigns on the importance of confiscation, including in the area of financial crime, have been conducted among magistrates and investigators, none of these initiatives has specifically addressed foreign bribery. Lastly, while France has not taken any specific steps to develop guidelines on methods for quantifying the proceeds of foreign bribery offences, it states that the revised CJIP guidelines, which include elements of a method for calculating the benefits derived from the offences in question, including foreign bribery offences, "are fully applicable to the calculation of direct or indirect proceeds outside the CJIP framework". However, this method, which relies on the cooperation of the legal person under accusation, can only be partially applicable to quantifying the proceeds of foreign bribery in the context of a trial resolution, in particular with regard to natural persons.
- ❖ *Recommendation 9(a) – Not implemented.* In Phase 4, the Working Group had congratulated France for ensuring the continued and permanent prohibition of individual instructions from the Minister of Justice to prosecutors, with the Act of 25 July 2013. It had nonetheless observed that this Act did not challenge the principle according to which the Prosecutor General's Offices transmit information to the Ministry of Justice in certain sensitive cases, notably due to their political or international dimensions. The Working Group had noted that high-level magistrates, civil society, and, most recently, the Supreme Council of Magistracy were calling for a more precise delimitation in the law of the cases for which information should be reported, following up on prior efforts to clarify this matter through ministerial circulars. The opportunity that arose with the Act on "confidence in the judiciary" approved at the end of December 2021 to introduce the clarifications expected by the Working Group was not taken and there is no project currently underway for implementing this recommendation.

¹⁵ [Circular](#) of 2 June 2020 on criminal policy in the area of international bribery.

- ❖ *Recommendation 9(b) – Not implemented.* In Phase 4, the Working Group had been disappointed that neither of the constitutional reforms initiated in 2013 and 2019 to strengthen the independence of the French public prosecution service were brought to fruition, and had considered that this need to strengthen the independence of the Public Prosecutor's Office in accordance with this recommendation, already identified in Phase 3, had become even more pressing with the concentration in the hands of the PNF of investigative, prosecutorial and non-trial resolution powers (through CRPC and CJIP) in foreign bribery cases. In the absence of any new measures to revive or initiate the expected reforms, this recommendation remains unimplemented.
- ❖ *Recommendation 9(c) – Not implemented.* In Phase 4, the Working Group had congratulated France for ending the public prosecutor's monopoly on initiating public action, thanks to the possibility for the victim(s) of foreign bribery offences, including accredited anti-corruption NGOs, to lodge a complaint seeking status as a civil party, therefore making it possible to counter possible inertia on the part of the Public Prosecutor's Office. However, the Working Group had felt that the conditions for the renewal of their certification every three years by the Ministry of Justice, as they were being applied, did not seem to allow the associations to play their role as citizen watchdogs independently. France states that it does not intend to entrust the certification procedure for these associations to the High Authority for Transparency in Public Life (HATVP), as suggested by the Working Group, among other solutions, and instead favours obtaining "a simple consultative opinion from the HATVP in order to eliminate any suspicion of conflict of interest". The proposed reform would require a decree by the Council of State to amend Article 3 of Decree No. 2014-327 of 12 March 2014. The wording proposed in France's report provides for a simple opinion, which means that consultation would be mandatory but that the Minister of Justice would retain the option of overruling the opinion of the HATVP. However, encouraging this draft reform may be, no timetable for its adoption has been provided by France and this recommendation therefore remains unimplemented.
- ❖ *Recommendation 9(d) – Not implemented.* In Phase 4, the Working Group had welcomed the measures taken by France to strengthen the rigour of defence secrecy classifications while regretting however, that the declassification procedure for investigation and prosecution remained unchanged. The latter remained vulnerable to the consideration of factors prohibited by Article 5 of the Convention and was still likely to impede the conduct of investigations and prosecutions for transnational bribery. As the Phase 3 recommendation on this issue remained unimplemented, the Working Group had recommended that France take these measures "by all means and as soon as possible". The Working Group is encouraged by the ongoing work to professionalise what are known as "security officers", who are responsible for overseeing the implementation of defence secrecy within public or private organisations that hold or process information covered by national defence secrecy. However, no steps have been taken to clarify that the factors of Article 5 of the Convention should not be taken into account in dealing with declassification requests.
- ❖ *Recommendation 10(a) – Fully implemented and converted to issue for follow-up.* In Phase 4, the Working Group had been deeply concerned about the criticism directed towards the PNF, whether directly by proposing its abolition (an idea not taken up by the government), or indirectly by calling into question its officials or the methods that had enabled France to play a recognised role in the fight against bribery through the resolution of high-profile foreign bribery cases. With regard to the disciplinary proceedings initiated against some prosecutors, including at the PNF, referred to in the report, France indicates that following hearings held in September 2022, "No disciplinary action was taken and no penalty imposed". These decisions are reassuring. The recommendation had been that France take the necessary measures to preserve the PNF's role by restoring an appropriate environment for the investigation and prosecution of its cases. These measures were all the more important at the end of a three-year procedure in which the Minister of Justice was accused of taking an illegal interest in several files, one of which, already mentioned in the Phase 4 report, concerned an administrative investigation ordered in September 2020 against three PNF magistrates. During the hearings, the magistrates involved in these proceedings indicated that these investigations had contributed to perpetuating the climate of mistrust already identified during the Phase 4 evaluation. The proceedings ended in November 2023 with the Minister's acquittal, with the Court of Justice of the Republic, made up of twelve members of parliament and magistrates, finding that while the conflict of interest had been materially established, the intent had not. The French authorities maintain that they are committed to guaranteeing an appropriate environment for the PNF's action in the long term, by confirming "the PNF's institutional anchoring both nationally and internationally". The French

authorities add that the Ministry of Justice fully acknowledges the work of the PNF in the fight against economic, financial and tax crime at the highest level. To this end, it will be organising an international seminar jointly with the PNF and the Paris Public Prosecutor's Office to celebrate the PNF's tenth anniversary. The seminar will bring together the parties involved to discuss in particular the results and future of PNF litigation. The organisation of this event, scheduled for June 2024, will demonstrate the joint desire to re-establish an appropriate climate between the Ministry of Justice and the PNF. The Working Group will continue to monitor developments in this area in Phase 5 in order to assess, in particular, the extent to which a stronger framework for the Ministry of Justice's disciplinary powers in respect of public prosecutors could help to perpetuate the climate of calm and trust that the French authorities have endeavoured to re-establish.

- ❖ *Recommendation 10(b) – Fully implemented.* In Phase 4, the limitation of the duration of preliminary investigations to two or three years, approved by Parliament on 18 November 2021, at the time of finalising the Phase 4 report, had been a matter of very serious concern to the Working Group as it considered that this reform could lead to serious difficulties in resolving a large number of foreign bribery cases and presented a significant risk of putting into question the PNF's positive achievements by imposing on its activity time limits considered to be ill-suited to the constraints inherent to these complex cases and to the already overburdened capacities of the specialised investigation, prosecution, trial and judgment bodies. The suspending of the duration of preliminary investigations in cases involving mutual legal assistance requests was seen to only partially address the issue. Two years later, France reports that the Ministry of Justice's Orientation and Programming Bill (LOPJ), which was adopted by Parliament on 11 October 2023 (and came into force on 22 November), has amended article 75-3 CCP on several points. Firstly, the starting point for calculating the time limit no longer applies from the start of the investigation but only from the first act involving the exercise of enforcement powers, i.e. acts relating to voluntary interviews of suspects, police custody or searches of premises concerning a person. Consequently, the act of referring the case to an investigating department, the time taken to analyse the files, and investigations that do not involve enforcement measures does not mark the start of the time limit. Secondly, the new text provides for the invalidation of any investigative act concerning a person who has been the subject of a voluntary interview as a suspect, police custody or searches, if it is carried out after the time limit has expired. Invalidity will therefore be limited to acts concerning that person. Finally, the new wording of article 75-3 CCP provides that at the end of the two-year period, which may be extended by one year, a further exceptional period of two years may be granted by the Public Prosecutor¹⁶. The total period could therefore be extended to five years, as was the case for investigations into terrorism and organised crime at the time of the Phase 4 evaluation, although it should be noted that the amendment to Article 75-3 CCP now extends the duration of preliminary investigations in these areas to seven years. These amendments are to be commended as a response to the Working Group's concerns.
- ❖ *Recommendation 11(a) – Partially implemented.* In Phase 4, the Working Group had welcomed the developments in the CRPC's framework since Phase 3, as well as the changes in criminal policy that no longer reserved the CRPC only for the simplest cases, as evidenced by the PNF's more systematic approach to considering the possibility of concluding the enforcement action with a CRPC when individuals admitted their guilt at the end of the preliminary investigation. The Working Group had been disappointed, however, that these developments were not being accompanied by more disclosure and transparency, leaving Phase 3 recommendation 4.c. unimplemented. The French authorities state that the details of the CRPC, such as the terms of the agreement and the sanction(s) approved, are made public at the CRPC approval hearing. During this public hearing, the approving judge presents the proposal and the PNF member present makes detailed submissions explaining the facts, justifying the use of the CRPC and explaining the nature and level of the proposed penalties. The dates of the approval hearings are available on the PNF website, which is accessible to the press, who may request further details from the PNF, as well as the approval decision itself. The Working Group is disappointed that this mechanism is not supplemented by greater disclosure and transparency regarding the concluded CRPCs, once the approval hearing has taken place, leaving recommendation 4.c. of Phase 3 partially implemented.

¹⁶ The Public Prosecutor may decide to extend the investigation in accordance with the procedures set out in Article 77-2 V of the Code of Criminal Procedure by means of a written, reasoned decision placed in the case file.

- ❖ *Recommendation 11(b) – Partially implemented.* In Phase 4, following the rejection of the CPRC proposed in conjunction with a CJIP in a major case, the Working Group had expressed its concern about the consequences that the rejection could have on the ability of the PNF and investigative judges to enter into CPRCs with individuals. It had also feared the possible effects that it might have on the level of co-operation necessary to conclude a CJIP and, more generally, had feared that it may jeopardise France's progress in recent years to strengthen its capacity to resolve foreign bribery cases and to take part in multi-jurisdictional resolutions. Some measures have been taken to reconsider the possibility of permitting individuals to be covered by the CJIPs or other appropriate non-trial mechanisms and to ensure better co-ordination between non-trial resolution mechanisms respectively applicable to natural and legal persons in foreign bribery cases. The French authorities report that they considered these issues during a seminar on transnational corruption, which was held on 25 January 2023 and organised by the ENM and the MOJ for magistrates and practitioners. They also considered the issues in the context of parliamentary deliberations over the LOPJ. The coordination of the non-trial mechanisms respectively applicable to natural and legal persons in foreign bribery cases has continued to be a matter of concern, as evidenced in particular by a judgment of 29 November 2023 of the Criminal Division of the Court of Cassation which, in the same case as reviewed in the Phase 4 report, ruled on the possible violation of the presumption of innocence caused by the mention in the CJIP of the admission of guilt of the individuals in the CRPC which were not then approved. At the same time, as of 30 September 2024, this sort of situation should not arise as starkly insofar as the prosecutors will have the possibility to propose another CRPC even if the Court rejects the first proposal or the defendant rejects the proposed penalty (article 495-12 CCP, as modified by the LOPJ). This reform is encouraging. Nonetheless, since the rejection of the CRPC that gave rise to this recommendation, the PNF has not subsequently sought to have a CRPC approved simultaneously with a CJIP. It is thus premature to consider that the reform introduced by the LOPJ will sufficiently address the concerns that the Working Group expressed in Phase 4.
- ❖ *Recommendation 12(a) – Partially implemented.* In Phase 4, the Working Group had been encouraged by the Bureau for International Mutual Assistance in Criminal Matters (BEPI)'s recent plans to develop IT tools to provide statistical data on mutual legal assistance (MLA). The Working Group had nevertheless identified delays in France's execution of foreign MLA requests and had considered that the resources allocated within the PNF to process MLA requests appeared to be inadequate. France does not describe any recent measures designed to ensure that sufficient resources are allocated to law enforcement authorities to guarantee the provision of prompt and effective MLA to other Parties to the Convention. France considers that the PNF's execution time for MLA requests is satisfactory but does not provide statistics for the years 2022 and 2023 (after Phase 4). However, France refers to three requests for international MLA in criminal matters relating to bribery of a foreign public official issued by Parties to the Convention in 2022 and 2023 and executed by the PNF in six months or less. The forthcoming launch of the International Mutual Assistance in Criminal Matters (LEPI) software as a "minimum viable product" is to be commended. However, it is too early to assess the impact of this tool, which is not yet complete. France is counting on the development of LEPI to ensure more systematic monitoring of requests for mutual assistance issued by France when they remain unanswered by the foreign authorities after submission, and thereby to implement part of the recommendation.
- ❖ *Recommendation 12(b) – Partially implemented.* In Phase 4, the Working Group had noted that various actors involved in combating bribery, both domestically and internationally, continued to deplore the slowness of the mutual assistance process caused, in their view, by the blocking statute and the implementation of article 694-4 CCP. The Working Group had also been concerned by the lack of clear criteria for applying these mechanisms in investigations by other Parties to the Convention. With regard to the blocking statute, France's adoption of the decree of 18 February 2022 is to be welcomed. It clarifies the powers of the Department of Strategic Information and Economic Security (SISSE), which is now responsible for issuing legally non-binding opinions, in French and English, on the applicability of Articles 1 or 1 bis of the blocking statute to requests for information received by French companies from foreign judges. Although the SISSE is expected to consult several ministries or competent authorities, the one-month period allowed for examining the case and preparing the opinion will ensure that this new procedure does not result in additional delays in the provision of mutual assistance by France. Of the 93 opinions issued since 2022, all have been issued within the specified timeframe, with an average turnaround time of 19 days and a minimum turnaround

time of 48 hours for urgent procedures. The publication of the Guide for companies to identify sensitive data, which clarifies the criteria used to identify the data covered by Article 1 of the blocking statute, is also a positive development. France states that, in the opinions issued by the French administration, foreign authorities are systematically invited, if they so wish, to contact the SISSE directly for an explanation of its opinions. The SISSE can also be contacted by e-mail on questions relating to the applicability of the law. However, the guide provides that the SISSE may validate the use of experts for the purpose of executing in France investigative acts formulated by a foreign judge in order to filter the data requested by the latter. This possibility could lead to additional delays in executing requests for communication and could therefore affect the course of investigations and prosecutions abroad. With regard to Article 694-4 CCP, France states that there is "convergence work" between the SISSE and the Ministry of Justice to ensure that the scope of the concept of "essential interests of the Nation" as set out in Article 694-4 CCP corresponds to the scope covered by Article 1 of the blocking statute. While this work could help to clarify the criteria under which the French authorities apply Article 694-4 CCP, it is not designed to expedite the execution of formal mutual assistance, including when Article 694-4 CCP is applied.

Recommendations concerning the liability of legal persons

- ❖ *Recommendation 13(a) – Not implemented.* In Phase 4, the Working Group had recommended that France clarify in law the requirements for criminal liability of legal persons to ensure that its approach took into account Annex I to the 2009 Recommendation and that a legal person could not avoid liability for bribery by using an intermediary, including a related legal person. In particular, neither the need to specifically identify the body or representative that may trigger the liability of the legal person, nor the definition of the body or representative were clearly established in case law. Since then, although France has not taken any concrete steps to clarify its legislation, it has nevertheless indicated that it is in favour of considering the possibility of extending the scope of corporate criminal liability. However, it stresses that, for reasons of legal certainty in particular, this reflection can only take place once the discussions underway at EU level on the proposed anti-corruption directive have been completed.¹⁷
- ❖ *Recommendation 13(b) – Not implemented.* The Phase 4 report had noted that the relationship between the liability of legal persons for foreign bribery and the implementation (or failure to implement) a compliance programme as promoted or required by the Sapin 2 Act, was not clear for the private sector. France points out that the aforementioned proposal for an anti-corruption directive, currently being negotiated at EU level, at present provides in particular that the legal person may be held criminally or administratively liable for lack of supervision and that the implementation of effective internal corporate compliance programmes should be considered a mitigating circumstance by national legislators. This is an encouraging prospect, but as the directive has not yet been adopted or, a fortiori, transposed into French law, recommendation 13(a) must be considered unimplemented for the time being.
- ❖ *Recommendation 13(c) – Partially implemented.* The Phase 4 report had noted the lack of training for magistrates on corporate liability for foreign bribery and related economic and financial crimes. Since then, France has taken training measures that may contribute to remedying this situation, in particular through the training modules offered by the ENM and the seminar organised by the ENM and the Ministry of Justice on foreign bribery on 25 January 2023. The information provided by France on these initiatives has not, however, shown an increase in training efforts since the Phase 4 report, as expected by this recommendation.
- ❖ *Recommendation 14(a) – Fully implemented.* The Phase 4 report had commended France for the guidelines on CJIP developed jointly by the PNF and the AFA, while nevertheless noting that they were only available on the AFA website. Since then, France has introduced effective measures to

¹⁷ [Proposal for a Directive](#) of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council.

disseminate the guidelines more widely. The PNF website now contains a specific section on the CJIP, which refers to the guidelines (in the new version updated on 16 January 2023) as well as providing a contextual summary. An English version of the guidelines is also available on the PNF website. A conference was organised in partnership with a major French law school to mark the publication of the updated guidelines and received extensive coverage in the French general and specialist press.

- ❖ *Recommendation 14(b) – Fully implemented.* The Phase 4 report had expressed disappointment at the lack of monitoring and accessibility of the information published on CJIP in relation to foreign bribery. Since then, France has taken steps to improve the situation. The Ministry of Justice website publishes comprehensive, up-to-date information, and specifies financial CJIP, including CJIP in relation to foreign bribery, which makes them easier to access. The Working Group encourages France to take similar measures to improve the information published on CJIP in relation to foreign bribery by the other relevant stakeholders, in particular the PNF, the AFA and the Ministry of the Economy, as at present this information is not always complete, up to date or easily accessible.
- ❖ *Recommendation 15 – Partially implemented.* In Phase 4, the Working Group had observed that there were no guidelines in France on how the penalties for foreign bribery could be calculated, particularly in relation to imposing a fine calculated on the basis of ten times the proceeds of the offence (Articles 435-3 and 131-38 CC). It was therefore uncertain whether the proceeds of foreign bribery were considered to be the contract amount or the profits derived from the contract, and even how the relevant amount would be calculated. With regard to the CJIP, the Working Group had considered that France was still in the early stages of developing the confiscation framework and measures for calculating the confiscatory component of the public interest fine and had accordingly recommended that France develop more precise guidelines to clarify how the confiscatory component of the public interest fine was calculated. The publication by the PNF of its new CJIP guidelines on 16 January 2023, followed by the publication by the Ministry of Justice of a technical fact sheet intended for all magistrates, have since clarified the methodology for assessing the direct and indirect benefits of the foreign bribery offence without clarifying that the proceeds of the foreign bribery offence correspond to the sum of the direct and indirect benefits derived from the foreign bribery offence. In its follow-up report, France considers that this calculation method is also applicable for the purposes of confiscating the benefits derived from the offence as an additional penalty or as a component of the fine imposed. However, while the guidelines and the fact sheet both clarify the basis for calculating the confiscation component of the public interest fine (Article 41-1-2 CCP), neither refers to the implementation of this method in criminal proceedings. France has not provided any evidence to support this interpretation.
- ❖ *Recommendation 16 – Not implemented.* In both Phase 3 and Phase 4, the Working Group had recommended that France take the necessary steps to allow all authorities in charge of public procurement contracts to have access to the criminal records of legal persons. France has announced that a reform of the CCP is planned with a view to enabling entities awarding public contracts to check that tenderers have not been convicted of a criminal offence that could lead to exclusion from these contracts, by making it possible for the entities awarding the contracts to obtain and produce an extract from the tenderer's criminal record. In the meantime, the old system is set to continue to apply, under which only some of the authorities awarding public contracts can obtain an extract from the criminal record of the legal persons applying for public contracts. While it is encouraging to know that France is considering such a reform, its substance and form are still unknown. In any case, it will only be possible to evaluate the implementation of this recommendation through a reform of this kind once it has been completed and has entered into force.
- ❖ *Recommendation 17 – Fully implemented.* In Phase 4, the Working Group had noted that intermediate-sized enterprises and SMEs, including those operating in sectors with a high risk of bribery, were still insufficiently aware of the challenges and requirements of combating anticorruption, particularly in the area of foreign bribery. The publication by the AFA on 16 December 2021 of a practical anti-bribery guide for SMEs and small intermediate-sized enterprises is to be commended. The guide contains instructive fact sheets with practical illustrations and addresses the involvement of SMEs and small intermediate-sized enterprises in international trade. The involvement of numerous stakeholders in the preparation of the guide is also worth highlighting. Other awareness-raising

initiatives organised by the AFA and “Team France Export”¹⁸ indirectly target SMEs and small intermediate-sized enterprises. The results of the National diagnostic survey of anti-corruption measures in businesses for the year 2022 confirm these efforts. Indeed, in 2022, 82% of companies not subject to Article 17 of the Sapin 2 Act (including SMEs and some of the small intermediate-sized enterprises that participated in the study) stated that they had implemented measures to prevent and detect corruption and influence peddling, an increase of 26 percentage points since 2020. France also points out that the 2024-2027 National multi-year plan to fight corruption (PNPLC), currently being adopted, places particular emphasis on export companies operating in regions where the risk of foreign bribery is high and on growth companies (unicorns, start-ups). However, the PNPLC 2024-2027 has not yet been adopted or published.

- ❖ *Recommendation 18(a) – Partially implemented.* In Phase 4, the Working Group had considered the creation of the AFA a notable development in the French legal framework. At the same time the Working Group had noted that it was important not to undermine the Sapin 2 Act’s achievements and had expressed concerns about the uncertainties surrounding the AFA’s future, particularly in the context of a bill introduced on 21 October 2021. As this bill has now lapsed, the concerns it had raised with regard to guaranteeing AFA’s independence and preserving its mandate have been allayed. In addition, the AFA still has significant corporate audit objectives. Even though the AFA is still not an independent administrative authority, it does not, in accordance with the law, receive any instructions from the government, and its director enjoys a functional guarantee of independence. With regard to the AFA’s financial resources, the overall annual budget allocated to the AFA for its expert appraisal expenses has been increased since 2021 from EUR 250 000 to EUR 350 000 in 2023 and should be maintained for the years 2024 to 2027. With regard to the AFA’s human resources the number of permanent staff is now 58 as compared with 57 in 2021 at the time the Phase 4 report was adopted. France indicates that two of the six positions created since 2023 will be allocated to the Sub-Directorate for Audits. France, however, does not specify whether they will aim to strengthen the promotion and monitoring of the development of compliance measures by companies, which was the main purpose for this recommendation. As a result, this recommendation is only partially implemented.
- ❖ *Recommendation 18(b) – Partially implemented.* In Phase 4, the Working Group had commended France for the ability to use the AFA’s expertise to conduct audits on the enforcement of penalties to, or obligations to, implement a compliance programme imposed through court judgments or CJIPs respectively. They had also welcomed the co-operation that had been established with the PNF. Since the Phase 4 report, the DACG has, in a dispatch sent to prosecutors on 10 January 2022, emphasised the complementary nature of the work carried out by Public Prosecutors Offices with the AFA’s missions, and in particular encouraged Public Prosecutors Offices to consult the AFA when they envisage to recourse to a CJIP or to request a compliance programme penalty at a hearing. In practice, the PNF has continued to rely on the AFA’s expertise and should be encouraged to continue its efforts to ensure that the AFA’s expertise is used to the full, both in CJIPs and in judgements. Since the Phase 4 report, the AFA has carried out a review prior to the conclusion of two CJIPs concerning acts likely to be qualified as foreign bribery and the companies concerned have been required to submit to a compliance programme monitored by the AFA. The AFA has also carried out audits and verifications on two companies, in application of CJIP concerning acts likely to be qualified as foreign bribery and entered into before Phase 4. In the absence of any sanctions having been imposed to date, the Sanctions Commission has not had the occasion to task the AFA with monitoring the implementation of such sanctions. As no judgment in a foreign bribery case has imposed an additional compliance penalty, the AFA has also not had the opportunity to rule on the possibility of subjecting a legal person to the implementation of a compliance programme as an additional penalty. For this reason, the Working Group is not able to consider this recommendation as fully implemented.
- ❖ *Recommendation 19 – Not implemented.* In Phase 4, the Working Group had regretted that the nature of the review carried out by the Sanctions Commission led it to rule on the underlying facts of the issues referred to it at the time of the hearing and not at the time the issues were identified by the AFA during its audit, which made it unlikely, in practice, that penalties would be imposed for non-compliance under article 17 of the Sapin 2 Act. The Sanctions Commission considers that because

¹⁸ “Team France Export” is made up of advisers from Business France, Chambers of Commerce and Industry, and Bpifrance.

appeals against its decisions are appeals of full jurisdiction, it therefore considers that it has to assess the existence of the violation not on the date on which it was established by the AFA, but on the date on which the Commission gave its decision. Although the French authorities acknowledge that this interpretation, “appears to be contrary to both the spirit and the text of the Sapin 2 Act”, they see no need to modify the legal framework for the AFA Sanctions Commission’s intervention as it stands, on the grounds that it was only created recently, that only a small number of cases have been referred to it, and that the AFA could lodge an appeal with the Administrative Court against the decisions of the Sanctions Commission “if such an appeal were granted to it in the absence of any legal provisions”. France has therefore not taken any measures to address this recommendation, nor does it plan to do so in the short or medium term, other than to clarify the AFA’s right of appeal against the Sanctions Commission.

- ❖ *Recommendation 20 – Partially implemented.* The Phase 4 report had noted that none of the 13 cases of laundering of foreign bribery opened since Phase 3 considered the proceeds derived from active foreign bribery but targeted the laundering of bribes. The authorities seemed to have a certain conceptual difficulty, as already noted in Phase 3, to envisage the laundering of foreign bribery as the laundering of the proceeds of derived from active bribery (see also recommendation 2). France has since clarified that its legislation allows the laundering of the proceeds of active bribery to be prosecuted. France states that, since the Phase 4 report, three cases have led to the opening of investigations concerning, among other things, the laundering of foreign bribery. However, it did not specify whether these cases involved laundering of the proceeds of active bribery.
- ❖ *Recommendation 21 – Partially implemented.* In Phase 4, data on the enforcement of the non-deductibility of bribes paid to foreign public officials in overseas territories were not available. The situation remains unchanged. The Phase 4 report had also noted that the judicial authority did not systematically report to the tax authorities any information from judicial proceedings which may lead to the presumption of tax evasion, as nevertheless required by Art. L. 101 of the Manual of Tax Procedures. Since then, France has launched a number of interesting initiatives aimed at recalling the legal framework for exchanges of information between the judicial authorities and the tax authorities and fostering regular contacts between them. The impact of these measures cannot be assessed in the absence of specific data on the number of communications to the tax authorities concerning foreign bribery, including in the overseas territories. Lastly, the Phase 4 report had noted that the statute of limitations in tax matters (10 years) seemed potentially inadequate in view of the time required to obtain a conviction for foreign bribery in France. France has started reflecting on the limitation period for re-assessing tax returns in this respect, noting in particular that measures encouraging communication between the judicial authorities and the tax authorities are likely to result in information being passed on at an earlier stage. The Working Group encourages France to pursue this reflection further and to re-examine the issue in a more in-depth manner, as expected in the context of this recommendation.

Dissemination of the Phase 4 report:

France indicates that, upon its publication in December 2021, the Phase 4 evaluation report was posted on Ministry of Justice website site and intranet.¹⁹ It was also widely quoted in the PNF’s 2021 activity summary.²⁰ The Ministry of the Economy, Finance and Industrial and Digital Sovereignty published a summary of the report on its website on 16 January 2022, with a link to the OECD website for accessing the report.²¹ The AFA also published an article on its website presenting the evaluation report on 28 January 2022, with a link to both the French and English versions of the report.²² The AFA 2021 activity

¹⁹ See the publication on the [Ministry of Justice](#) website

²⁰ See the [2021 activity summary of the National Financial Prosecutor’s Office](#)

²¹ [“L’OCDE salue le rôle de TRACFIN dans la lutte contre la corruption d’agents publics étrangers \(CAPE\) | economie.gouv.fr”](#) ([“OECD praises TRACFIN’s role in combating bribery of foreign public officials \(CAPE\) | economie.gouv.fr”](#)).

²² [“Évaluation de l’OCDE : la France passée à la loupe” \(OECD assessment: France under the microscope\)](#), <https://www.agence-francaise-anticorruption.gouv.fr/fr/evaluation-locde-france-passee-loupe-0>

report also refers to the evaluation report.²³

France also indicates that the Phase 4 report was the subject of a specific session at a seminar on bribery of foreign public officials held on 25 January 2023 for members of the judiciary and practitioners. The evaluation report is also mentioned in various training courses organised by the ENM for members of the judiciary.

Conclusions of the Working Group on Bribery:

Based on these findings, the Working Group concludes that recommendations 1.c, 1.h, 1.i, 3, 4.a, 5.a, 5.b, 6, 10.a, 10.b, 14.a, 14.b and 17 have been fully implemented; recommendations 1.a, 1.b, 1.e, 1.f, 2, 4.b, 7.a, 7.b, 7.c, 11.a, 11.b, 12.a, 12.b, 13.c, 15, 18.a, 18.b, 20 and 21 have been partially implemented; and recommendations 1.d, 1.g, 8.a, 8.b, 9.a, 9.b, 9.c, 9.d, 13.a, 13.b, 16 and 19 have not been implemented. The Working Group has decided to convert recommendations 3, 5.a, 5.b and 10.a into issues for follow-up. The Working Group invites France to submit an additional written follow-up report to the Working Group in two years, i.e. in March 2026 about recommendations 7.a, 7.b, 7.c, 9.a, 9.b, 12.a, 13.a and 13.b. This report should also provide the Working Group with updated information on France's actions to enforce the foreign bribery offence.

²³ [AFA 2021 activity report.](#)

Phase 4 Two-Year Follow-Up Report: France

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. France is asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#) (paragraphs 52-60).

Please submit completed answers to the Secretariat on or before:

1 December 2023

Name of country:

France

Date of approval of Phase 4 evaluation report:

9 December 2021

Date of information:

28 November 2023

Part I: Recommendations of the working group

Responses to the questions in Part I should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Recommendations to ensure effective prevention and detection of foreign bribery

Text of recommendation 1(a):

1. Regarding **detection of foreign bribery**, the Working Group recommends that France:

a. (i) Clarify the relationship between the reporting obligation incumbent on public officials under article 40 CCP and the possibility of reporting open to them under article 6 and 8 of the Sapin 2 Act, in particular with regard to reporting channels, the criteria applicable for using either of these mechanisms, and the related protections; and (ii) ensure that the thresholds for reporting a credible allegations of foreign bribery are not interpreted in an overly demanding manner and do not create obstacles to such reporting. [Phase 3 recommendation 11.b; 2009 Recommendation, IX]

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

- (i) **Clarify the relationship between the reporting obligation incumbent on public officials under Article 40 CCP and the possibility of reporting open to them under Article 6 and 8 of the Sapin 2 Act, in particular with regard to reporting channels, the criteria applicable for using either of these mechanisms, and the related protections**

The relationship between the reporting obligation under Article 40 of the Code of Criminal Procedure (CCP) and the possibility of reporting under Article 6 and 8 of the Sapin 2 Act is to be specified in the new circular on the procedure for reporting alerts issued by civil servants and military personnel.

This new circular, prepared by the Directorate General for Administration and the Civil Service (DGAFF) with the assistance of the Ministry of Justice and the whistleblowing representatives in the ministries, aims to present the changes to the regulations on whistleblowers for the civil service resulting from Act 2022-401 of 21 March 2022 implementing decree 2022-1284 of 3 October 2022. It is expected to be published in the first quarter of 2024. The details of Article 40 of the CCP will be the subject of a specific Annex to the circular.

Concerning the relationship between the two measures, the circular will specify as follows:

- Article 40 para. 2 of the Code of Criminal Procedure introduced an obligation for public officials to report acts constituting crimes and offences, to which articles L. 121-11 and L. 135-1 of the General Civil Service Code refer.

Under this specific procedure, any public official who becomes aware of a crime or offence in the course of his or her duties is required to notify the Public Prosecutor without delay and to transfer all information, reports and documents relating to the crime or offence to the same. Pursuant to Article L. 135-1 of the General Civil Service Code, the person concerned may also report the same facts to the administrative authorities. Individuals making a report under this specific procedure enjoy the same protection as that granted to public officials recognised as whistleblowers under the Sapin 2 Act, as set out in Article L. 135-4 of the General Civil Service Code.

- The existence of this specific procedure rules out the possibility of a public official simultaneously reporting an incident under the general whistleblowing provisions of the Sapin 2 Act:

Article 6 of the Act of 9 December 2016 provides in its paragraph III that: "*III. Where the conditions for the application of a specific system for reporting breaches and for protecting the person reporting are met, as provided for by law or regulation or by an act of the European Union mentioned in Part II of the Annex to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, this chapter shall not apply.*" In the event of mandatory reporting of crimes and offences pursuant to Articles L. 121-11 and L. 135-1 of the General Civil Service Code, which refer to Article 40 paragraph 2 of the Code of Criminal Procedure, the general whistleblowing mechanism introduced by the Law of 9 December 2016 is therefore entirely excluded, with regard to both the use of internal and external reporting and the possibility of public disclosure.

- However, the general whistleblowing regime set out in Articles 6 and 8 of the Act of 9 December 2016 remains applicable where the conditions set out in Article 40(2) of the Code of Criminal Procedure are not met, in particular where the person reporting a crime or an offence is not a public official - for example, private sector employees in the public body concerned, such as apprentices - or is no longer a public official – for example persons whose employment relationship with the public body has ended.

- (ii) **Ensure that the thresholds for reporting credible allegations of foreign bribery are not interpreted in an overly demanding manner and do not create obstacles to such reporting. [Phase 3 recommendation 11.b; 2009 Recommendation, IX]**

In order to ensure that credible allegations of bribery of a foreign public official (also referred to herein as foreign bribery) are systematically reported, all government departments in administrations that may have to deal with such allegations have taken this recommendation on board by implementing appropriate training for their employees on how to detect bribery, the habits to adopt, and the channels for reporting it, organised by their ethics officer or dedicated department, in particular in conjunction with the French Anti-Corruption Agency (AFA) where appropriate. It is essential that departments do not exercise self-censorship when reporting such incidents to the judicial institutions, given that there is no threshold required, in terms of the financial amount involved or the level of evidence obtained.

Regarding the General Directorate of the Treasury (DG Trésor) and the Ministry for Europe and Foreign Affairs (MEAE):

The Code of Ethics of the General Directorate of the Treasury, updated in June 2023, clearly mentions the reporting obligation under Article 40 of the Code of Criminal Procedure and sets out the protection arrangements for whistleblowers.²⁴

The MEAE and the General Directorate of the Treasury have also stepped up projects aimed at providing training on and raising awareness of detecting and reporting allegations of foreign bribery²⁵, which include:

- An “Integrity Day” at the MEAE, the first edition of which was held on 9 December 2022, which is also UN International Anti-Corruption Day.

²⁴ **Annex 1:** General Directorate of the Treasury - Code of Ethics – June 2023.

²⁵ **Annex 2:** General Directorate of the Treasury - Training – Presentation of the OECD and combating bribery of foreign public officials.

This day of training and awareness-raising on the risks of bribery and integrity violations provided an opportunity to present the OECD WGB's recommendation to officials in central administration in mainland France, as well as those posted abroad, to make up for the lack of reporting. A specific module in the form of a "round table" was dedicated to the methodology of reporting under Article 40 of the Code of Criminal Procedure, both at the central administration and on postings abroad. The trainers were from the MEAE central administration departments responsible for receiving and directing reports of foreign bribery and from the Paris Prosecutor's Office.

The officials in charge of fighting corruption at the Ministry of Foreign Affairs were assisted by the French Anti-Corruption Agency (AFA), the High Authority for Transparency in Public Life (HATVP), the National Financial Prosecutor's Office (Parquet national financier - PNF), the French Development Agency and the Paris Prosecutor's Office. These modules can also be accessed as part of an online training course using the "Diplomatica" software package available to all MEAE staff.

- A seminar on foreign bribery was also organised on 26 June 2023 during the "Journées Internationales du Trésor" (JIT),²⁶ in the presence of all the heads of economic services in the embassies. The recording of the session is also available to all officials in the network. In the presence of representatives of the OCLCIFF (the Central Office for Combating Corruption and Financial and Fiscal Offences), the PNF and the AFA, it provided an opportunity to review the issues involved in detecting and reporting foreign bribery. Officials were also reminded of their obligations under Article 40 and of the reporting channels available.

- Anti-bribery training for officials being posted abroad, during which the obligation to report acts of foreign bribery is particularly emphasised. Two seminars on the risks of corruption and foreign bribery were organised in June 2023 on the occasion of the "New leavers Day" at the MEAE and at the General Directorate of the Treasury. During an interview in October 2023 with the Director of the AFA, the Deputy Director General of the Treasury stated that this seminar should be made systematic;

- Specific anti-bribery training sessions for future heads of mission (ambassadors), to make them aware of their responsibilities in terms of collecting and transmitting reports and to present them with the best practices to adopt and have adopted within their future postings;

- Anti-bribery training modules as part of the initial training of officials, and in particular anti-bribery training modules for diplomats who will be posted abroad during their career. The issues involved in reporting allegations of foreign bribery were highlighted in 2023 during the "mid-career" training modules for MEAE officials;

- Specific training on certain bribery risks as part of the ongoing training of officials. For example, in April 2023 officials in the MEAE's Economic Diplomacy Directorate were made aware of the risks associated with their links with companies, the risks of unlawful acquisition of an interest and good practice in terms of transparency in declarations of interest;

- Specific meetings when new appointments are made to posts that are sensitive in terms of foreign bribery, with the officials in charge of combating corruption in central government, in order to raise awareness of the risks and how to detect and report allegations of foreign bribery.

Regarding Bpifrance:

²⁶ **Annex 3:** General Directorate of the Treasury – Preview for the *Journées internationales du Trésor* (JIT) on 26 June 2023, **Annex 4:** JIT Programme for 26 June 2023, **Annex 5:** JIT - OCLCIFF on 26 June 2023, **Annex 6:** JIT - reporting obligation.

As a "public group promoting business financing and development, acting in support of public policies conducted by the State and the Regions", Bpifrance has a duty to be an irreproachable and exemplary player in terms of ethics and compliance.

Accordingly, Bpifrance has developed **codes of ethics** across the group, for its Assurance Export²⁷ arm (an export credit agency), Financing²⁸ and Investment²⁹ which constitute a set of fundamental values, guiding principles and rules of good conduct that all employees must follow in their day-to-day activities. They complement the body of instructions and procedures applicable to the Bpifrance group (e.g. instructions relating to the fight against money laundering and the financing of terrorism) to form a coherent corpus. For example, the Bpifrance Assurance Export Code of Ethics is based on the legal and regulatory provisions in force, as well as soft law, and complements the Bpifrance Internal Regulations on Assurance Export, of which it is an Annex.

Bpifrance has also developed a **Code of conduct on fighting corruption**³⁰, which is based on prevention, detection and, if necessary, sanctions. This responsibility is passed on to and relayed by all Bpifrance employees. The measures are in line with French regulations (including the Sapin 2 laws). The General Management is supported by the Compliance and Permanent Control Department (DCCP), which deploys, coordinates and steers this anti-corruption mechanism.

Finally, to continue this drive, **awareness-raising videos** on fighting corruption are broadcast, and **e-learning is used**, in a serious game format, for all new recruits in face-to-face meetings or webinar sessions.

Regarding Business France (BF):

In conjunction with the team in charge of coordinating the Team France Export (TFE) network in the regions, Business France organised a presentation by the AFA at the "regional international days", namely in Hauts-de-France, Normandy and Pays de la Loire, and has proposed similar initiatives going forward in other regions (Auvergne Rhône-Alpes, Occitanie, Bourgogne-Franche-Comté). A joint review of the implementation of these various initiatives, based on feedback from the various regions, is scheduled for the end of the year between Business France and the AFA.

Regarding TRACFIN:

Ethics are a core concern for TRACFIN, which subjects its officials to an ethics check before they take up their duties and when they leave, in order to prevent the risks of bribery or, more broadly, conflicts of interest.

Regarding Agence française de Développement (AFD Group):

As a key player in France's public policies on solidarity and sustainable investment for the benefit of developing countries and the French Overseas departments and regions, AFD Group pays particular attention to the proper allocation of its financing and aims to ensure that its funds serve the purposes for which they were intended.

The Group strives to promote the highest standards of integrity: fair practices, financial transparency

²⁷ **Annex 7:** Bpifrance - Code of ethics - Assurance Export.

²⁸ **Annex 8:** Bpifrance - Code of ethics – Financing.

²⁹ **Annex 9:** Bpifrance - Code of ethics - Management Company procedure.

³⁰ **Annex 10:** Bpifrance - Code of conduct on fighting corruption, favouritism and influence peddling.

and zero tolerance for fraud and corruption.

AFD Group has set up a robust system for preventing and combating prohibited practices, including bribery, based on prevention, detection and control measures. To this end, AFD Group has organised its system as follows:

- a General Policy to prevent and combat prohibited practices, which reaffirms the institution's zero tolerance of such reprehensible behaviour;
- This umbrella document is broken down into several procedures with distinct objectives:
 - an Anti-Corruption Code of Conduct applicable not only to AFD Group staff but also to its partners and service providers;
 - a reporting procedure for internal staff which sets out an obligation to report any suspicions to the AFD Group's investigation function;
 - guiding principles for the Investigation Function, notably highlighting the notion of protection of sources;
 - a contractual corpus prohibiting all acts of fraud and bribery in particular, as well as an obligation to report such practices whenever they are likely to affect the project financed by one of the AFD Group's institutions and a right to investigate.

Most of these documents can be accessed via the AFD Group's website, where a dedicated page has been created: [Combating Corruption | AFD - Agence Française de Développement](#) (available in several languages).

In order to implement this system, an Investigations Function was created in 2018, currently comprising three officials, which is responsible for carrying out investigations whenever allegations of prohibited practices are brought to AFD's attention. In addition to the obligation for internal staff to report such situations, there is a reporting mechanism open to third parties in the AFD Group (accessible via the website) which enables these third parties to contact the Investigations Function directly.

In addition, e-learning and face-to-face training sessions are offered to all staff, as well as awareness-raising sessions for specific personnel (staff leaving for the network, members of the Management Committee, people on an international volunteer work programme (VIE), etc.), particularly on International Anti-Corruption Day. AFD is also invited to events such as the MEAE's Integrity Day.

Regarding the French Ministry of the Armed Forces (MinArm):

The French Ministry of the Armed Forces conducts i) ethics training for future defence attachés and assistant defence attachés, before they take up their duties, and ii) ethics awareness training for military personnel before they leave for overseas operations and short-term missions.

Regarding the Agence française anticorruption (French Anti-Corruption Agency - AFA):

In addition to its participation in all of the training initiatives described above, the AFA also raises awareness of foreign bribery among all businesses through awareness-raising initiatives, conducted in particular with professional federations and associations. The Agency has also updated a [guide on facilitation payments](#) to help companies anticipate such requests and react when they are made. This updated guide was drawn up following a benchmarking exercise on facilitation payments led by the General Directorate of the Treasury, with the participation of around ten economic services.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 **detection of foreign bribery**, the Working Group recommends that France:

(b) Ensure that the AFA has the necessary tools to continue to play its full part in detecting potential foreign bribery in the course of its duties by: (i) training its staff on the red flags for foreign bribery to ensure that offences are reported to the PNF, which can then assess the appropriateness of opening an investigation; and (ii) taking the necessary measures to ensure that companies' assertions of professional secrecy obligations will not impede the identification of suspicious financial transactions during AFA's audits. [2009 Recommendation, III.i. III.iv. and IX.i.]

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

- (i) **Ensure that the AFA has the necessary tools to continue to play its full part in detecting potential foreign bribery in the course of its duties by: (i) training its staff on the red flags for foreign bribery to ensure that offences are reported to the PNF, which can then assess the appropriateness of opening an investigation**

The AFA plays a particularly active role in training its staff in warning signs and ensures that reports are sent to the public prosecutor's office as soon as possible, particularly to the PNF.

For example, a judge assigned to the AFA conducts a legal review of developments in legislation and case law relating to criminal offences involving integrity violations, and in particular the bribery of foreign public officials, which is distributed to all staff in the Sub-Directorate for Audits and is the subject of an annual meeting summarising the main developments over the year. AFA staff also have access to a weekly document review produced by the documentary resource centre of the Ministry of the Economy, Finance and Industrial and Digital Sovereignty (MEFSN), which offers a personalised monitoring service on integrity issues. In addition, internal AFA workshops are organised on a regular basis to identify the various risk scenarios for integrity violations.

The reports received by the official representatives, in particular a judge on secondment specialised in criminal law and an economic intelligence officer, reporting to the deputy director of audits, are analysed by professionals experienced in this type of litigation. **Of the 205 reports received by the AFA in 2021, 79 were forwarded to the relevant departments or authorities, including 70 to public prosecutors. Of the 7 reports sent to the public prosecutor's office on the basis of Article 40 of the Code of Criminal Procedure, two related to acts likely to constitute offences of bribery of foreign public officials in the context of contracts concluded in various Asian countries (Thailand, Malaysia, Vietnam, Indonesia) and in Burkina Faso and were sent to the National Financial Prosecutor's Office (PNF). Similarly, of the 304 reports received by the AFA in 2022, 37 were forwarded to the relevant departments or authorities, including 33 to public prosecutors.**

The French authorities therefore consider that this recommendation has been implemented.

- (ii) **Ensure that the AFA has the necessary tools to continue to play its full part in detecting potential foreign bribery in the course of its duties by (ii) taking the necessary measures to ensure that companies' assertions of professional secrecy obligations will not impede the identification of suspicious financial transactions during AFA's audits. [2009 Recommendation, III.i. III.iv. and IX.i.]**

After analysis, the French authorities believe that a legislative remedial measure does not seem

necessary in order to meet the objective of this recommendation. Indeed, Article 4 of Act No. 2016-1691 of 9 December 2016 on transparency, combating corruption and the modernisation of economic life, known as Sapin 2, requires the person or persons legally responsible for the audited entities to provide AFA audits officers with "any document" or "any useful information" (...), without impeding the exercise of this prerogative by the assertion of any professional secrecy obligation.

The legislator, who thus intended to entrust the AFA with the general task of supervising the entities subject to the law, implicitly authorises the AFA, notwithstanding the existence of professional secrecy, to receive any documents necessary for the performance of its audits and inspections.^[1]

Although the entities subject to the AFA's initial audits tried to argue that they were bound by professional secrecy, they no longer did so during subsequent audits, so that it no longer seems necessary to protect the AFA's actions by declaring in law that no claims of secrecy could be invoked against it other than that for lawyers in connection with a defence. In addition, the AFA still has the option, if necessary, of reporting this refusal to the Public Prosecutor, who may then prosecute on the grounds of the offence of obstruction.^[2]

The French authorities therefore consider that this recommendation has been implemented.

^[1] The question of the breach of professional secrecy that could have been asserted against members of the Conseil de l'Ordre des Experts-Comptables (Supreme Council of the Order of Chartered Accountants) whose task was to carry out internal audits of the profession and who could have been given client files in this context was referred to the Conseil d'Etat (France's highest administrative court) (CE, 31 March 2003, n°229839) which ruled that the unlawful breach of professional secrecy had been ruled out on the grounds that "*the restriction imposed on professional secrecy is the necessary consequence of the legislative provisions conferring on the association, in the interests of clients and the general interest, a general mission to supervise the profession*". The ruling states, "*whereas it follows from all of these provisions that, in order to carry out their mission and only to the extent necessary for that mission, the chartered accountants, members of the Order responsible for internal control, who are themselves bound by professional secrecy, may and must be given access to all working papers and documents and in particular to client files; that the resulting restriction on professional secrecy is the necessary consequence of the legislative provisions conferring on the Order, in the interest of clients and in the general interest, a general task of supervising the profession; that, consequently, the plea that articles 69, 86 and 90 of the contested regulation unlawfully infringe the rule of professional secrecy must be rejected*".

^[2] According to paragraph 5 of article 4 of the aforementioned law, it is punishable by a fine of EUR 30 000 to take any measure intended to obstruct the performance of the duties entrusted to the authorised officials mentioned in this article.

If no action has been taken to implement this recommendation, 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(c):

1. Regarding **detection of foreign bribery**, the Working Group recommends that France:

c. (i) Analyse the reasons why officials in diplomatic and consular posts and in economic departments of embassies (MEAE and General Directorate of the Treasury) have not been able to detect any allegations of foreign bribery themselves, including through the local media, and take the necessary measures to remedy the situation; and (ii) Ensure that diplomatic officials posted abroad actively monitor the local press for the purpose of detecting foreign bribery. [Phase 3 recommendation 10; 2009]

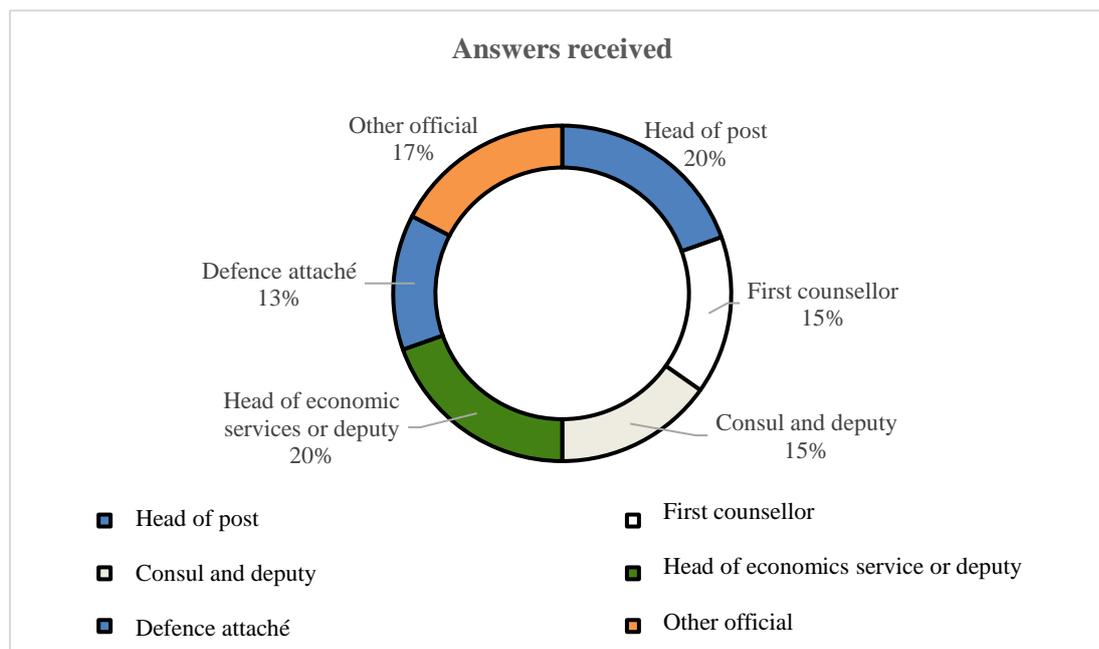
Recommendation 2009 III.i; iv. and IX.ii.]

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

- (i) **Analys the reasons why officials in diplomatic and consular posts and in economic departments of embassies have not been able to detect allegations of foreign bribery themselves, including through the local media, and take the necessary measures to remedy the situation:**

In order to analyse the reasons why officials in diplomatic and consular posts and in economic departments of embassies have not been able to detect and report allegations of foreign bribery themselves, the Ministry for Europe and Foreign Affairs and the General Directorate of the Treasury carried out a joint survey (1), the findings of which (2) are used to refine the content of the awareness-raising and training initiatives that the two ministries want to reinforce in order to remedy this situation (3).

1. In order to identify obstacles to detecting foreign bribery, 20 diplomatic representations from different regional groups, selected using a sampling method that ensures over-representation of countries at risk (16 out of 20 are not signatories to the OECD Anti-Bribery Convention), were consulted. 48 responses were received from heads of post (ambassadors), first counsellors, consuls, heads of economic services and deputy heads, defence attachés and other officials³¹ (cf. Annex).

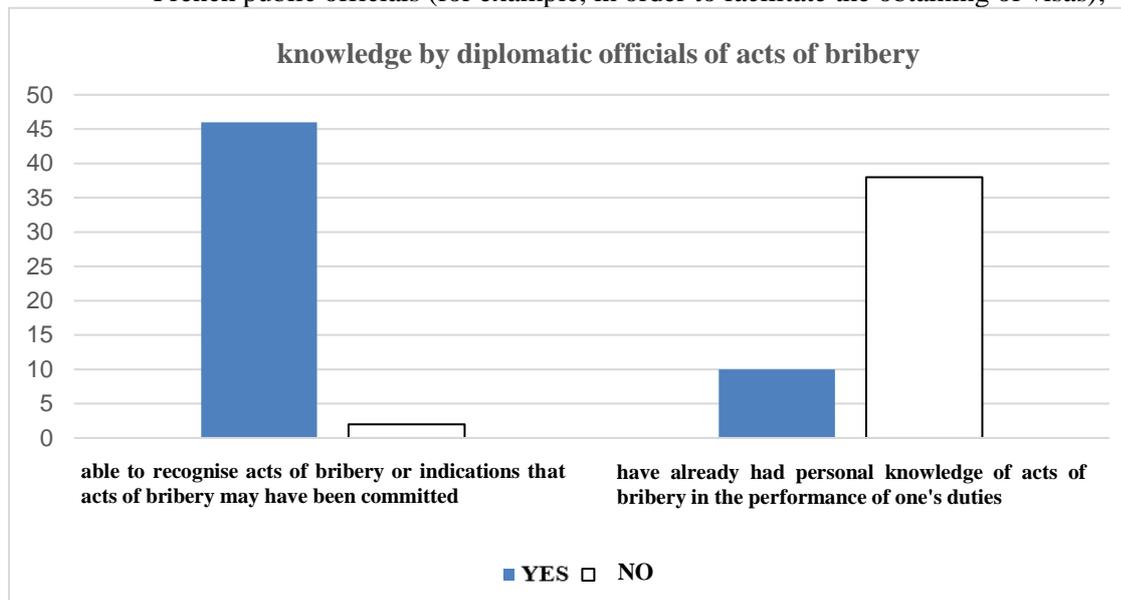


These answers helped to:

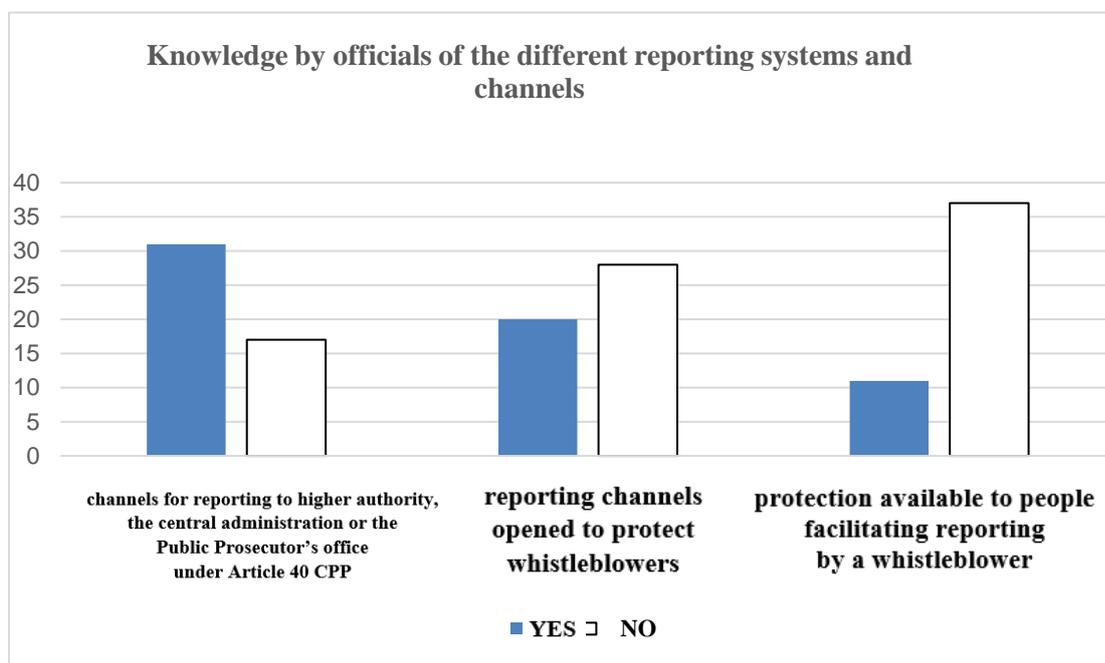
- determine the level of awareness of foreign bribery: less than a third of the officials questioned said they had already been aware of acts of bribery, and almost all of them had subsequently reported these acts (the reasons given for not reporting are detailed below). However, it

³¹ **Annex 11:** MEAE, General Directorate of the Treasury – Questionnaire sent to the officials in the twenty positions consulted in the summer of 2023.

should be noted that the incidents mentioned also concern attempts by foreigners to bribe French public officials (for example, in order to facilitate the obtaining of visas);

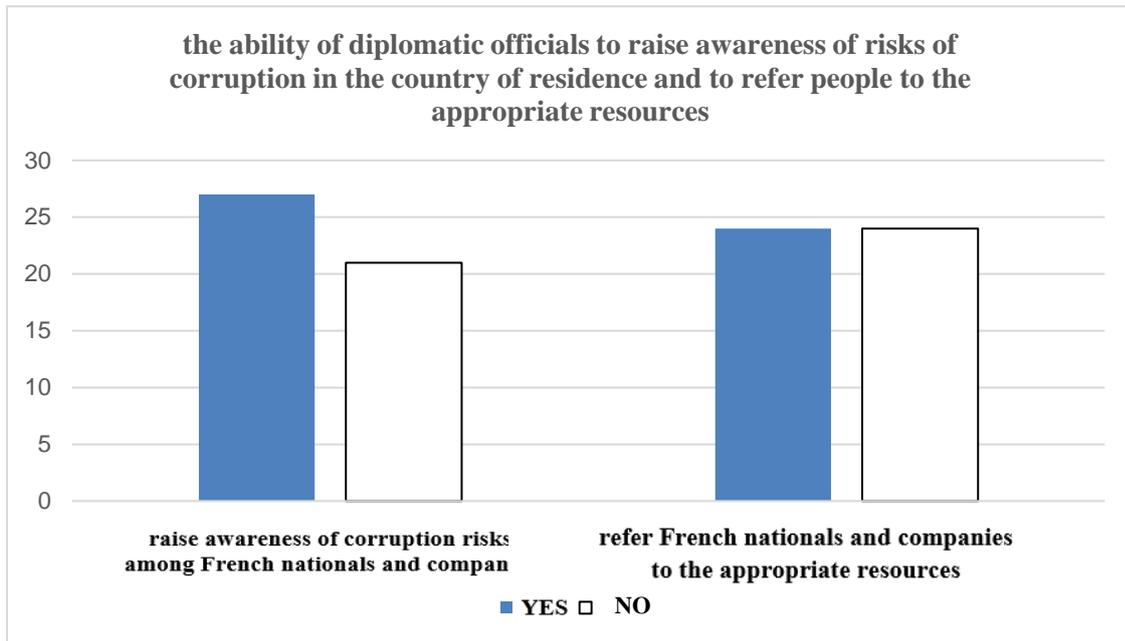


- assess awareness of reporting channels, in particular under article 40 of the French Code of Criminal Procedure: the vast majority of officials seem to be aware of this reporting obligation, although a third admit to being unaware of it, which is still a high proportion given the awareness-raising efforts made in the past;

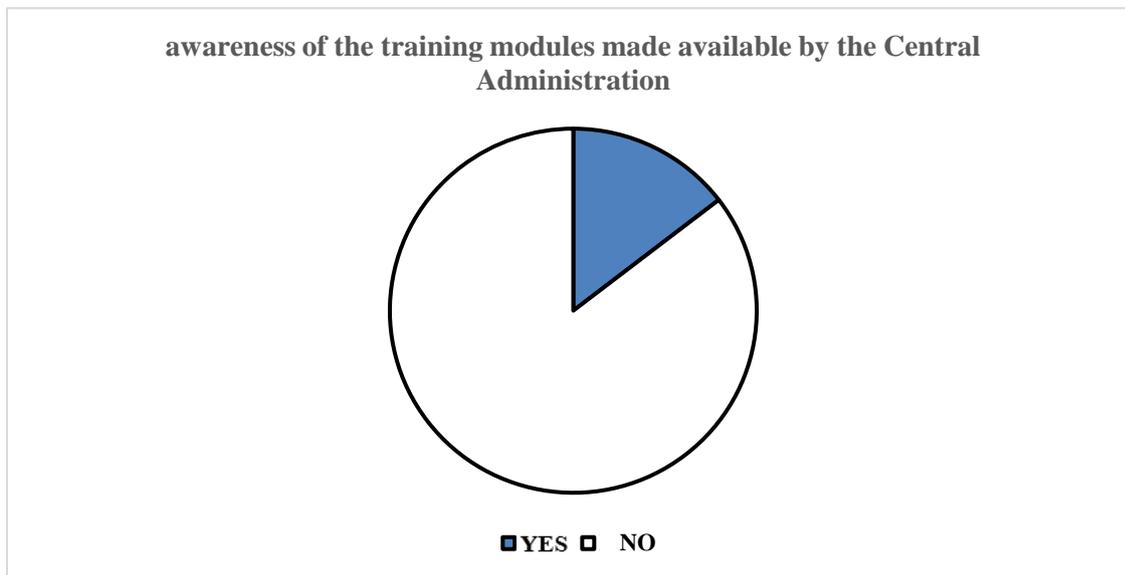


- assess awareness of the protection mechanisms for whistleblowers and whistleblower facilitators: these mechanisms, although introduced by the Sapin 2 Act over 6 years ago, are largely unknown to employees (37/48);
- determine the ability of diplomatic officials to raise awareness among French nationals and companies of the risks of bribery in their country of residence, and to direct them to useful

resources where appropriate: while a majority of the officials consulted believe they are able to raise awareness among their contacts, 50% of them do not know which useful resources to refer them to.



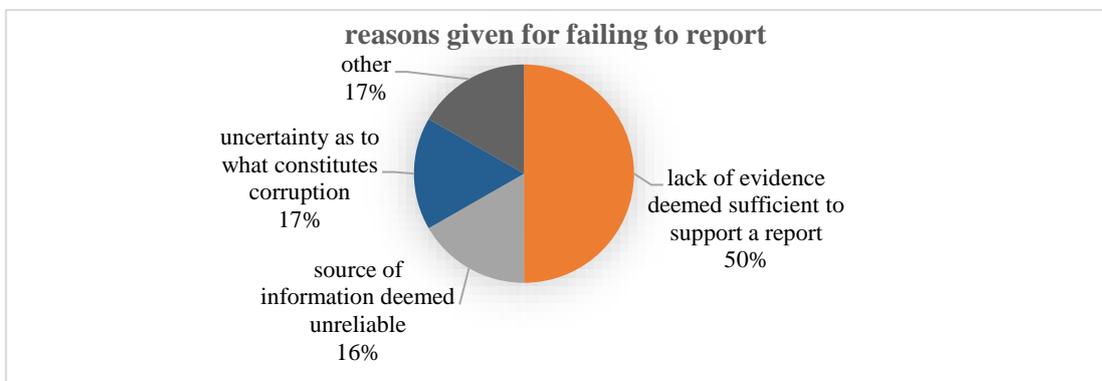
- assess officials' awareness of the various training modules made available to them by the central administrations of both the MEAE and the Treasury: only 15% of officials stated that they were informed of the training modules offered by their central administration.



2. Analysis of the questionnaires shows that most officials in the diplomatic and economic services are aware of the obligation to report acts of bribery, but in practice few of them consider that they have ever been aware of such acts. Consequently, and logically, even fewer considered it necessary to find out about the protection mechanisms for whistleblowers or the training modules offered by the central administration.

Almost all of the officials who indicated that they were aware of allegations of foreign bribery but did

not report them said that they did not consider the information to be sufficiently reliable or that they did not consider the evidence brought to their attention to be sufficiently conclusive. Only one official (classified as "other" in the graph below) indicated that he was aware of legal proceedings in progress for the same acts and therefore refrained from reporting. None of them indicated that they feared damaging diplomatic relations or damaging economic or financial interests.



The two Ministries, in light of this analysis and conscious of the need for a cultural shift, intend to firmly pursue efforts to step up awareness-raising and information measures to ensure that officials (i) do not underestimate the importance of foreign bribery and are familiar with the tools for detecting such acts and the procedures for reporting them; (ii) report systematically when they become aware of allegations of foreign bribery to enable the judicial authorities to carry out the investigations they deem necessary, regardless of the source of the report or the level of detail of the information gathered by the official.

3. It is for this reason that the MEAE and the General Directorate of the Treasury have recently multiplied the number of projects to raise awareness and provide training in detecting and reporting allegations of foreign bribery, including:

- An "Integrity Day" at the MEAE, the first of which was held on 9 December 2022, UN International Anti-Corruption Day.

This day of training and awareness-raising on the risks of bribery and integrity breaches enabled the WGB's recommendation to be presented to officials at central administration and on postings, in order to make up for this lack of reporting. A specific module in the form of a 'round table' was dedicated to reporting methodology under Article 40 of the Code of Criminal Procedure, both at central administration level and in the field. The trainers were from the MEAE central administration departments responsible for receiving or directing reports of foreign bribery and from the Paris Prosecutor's Office.

The Department's anti-corruption officers received support from the French Anti-Corruption Agency, the High Authority for Transparency in Public Life (HATVP), the National Financial Prosecutor's Office, the French Development Agency (AFD) and the Paris Prosecutor's Office.

- A seminar on the bribery of foreign public officials was also organised on 26 June 2023 during the Journées Internationales du Trésor (JIT), in the presence of all the heads of economic departments based in the embassies. The recording of the session is also available to all officials in the network. In the presence of the OCLCIFE, the PNF and the AFA, it provided an opportunity to review the issues involved in detecting and reporting foreign bribery. Officials were also reminded of their obligations under Article 40 and the reporting channels available.

- Anti-corruption training for officials being posted abroad, during which the obligation to report acts of foreign bribery is particularly emphasised. Two seminars on the risks of corruption and foreign bribery were organised in June 2023 on the occasion of the "New leavers Day" at the MEAE and at the General Directorate of the Treasury. During an interview in October 2023 with the Director of the AFA, the Deputy Director General of the Treasury stated that this seminar should be made systematic, which shows that our ministries' top management is aware of the issue.

- Specific anti-corruption training sessions for future heads of mission (ambassadors), to make them aware of their responsibilities in terms of collecting and transmitting reports and to present them with the best practices to adopt and have adopted within their future postings.
- Anti-corruption training modules as part of the initial training of officials, and in particular anti-corruption training modules for diplomats who will be posted abroad during their career. The issues involved in reporting allegations of foreign bribery were highlighted in 2023 during the "mid-career" training modules for MEAE officials.
- Specific training on certain corruption risks as part of the ongoing training of officials. For example, in April 2023 officials in the MEAE's Economic Diplomacy Directorate were made aware of the risks associated with their links with companies, the risks of unlawful acquisition of an interest and good practice in terms of transparency in declarations of interest, with the notable participation of the HATVP.
- Specific meetings when new appointments are made to posts that are sensitive in terms of foreign bribery, with the officials in charge of combating corruption in central government, to raise awareness of the risks and how to detect and report allegations of foreign bribery.

In addition, several additional measures have been taken to ensure that the fight against corruption is clearly identified by heads of post as an essential mission:

- - the instructions sent to ambassadors when they take up their post now mention this mission;
- - starting in 2023, an updated diplomatic note will be sent every two years to all officials in the network to remind them of their obligations with regard to reporting acts of bribery of foreign public officials;
- - training modules will be made available online on the "Diplomatica" software programme accessible by all MEAE staff;
- - the General Inspectorate of the General Directorate of the Treasury has been alerted to the small number of reports made by the economic services and has included this issue in its economic services inspection missions.

All of these remedial measures have been incorporated into the draft national anti-corruption plan 2024-2027, which will be adopted by an inter-ministerial committee chaired by the Prime Minister in the first quarter of 2024, in order to give the strongest possible political impetus to this issue, which the French authorities have taken fully into account. Future training courses and additional measures will fully reflect the conclusions of this questionnaire and will provide more information on points on which officials lack knowledge.

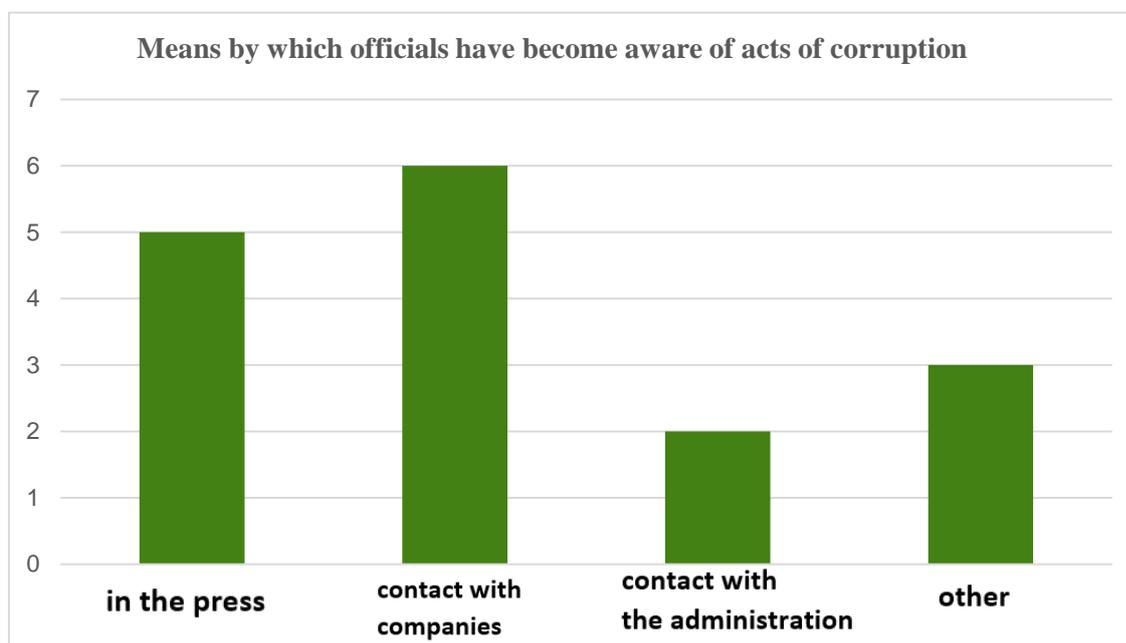
(ii) Ensure that diplomatic officials posted abroad actively monitor the local press for the purpose of detecting foreign bribery. [Phase 3 recommendation 10; 2009 Recommendation 2009 III.i; iv. and IX.ii.]

Monitoring the local press is an important part of the work carried out by staff in the French diplomatic network abroad. Within the embassies, the "press service", under the authority of the diplomatic chancellery, monitors all local press and produces a press review for the benefit of other embassy departments and locally-established French operators (depending on the country: Business France, Agence française, Institut français, etc.).

Press officers are also part of the population invited to attend the awareness-raising training provided by the MEAE and the General Directorate of the Treasury on detecting and reporting allegations of bribery of foreign public officials. They are aware of the importance of such information, and have been reminded of their reporting obligations, notably under article 40 of the French Code of Criminal Procedure.

Finally, in order to ensure best practices within the embassies, the consultation questionnaire on

reporting foreign bribery referred to above (1.c.i.) also provided an opportunity to question officials on how they handled reports of corruption in the local press.



The results show that a third of officials who had heard of acts of corruption had read about them in the press, thus underlining the fact that this issue is already included in the media topics reviewed in some areas of the diplomatic network. The awareness-raising measures implemented to ensure that all diplomatic posts are made aware of the stakes involved in the fight against foreign bribery will serve as a reminder of the importance for officials posted in the diplomatic network abroad to actively monitor the local press with a view to detecting possible cases of foreign bribery and reporting them.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(d):

1. Regarding **detection of foreign bribery**, the Working Group recommends that France:

(d) (i) Conduct a thorough review of companies' internal control, ethics and compliance programmes or measures when granting and monitoring arms export licences; and (ii) Ensure that companies sanctioned for foreign bribery can have their arms exports authorisations suspended. [Phase 3 recommendation 12.c; Recommendation XI.i]

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

- (i) **Conduct a thorough review of companies' internal control, ethics and compliance programmes or measures when granting and monitoring arms export licences**

Under the terms of the Sapin 2 Act (Act No. 2016-1691 of December 9, 2016 on transparency, combating corruption and the modernisation of economic life), companies and public industrial and commercial establishments (EPICs) that reach a certain threshold in terms of headcount (500 employees) and revenues (100 million euros) are required to put in place internal measures and procedures designed to prevent and detect the perpetration, in France or abroad, of acts of trading in influence and corruption. In addition, the obligation to implement such measures and procedures may be imposed on a legal person, regardless of its size, by applying the additional sanction provided for in Article 131-39-2 of the French Criminal Code in the event of conviction for corruption or trading in influence.

These obligations naturally apply to arms exporters, as they do to all companies (provided they meet the headcount and revenue thresholds and/or have been ordered to do so by the courts).

Pursuant to 3° and 4° of Article 3 and III of Article 17 of the Sapin 2 Act, **monitoring compliance with these obligations is the responsibility of the French Anticorruption Agency (AFA)**, which since 2017 has carried out several audits on companies conducting part of their business in the arms sector, either as part of own-initiative audits or as part of the monitoring of a compliance programme implemented under a CJIP (Convention judiciaire d'intérêt public – a resolution similar to a Deferred Prosecution Agreement in other countries).

Accordingly, neither the authorities responsible for issuing war material export licences, nor those responsible for the a posteriori inspection provided for in Article L. 2339-1 of the Defence Code, are tasked with carrying out such an in-depth review, as this does not fall within their remit as defined by the regulations and, in any event, would require the mobilisation of expertise that these authorities do not have.

Nevertheless, **these authorities exercise particular vigilance over risks of corruption within the framework of their respective missions:**

- if the examination of an export licence application or the completion of an audit reveals sufficient evidence of corruption, these authorities are obliged to report the matter to the public prosecutor in application of Article 40 of the Code of Criminal Procedure;
- in addition, if the commercial channels or intermediaries declared in the application give rise to suspicions or questions, checks are carried out and the application may be refused if the suspicions are confirmed;
- to assess the risk of misappropriation, or re-export under undesirable conditions, of exported equipment, which is systematically assessed when an export licence application is examined, in accordance with the seventh criterion of [Council Common Position 2008/944/CFSP of 8 December 2008](#), the degree of corruption in the recipient State is taken into account by the administrative authority, in accordance with the recommendations in the guide for use of the Common Position;
- the Direction Générale de l'Armement (General Directorate of Armaments - DGA - French government defence procurement and technology agency) conducts awareness-raising activities on the Sapin 2 Act for the staff in the French Ministry of Defence and can also draw the attention of manufacturers to the need for vigilance in the fight against corruption, particularly in the case of SMEs which are not obliged to implement anti-corruption compliance measures but which have an interest in equipping themselves with a system for preventing and detecting integrity violations, particularly during SME business day events.

The French authorities therefore consider that this recommendation has been implemented.

- (ii) **Ensure that companies sanctioned for foreign bribery can have their arms exports authorisations suspended. [Phase 3 recommendation 12.c; Recommendation XI.i]**

Under Articles [L. 2335-1](#) and [L. 2335-14](#) of the French Defence Code, the administrative authority may at any time suspend export or transfer licences it has issued for reasons of "*compliance with France's international commitments, protection of essential interests of security, public order or public safety, or failure to comply with the conditions specified in the licence*".

These very broad grounds for suspension make it possible to suspend an export licence where there is sufficient evidence that the planned export has given rise, or could give rise, to the perpetration of an act of corruption, without it being necessary for the exporter to have been convicted of a corrupt practice - which is one factor, among others, likely to corroborate the existence of a risk of corruption.

The application of these provisions should not lead the administrative authority to systematically suspend an export licence when the exporter has been convicted of bribery of foreign public officials, without taking into account when the alleged offences took place or the link - or lack of link - between the offence committed and the export covered by the authorisation granted (e.g. acts relating to the export of other equipment for a different destination, in connection with an activity of the company other than arms exports, etc.). Such a systematic approach would be contrary to the independent assessment that the authorities must make of the situation submitted to them.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(e):

1. Regarding **detection of foreign bribery**, the Working Group recommends that France:

(e) (i) Continue and intensify awareness-raising measures, recently initiated in mainland France, for tax administration officials; (ii) Implement, without further delay, the same measures in overseas territories; and (iii) Ensure that the tax authorities promptly report to prosecutors any information collected for tax purposes when it likely pertains to acts of foreign bribery. [Phase 3 Recommendation 9.b; 2009 Recommendation VIII.i.; 2009 Recommendation on tax measures II.]

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

(i) Continue and intensify awareness-raising measures, recently initiated in mainland France, for tax administration officials

The first initiatives put in place by the Directorate of National and International Audits (DVNI) in 2021 were continued in 2022 with regular awareness-raising sessions for its staff and department heads on the subject of combating bribery of foreign public officials. The Directorate's anti-corruption contact point has addressed departmental meetings for field staff (10 meetings in 2022 and 8 in 2023), where she emphasised the legitimate role of auditors in uncovering evidence that could constitute or help to demonstrate bribery of foreign public officials. In addition, information is also available and visible on the [Intranet of the DVNI](#), which is the everyday working tool used by officials.

The French authorities therefore consider that this recommendation has been implemented.

(ii) Implement, without further delay, the same measures in overseas territories

The overseas *départements* (Guadeloupe, French Guiana, Reunion Island, Martinique and Mayotte) which, like the other departmental bodies in mainland France, do not have institutional and fiscal autonomy, apply the same measures as the rest of France.

In New Caledonia, the tax services department is fully aware of the risks associated with illicit transactions linked to the bribery of foreign public officials, but states that it has not been aware of any such incidents in recent years (apart from one case which was the subject of a conviction in New Caledonia in 2020). A report to the public prosecutor's office would be made using the procedure set out in Article 40 of the Code of Criminal Procedure, which applies automatically in New Caledonia. Illicit foreign bribery transactions mainly concern foreign markets and, due to the structure of the local economy, New Caledonian companies have very little presence on foreign markets.

- (iii) **Ensure that the tax authorities promptly report to prosecutors any information collected for tax purposes when it likely pertains to acts of foreign bribery. [Phase 3 Recommendation 9.b; 2009 Recommendation VIII.i.; 2009 Recommendation on tax measures II.]**

An educational module to help detect misconduct that should be reported under Article 40³² was circulated to the tax departments in September 2020 and statistical monitoring has been adapted to isolate Article 40 offences relating to corruption. On the basis of Article 40, 578 acts were reported in 2022 by the DGFIP (General Directorate of Public Finances), but no reports of bribery. To further strengthen its action, the DGFIP has included in the annual report on Article 40, which was distributed to the network on 17 May 2023, an instruction to systematically draft a report under Article 40 for any rectification made on the basis of Article 39-2 bis of the General Tax Code. Lastly, the DVNI states that the documentation presented to date to auditors during field audits has made it possible to ensure that the audited companies are taking the necessary measures to prevent situations that could give rise to the application of Article 39-2 bis of the General Tax Code.

The network of anti-money laundering/terrorist financing (AML/CFT) advisors in each of the overseas territories, who report directly to the prefects and high commissioners, have also been made aware of these issues.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(f):

1. Regarding **detection of foreign bribery**, the Working Group recommends that France:

(f) (i) Enhance the detection and reporting mechanisms in order to ensure that allegations of foreign bribery are transmitted by BPIfrance to the public prosecution service (ii) Implement all the necessary training and awareness-raising measures to enable BPIfrance staff to identify and address red flags that should enable foreign bribery to be detected in the projects financed by the agency. [Recommendation 11.c.; 2009 Recommendation, III (vii); and 2019 Recommendation on bribery and officially-supported

³² **Annex 12:** DGFIP (General Directorate of Public Finances) - Practical assistance in drafting reports under Article 40 of the Code of Criminal Procedure.

export credits, V]

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

- (i) **Enhance the detection and reporting mechanisms in order to ensure that allegations of foreign bribery are transmitted by BPIfrance to the public prosecution service**

Detection systems have been strengthened by the introduction of (i) **an internal tool called Flaminem** which enables anti-corruption due diligence to be conducted, as well as AML/CFT due diligence and compliance with economic sanctions regulations during the investigation of any case. Flaminem thus enables Bpifrance Group employees to identify corruption red flags, in particular through Flaminem's "E-Reputation" module, which is directly connected to the Dow Jones platform and enables due diligence to be carried out on each of the parties involved in the transaction (i.e. negative press articles relating to regulatory corruption issues against one of the parties involved; investigations or convictions relating to regulatory corruption issues). It should be noted that after each case has been investigated, Flaminem has a monitoring system which allows Bpifrance's Compliance and Permanent Control Department to reopen for review a case, in which a point relating to regulatory corruption issues has been identified after the fact; (ii) **additional questions asked in the Credit Insurance Application form (DAC) relating to the use of an agent**. Bpifrance Assurance Export's operational staff must therefore analyse the answers provided by the exporter; and (iii) an **Annex to the Credit Insurance Application form** entitled "*Statement relating to the fight against corruption and to the protection of personal data*" which incorporates the recommendations of the OECD's 2019 "Anti-Bribery Recommendation" and which must be signed and dated by the exporter and the credit institution. In other words, as soon as a risk factor/red flag is identified, the case is referred to Bpifrance's Compliance and Permanent Control Department for study and opinion, which must, if applicable, make a declaration to the public prosecutor.

The French authorities therefore consider that this recommendation has been implemented.

- (ii) **Implement all the necessary training and awareness-raising measures to enable BPIFrance staff to identify and address red flags that should enable foreign bribery to be detected in the projects financed by the agency. [Recommendation 11.c.; 2009 Recommendation, III (vii); and 2019 Recommendation on bribery and officially-supported export credits, V]**

The Bpifrance Group (including Bpifrance Assurance Export) has put in place training and awareness-raising measures on bribery, particularly of foreign public officials:

- **an e-learning course** (in serious game format) on fighting corruption;
- **an awareness-raising video** (in "archi" format) on fighting corruption;
- the publication of a **code of ethics**³³ including a section on the fight against corruption, supported by a **face-to-face awareness-raising session**;
- the publication of a **code of good conduct**³⁴; and
- the introduction of **specific training for new recruits** (face-to-face or via webinar) to raise awareness of anti-bribery issues in particular.

The French authorities therefore consider that this recommendation has been implemented.

³³ **Annex 7:** Bpifrance - Code of ethics – Assurance Export; **Annex 8:** Bpifrance - Code of ethics – Financing; **Annex 9:** Bpifrance - Code of ethics – Management Company Procedure.

³⁴ **Annex 10:** Bpifrance - Code of conduct on fighting bribery, favouritism and trading in influence.

If no action has been taken to implement this recommendation, 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(g):

1. Regarding **detection of foreign bribery**, the Working Group recommends that France:

(g) Revise the professional practice guidance for auditors on reporting criminal acts to the Public Prosecutor, to ensure that the foreign bribery offence is expressly mentioned. [2009 Recommendation, X.B.iii. and v.]

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

If no action has been taken to implement this recommendation, 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:

Statutory auditors are involved in the fight against corruption through their obligation to disclose to the Public Prosecutor any criminal acts of which they become aware in the course of their work. This obligation and its sanction are set out respectively in Article L. 823-12 ([Article L823-12 - Code de commerce - Légifrance \(legifrance.gouv.fr\)](#)) and Article L. 820-7 ([Article L820-7 - Code de commerce - Légifrance \(legifrance.gouv.fr\)](#)) of the French Commercial Code.

The scope and content of this obligation were set out in a circular issued by the Ministry of Justice on 18 April 2014 ([Légifrance - Droit national en vigueur - Circulaires et instructions - Circulaire du 18 avril 2014 relative à l'obligation de révélation des faits délictueux des commissaires aux comptes \(legifrance.gouv.fr\)](#)), to which is appended the Professional Practice guidance established by the *Compagnie nationale des commissaires aux comptes* (CNCC - French Association of Statutory Auditors), recognised as good professional practice by the *Haut conseil du commissariat aux comptes* (H3C - High Council of Statutory Auditing), in its opinion of 14 April 2014 ([bonne_pratique_professionnelle6.pdf \(h3c.org\)](#)).

The extremely broad wording of the text, which stipulates that disclosure must relate to "criminal offences", implies that any fact likely to be classified as a criminal offence must be considered as covered by this obligation. The aforementioned Professional Practice specifies that this applies to "all categories of offence, regardless of their legal classification as a felony, misdemeanour or contravention and regardless of the status or function of the person or entity that committed them". In addition, the Annex to this Professional Practice gives a non-exhaustive list of the main offences, including the offence of bribery under Article 433-1 of the French Criminal Code ([Article 433-1 - Code pénal - Légifrance \(legifrance.gouv.fr\)](#)).

The Professional Practice guidance is therefore extremely clear on the fact that the offence of bribery of a foreign public official does indeed fall within the scope of the obligation to disclose, and no additional measures to increase the degree of implementation of the recommendation have been identified.

The French authorities therefore consider that the objective of this recommendation has been achieved.

Text of recommendation 1(h):

1. Regarding **detection of foreign bribery**, the Working Group recommends that France:

(h) Define, by any appropriate means, the framework and practical incentives for self-reporting, including by: (i) clarifying the extent to which self-reporting is taken into account to benefit from a CJIP; and (ii) clarifying its impact on the amount of the public interest fine and other measures that are imposed through a CJIP. [2009 Recommendation III.iv. and Annex I.D.]

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

- (i) **Define, by any appropriate means, the framework and practical incentives for self-reporting, including by: (i) clarifying the extent to which self-reporting is taken into account to benefit from a CJIP**

Created by [the Act of 9 December 2016 known as "Sapin 2"](#), the *Convention judiciaire d'intérêt public* (CJIP - a resolution similar to a Deferred Prosecution Agreement in other countries) enables the efficient and rapid handling of proceedings brought against legal persons for acts of corruption, trading in influence, tax evasion and the laundering of the proceeds of these offences, or for any related offence.

The framework provided for in Article 41-1-2 of the Code of Criminal Procedure is particularly clear and transparent and was the subject of a [DACG \(Directorate of Criminal Affairs and Pardons\) circular presenting the provisions that was distributed to all courts on 31 January 2018](#), a [second circular on 2 June 2020 on criminal policy in the area of international bribery](#) and a [third circular on 4 October 2021 on the fight against tax evasion](#).

The criteria for the use of these non-trial arrangements have been specified in the [new PNF guidelines](#) published on 16 January 2023³⁵. For economic operators and foreign judicial authorities alike, these guidelines are an instrument of predictability and legal certainty. This particularly informative document is publicly available on the website of the French National Financial Prosecutor's Office, has been presented to the widest possible audience at specific conferences, and has been widely reported in the specialist press.^{[1][2]}

In 2023, all French courts were reminded of this framework through the distribution of a [DACG Focus](#) fact sheet available on the Ministry of Justice intranet³⁶. It will be explained during in-service training courses dedicated to dealing with economic and financial crime, and more specifically in the specific modules on corruption.

Professionals are familiar with the criteria for using the CJIP. As a general rule, public prosecutors are asked to assess the appropriateness of implementing an agreement on the basis of several criteria:

- the background of the legal person;
- the voluntary nature of the disclosure;
- the extent to which the legal person cooperates with the judicial authorities;
- the evidence provided by the preliminary investigation;
- the implementation of a compliance programme;
- compensation of the victim.

Among these criteria, **self-reporting** and the leading role played by the legal person in disclosing the facts will be conducive to allowing recourse to the CJIP. Particular attention will be paid to the assessment of the reasonable period of time that elapsed between the time when the director of the legal person became aware of the facts and the time when they were disclosed, as well as to the complete and substantiated

³⁵ **Annex 13:** PNF – Guidelines for implementing the *Convention judiciaire d'intérêt public* (CJIP)– 16 January 2023.

³⁶ **Annex 14:** DACG - *La Convention judiciaire d'intérêt public* (CJIP) – July 2023.

nature of the information and documents transmitted as part of the disclosure. The disclosure must be sufficiently detailed to enable the public prosecutor to understand with a sufficient degree of precision the facts of which they were not yet aware.

The French authorities therefore consider that this recommendation has been implemented.

- (ii) **Define, by any appropriate means, the framework and practical incentives for self-reporting, including by (ii) clarifying its impact on the amount of the public interest fine and other measures that are imposed through a CJIP. [2009 Recommendation III.iv. and Annex I.D.]**

The ordering of a public interest fine in the context of a CJIP is governed by clear and universally accessible legislation. Accordingly, [Article 41-1-2 I 1° of the Code of Criminal Procedure](#) provides that "the amount of the fine shall be set in proportion to the benefits derived from the breaches established, up to a limit of 30% of the average annual revenue calculated on the basis of the last three known annual revenues at the date on which the breaches were established".

To set the amount of the fine, public prosecutors must **assess the direct and indirect benefits** derived from the breaches that fall within the material scope and timeframe of the acts covered by the CJIP and apply a multiplying factor that varies according to aggravating or mitigating factors.

All the factors taken into account are published online on the website of the National Financial Prosecutor's Office (PNF) and relayed to the courts by the Directorate of Criminal Affairs and Pardons (DACG).

Aggravating factors	Ceiling		Mitigating factors	Ceiling
any form of obstruction of the investigation	30%		self-reporting	50%
large company	20%		one-off nature of the incident	10%
deficiencies in the compliance programme (company subject to Article 17 of the Act of 9 December 2016)	20%		relevance of internal investigations	20%
repeated nature of the acts	50%		active cooperation	30%
judicial, tax or regulatory history	20%		remedial measures	20%
use of the legal person's resources for the purpose of concealment	20%		effectiveness of the internal reporting system	10 %
creation of tools for the purpose of concealment	30%		full and unreserved acknowledgement of the facts	20%
involvement of a public official	30%		prior compensation of victims	40%
serious disturbance of public order	50%			

The active role of the company is essential in calculating the fine. The company will be asked to provide all the relevant information and data needed to assess the direct and indirect benefits derived from the breaches observed.

In addition, self-reporting of the acts is **the primary mitigating factor that reduces the amount of the**

fine. If the company comes forward voluntarily, the fine imposed can be reduced by 50% on this factor alone. Accordingly, like the new Corporate Enforcement Policy published by the DOJ on 17 January 2023, the PNF's new guidelines clearly and predictably emphasise the benefits for any company of voluntarily reporting acts that may be the subject of a CJIP.

The French authorities therefore consider that this recommendation has been implemented.

^[1] Miren Lartigue, "*Nouvelles directives du PNF sur la CJIP : des clarifications très attendues par les avocats*", Dalloz actualité, January 2023

^[2] Amaury Bousquet, "*Nouvelles lignes directrices CJIP : vers une pénalisation de la conformité ?*", Lextenso, Actu-Juridique.fr, March 2023, <https://www.actu-juridique.fr/id/AJU358703>

If no action has been taken to implement this recommendation, 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(i):

1. Regarding **detection of foreign bribery**, the Working Group recommends that France:

(i) Ensure that a larger number of credible foreign bribery allegations are promptly investigated, particularly allegations concerning major French companies reported in the national or foreign media as well as in the compilation of foreign bribery allegations maintained by the Working Group. [Convention, Article 5, 2009 Recommendation, Annex I.D.]

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

In order to combat bribery of foreign public officials effectively, investigations into credible and substantiated allegations of bribery must be opened systematically and as quickly as possible. As the [circular from the Minister of Justice dated 2 June 2020](#) points out, it is important to make the best possible use of all existing channels for reporting international bribery, in particular national and foreign press articles and the information collected and exchanged by all 44 delegations in the OECD Working Group on Bribery (WGB) in International Business Transactions.

To this end, the National Financial Prosecutor's Office (*Parquet National Financier* – PNF) has set up several working groups, including an "open source" group, made up of prosecutors and specialist assistants, whose aim is to strengthen and structure the work of monitoring and improving the information available. Organised internally and identified by institutional contacts, the group receives public information, particularly from the national and international press. More specifically, the group monitors French and international publications on the bribery of foreign public officials. In addition to its monitoring work, the group endeavours to cross-check and add to raw information in order to determine whether it is worth opening a criminal investigation. Most of this pre-criminal research is carried out using open sources and through contacts with other prosecuting authorities.

In addition, as a member of the French delegation to the WGB, the PNF is regularly informed of the cases listed in the OECD matrix and takes part in updating and adding to it at each round table session. The information contained in the matrix is systematically analysed so that investigations can be opened.

A number of cases have also been opened by the PNF as part of its media monitoring and analysis of the OECD matrix, including:

- In 2021: a case initially identified during the "integrity" group's work via the OECD matrix led to the opening of a judicial investigation, which was initiated on the basis of a press release from a foreign anti-corruption authority picked up by the "Gotham City" online media. Two other

proceedings were initiated after identification by the “open source” group following publications in the US press (Wall Street Journal);

- In 2022: an investigation was launched after an article in the online media Intelligence Online was identified.

At the seminar on the bribery of foreign public officials organised by the DACG on 25 January 2023, the media and the OECD matrix were once again cited as particularly interesting sources and exploited in this respect, alongside self-reporting, TRACFIN suspicious transaction reports and information sent by partners.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 2:

2. Regarding detection of foreign bribery via mechanisms to combat money laundering, the Working Group recommends that France (i) Continue and intensify its awareness-raising efforts aimed at professions required to report instances that may involve foreign bribery, while taking care to integrate the laundering of proceeds derived from active foreign bribery into TRACFIN’s analysis and awareness-raising activities; and (ii) Strengthen statistical monitoring of information processed by TRACFIN “integrity violations” unit related to the foreign bribery offence. [Phase 3 recommendation 7.a; 2009 Recommendation, III.i.]

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

- (i) **Continue and intensify its awareness-raising efforts aimed at professions required to report instances that may involve foreign bribery, while taking care to integrate the laundering of proceeds derived from active foreign bribery into TRACFIN’s analysis and awareness-raising activities**

TRACFIN's 2021 Activity Report published in July 2022 ([TRACFIN 2021 : activité et analyse](#)) devotes a section to reports of breaches of the duty of integrity (pages 41 to 48), a concept that includes the foreign bribery offence. In this section, information specifically focused on TRACFIN's role in detecting patterns of foreign bribery was presented, including the conclusions of the OECD evaluation (page 47). The judicial consequences of a TRACFIN report concerning a presumption of trading in influence with foreign public officials are also detailed in a "feedback from judicial experience" (page 43).

A typical case of bribery of a foreign public official is the subject of a two-page presentation in TRACFIN's 2023 Activity Report. This case, accompanied by an explanatory diagram, also includes the alert criteria that should attract the attention of the reporting professions. The double-page spread on the typical case of bribery of a foreign public official is appended to Fact Sheet 2.ii

TRACFIN's division responsible for guidance, analysis and relations with reporting entities is continuing to reflect on how best to organise exchanges with the private sector on subjects related to foreign bribery. For this purpose, initial discussions have been held with the private sector to identify potential participants. A workshop on this subject with private banks is set to be organised in the coming months. The scope of this workshop is currently being defined by TRACFIN. It could lead to the production of a public document designed to support the private sector on the fight against bribery (with a section on foreign

bribery).

The subject of the fight against foreign bribery is discussed with all the professions that TRACFIN meets and that are capable of detecting this type of offence. For example, in December 2022, during a meeting between TRACFIN and the statutory auditors of the Ile de France region, oral discussions focused on foreign bribery and in particular on how the profession can use its expertise to identify this type of offence. Foreign bribery is also dealt with in the context of exchanges between competent authorities responsible for combating money laundering and the financing of terrorism (AML/CFT), to ensure that they have the same level of knowledge and to make it easier to raise awareness in the private sector. In this respect, the plenary session of 22 March 2023 of the Advisory Board for the Fight Against Money Laundering and Terrorist Financing (COLB) which brings together all the competent AML/CFT authorities, was devoted to the fight against bribery, notably at the initiative of TRACFIN. Foreign bribery was mentioned in oral discussions and in a presentation by the Direction centrale de la police judiciaire (DCPJ).

The French authorities therefore consider that this recommendation has been implemented.

(ii) Strengthen statistical monitoring of information processed by TRACFIN “integrity violations” unit related to the foreign bribery offence. [Phase 3 recommendation 7.a; 2009 Recommendation, III.i.]

In 2022, general improvements were made to TRACFIN's statistical monitoring tools, including:

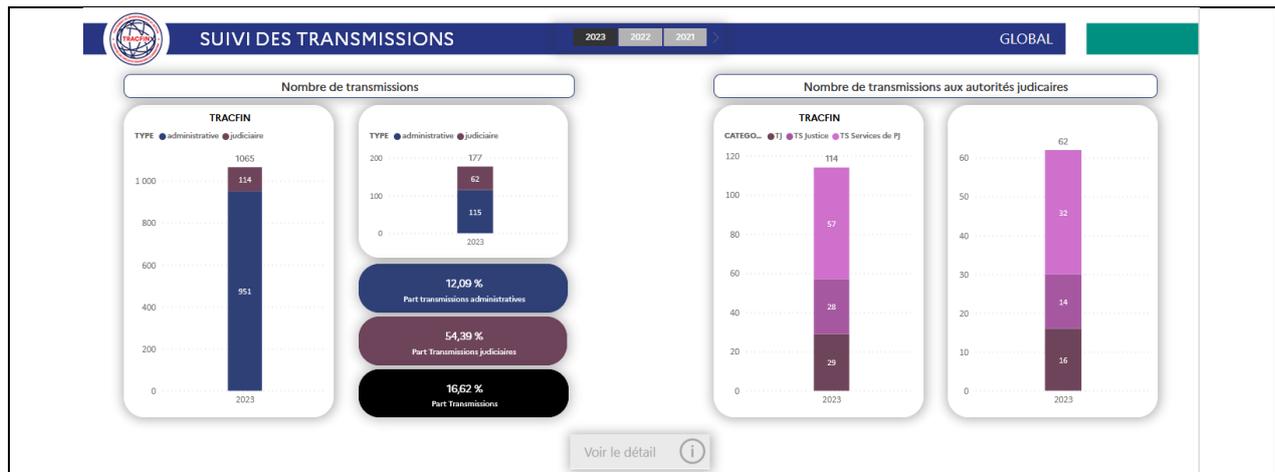
- the introduction of automatic e-mailing of indicators to improve monitoring of information received, processed and transmitted by the Unit;
- the modernisation of the tool, allowing in particular:
 - the development of dynamic reports;
 - the automation of activity monitoring indicators and steering tools;
 - the automation of the annual report and periodic reports.

These automatic messages take the following form:

- key figures on information received by TRACFIN:



- monitoring of referrals by a TRACFIN department (see chart below):



All units have concerned (technical, operational and strategic) considered ways of reinforcing statistical monitoring in relation to foreign bribery cases more specifically. After this reflection was completed, a project on implementing a system referencing the nature of offences covered by the all disseminations to the judicial authorities was presented for internal approval. For each dissemination, a reference (called tag) will specify the nature of the offence in the IT case management tool and it will be possible to determine, automatically, the number of cases for each offence. The list of tags (which will not be restricted to foreign bribery offences) is still under approval, hence the implementation of this system will take place shortly. It will start by an exploratory phase during which the referencing list will be enhanced.

Finally, a typical case of bribery of a foreign public official is the subject of a two-page presentation in TRACFIN's 2023 Activity Report. This case, accompanied by an explanatory diagram, also includes the alert criteria that should attract the attention of the reporting professions. The double-page spread on the typical case of bribery of a foreign public official is appended to this fact sheet³⁷.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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:

3. Regarding **protection for whistleblowers**, the Working Group recommends that France take advantage of the current effort to transpose the EU directive to take the necessary measures to (i) Clarify and harmonise the whistleblower regime, and strengthen the protections afforded to whistleblowers; (ii) Strengthen the position of the Defender of Rights in the system by reviewing its role and providing it with the necessary means to exercise its role effectively; and (iii) Increase public awareness of the importance of whistleblowers, especially in combating bribery. [2009 Recommendation, III.i., iv., and IX.iii.]

³⁷ **Annex 15:** TRACFIN - Model case of bribery of a foreign public official

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

Act No. 2022-401 of 21 March 2022 aimed at improving protection for whistleblowers, and Organic Act No. 2022-400 of 21 March 2022 reinforcing the role of the Defender of Rights office with regard to whistleblowing, strengthen protection for whistleblowers in order to respond ambitiously to all recommendations. These provisions have been fully implemented since the entry into force of the Conseil d'Etat decree of 3 October 2022 on procedures for collecting and processing whistleblower reports and establishing the list of external authorities set up by Act No. 2022-401 of 21 March 2022 aimed at improving protection for whistleblowers.

These texts transpose into French law European Directive 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law, while on certain points, notably the protections afforded to whistleblowers, they are not limited to it.

The text clarifies the definition of a whistleblower and broadens the scope of information that can be the subject of a report. It establishes a simplified framework for the handling of whistleblowing in France, by transposing the provisions of the directive into the single framework of the Sapin 2 Act, and by abolishing or harmonising pre-existing sector-specific whistleblowing mechanisms.

Regarding whistleblower reports:

The facts reported may concern information on a crime, an offence or breaches of the law, as well as attempts to conceal such breaches, or a threat or harm to the general interest; a whistleblower may report facts that have come to his or her attention in a professional context. Where the information has not been obtained in the course of his or her professional activities, the whistleblower must have personal knowledge of it; the whistleblower must act in good faith and without direct financial consideration. Penalties are provided for in the event of improper reporting or public disclosure.

Although whistleblowers are encouraged to make their reports "internally" (i.e. within the organisation where they work), they will now be able to choose to make their reports directly to an external authority. The list of these external authorities is specified by the Conseil d'Etat decree.

If the whistleblower discloses the report publicly, he or she will not lose the right to protection provided that certain conditions are met: (i) when the report transmitted to the internal or external authority has not been dealt with appropriately; (ii) in the event of serious and imminent danger; (iii) in the professional context, in the event of imminent or obvious danger to the general interest; (iv) when the whistleblower risks reprisals if he or she uses the external channel.

Regarding protection for whistleblowers:

- **the text extends the main protections offered to whistleblowers**, in particular protection against reprisals, to individuals who have a relationship with the whistleblower, such as colleagues or close relations, to "facilitators" who help the whistleblower to make the report or disclosure, and to legal entities controlled by the whistleblower or in which the whistleblower works or has a professional relationship;
- **the Act strengthens the guarantees of confidentiality** surrounding whistleblowing and adds to the list of prohibited reprisals (intimidation, damage to reputation, particularly on social networks, improper referral for treatment, etc.). Anyone taking reprisals against a whistleblower will now be liable to three years' imprisonment and a fine of 45 000 euros under the criminal offence of discrimination (Article 225-1 of the Criminal Code);
- **whistleblowers will not be liable** under civil law for any damage caused by their whistleblowing, or under criminal law for having revealed a protected secret or for having, in this context, lawfully intercepted or retained confidential documents relating to their whistleblowing. Civil and criminal non-liability is limited to information whose reporting or disclosure was necessary to protect the interests in question;

- **at the start of the trial, the judge may award an advance on legal costs** to a whistleblower who is contesting a retaliatory measure or who is the subject of a procedure initiated with a view to muzzling him/her (such as filing a civil action for defamation). The judge may award an additional advance to a whistleblower whose financial situation has seriously deteriorated.

Existing whistleblowing procedures in certain sectors, for example in the areas of finance and employment law, are harmonised under the revised Sapin 2 Act procedure, thereby strengthening the protection they provide. Certain sector-specific procedures have been abolished and absorbed into the new Sapin 2 Act procedure.

External authorities will be able to grant whistleblowers psychological and financial support.

In order to make the law applicable and finalise transposition of the directive, a number of measures were taken by Conseil d'État decree. Decree 2022-1284 came into force on 4 October 2022. It specifies the procedure for collecting and processing whistleblower reports to be put in place within the entities concerned and the external authorities, and sets out the list of the latter.

In particular, the decree requires that internal and external procedures be publicised so that the public is fully informed about these reporting channels. Accordingly, each entity must disseminate its procedure *"by any means ensuring adequate publicity, in particular by notification, posting or publication, where appropriate on its website or by electronic means, in such a way as to make it permanently accessible to anyone"* able to use the internal channel (first paragraph of Article 8).

In addition, each entity must *"also make available clear and easily accessible information concerning the external reporting procedures referred to in II of Article 8 of the Act of 9 December 2016 referred to above"* (paragraph three of Article 8).

Regarding the position of the Defender of Rights:

The Defender of Rights has been given new competences to provide better support for whistleblowers and plays a leading role in the new system.

In addition to its missions to assist and support whistleblowers, the Defender of Rights can now redirect reports that do not fall within the remit of one of the external authorities contacted to another authority, whether designated by decree or not, which it deems best placed to deal with them. In practice, the Defender of Rights is a key contact for all the external authorities, whose actions it seeks to coordinate in order to ensure that reports are dealt with more effectively.

The Defender of Rights can also issue an opinion on the whistleblower status, to prevent possible reprisals, thus helping to make the whistleblower's role more secure.

In addition, the Organic Law of 21 March 2022 provides that it will submit to the President of the Republic and the Presidents of the two Assemblies a biennial report on the overall functioning of whistleblower protection; a first report is expected in spring 2024.

Lastly, the Defender of Rights has already published a guide for whistleblowers, updated in March 2023, setting out the legal framework for protection in a clear and accessible way, in the form of answers to simple questions: What is a whistleblower report? Can you be a whistleblower? How can you be protected?

Within the institution, a deputy post has been created to spearhead the mission of supporting whistleblowers, as well as an additional post for monitoring cases.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(a):

4. Regarding **the capacity of the AFD Group** to detect and report foreign bribery offences, the Working Group recommends that France:

(a) (i) Ensure that sufficient resources and specialist staff are allocated to the AFD Group's investigation function; (ii) Continue to regularly reassess the effectiveness of these oversight mechanisms, notably with regard to the accuracy of information provided by bidders, to avoid certain foreign bribery risks escaping the AFD's oversight, and in particular with regard to intermediaries that bidders may use; and (iii) Continue its efforts to ensure that AFD Group staff receive targeted training on foreign bribery risks in projects financed by the Group. [Phase 3 recommendation 12.b, 2016 Recommendation for development co-operation actors, 4.ii., 6.iii., 3.ii.]

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

The recommendation has been implemented in three stages:

(i) Ensure that sufficient resources and specialist staff are allocated to the AFD Group's investigation function.

Regarding the resources and specialist staff allocated to the AFD Group's investigation function: since 2018, the AFD has had a unit dedicated to investigating fraud and corruption affecting projects financed by the Group, which is attached to the Compliance Department. This function was initially staffed by 2 permanent employees. In 2023, the AFD decided to allocate an additional permanent position to the investigation function, bringing the number of dedicated staff in the function to three FTEs. It should also be noted that, since July 2022, the Compliance Department has been attached to the highest organisational level of the company, i.e. directly to AFD's General Management, in order to ensure its independence from the operational departments and enable it to inform the decision-making of senior management and the governance body. This reporting line has also benefited the Investigations Function.

(ii) Continue to regularly reassess the effectiveness of these oversight mechanisms, notably with regard to the accuracy of information provided by bidders, to avoid certain foreign bribery risks escaping the AFD's oversight, and in particular with regard to intermediaries that bidders may use.

Regarding the effectiveness of the oversight mechanisms particularly in the context of contracts financed in foreign countries using AFD resources: as a financial institution, by regulation, AFD has a permanent control function which carries out various level 2.2 controls on corruption and fraud, in addition to the level 2.1 controls carried out by the compliance function. In addition, first-level controls are carried out by the operational departments in accordance with [the AFD's procurement directives](#) for projects financed in foreign countries and the financing agreement. In order to increase the effectiveness of its system, the AFD is currently revising the integrity declaration that bidders for financed contracts must complete and submit when submitting their technical and financial bids (declarations of integrity and absence of convictions). This declaration of integrity will change in Q4 2023 to stipulate that tenderers will also have to declare any use of a commercial intermediary/agent as well as the nature and amount of the related service. The AFD's operational departments will have to take this information into account when assessing

the risk of corruption. This document will be forwarded to the Working Group as soon as it has been adopted by the AFD's internal procedures committee.

(iii) Continue its efforts to ensure that AFD Group staff receive targeted training on foreign bribery risks in projects financed by the Group.

Regarding staff training: the AFD has reviewed its staff training programme on the prevention and detection of corruption practices³⁸ i) by distinguishing between those staff members who should be considered particularly exposed to the risk of corruption and for whom additional training on this type of risk is now provided, and ii) by adopting a risk-based approach which consists of contacting the business lines that are most at risk or whose position is essential to the implementation of the prevention and detection programme. The aim is to use ad hoc meetings to raise awareness of corrupt and fraudulent practices identified in the past in the course of employees' work, in addition to the annual *e-learning* courses on corruption that are compulsory for all employees. One of the face-to-face training sessions was given by the Head of the Compliance Department in 2023 to all members of the AFD Group's Management Committee (which includes members of General Management, Executive Directors, Head Office Department Directors, as well as the Directors of AFD's regional and local agencies, PROPARCO and SOGEFOM). This awareness-raising session presented the system for preventing and combating corruption and other prohibited practices, as well as figures relating to the AFD Group's activities. Several times a year, the Investigations Function also conducts face-to-face awareness-raising campaigns for certain operational functions (technical departments in charge of appraising and monitoring financed projects) or support functions (KYC unit, Legal Department, payment agents, etc.).

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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. Regarding **the capacity of the AFD Group** to detect and report foreign bribery offences, the Working Group recommends that France:

(b) Revise the AFD Group's Guidelines for Procurement in Foreign Countries to ensure that, as in the case of final convictions or, for example, debarments pronounced by the World Bank, the conclusion of a CJIP or any other non-trial resolution for foreign bribery in France or abroad can lead to a review of the operator's eligibility to participate in current or future contracts financed by the Group or its agencies, in particular taking into account the robustness of the compliance programme implemented by the bidder. [2016 Recommendation for development co-operation actors, 6.i. and iv.]

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

As requested, the AFD is currently revising, in the aforementioned Guidelines, the criteria for ineligibility of bidders for a contract financed by the AFD in foreign States in order to integrate non-trial judicial measures, such as the CJIP or CRPC (or any other negotiated agreement or any other similar form of transaction having the effect of terminating public proceedings). This broadening will be taken into account, as for sanctions and convictions, when this measure has been formulated by a judge in the bidder's

³⁸ **Annex 16:** AFD – Training material on preventing, detecting and combating Prohibited Practices - 20 June 2023.

country of registration, in the country where the Contract is carried out, in the context of the award or performance of a contract financed by the AFD or ordered by an institution of the European Union or by a competent authority in France in connection with Prohibited Practices, or in connection with any offence committed in the context of the award or performance of a contract. The limitation of the geographical scope of sanctions and final convictions is justified for operational reasons: the AFD wishes to ensure that it is able to obtain this information or have access to it via the search tools it uses to carry out the necessary checks to combat money laundering and the financing of terrorism. These changes are expected to be validated by the AFD's General Management and Procedures Committee during the first half of 2023.

This amendment to the Guidelines will be presented to the AFD's internal procedures committee in Q4 2023 and will be shared with the Working Group once it has been adopted.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 regarding enforcement of the foreign bribery offence

Text of recommendation 5(a):

5. Regarding the **foreign bribery offence**, the Working Group recommends that France:

(a) Continue its efforts to clarify, by all appropriate means, to prosecutors, investigators and judges that, contrary to the approach adopted in domestic bribery cases, evidence of foreign bribery under articles 435-3 CC et seq. does not require recourse to the case-law principle of a corruption pact, even for ease of establishing evidence; [Phase 3 recommendation 1.c. and Convention, Article 1, Comment 3; 2009 Recommendation, III.ii. and V]

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

According to constant case law dating back to a [decision of the Court of Cassation of 10 June 1948](#), it is very clear that the offence of domestic bribery and the offence of bribery of a foreign public official do not require proof of the existence of a "corruption pact". To establish these offences, it is sufficient to prove that the active briber offered a sum of money or that the passive briber requested the payment of a sum of money in exchange for the performance of an act. It is irrelevant whether or not the offer or request was accepted. Accordingly, attempted bribery is not specifically criminalised, since the acts that could correspond to this definition already constitute the offence of bribery itself.

This point was specifically reiterated in the [Circular of 2 June 2020 on international corruption](#), signed by the Minister of Justice and sent to all prosecutors, investigators and judges, which states that "it should be emphasised that, in order to be established, this offence - bribery of a foreign public official - does not require proof of the existence of a corruption pact".

In response to the recommendation of the OECD Working Group on Bribery in International Business Transactions, all judges in charge of cases involving bribery of foreign public officials have been reminded that it is not necessary to establish a corruption pact in order to punish this offence.

Accordingly, on 25 January 2023, the Directorate of Criminal Affairs and Pardons (DACG) organised

a seminar for all magistrates and practitioners in the field of international corruption. On this occasion, a member of the Court of Cassation clearly referred to this consistent case law on foreign bribery, recalling that "it is not necessary for the public official to have carried out their assignment for the offence of bribery to be constituted. This offence exists from the moment it is requested. There is bribery even when the recipient has anticipated the briber's agreement". The case law compiled for this occasion was distributed to all the magistrates who requested it.

In addition, the constituent elements of the bribery offence are regularly discussed during the specific in-service training provided by the National School for the Judiciary (ENM). During the course on bribery of foreign public officials held on 2 December 2022, all participants were reminded that the offence of bribery of foreign public officials does not require proof of the existence of a "corruption pact". This training course is permanently available to all magistrates on the National School for the Judiciary's online platform.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 5(b):

5. Regarding the **foreign bribery offence**, the Working Group recommends that France:

(b) Clarify by all appropriate means, to prosecutors, investigative judges and trial judges, that payments to third parties are covered by the foreign bribery offence under article 435-3 CC, of which they are a characteristic financial arrangement. [Phase 3 recommendation 1.c. and Convention, Article 1, Comment 3; 2009 Recommendation, III.ii. and V]

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

The [Circular of 2 June 2020 on international corruption](#), signed by the Minister of Justice and addressed to all magistrates, **specifically points out that** "according to a study carried out on the basis of 427 cases of foreign bribery involving legal persons and individuals belonging to countries that are signatories to the OECD Anti-Bribery Convention, in almost one out of two cases of international bribery, the kickbacks were paid or their payment was authorised by senior representatives of the company's management". Furthermore, according to the same study, intermediaries are involved in three out of four cases of international corruption (generally commercial agents, distributors or local brokers). **It is therefore important to consider prosecuting not only the employees directly involved in the bribery scheme, but also the managers and all individuals outside the company who were involved, in one way or another, in the process of committing the offence.** In this respect, it should be remembered that case law considers intermediaries ([Crim. 27 Nov. 2001, n°01-82.099](#) and [Crim. 19 Dec. 2001, n°01-81.495](#)) or legal advisers to be accomplices in active bribery if they knowingly provide information enabling a financial arrangement to be put in place to enable the payment of a hidden commission through a foreign company in order to conceal the commission of the offence ([Crim. 9 Nov. 1995, n°94-84.204](#)).

At the seminar held on 25 January 2023 for all seminar for all magistrates and practitioners in the field of international bribery, the representative from the Court of Cassation very clearly reiterated that [Article 432-11 of the French Criminal Code](#) and all the articles relating to corruption provide that it is irrelevant whether the bribe was paid to the bribee or to a third party, thus confirming the

case law of the Court of Cassation, which had previously ruled that "the offence of bribery does not presuppose that the funds were paid directly to the bribee rather than to a legal person managed by the bribee" ([Crim. 7 Feb. 2001, n° 00-82.710](#)).

In practice, judges punish payments by third parties on the grounds of complicity in foreign bribery.

For example, on 21 December 2018, the Paris Criminal Court convicted an individual who acted as an intermediary between TOTAL and the secretary of the son of the former Iranian president and director of a subsidiary of the National Oil Iranian Company. This intermediary had opened several bank accounts used to transfer sums paid by TOTAL and the Iranian leader. He was sentenced in absentia to 4 years' imprisonment for complicity in the active bribery of a foreign public official and an arrest warrant was issued for him. In a second case, on 3 October 2016, the Paris Criminal Court convicted an employee of the bribing company of complicity in active bribery after they had knowingly used their bank account to receive funds and had acted as an intermediary between the foreign public official and the director of the bribing company. He was given a 4-month suspended prison sentence and fined 10 000 euros. More recently, on 7 June 2022, the Paris Criminal Court convicted a foreign public official who was a technical adviser to the Ministry of Public Works of the Democratic Republic of Congo (DRC). The official had signed a business agreement with the bribing company to help it obtain contracts in Central African countries, particularly in the DRC, and had received commissions totalling 1 629 000 euros, which had been reinvested in purchasing property in Paris. The intermediary was found guilty of complicity in the bribery of a foreign public official and money laundering and sentenced to two years' imprisonment with an accompanying arrest warrant, and confiscation of the seized property and assets. A second public official managing the DRC's building and public works control office that awarded fraudulent public contracts worth a total of 5 500 393 euros and who received a commission of 215 000 euros, was found guilty of passive bribery of a foreign public official and laundering of corruption and sentenced to 18 months' imprisonment with an accompanying arrest warrant and confiscation of seized assets. In addition, many proceedings currently underway involve intermediaries who received commissions. For example, the EGIS AVIA case, in which a [CJIP](#) was accepted by the legal person and approved on 10 December 2019, involves an intermediary who received a commission of nearly 400 000 euros.

In addition, payments to third parties are also prosecuted under the offence of passive bribery or money laundering predicated on bribery of a foreign public official by a criminal gang.

For example, investigations carried out as part of a judicial inquiry revealed acts of passive bribery of a foreign public official committed by a member of the family of the President of Uzbekistan who had held public office. On 26 June 2019, the legal persons in question were prosecuted as part of a CRPC procedure for money laundering predicated on bribery of a foreign public official by a criminal gang by acquiring the assets in question on behalf of this individual. The assets were confiscated. The investigations into the individual were carried out by the Uzbek authorities, with France requesting the judgments issued.

Moreover, in a major case of bribery of a foreign public official and money laundering relating to contracts awarded in Algeria, the investigation established that a member of the family of a former Algerian minister and a Franco-Algerian businessman close to this minister were the economic beneficiaries of assets held through several Sociétés Civiles Immobilières (SCIs), including property complexes located in France, with a total estimated value of 21 000 000 euros for the former and 7 000 000 euros for the latter. They had received commissions paid by companies with a view to bribing various Algerian ministers and their relatives, as well as the directors of a state-owned Algerian company in charge of marketing hydrocarbons. Parallel proceedings were conducted in Italy, revealing that one of the accused had received more than 200 million euros in commissions for contracts worth more than 10 billion dollars. In France, property and securities worth more than 36 million euros were seized. This case is currently at the end of its judicial inquiry.

Lastly, a case was opened following a TRACFIN alert for money laundering predicated on breach of trust,

misappropriation of foreign public funds and bribery of a foreign public official, in which a property worth nearly 900 000 euros was seized that belonged to a SCI owned by the niece of an African leader and her husband.

An analysis of the applicable legislation, case law, guidelines sent to public prosecutors and a study of the practice of specialised magistrates show that payments to third parties are clearly identified as bribery offences by the French judicial authorities and are effectively prosecuted.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 6:

6. Regarding **enforcement of the foreign bribery offence**, the Working Group recommends that France take all necessary measures to enable the various components of the criminal justice system, including the entities set up since Phase 3, to pursue with the increase in the enforcement of the foreign bribery offence and, more particularly, to proactively and effectively detect, investigate, prosecute and sanction the individuals and legal persons who commit foreign bribery. [Convention, Article 5, 2009 Recommendation, II; III.ii; V; and Annex I.D.]

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

The increased involvement of the entire criminal justice system in enforcing the foreign bribery offence is reflected in significant statistics.

The French courts, and in particular the National Financial Prosecutor's Office (Parquet National Financier - PNF), are highly active in the fight against bribery of foreign public officials, with **70 cases under investigation, 49 by way of preliminary investigation and 21 by way of judicial inquiry.**

Since 1 January 2021, the PNF has opened 13 preliminary investigations into bribery of foreign public officials (9 since 1 September 2021).

Investigations combining the expertise of specialist investigators from the Central Office for Combating Corruption and Financial and Fiscal Offences (*Office central de lutte contre la corruption et les infractions financières et fiscales* - OCLCIFF) and that of specialist prosecutors and investigative judges have resulted in significant sanctions.

Since France signed the Convention, 22 cases have resulted in the definitive prosecution of **30 individuals** pour bribery of a foreign public official (CAPE), for bribery of a foreign public official, including 2 in the context of a CRPC (*comparution sur reconnaissance de culpabilité*, or plea bargain), and **31 legal persons**, including 3 in the context of a CRPC and 9 in the context of a *convention judiciaire d'intérêt public* (CJIP) for foreign bribery or complicity in this offence.

2022 was a particularly busy year as 3 CJIPs were signed and approved for bribery of a foreign public official.

07.07.2022	DORIS GROUP SA	PNF	Bribery of a foreign public official	Public interest fine of 3 463 491 euros. Three-year obligation to implement a compliance
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				programme
07.07.2022	IDEMIA France (OBERTHUR)	PNF	Bribery of a foreign public official	Public interest fine of 7 957 822 euros
30.11.2022	AIRBUS II (AIRBUS PHASE INSTRU)	PNF	Bribery of a foreign public official	Public interest fine of 15 856 044 euros + Compensation of 20 000 euros for damages suffered by the association ANTICOR + 1 euro in compensation for damages suffered by the association SHERPA
28.06.2023	TECHNIP Energies France & TECHNIP UK	PNF	Bribery of a foreign public official	Respective public interest fines of 54 146 000 euros and 154 792 000 euros

The start of 2024 will also be very busy as a case will be heard by the Criminal Court from 29 January to 1 February 2024 involving a foreign public official for passive bribery of a foreign public official, two intermediaries including a lawyer for complicity in passive bribery of a foreign public official, a legal person and three individuals for active bribery of a foreign public official. The case will be heard on 29, 30, 31 January and 1 February 2024. **This example is a perfect illustration of the fact that the French justice system is committed to prosecuting both legal persons and individuals, not only through legal settlements but also in the criminal courts.**

Three other cases of bribery of a foreign public official have already been heard or are in the process of being heard before the Criminal Court and will be tried between now and March 2024. In the first case, three individuals will be tried before the Criminal Court for bribery of a foreign public official and misuse of corporate assets, while the company will be tried for exporting war material or similar abroad without an export licence. In the second case, four individuals will be prosecuted for active bribery of a foreign public official, private bribery, misuse of corporate assets, use of forgeries and complicity in bribery of a foreign public official. In the third case, two individuals will be tried, the first for active bribery of a foreign public official and misuse of corporate assets, and the second for passive bribery of a foreign public official and concealment of misuse of corporate assets.

The December 2021 Phase 4 evaluation report on France welcomed the significant increase in the number of investigations opened and cases resolved since 2012. France is continuing on this dynamic upward trend, confirming the effectiveness of its repressive measures to combat bribery of foreign public officials.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(a):

7. Regarding the **means and resources, expertise and training** of investigators, prosecutors,

investigative judges and trial judges, the Working Group urges France to promptly take the necessary measures to:

(a) Ensure that (i) Sufficient resources are allocated to specialised investigative units, in particular to the OCLCIFF and the BNLCCF; and (ii) These units can recruit and retain the necessary officers with financial and economic expertise, including taking into account cost-of-living constraints in the most important economic centres. [Phase 3 recommendation 4.e; Convention, Article 5; 2009 Recommendation, II, V, Annex I.D.]

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

France is firmly committed to ensuring that sufficient resources are allocated to specialised investigative units, in particular to the OCLCIFF and the BNLCCF (National Brigade for Combating Corruption and Financial Crime), which is part of the former.

(i) Several recent initiatives are intended to help increase the resources allocated to these services:

Firstly, the reform of the national police operational reserve (Article 12 of Act no. 2022-52 of 24 January 2022 on criminal liability and internal security (RPSI)) now allows police officers serving in the national police operational reserve (retired police officers) to retain their status as judicial police officers or officials. As a result, although they are reservists, they will now be able to act as investigators. This will open up new possibilities for providing additional trained personnel.

Secondly, the function of investigation assistant was newly created by the Ministry of the Interior's Orientation and Programming Act of 24 January 2023. These new personnel will be able to carry out a certain number of formal investigative acts, thus allowing investigators to concentrate on the substance of cases. The first investigation assistants were set to arrive at the very end of 2023, and the first investigation assistant took up her post at the OCLCIFF on 16 October 2023.

Thirdly, the planned restructuring of a unit of the national police will lead to a proposal to allocate 22 additional posts in 2023 and 2024, in order to replenish the specialised financial services of the judicial police.

For 2023, despite the 12 additional positions opened at the OCLCIFF, very few candidates came forward and only 1 was selected.

In an innovative move, a post of specialist investigations attaché has been created to recruit a specialist in the analysis of financial data and public law on a contract basis. Recruitment was launched in May 2023 and is currently being finalised.

A trainee (enrolled in a Masters in international relations) has also been recruited for the period 2023-2024 to assist the Head of Office with strategic and international missions.

Given the difficulty of recruiting staff in Nanterre, the OCLCIFF can continue to rely on the financial crime units of the interdepartmental criminal investigation departments, which also have investigators specialising in financial matters and whose numbers have increased (425 on 1 June 2023 compared with 410 on 1 January 2023).

- (ii) The desire to increase the number of specialist investigators, as demonstrated by the number of positions opened in 2023, is being supported by efforts to improve training, so as to make these positions as attractive as possible and retain staff already in place.**

For example, the Ministry of the Interior's Sub-Directorate for Financial Crime (SDLCF) launched a review of the "Economic and Financial Investigations" qualification in 2021. This is a financial training course that can then be completed by more specialised and targeted training courses (public procurement, criminal assets, money laundering, bribery, etc.).

Other initiatives are underway to improve training:

- The SDLCF is part of the EMPACT programme (European Multidisciplinary Platform Against Criminal Threats), which is a programme for conducting police action in the form of multi-year cycles. Within this framework, the Member States, agencies and other European Union partners work closely together to tackle the main criminal threats, using joint operational actions to dismantle criminal networks, their structures and business models. EMPACT also supports structural actions, such as training, to enhance the efficiency of internal security forces. EMPACT has enabled the SDLCF to launch work to overhaul its training, which entered an active phase in the first half of 2023, with the effective employment since 1 March of two dedicated contract staff as project managers. Their priority is to define and implement the prerequisites for first-level training courses and to update the Financial Crime Investigator course.
- At the same time, the SDLCF has also embarked on a joint initiative with the General Directorate of the National Gendarmerie (DGGN) aimed at obtaining level 6 professional certification for training dedicated to combating financial crime. These courses will enhance the technical skills of staff assigned to departments dealing with financial crime, with a view to retaining them, and are spread over a total duration of 7 weeks, with two annual sessions. This certification, entitled Financial Crime Investigator, was validated by the publication in the Official Gazette of 22 August 2023 of the decree of 28 July 2023 revising the professional certifications issued by the Ministry of the Interior and Overseas Territories (MIOM) for a period of 5 years. They concern both the police ("Economic and financial crime investigator" training, which should involve 50 to 60 people a year) and the gendarmerie ("Economic and financial crime" training).

These training courses, recognised by the award of a State diploma (equivalent to three years' study in higher education), enhance the experience and professional achievements of specialist investigators and increase the attractiveness of these professions by offering officers recognition and new prospects.

The French authorities therefore consider that the objective of this recommendation has been achieved.

If no action has been taken to implement this recommendation, 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. Regarding the **means and resources, expertise and training** of investigators, prosecutors, investigative judges and trial judges, the Working Group urges France to promptly take the necessary measures to:

(b) (i) Strengthen the resources allocated to the PNF in terms of personnel and specialised expertise to enable it to deal effectively with foreign bribery cases; and (ii) Train a sufficient number of specialised prosecutors to provide the means, in the short and long term, to consolidate the progress that France made by creating this prosecution authority. [Phase 3 recommendation 4.e; Convention, Article 5; 2009 Recommendation, II, V, Annex I.D.]

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

To ensure that foreign bribery cases are dealt with effectively, France has set up a specialised prosecution service staffed by magistrates, registrars and specialist assistants, whose numbers have more than doubled in ten years.

- (i) **Strengthen the resources allocated to the PNF in terms of personnel and specialised expertise to enable it to deal effectively with foreign bribery cases.**

1. Concerning PNF magistrates:

The Ministry of Justice has set an ambitious target for the five-year period 2023-2027 of appointing more than 1,500 new magistrate over this period.

This target will be accompanied by the creation of more than 2,000 new posts for legal assistants (+400/year) and more than 100 specialist assistants (+20/year).

The centralised workforce of the National Financial Prosecutor's Office (Parquet National Financier - PNF) has been steadily increased since its creation in 2014. Initially set at 10 magistrates, this number doubled in eight years to reach 20 in 2022.

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022
No. of magistrates at the PNF on 01 September	10	15	16	17	17	17	17	18	20

2. Concerning the team providing assistance to magistrates**A- Specialist assistants:**

In recent years, there has been constant growth and consolidation of the teams assisting magistrates.

On 1 March 2017, there were 93 specialist assistants (SAs) working in the courts, 108 on 1 September 2020, 122 on 1 November 2021 and 137 on 1 May 2023, representing a 47.3% increase in the number of SAs since 2017.

Since 2016, the number of SAs assigned to the PNF has been increased by 4 additional staff to reach a total of 8 SAs on 1 September 2023. They come from various backgrounds:

- 2 SAs in taxation, former employees of major tax law firms,

- 1 SA in stock market matters, a former rapporteur at the Autorité des marchés financiers (AMF),
- 1 SA in accounting, former chartered accountant and statutory auditor,
- 1 SA in public procurement, former public procurement expert,
- 1 SA in civil service law, former lecturer,
- 1 SA in IT, from the DGFIP.
- 1 SA in seizures and confiscations

In addition, a SA in accounting/forensic accounting is currently being recruited, with a planned start date in 2024.

Year	2016	2017	2018	2019	2020	2021	2022	2023
No. of SAs at the PNF on 01/09	4	4	5	6	7	6	6	8

B- legal assistants:

There are two legal assistant positions at the PNF:

- 1 legal assistant specialised in competition law
- 1 general legal assistant

The French authorities therefore consider that this recommendation has been implemented.

- (ii) **Train a sufficient number of specialised prosecutors to provide the means, in the short and long term, to consolidate the progress that France made by creating this prosecution authority. [Phase 3 recommendation 4.e; Convention, Article 5; 2009 Recommendation, II, V, Annex I.D.]**

Training all magistrates involved in bribery of a foreign public official is a priority for the French authorities.

Over the years, the French National School for the Judiciary (ENM) has developed a wide range of training courses dedicated to the fight against economic and financial crime, in particular the fight against corruption and bribery of a foreign public official, for French magistrates, prosecutors and trial judges. The Continuing Education Sub-Directorate has developed sessions and training courses dedicated to or dealing with this topic.

These high-quality training courses, conducted by experts in the field and in particular by the National Financial Prosecutor's Office (PNF), are offered not only to French magistrates but also to foreign magistrates, specialist investigators and specialist assistants.

The aim is to train the entire criminal justice system in order to guarantee effective repressive measures in the fight against corruption.

In addition, the Ministry of Justice and its Directorate of Criminal Affairs and Pardons (DACG), in partnership with the ENM, organised a seminar on combating bribery of foreign public officials, which was held on 25 January 2023 and brought together all the professionals involved in this type of litigation in order to respond specifically to certain points raised by the OECD Working Group on Bribery.

I. Training of all members of the judiciary responsible for combating foreign bribery by the French National School for the Judiciary

I. A. Continuing education sessions organised by the ENM

1.A.1. Two sessions dedicated to the fight against corruption and organised each year by the ENM

A five-day session entitled "**Corruption: detection, prevention and repression**"³⁹. This session, open to 104 participants, including 60 magistrates, presents the various integrity violation offences, the people involved and the investigative strategies to be developed, and the new possibilities for prosecution and judgement through theoretical presentations, case studies and roundtable discussions on the effectiveness of our repressive arsenal and its position in the international system.

The programme includes:

- A talk on "Fighting corruption, a priority criminal policy after the adoption of the Sapin 2 Act. Current situation and future prospects. Olivier Christen, Director of Criminal Affairs and Pardons at the Ministry of Justice;
- A presentation on "The French Anti-Corruption Agency: organisation, missions, assessment 6 years after the Sapin 2 Act" by Charles Duchaine, Director of the AFA;
- A presentation of the case law of the Court of Cassation on integrity violations by Bertrand de Lamy, member of the Criminal Division of the Court of Cassation.

A five-day session entitled "**Corruption: detection, prevention and repression**" jointly organised by the ENM's international department and the AFA. **This session is open to foreign judicial investigators and magistrates** and includes a specific session on foreign bribery.

1.A.2. Specific modules on corruption in more general sessions

Several modules are occasionally devoted to fighting corruption in **the Criminal Justice Division's sessions on economic and financial crime**:

The "**Serious economic and financial crime: investigation techniques and strategy**" course⁴⁰, which provides a 5-day in-depth look at investigative methods and strategies in complex cases. A 2022 session was devoted to "The CJIP: the new prosecutor/lawyer/company relationship and the role of the AFA and the liability of legal persons" and another to "The international dimension of corruption" to enable a discussion on professional practices. **A specific session on the bribery of foreign public officials was organised and provided an opportunity to present the work of the OECD's Working Group on Bribery, the best practices identified by the WGB in its evaluation of France and areas for improvement. Documentation**⁴¹ summarising the French jurisdictional and legislative measures put

³⁹

Annex 17: ENM - Material for the anti-bribery session - 14 to 18 November 2022;

Annex 18: ENM - Material for the anti-bribery session - 5 to 09 December 2022;

Annex 19: ENM, AFA – Material for the anti-bribery session - 13 to 17 November 2023;

Annex 20: ENM – Material for the anti-bribery session- 4 to 8 December 2023.

⁴⁰ **Annex 21:** ENM material for training on serious economic crime - 28 November to 2 December 2022;

Annex 22: DACG - Presentation as part of training on serious economic crime - 2 December 2022;

Annex 23: ENM - Material for training on serious economic crime - 27 November to 1 December 2023.

⁴¹ **Annex 24:** Presentation of the fight against foreign bribery and the report on France by the OECD WGB - 25 January 2023.

in place to effectively combat foreign bribery and the recommendations made to France by the OECD, was given to all participants and is accessible to all French judges and prosecutors via the ENM's online training platform.

The cycle on "**Advanced study of economic and financial criminal law**"⁴² which consists of three three-day modules and is aimed at judicial officials wishing to specialise. In 2022, module 2 was devoted entirely to the fight against integrity violations, with a presentation of the rules governing public procurement, the monitoring of compliance with integrity in the audit of public accounts, the texts and case law applicable to integrity violations and investigation strategies.

Other sessions by the Criminal Justice Division present the mechanisms of the CJIP. For example, the two-day session on "**Alternative and Simplified Prosecutions** includes a segment on the CJIP, presented as an original alternative to prosecution, with a judge delegated by the French Anti-Corruption Agency. This session is open to 22 participants, including 18 magistrates. The session on the **corporate criminal liability**⁴³ also devotes half a day to the CJIP as a means of negotiated justice, and includes a section devoted to practical cases of financial negotiations in the context of a CJIP.

Since 2020, for the purpose of the **MAJ convention for magistrates, lawyers and legal experts**, the ENM, the EFB (French professional bar training school) and the AFJE (*Association française des juristes d'entreprise*) have joined forces to offer three cycles of three modules each open to 15 magistrates, 15 lawyers and 15 legal experts, enabling these professionals from different backgrounds to work together on common themes, based on case studies relating to business activity. The theme of corruption is one of the common threads running through the three cycles (negotiation, investigation and CSR), with a particular focus on internal investigations, judicial investigations and the CJIP. This innovative partnership offers an original vision of the fight against economic crime through the cross-fertilisation of views between the business world, the bar and the judiciary.

1.A.3. Annual training courses for all those involved in the anti-corruption criminal justice system

It should be noted that these training sessions are offered every year to French judicial officials, public prosecutors, investigative judges, trial judges and first and second instance judges, as well as to a wider public:

Approach to economic and financial law: 103 participants, including 76 magistrates, 10 gendarmes, 2 foreign magistrates, 2 specialist assistants, 5 administrative jurisdictions, 3 TRACFIN officials, 5 police officers;

In-depth economic and financial law: 61 participants, including 40 magistrates, 3 customs officers, 5 financial court magistrates, 3 gendarmes, 2 specialist assistants, 3 TRACFIN officials, 2 foreign magistrates, 3 police officers;

Serious economic and financial crime: investigation techniques and strategy: 31 participants, including 24 magistrates, 2 specialist assistants and 5 police officers;

Bribery: 104 participants, including 60 magistrates, 2 foreign magistrates, 2 officials from the Agency for the Collection and Management of Seized and Confiscated Assets (AGRASC), 3 customs officers, 10 gendarmes, 2 honorary magistrates, 5 consular judges, 10 police officers, 10 magistrates from financial jurisdictions;

The liability of legal persons: 53 participants, including 34 magistrates, 1 barrister, 2 financial court magistrates, 13 staff from the French Public Service Schools network, 1 customs officer, 2 temporary

⁴² **Annex 25:** ENM - Cycle on "Advanced study of economic and financial criminal law" - 20 to 22 June 2022;

Annex 26: ENM - Cycle on "Advanced study of economic and financial criminal law" - 21 to 23 June 2023.

⁴³ **Annex 27:** ENM - Session on corporate criminal liability from 21 to 23 September 2022;

Annex 28: ENM - Session on corporate criminal liability from 8 to 10 February 2023.

magistrates.

1.B. Distance learning courses on combating corruption and bribery of foreign public officials can be accessed at any time via the learning platform.

In 2022, an educational platform was created where all the support documents and material from all the sessions on economic and financial crime and bribery of foreign public officials is accessible to all magistrates.

The online training courses include the following: the fight against bribery of foreign public officials and the OECD Anti-Corruption Working Group , a summary of the case law of the Criminal Division of the Court of Cassation on integrity and corruption offered by a specialised adviser of the Court of Cassation, the fundamentals of public procurement law offered by the PNF and the Court of Auditors and passive bribery and trading in influence committed by persons holding public office offered by an advocate general at the Court of Cassation and the public prosecutor's office at the Court of Auditors.

1.C. Courses organised every year by the sub-directorate for continuing education

Every year, the ENM organises training courses to give magistrates a closer look at how the various players involved in the fight against corruption operate.

Since 2019, the ENM has been offering a 5-day group course at the AFA, which is repeated twice a year. The eight magistrates selected are given the opportunity to find out how this agency operates and its control methods.

In addition, the magistrates also have the opportunity to take part in individual practical placements with the OCLCIFI and all the various economic and financial crime units of the Paris Police Headquarters (Préfecture de Police), in order to find out how corruption offences are dealt with in practice by the investigative services.

1.D. Organisation of a seminar on corruption and organised crime

The fight against concessions that facilitate other forms of criminality, in particular drug trafficking, is at the heart of several inter-ministerial action plans, in particular the new French anti-corruption strategy. In order to provide a detailed analysis of this new phenomenon and to strengthen and co-ordinate the fight against it, the ENM will be organising a seminar in spring 2024, in conjunction with the French Anti-Corruption Agency and the Directorate of Criminal Affairs and Pardons, specifically devoted to the links between corruption and organised crime.

II. Organisation of a seminar on combating bribery of a foreign public official and the recommendations of the OECD Working Group on Bribery in International Business Transactions

This seminar organised by the Directorate of Criminal Affairs and Pardons and the French National School for the Judiciary⁴⁴, in collaboration with the PNF, brought together on 25 January 2023 all magistrates - the investigative, trial, first and second instance judges, specialised investigators and partners, in charge of litigation against bribery of foreign public officials, under the high patronage of the Attorney General at the Paris Court of Appeal, with the participation in particular of the President of the Judicial Court of Paris, in charge in particular of approving the CJIP signed by the PNF.

⁴⁴ **Annex 29:** Ministry of Justice and ENM - Organisation of a seminar on combating bribery of a foreign public official and the recommendations of the OECD Working Group on Bribery in International Business Transactions – 25 January 2023.

The two sessions provided an opportunity to take stock of the French legal and legislative framework for combating bribery of foreign public officials, and to discuss successes and areas for improvement, in line with the expectations of the OECD Working Group on Bribery.

Session 1: Specific features of investigations into foreign bribery: diversity of sources of reports and the challenges of international cooperation

9:45-10:30: Round Table 1 - How can we increase the number of investigations opened in light of the increased sources of foreign bribery detection?

Speakers: Jérôme SIMON, 1st Deputy Financial Prosecutor at the PNF;

Sophie DUCLOS, Prosecutor, Company Law and Audit Office, DACS

10:45-12:30: Round Table 2 – What strategies for international co-operation and the coordination of prosecutions with foreign authorities to enhance the effectiveness of investigations?

Speakers: Céline GUILLET, Deputy Public Prosecutor, PNF; Pascal GASTINEAU, Vice-President in charge of investigations, Paris Judicial Court; Olivier HUBAC, Project Director, Strategic Information and Economic Security Department (SISSE), Ministry of Finance; Guillaume HEZARD, Chief Superintendent of Police (OCLCIFE); Florence HERMITE, Justice Attaché, Washington;

14:00-14:30: Special focus - the case law of the Court of Cassation on foreign bribery

Speaker: Dominique PAUTHE, Adviser at the Court of Cassation

Session 2: Judicial resolution of foreign bribery cases

14h:00–16:15: Round Table 3 – The suitability of the CJIP - strengths and limits. What solutions can be found for a comprehensive judicial resolution of foreign bribery cases and the imposition of effective, proportionate and dissuasive penalties?

Speakers: Jean-François BOHNERT, National Financial Prosecutor; Stéphane NOEL, President of the Paris Judicial Court; Aude BURESI, Vice-President in charge of investigations at the Paris Judicial Court; Bénédicte de PERTHUIS, 1st Vice-President of the 11th and 32nd Correctional Chambers of the Paris Judicial Court;

16:30 – 17:00: Special focus – five-year review of the foreign bribery compliance programme

Speakers: Laetitia Felici, Judge seconded to the French Anti-Corruption Agency (AFA); Bertrand Brehier, Head of Banking and financial regulation, Société Générale Group

17:00 – 17:15 Closing by the DACG: the OECD evaluation - an opportunity to further develop the French system for combating foreign bribery

Speaker: Julien RETAILLEAU, Deputy Director, Specialised Criminal Justice Sub-Directorate, DACG

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(c):

7. Regarding the **means and resources, expertise and training** of investigators, prosecutors, investigative judges and trial judges, the Working Group urges France to promptly take the necessary measures to:

(c) Ensure that investigative judges and trial judges dealing with foreign bribery cases have: (i) The necessary resources, including specialist experts, to deal with them effectively and in a timely manner; and (ii) The necessary training for this purpose. [Convention, Articles 1 and 5; 2009 Recommendation, II, V, Annex I.D.]

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

- **Ensure that investigative judges and trial judges dealing with foreign bribery cases have: (i) The necessary resources, including specialist experts, to deal with them effectively and in a timely manner;**

The Ministry of Justice takes measures to ensure that investigative judges and trial judges have the necessary resources to deal effectively with foreign bribery cases.

1. Increasing the number of trial judges at the Judicial Court of Paris, investigative judges and criminal court judges handling cases of foreign bribery:

In 2019, the number of judges assigned to the Judicial Court of Paris' investigating department was 79. In 2021, this number has been increased to 81 investigating judges. One post was created in 2022, bringing the current number to 82, **3 more investigating judges than in 2016.**

It should be pointed out that the Ministry of Justice, and within it the Judicial Services Directorate, has no control over the appointment of criminal judges specialising in economic and financial matters or specialised inter-regional courts within the various courts. It falls within the organisational powers of the head of court, who organises his or her various departments and distributes the staff resources allocated to the different types of case.

The rotation order of the Paris court, which sets out the organisation of the court, stipulates that the 11th and 32nd correctional chambers, i.e. three sections, of the court have jurisdiction over "economic and financial litigation - offences under articles 704, 705 and 705-1 of the Code of Criminal Procedure". The current staffing of this department is as follows:

- 1 First Vice-President,
- 1 First Assistant Vice-President,
- 5 Vice-Presidents,
- 5 judges,
- 2 temporary judges (MTT) assigned mainly to these chambers but who may also be involved in other cases.

i.e. 14 judges assigned to hear this type of case.

The same analysis of the rotation order makes it possible to count the investigating judges "specifically responsible for investigating offences falling within the scope of Articles 704, 705 and 705-1 of the Code of Criminal Procedure", which include foreign bribery. The department is currently staffed as follows

- 1 First Vice-President in charge of investigations,

- 8 Vice-Presidents in charge of investigations,
- 1 investigative judge.

i.e. 10 investigating judges whose chambers are dedicated to this type of litigation.

2. Increasing the number of specialist assistants to support judges dealing with cases of foreign bribery:

Since 2016, the number of specialist assistants assigned to the Judicial Court of Paris has been increased by 7, bringing the total number of specialist assistants to 21 in 2023.

The number of economic and financial assistants assigned to the Judicial Court of Paris has almost doubled since 2016, reaching a total of 7 in 2023. They come from varied background: the national police force (3), the public finance department (2) and the national gendarmerie (1). Two additional assistants have specialist profiles, one in intellectual property and the other in cybercrime.

		Year							
		2016	2017	2018	2019	2020	2021	2022	2023
Number of SAs assigned to investigations at the Judicial Court of Paris on 01 September	Economic and financial	4	4	6	6	6	5	8	7
	Crimes against Humanity Unit	3	3	3	3	3	2	3	3
	Public health unit	5	5	6	5	5	4	6	6
	Cybercrime	2	3	3	1	2	2	3	3
	Terrorism	/	2	1	1	1	1	1	1
	JIRS - Junalco	/	/	/	/	/	/	/	1
Total number of SAs assigned to investigations at the Judicial Court of Paris on 01 September		14	17	19	16	17	14	21	21

The French authorities therefore consider that this recommendation has been implemented.

- **Ensure that investigative judges and trial judges dealing with foreign bribery cases have: The necessary training for this purpose [Convention, Articles 1 and 5; 2009 Recommendation, II, V, Annex I.D.]**

Training all judges involved in bribery of a foreign public official is a priority for the French authorities.

Over the years, the French National School for the Judiciary (ENM) has developed a wide range of training courses dedicated to the fight against economic and financial crime, in particular the fight against corruption and bribery of a foreign public official, for French magistrates, prosecutors and trial judges. The Continuing Education Sub-Directorate has developed sessions and training courses dedicated to or dealing with this topic.

These high-quality training courses, conducted by experts in the field and in particular by the National Financial Prosecutor's Office (PNF), are offered not only to French magistrates but also to foreign magistrates, specialist investigators and specialist assistants.

The aim is to train the entire criminal justice system in order to guarantee effective repressive measures in the fight against corruption.

In addition, the Ministry of Justice and its Directorate of Criminal Affairs and Pardons (DACG), in partnership with the ENM, organised a seminar on combating bribery of foreign public officials, which was held on 25 January 2023 and brought together all the professionals involved in this type of litigation in order to respond specifically to certain points raised by the OECD Working Group on Bribery.

I. Training of all members of the judiciary responsible for combating foreign bribery by the French National School for the Judiciary

I. A. Continuing education sessions organised by the ENM

1.A.1. Two sessions dedicated to the fight against corruption and organised each year by the ENM

A five-day session entitled "**Corruption: detection, prevention and repression**". This session, open to 104 participants, including 60 magistrates, presents the various integrity violation offences, the people involved and the investigative strategies to be developed, and the new possibilities for prosecution and judgement through theoretical presentations, case studies and roundtable discussions on the effectiveness of our repressive arsenal and its position in the international system.

The programme includes:

- A talk on "Fighting corruption, a priority criminal policy after the adoption of the Sapin 2 Act. Current situation and future prospects. Olivier Christen, Director of Criminal Affairs and Pardons at the Ministry of Justice;
- A presentation on "The French Anti-Corruption Agency: organisation, missions, assessment 6 years after the Sapin 2 Act" by Charles Duchaine, Director of the AFA;
- A presentation of the case law of the Court of Cassation on integrity violations by Bertrand de Lamy, member of the Criminal Division of the Court of Cassation.

A five-day session entitled "**Corruption: detection, prevention and repression**» jointly organised by the ENM's international department and the AFA. **This session is open to foreign judicial investigators and magistrates** and includes a specific session on foreign bribery.

1.A.2. Specific modules on corruption in more general sessions

Several modules are occasionally devoted to fighting corruption in **the Criminal Justice Division's sessions on economic and financial crime**:

- The "**Serious economic and financial crime: investigation techniques and strategy**" course, which provides a 5-day in-depth look at investigative methods and strategies in complex cases. A 2022 session was devoted to "The CJIP: the new prosecutor/lawyer/company relationship and the role of the AFA and the liability of legal persons" and another to "The international dimension of corruption" to enable a discussion on professional practices. A specific session on the bribery of foreign public officials was organised and provided an opportunity to present the work of the OECD's Working Group on Bribery, the best practices identified by the WGB in its evaluation of France and areas for improvement. Documentation summarising the French jurisdictional and legislative measures put in place to effectively combat foreign bribery and the recommendations made to France by the OECD, was given to all participants and is accessible to all French judges and prosecutors via the ENM's online training platform.
- The cycle on "**Advanced study of economic and financial criminal law**" which consists of three three-day modules and is aimed at judicial officials wishing to specialise. In 2022, module 2 was devoted entirely to the fight against integrity violations, with a presentation of the rules governing public procurement, the monitoring of compliance with integrity in the audit of public accounts, the texts and case law applicable to integrity violations and investigation strategies.

Other sessions by the Criminal Justice Division present the mechanisms of the CJIP. For example, the two-day session on "**Alternative and Simplified Prosecutions**" includes a segment on the CJIP, presented as an original alternative to prosecution, with a judge delegated by the French Anti-Corruption Agency. This session is open to 22 participants, including 18 magistrates. The session on the **corporate criminal liability** also devotes half a day to the CJIP as a means of negotiated justice, and includes a section devoted to practical cases of financial negotiations in the context of a CJIP.

Since 2020, for the purpose of the **MAJ convention for magistrates, lawyers and legal experts**, the ENM, the EFB (French professional bar training school) and the AFJE (*Association française des juristes d'entreprise*) have joined forces to offer three cycles of three modules each open to 15 magistrates, 15 lawyers and 15 legal experts, enabling these professionals from different backgrounds to work together on common themes, based on case studies relating to business activity. The theme of corruption is one of the common threads running through the three cycles (negotiation, investigation and CSR), with a particular focus on internal investigations, judicial investigations and the CJIP. This innovative partnership offers an original vision of the fight against economic crime through the cross-fertilisation of views between the business world, the bar and the judiciary.

1.A.3. Annual training courses for all those involved in the anti-corruption criminal justice system

It should be noted that these training sessions are offered every year to French judicial officials, public prosecutors, investigative judges, trial judges and first and second instance judges, as well as to a wider public:

- Approach to economic and financial law: 103 participants, including 76 magistrates, 10 gendarmes, 2 foreign magistrates, 2 specialist assistants, 5 administrative jurisdictions, 3 TRACFIN officials, 5 police officers;
- In-depth economic and financial law: 61 participants, including 40 magistrates, 3 customs officers, 5 financial court magistrates, 3 gendarmes, 2 specialist assistants, 3 TRACFIN officials, 2 foreign magistrates, 3 police officers;
- Serious economic and financial crime: investigation techniques and strategy: 31 participants, including 24 magistrates, 2 specialist assistants and 5 police officers;

- Corruption: 104 participants, including 60 magistrates, 2 foreign magistrates, 2 officials from the Agency for the Collection and Management of Seized and Confiscated Assets (AGRASC), 3 customs officers, 10 gendarmes, 2 honorary magistrates, 5 consular magistrates, 10 police officers, 10 magistrates from financial jurisdictions;
- The liability of legal persons: 53 participants, including 34 magistrates, 1 barrister, 2 financial court magistrates, 13 staff from the French Public Service Schools network, 1 customs officer, 2 temporary magistrates.

1.B. Distance learning courses on combating corruption and bribery of foreign public officials can be accessed at any time via the learning platform.

In 2022, an educational platform was created where all the support documents and material from all the sessions on economic and financial crime and bribery of foreign public officials is accessible to all magistrates.

The online training courses include the following: the fight against bribery of foreign public officials and the OECD Anti-Corruption Working Group , a summary of the case law of the Criminal Division of the Court of Cassation on integrity and corruption offered by a specialised adviser of the Court of Cassation, the fundamentals of public procurement law offered by the PNF and the Court of Auditors and passive bribery and trading in influence committed by persons holding public office offered by an advocate general at the Court of Cassation and the public prosecutor's office at the Court of Auditors.

1.C. Courses organised every year by the sub-directorate for continuing education

Every year, the ENM organises training courses to give magistrates a closer look at how the various players involved in the fight against corruption operate.

Since 2019, the ENM has been offering a 5-day group course at the AFA, which is repeated twice a year. The eight magistrates selected are given the opportunity to find out how this agency operates and its control methods.

In addition, the magistrates also have the opportunity to take part in individual practical placements with the OCLCIFI and all the various economic and financial crime units of the Paris Police Headquarters (Préfecture de Police), in order to find out how corruption offences are dealt with in practice by the investigative services.

1.D. Organisation of a seminar on corruption and organised crime

The fight against concessions that facilitate other forms of criminality, in particular drug trafficking, is at the heart of several inter-ministerial action plans, in particular the new French anti-corruption strategy. In order to provide a detailed analysis of this new phenomenon and to strengthen and co-ordinate the fight against it, the ENM will be organising a seminar in spring 2024, in conjunction with the French Anti-Corruption Agency and the Directorate of Criminal Affairs and Pardons, specifically devoted to the links between corruption and organised crime.

II. Organisation of a seminar on combating bribery of a foreign public official and the recommendations of the OECD Working Group on Bribery in International Business Transactions

This seminar organised by the Directorate of Criminal Affairs and Pardons and the French National School for the Judiciary, in collaboration with the PNF, brought together on 25 January 2023 all magistrates - the investigative, trial, first and second instance judges, specialised

investigators and partners, in charge of litigation against bribery of foreign public officials, under the high patronage of the Attorney General at the Paris Court of Appeal, with the participation in particular of the President of the Judicial Court of Paris, in charge in particular of approving the CJIP signed by the PNF.

The two sessions provided an opportunity to take stock of the French legal and legislative framework for combating bribery of foreign public officials, and to discuss successes and areas for improvement, in line with the expectations of the OECD Working Group on Bribery.

Session 1: Specific features of investigations into foreign bribery: diversity of sources of reports and the challenges of international cooperation

9:45-10:30: Round Table 1 - How can we increase the number of investigations opened in light of the increased sources of foreign bribery detection?

Speakers: Jérôme SIMON, 1st Deputy Financial Prosecutor at the PNF;

Sophie DUCLOS, Prosecutor, Company Law and Audit Office, DACS

10:45-12:30: Round Table 2 – What strategies for international co-operation and the coordination of prosecutions with foreign authorities to enhance the effectiveness of investigations?

Speakers: Céline GUILLET, Deputy Public Prosecutor, PNF; Pascal GASTINEAU, Vice-President in charge of investigations, Paris Judicial Court; Olivier HUBAC, Project Director, Strategic Information and Economic Security Department (SISSE), Ministry of Finance; Guillaume HEZARD, Chief Superintendent of Police (OCLCIFE); Florence HERMITE, Justice Attaché, Washington;

14:00-14:30: Special focus - the case law of the Court of Cassation on foreign bribery

Speaker: Dominique PAUTHE, Adviser at the Court of Cassation

Session 2: Judicial resolution of foreign bribery cases

14h:00–16:15: Round Table 3 – The suitability of the CJIP - strengths and limits. What solutions can be found for a comprehensive judicial resolution of foreign bribery cases and the imposition of effective, proportionate and dissuasive penalties?

Speakers: Jean-François BOHNERT, National Financial Prosecutor; Stéphane NOEL, President of the Paris Judicial Court; Aude BURESI, Vice-President in charge of investigations at the Paris Judicial Court; Bénédicte de PERTHUIS, 1st Vice-President of the 11th and 32nd Correctional Chambers of the Paris Judicial Court;

16:30 – 17:00: Special focus – five-year review of the foreign bribery compliance programme

Speakers: Laetitia Felici, Judge seconded to the French Anti-Corruption Agency (AFA); Bertrand Brehier, Head of Banking and financial regulation, Société Générale Group

17:00 – 17:15 Closing by the DACG: the OECD evaluation - an opportunity to further develop the French system for combating foreign bribery

Speaker: Julien RETAILLEAU, Deputy Director, Specialised Criminal Justice Sub-Directorate, DACG

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 **sanctions and confiscation**, the Working Group recommends that France:

(a) Ensure that the sanctions imposed in practice on individuals convicted of foreign bribery are effective, proportionate and dissuasive in accordance with Article 3 of the Convention. [Phase 4 recommendation 3.a.ii.; Convention, Article 3(1)]

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

The circular of 2 June 2020 signed by the Minister of Justice and sent to all French public prosecutors' offices stresses the importance of prosecuting legal persons and individuals, including intermediaries who are involved in nearly 3 out of every 4 cases of international bribery, by punishing them with effective, proportionate and dissuasive sanctions, in accordance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the recommendations of the WGB.

The circular encourages public prosecutors to impose sanctions commensurate with the seriousness of the offence and points out that individuals guilty of active or passive foreign bribery are liable to a prison sentence of up to 10 years, in addition to a fine of 1 million euros, which can be increased to double the proceeds of the offence. In the case of trading in the influence of a foreign public official, the penalties are 5 years' imprisonment and a fine of 500 000 euros, which can also be increased to double the proceeds of the offence. Additional sanctions may also be imposed, including a ban on civic and civil rights, a ban on carrying out the professional activity in connection with which the offence was committed, the posting/distribution of the decision handed down, and the confiscation of seized assets.

The French judicial authorities are committed to prosecuting and convicting not only legal persons guilty of bribery of foreign public officials, but also individuals.

As a result, 30 individuals have been convicted in foreign bribery cases. Recent convictions include:

- the conviction on 5 April 2022, in a case of foreign bribery, of an individual for laundering of aggravated tax evasion proceeds and misuse of corporate assets, under *comparution sur reconnaissance préalable de culpabilité* (CRPC), which entails an appearance before the court after recognising one's guilt, to a suspended sentence of 3 years' imprisonment and confiscation of 1 million euros from accounts held in Luxembourg, following a settlement with the tax authorities under which the individual concerned paid 4.9 million euros in evaded duties and additional sanctions;
- the conviction of 3 individuals by the criminal court on 7 June 2022, the first for complicity in foreign bribery and money laundering to a sentence of 2 years' imprisonment with issuance of an arrest warrant, confiscation of two properties worth nearly 2 million euros; the second for foreign bribery to a suspended sentence of 3 years' imprisonment and a fine of 30 000 euros and the third for foreign bribery and laundering of the proceeds of corruption to a sentence of 18 months' imprisonment with issuance of an arrest warrant and confiscation of the assets in 2 securities accounts amounting to nearly 150 000 euros. As this last person has lodged an appeal against the judgement, a new hearing will be held in autumn 2023;
- the conviction on 12 September 2023, in a case of foreign bribery, of an individual for complicity in foreign bribery, misuse of corporate assets and forgery to a sentence, via the CPRC procedure,

to a suspended sentence of 12 months' imprisonment and a fine of 100 000 euros, of which 60 000 euros was suspended.

An analysis of the convictions of individuals for foreign bribery by the French courts reveals a particularly strong progression, demonstrating that the Ministry of Justice's criminal policy directives, coupled with increased awareness and training of all the relevant magistrates, have led to better understanding and prosecution of this offence. The prison sentences handed down - accompanied, if necessary, by an arrest warrant - systematically accompanied by fines and the confiscation of very high value sums and properties corresponding to the proceeds of the offences are particularly effective, proportionate and dissuasive in accordance with article 3 of the Convention.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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. Regarding **sanctions and confiscation**, the Working Group recommends that France:

(b) Take the necessary steps to ensure that legal proceedings make full use of the confiscation measures provided for in law for both natural and legal persons, and in particular: (i) Ensure that magistrates and investigators adopt a more proactive approach to the seizure and confiscation of the instrument and proceeds of foreign bribery offences or assets of equivalent value; (ii) Conduct awareness-raising activities among magistrates and investigators on the importance of confiscating the proceeds of foreign bribery offences (especially when the perpetrator is a legal person, including outside the CJIP framework); and (iii) Develop guidelines on methods for quantifying the proceeds of foreign bribery offences (outside the CJIP framework). [Phase 3 recommendation 3.c; Convention, Article 3(3)]

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

- (i) **Ensure that magistrates and investigators adopt a more proactive approach to the seizure and confiscation of the instrument and proceeds of foreign bribery offences or assets of equivalent value;**

One of the main aims of the successive reforms^[1] adopted by France since 2010 has been to adopt a more asset-based approach to investigations by extending the scope of seizure beyond assets owned by the person prosecuted or convicted, and the scope of confiscation beyond assets linked solely to the offence committed.

In application of [Article 131-21 of the Criminal Code](#), confiscation applies in particular to:

- the object or direct or indirect product of the offence (Article 131-21, para. 3), wherever it may be found, including an unindicted third party and except where the property is likely to be returned to the victim;
- the instruments used to commit the offence or which were intended to be used to commit the offence, of which the convicted person is the owner or, subject to the rights of the owner in good faith, of which he or she has free use (Article 131-21, para. 2).

Specific provisions relating to money laundering in connection with foreign bribery extend the scope of

confiscation beyond property directly or indirectly linked to the offence under [Article 131-21 of the Criminal Code](#).

In this respect, [Article 324-7 of the Criminal Code](#) provides for a penalty known as general confiscation, which authorises the confiscation of all or part of the assets belonging to the offender or of which he has free use (Article 131-21 paragraph 6 of the Criminal Code) without having to provide prior proof of the link between the asset and the offence and without having to determine the precise value of the proceeds of the offence. The [Act of 6 December 2013](#) extended this penalty to legal persons ([Article 324-9 of the Criminal Code](#)). However, the judge is required to give reasons for his or her decision, taking into account the seriousness of the offence, the personality of the offender and his or her personal circumstances, as well as the proportionality of the infringement of the interested party's property rights.

In addition, in the case of a crime or offence punishable by at least five years' imprisonment and having procured a direct or indirect profit, [Article 131-21 para. 5 of the Criminal Code](#) provides a mechanism for the presumption of the unlawful origin of movable or immovable assets that may be subject to confiscation. This mechanism therefore effectively applies to money laundering. This reverses the burden of proof, since confiscation can be ordered for assets for which the person concerned has not been able to prove the origin, i.e. that they were acquired with legal funds.

All the magistrates and investigators in charge of foreign bribery cases have taken full advantage of these extremely broad possibilities for seizure and confiscation, and there is now a consensus that these measures are an essential part of the law enforcement strategy to combat corruption and the laundering of foreign bribery.

In this respect, the Ministry of Justice has been pursuing for several years now, a proactive criminal law policy on seizures and confiscations, notably through its criminal policy circulars and dispatches, with the aim of encouraging prosecutors to think in terms of assets, both at the time of conducting an investigation and at the hearing stage.

The [DACG dispatch of 11 December 2020](#) on the fight against money laundering calls on public prosecutors to be proactive in seizures and confiscations so that the assets component of investigations is considered for any act of money laundering that has generated a significant profit. In particular, it is suggested that short, dematerialised channels be set up for transmitting reports to the TRACFIN financial intelligence unit to enable investigating authorities to quickly seize the bank accounts of so-called “ephemeral” companies. The circular also reiterates the importance of referring cases to the inter-ministerial investigation groups (GIR) for asset investigation purposes, to facilitate the rapid identification of assets to be seized with a view to confiscation.

The [circular on criminal policy in the fight against international corruption of 2 June 2020](#) expressly reiterates the need to confiscate the proceeds of foreign bribery. The circular invites public prosecutors to carry out systematic asset investigations in order to identify the proceeds of the offence and, more broadly, the assets of the defendants, whether in France or abroad.

The [dispatch of 26 March 2021 on improving the system of seizures and confiscations and the use of pre-judgment sales](#) reiterated the importance of this procedure, which should be considered systematically when the conditions for its implementation are met and it appears appropriate in view of the value of the asset and the cost of maintaining the seizure.

Lastly, the [circular of 03 March 2022 on the handling of proceedings involving Russian interests in the context of international sanctions against the Russian Federation](#), and the [Supplementary Dispatch of 27 April 2022 on the prosecution of breaches or circumvention of asset freeze measures imposed in the context of international sanctions against the Russian Federation](#) once again stressed the importance of

using seizure and confiscation mechanisms in the fight against money laundering.

The Ministry of Justice's proactive criminal law policy on the seizure and confiscation of the instruments and proceeds of transnational bribery has produced meaningful results, particularly in so-called "ill-gotten gains" cases.

In a case that was definitively judged on 9 September 2021 by the Paris Court of Appeal on charges including laundering by a criminal gang of misappropriation of public funds and tax evasion, a former Syrian dignitary was ordered to forfeit all French and British assets attributed to him, representing a cumulative value estimated in 2014 at more than 300 million euros.

In addition, a dignitary from Equatorial Guinea was convicted by the Paris Court of Appeal on 10 February 2020 on charges of laundering of misuse of corporate assets, misappropriation of public funds and breach of trust, and all the assets seized, including a property in Paris valued at 150 million euros, furniture and works of art, and seventeen luxury vehicles, were confiscated.

In addition, as part of a judicial inquiry opened at the Judicial Court of Paris on 3 January 2011 against Gabonese dignitaries in relation to charges of concealment of corruption, misappropriation of public funds, complicity in laundering of misappropriation of public funds and laundering of corruption, many seizures were made, including the seizure of a private mansion in Neuilly-sur-Seine on 20 June 2022 for a total of 5.2 million euros.

The French authorities therefore consider that this recommendation has been implemented.

- (ii) **Conduct awareness-raising activities among magistrates and investigators on the importance of confiscating the proceeds of foreign bribery offences (especially when the perpetrator is a legal person, including outside the CJIP framework);**

In addition to the dispatches and circulars on criminal policy prescribing a systematic and proactive approach to the seizure of criminal assets, such as those mentioned above, **France has also set up an agency specifically dedicated to the management of assets seized and confiscated on French territory: the Agency for the Collection and Management of Seized and Confiscated Assets (AGRASC)**, created by [Act No. 2010-768 of 9 July 2010 \(Articles 706-159 to 706-165 of the Code of Criminal Procedure\)](#) to facilitate seizure and confiscation in criminal matters, in the form of a public administrative body under the joint supervision of the Minister of Justice and the Minister responsible for the budget.

In addition to managing seized assets, AGRASC has a general role in assisting, advising and guiding prosecutors in seizure and confiscation matters.

AGRASC's involvement with prosecutors has been strengthened by the creation of regional branches. After Lyon, Marseille, Rennes and Lille, new branches were opened on 1 April 2023 in Fort-de-France, shared with Paris, as well as in Nancy and Bordeaux. These regional offices offer courts a high-quality, local service to help them optimise the processing of seized assets and dynamically manage sealed evidence within the courts. Since their opening in March 2021, the results of these branches have been extremely positive and AGRASC has noted that the courts involved are generally in favour of these regional branches and that, thanks to the presence of these branches, the criminal policy on seizures and confiscations has been given a real boost.

This desire to promote seizures and confiscations has also been demonstrated by the revision in 2021, in collaboration with AGRASC, of the [guide to seizures and confiscations](#), an educational tool that has been very popular with all those working in the field. This guide, in the form of fact sheets on specific topics,

is intended to be regularly updated in line with changes in legislation and case law, and is available to all magistrates on the intranet site of the Directorate of Criminal Affairs and Pardons. It was also supplemented on 27 June 2023 by the publication of the [guide to the seizure and confiscation of digital assets](#).

The dissemination of best practices is central to the issue of the effectiveness of the national criminal seizure and confiscation system. Examples include the distribution of templates for criminal seizures, the systematic inclusion of asset values in case files and the submission of written confiscation orders to the court.

The appointment of seizure-confiscation contacts in each jurisdiction by the [dispatch of 11 April 2018](#) is designed to address these systemic difficulties while making the process more dynamic and secure. These contacts will therefore take on the role of conveying technical and practical information and information on case law produced by the AGRASC and the DACG.

In addition, as part of the ongoing training of members of the judiciary, the ENM offers a number of courses specifically related to the seizure and confiscation of criminal assets:

- Detection, identification, seizure and confiscation of criminal assets - introduction⁴⁵ (2-day course) for magistrates, specialist assistants, temporary magistrates, foreign magistrates, court-appointed honorary magistrates and specialists (in particular investigators)
- Detection, identification, seizure and confiscation of criminal assets - advanced training⁴⁶ (2 days) for magistrates, specialist assistants and specialists (in particular investigators)
- Financial crime in Europe: seizure and confiscation of assets (2-day course) for European judges, organised by the European Judicial Training Network.

The French authorities therefore consider that this recommendation has been implemented.

- (iii) **Develop guidelines on methods for quantifying the proceeds of foreign bribery offences (outside the CJIP framework). [Phase 3 recommendation 3.c; Convention, Article 3(3)]**

France has all the tools it needs to ensure that the instrument and proceeds of bribery of a foreign public official, or assets of equivalent value to those proceeds, can be seized and confiscated or that pecuniary penalties of comparable impact can be imposed.

The [circular on criminal policy in the fight against international corruption of 2 June 2020](#) clearly states that the asset-based approach to foreign bribery investigations must cover all types of proceeds of foreign bribery: bribes received by the recipient, kickbacks received by the briber and benefits derived from the bribery by the briber, including the legal persons on whose behalf the bribes were paid.

The importance and necessity of quantifying the proceeds of the foreign bribery offence is also reflected in the seizure and confiscation activities of the judiciary. In the fight against corruption, the specific criminal policy circulars issued since 2020 regularly reiterate the priority that must be given to the

⁴⁵ **Annex 30:** ENM – Training programme on the detection, identification, seizure and confiscation of criminal assets - 17 and 18 April 2023.

⁴⁶ **Annex 31:** ENM – Advanced training programme at the ENM on the detection, identification, seizure and confiscation of criminal assets – 6 and 7 October 2022; **Annex 32:** ENM - Advanced training programme at the ENM on the detection, identification, seizure and confiscation of criminal assets – 5 and 6 October 2023.

identification, seizure and confiscation of criminal assets.

Similarly, the [Minister of Justice's General Criminal Policy Circular of 20 September 2022](#) reiterated the importance of pursuing a pro-active policy of seizure and confiscation of criminal assets, relying in particular on the services of reference magistrates and, where appropriate, specialised assistants.

In addition to the circulars, **the guide to seizure and confiscation drawn up by the Ministry of Justice** devotes a section to the development of a strategy for seizing the proceeds of offences.

Finally, **AGRASC**, in its assistance role, provides invaluable and operational assistance to members of the judiciary in office - public prosecutors, investigative judges, criminal court judges - on how to proceed with seizure and confiscation. If necessary, AGRASC staff are able to advise these officials on methods for calculating the proceeds of offences, particularly corruption offences.

Furthermore, while the PNF's guidelines, which are extremely specific on the issue of calculating the benefits derived from bribery, were drafted with a view to setting up CJIPs, these guidelines are just as valid and transposable for calculating the direct or indirect proceeds outside the CJIP framework with a view to seizure or confiscation at the hearing.

As regards the definition of the proceeds of the offence, it should be remembered that [Article 131-21 para. 3 of the Criminal Code](#) provides for the possibility of confiscating any asset that represents a direct or indirect proceed of the offence. In terms of the strategy for seizing the proceeds of foreign bribery, the choice of the type of proceed - direct or indirect - has some major advantages:

- a high chance of conversion to confiscation at the substantive hearing;
- the absence of a proportionality check, confirmed by the Criminal Chamber of the Court of Cassation ([Cass. Crim. 29 January 2020, no. 17-83.577](#), [Cass. Crim. 18 March 2020, no. 19-82.978](#); [Cass. Crim. 12 June 2019, no. 18-83.396](#));
- non-restitution when the court does not rule on the fate of the seized assets ([Article 41-4 of the Code of Criminal Procedure](#)).

[Article 131-21 of the Criminal Code](#) refers to proceeds without defining them in paragraph 3: "(...) [the penalty of confiscation] *also applies to all assets that are the object or direct or indirect product of the offence*". The concept of the **proceeds of an offence** has therefore been developed in the case law of the Court of Cassation.

Article 2 of [Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union](#), transposed into French law by [Act No. 2016-731 of 3 June 2016](#), defines proceeds as "*any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits*".

The definition is broad and equates the proceeds of the offence with the economic benefit or enrichment derived from criminal offences, i.e. what the illegal acts have produced, whether in the form of funds derived directly from the offence or from subsequent investments. The Court of Cassation regularly distributes the letter from the Criminal Division to all judges in France that sets out important decisions on calculating the proceeds of the offence and, consequently, on seizure and confiscation on this point. The state of the law and the applicable rules are set out in the guide to seizure and confiscation. For example, money obtained from drug trafficking or cash obtained from the illegal operation of slot machines as part of a pub business may be seized as direct proceeds of an offence^[2]. The indirect proceeds of the offence are intended to cover all forms of enrichment likely to be linked to the perpetration of the

offence. This is the case of the house belonging to the convicted offender, where the materials used for its construction and the purchase of the land on which it stands were financed by illicit funds derived from drug trafficking.^[3] or the paintings acquired with funds from fraud^[4]. In the same way, the wealth that these assets have made it possible to obtain, such as rent from the lease of a building acquired with funds of illicit origin, constitutes indirect proceeds. In the case of tax evasion, the indirect proceeds of the offence are the savings made as a result of the evasion, i.e. the amount of tax evaded.^[5]

The French authorities therefore consider that the objective of this recommendation has been achieved.

^[1] The most recent reforms include: [Act No. 2021-1031 of 4 August 2021 on solidarity-based development and the fight against global inequalities](#) which created a mechanism for the restitution of so-called "ill-gotten" assets to dispossessed populations, under which the proceeds of assets confiscated in so-called "ill-gotten gains" cases by foreign leaders are to be used to finance cooperation and development initiatives for the benefit of the populations of the countries concerned; [Act No. 2021-1729 of 22 December 2021 on confidence in the judiciary](#) and [Act No. 2022-299 of 2 March 2022 on combating bullying at school](#) which amended Article 131-21 of the Criminal Code to strengthen the rights of bona fide third parties in the event of a proposed confiscation of an asset.

^[2] [Cass. Crim. 9 March 2011, No. 10-82.319](#)

^[3] [Cass. Crim. 27 April 2000, No. 99-84.559](#)

^[4] [Cass. Crim. 25 January 2006, No. 05-82.626](#)

^[5] [Cass. Crim. 3 April 2019, No. 18-83.052](#)

If no action has been taken to implement this recommendation, 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. Regarding **investigations and prosecutions**, the Working Group recommends that France:

(a) Clarify in law that reporting information, at least in relation to foreign bribery cases: (i) meets clearly defined criteria; and (ii) is limited to cases that enable the Minister of Justice to monitor the implementation of the criminal policy, for which the Minister is responsible and accountable to parliament, as opposed to public prosecution, which is conducted by the National Public Prosecutor; and about which the Minister of Justice may not request any information on individual cases from the public prosecutors outside the above-mentioned criteria and purpose; [Convention, Article 5, 2009 Recommendation, V and Annex I.D.]

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

If no action has been taken to implement this recommendation, 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:

Reporting information is intended to enable the Government and the Ministry of Justice to exercise their prerogatives under Article 20 of the Constitution and Article 30 of the Code of Criminal Procedure. In particular, it is the responsibility of the Directorate of Criminal Affairs and Pardons, to which the reports are sent by the Public Prosecutor's Offices and under the authority of the Minister of Justice, to oversee

the preparation and evaluation of criminal policies, to participate in inter-ministerial public policies relating to criminal matters, to lead networks involving partner countries, to promote judicial co-operation and to make the necessary changes to legislation.

- (i) **Clarify in law that reporting information, at least in relation to foreign bribery cases: (i) meets clearly defined criteria.**

The criteria for reporting information to the Ministry of Justice are clearly defined in the Act of 25 July 2013, codified in Article 30 of the Code of Criminal Procedure, which states that "the Minister of Justice shall implement the criminal policy determined by the Government. He shall ensure that it is applied consistently throughout the Republic. To this end, he shall issue general instructions to the magistrates of the Public Prosecutor's Office. **He may not issue instructions in individual cases.** Each year, he shall publish a report on the application of the criminal policy determined by the Government, specifying the conditions of implementation of this policy and the general instructions addressed. This report is sent to Parliament. It may give rise to a debate in the National Assembly and the Senate".

Information reported to the Ministry's departments and specifically to the Directorate of Criminal Affairs and Pardons, to which the reports from the public prosecutor's offices are sent, **are not systematically forwarded to the Minister of Justice.** In addition, pursuant to [Article 2-1 of Decree No. 59-178 of 22 January 1959](#) relating to the powers and responsibilities of ministers, **a deferment mechanism** with communication to the Prime Minister's Office, makes it possible to **prevent and avoid any risk of conflict of interest** with regard to matters for which the minister concerned considers that he or she should not exercise his or her powers and responsibilities.

With regard to cases of foreign bribery in particular, the information reporting system provides the Directorate of Criminal Affairs and Pardons with **concrete information enabling it to define a proactive criminal prosecution policy**, and in particular to:

- **identify the difficulties that arise in practice** in order to determine the legislative changes required, and to propose supporting tools and measures;
- identify best practice in certain jurisdictions, analyse it and disseminate it throughout the country by means of circulars on criminal policy;
- **evaluate the efficiency of the judicial framework** for handling cases and the effectiveness of proceedings;
- **report on developments in procedures, in particular to the OECD Working Group on Bribery;**
- **facilitate international mutual assistance.**

The guarantees set out in the Act of 25 July 2013 and the rules derived therefrom are intended to ensure that there is no impact, even indirect, on procedures. They are regularly reiterated and expanded upon in the [Circular of 31 January 2014](#) and, more recently, **in the dispatch of 3 March 2021, which is specifically aimed at reducing the number of information reports:**

- the reports drawn up by the public prosecutor's offices on individual cases concern only the procedural steps that **have been taken**: the information thus relates only to steps after they have been taken, never to current or future steps;
- no procedural records may be transmitted;
- the **analytical nature of reporting information** is favoured in accordance with the purposes described above, in order to facilitate the identification of the overall difficulties raised by the procedure or the criminal issues involved;

- and above all, the reporting of this information— whether in a specific report or as part of the annual criminal policy report that the Public Prosecutor sends to the Minister of Justice – is subject to the rule laid down by law **prohibiting any instructions from the Minister of Justice in individual cases.**

The [Circular of 2 June 2020](#) on criminal policy in the fight against international corruption reiterated that in order for the Ministry of Justice to be able to play a leading role in ensuring that the Public Prosecutor's Office takes ownership of this type of case and that France is able to meet its international commitments in the fight against foreign bribery, cases of foreign bribery are reported to the Directorate of Criminal Affairs and Pardons, without this information being systematically communicated to the Minister.

The French authorities therefore consider that the objective of this recommendation has been achieved.

- (ii) **Clarify in law that reporting information, at least in relation to foreign bribery cases is limited to cases that enable the Minister of Justice to monitor the implementation of the criminal policy, for which the Minister is responsible and accountable to parliament, as opposed to public prosecution, which is conducted by the National Public Prosecutor; and about which the Minister of Justice may not request any information on individual cases from the public prosecutors outside the above-mentioned criteria and purpose; [Convention, Article 5, 2009 Recommendation, V and Annex I.D.]**

For corruption cases that do not involve foreign public officials, as with all other types of litigation, reporting information is not systematic and its sole purpose is to enable the Ministry to establish a criminal policy that is best suited to each case. It is up to the public prosecutors' offices to decide whether these cases should be reported to the Ministry of Justice.

It is the analysis of this information that enables the Ministry of Justice to make all the necessary improvements to the effectiveness of the law enforcement system in place and to give the most accurate and precise picture possible of the way in which cases are handled by the judicial authorities as part of the international assessments of France in this field.

The frequency, level of detail and timing of information feedback is decided by the PNF and ultimately by the Paris Public Prosecutor's Office, which assesses whether it is necessary or appropriate in the light of the aforementioned criteria and determines its content in the light of the need to preserve the confidentiality of investigations.

On 14 September 2021, the Constitutional Council examined this system and confirmed that the reporting of information, as set out in the legislation (Articles 30, 35, 39-1 of the Code of Criminal Procedure), ensured a balanced respect for the independence of the judiciary and the Government's prerogatives under Article 20 of the Constitution with regard to the implementation of criminal policy ([Decision No. 2021-927 QPC](#)).

The French authorities therefore consider that the objective of this recommendation has been achieved.

Text of recommendation 9(b):

9. Regarding **investigations and prosecutions**, the Working Group recommends that France:

(b) Complete as soon as possible the necessary reforms, including the constitutional reforms initiated in 2013 and 2019 to provide the Public Prosecutor's Office with the statutory guarantees needed to carry out its duties with all the independence necessary for the proper functioning of the justice system and to protect

prosecutors from any influence or the appearance of influence from the political authorities, in particular with regard to combating foreign bribery. [Convention, Article 5, 2009 Recommendation, V and Annex I.D.]

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

If no action has been taken to implement this recommendation, 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:

Firstly, it should be noted that under the terms of [Organic Law 2016-1090 of 8 August 2016](#) appointments of public prosecutors are now subject to the prior opinion of the Conseil supérieur de la magistrature (CSM or Supreme Council of Magistracy) and are no longer included in the list of positions appointed by the Council of Ministers.

As part of the constitutional reform initiated in 2013, a constitutional bill was adopted in identical terms by the two chambers on 26 April 2016, giving the CSM disciplinary powers over prosecutors and making the proposed appointments of all prosecutors subject to the CSM's assent. This bill was not submitted to Congress.

A new constitutional reform bill "for a renewal of democratic life" was tabled on 29 August 2019 (No. 2203) but was not pursued, due notably to the context of the health crisis linked to the Covid pandemic.

Finally, the independence of prosecutors in France is guaranteed by the fact that the Minister of Justice cannot issue instructions in individual cases ([Article 30 para. 3 of the Code of Criminal Procedure](#) [CCP]), and by the freedom of speech of prosecutors during hearings ([Article 33 of the CCP](#)). The Minister of Justice may issue general instructions to public prosecutors' offices, the purpose of which is to ensure that criminal policy is applied consistently and that all citizens are equal before the law. The validity of this organisation has been confirmed by the Constitutional Council ([Decision 2017-680 of 8 December 2017](#)), the ECHR ([judgment of 18 October 2018 Thiam v France](#)) and the CJEU on 12 December 2019 ([joined cases C-566/19 PPU and C-626/19 PPU](#)).

Text of recommendation 9(c) :

9. Regarding **investigations and prosecutions**, the Working Group recommends that France:

(c) Examine the possibility of entrusting the renewal of anti-bribery NGOs' certification to an independent authority, such as the High Authority for Transparency in Public Life for example, or, at the least, strengthening the impartiality guarantees surrounding the procedure for renewing the certification of anti-bribery NGOs which, since 2013, has allowed them to take legal action on behalf of citizens. [Convention, Article 5, 2009 Recommendation, Annex I.D.]

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

If no action has been taken to implement this recommendation, 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 possibility for approved associations to bring civil actions in cases of bribery of a foreign public official is one of the best practices identified by the Working Group on Bribery in International Business Transactions during its evaluation of France in December 2021 and is regularly

highlighted by civil society as a major step forward in recognising the role of victims in cases of bribery of a foreign public official. These associations can not only report incidents, but also file a civil complaint with a view to referring the matter to an investigating judge for investigation. Once it has been established, the civil party association has access to the entire procedural file and can make requests for acts to be carried out or for the proceedings to be declared invalid, or challenge certain decisions before the investigating chamber, in particular any decision to dismiss the case. To this end, the [Minister of Justice's Criminal Policy Circular of 2 June 2020 on international corruption](#) invited public prosecutors to pay particular attention to complaints and reports from approved associations.

Approval gives these associations a strong legal capacity and the procedure is therefore governed by guarantees that the association is genuinely active in the field of corruption and has the necessary financial independence. Accordingly, the substantive and formal conditions laid down by [Decree No. 2014-327 of 12 March 2014](#) on the conditions for the approval of anti-corruption associations with a view to exercising the rights recognised to civil parties and the [Order of 27 March 2014](#) on the approval of anti-corruption associations with a view to exercising the rights recognised to civil parties, provide that the Ministry of Justice, which issues and renews the approval, must check that: the purpose of the association's articles of association falls within the scope of the fight against corruption; the association has been in existence for 5 years from the date of its declaration; it has been effectively and publicly active in the fight against corruption and integrity violations for the years it has been in existence; a sufficient number of members contribute to its budget and ensure its financial balance and independence; its activities are selfless and independent, particularly with regard to the source of its resources; and the association operates regularly and in accordance with its articles of association, which must provide guarantees that its members are kept informed and participate effectively in its management. The application must be examined within a period of 4 months, which may be extended by 2 months if the investigation so warrants.

To date, three associations (Sherpa, Anticor and Transparency International France) have been approved by the Ministry of Justice.

Moreover, pursuant to [Article 20 II. of the Act of 11 October 2013 on transparency in public life](#), the **High Authority for Transparency in Public Life (HATVP) has approved the associations Anticor, l'Association Pour une Démocratie Directe, Sherpa and Transparency International France, to enable them to refer to it cases of non-compliance with public transparency obligations.** The approval procedure, which is set out in Article 26 of the HATVP's internal regulations, states that "in accordance with Article 25-1 of Act No. 2000-321 of 12 April 2000 and the provisions of Articles 15 to 21 of Decree No. 2017 908 of 6 May 2017, this approval may only be issued to associations that pursue a general interest objective, present a democratic method of operation and comply with rules designed to guarantee financial transparency. In addition, in order to be granted this approval, the association must meet the following two conditions: 1° Five years of existence from the date of its declaration; 2° Effective and public activity in the fight against corruption and public integrity violations, assessed in particular on the basis of the production and distribution of publications, the organisation of events and the holding of information meetings in these areas". **The factors assessed by the HATVP when granting or renewing approval are therefore similar in every respect to those observed by the Ministry of Justice.** It should also be pointed out that the HATVP's deliberations on granting renewal of approval specifically refer to the Minister of Justice's orders granting approval or renewing approval for the exercise of civil party rights.

The Working Group recommends that France examine the possibility of entrusting the renewal of anti-bribery NGOs' certification to an independent authority, such as the High Authority for Transparency in Public Life for example, or, at the least, to think about strengthening the impartiality guarantees surrounding the procedure for renewing the certification of anti-bribery NGOs.

It should be noted that the procedure for approving associations to exercise civil party rights is not specific to the field of corruption, since [Articles 2-1 et seq. of the Code of Criminal Procedure](#) list a range of associations, such as associations for the defence of the French language, assistance to victims of terrorism or consumer protection, which may bring civil party actions. Given the extent of the rights available to civil parties and the need to ensure that public prosecutions are brought by representative associations, these approvals are granted and renewed by the relevant ministries, rather than by independent bodies, following a regulated procedure.

Furthermore, the HATVP's remit, which is limited to the prevention of conflicts of interest and the transparency of the funding, resources and assets of public bodies, overlaps only very superficially with the remit of anti-corruption associations.

France therefore favours a reform of the approval procedure that would include a simple opinion from the HATVP in order to eliminate any suspicion of conflict of interest.

To this end, the proposed reform requires a decree to be issued by the Council of State in order to amend Article 3 of Decree No. 2014-327 of 12 March 2014, the new wording of which would be:

“Approval is granted by order of the Minister of Justice, after obtaining the opinion of the High Authority for Transparency in Public Life. The High Authority for Transparency in Public Life delivers its opinion within two months of the date of referral. It is published in the Official Gazette of the French Republic. Approval is granted for three years. It is renewable under the same conditions as the initial authorisation.”

The French authorities therefore consider that this recommendation has been implemented.

Text of recommendation 9(d):

9. Regarding **investigations and prosecutions**, the Working Group recommends that France:

(d) Clarify, by all means and as soon as possible, that the factors of Article 5 of the Convention should not be taken into account concerning declassification requests in the context of defence secrecy procedures so as not to impede foreign bribery investigations and prosecutions. [Phase 3 recommendation 4.g., Convention, Article 5]

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

First of all, France would like to point out that this obligation has been indirectly incorporated into its regulations since the phase 4 evaluation. The fifth paragraph of point 1.1 of Inter-ministerial General Instruction 1300 on the protection of national defence secrecy, which came into force on 9 August 2021, states that: *"National defence secrecy requires extreme care in the way it is used and in the implementation of the protective measures it entails. It must never be invoked arbitrarily or illegitimately. In particular, improper use of national defence secrecy to obstruct the truth exposes the perpetrator to the penalties set out in article 434-4 of the Criminal Code. National defence and security are, and must be, the sole grounds for the classification decision"*.

Admittedly, this provision does not refer explicitly to Article 5 of the Convention, given the impossibility of establishing a comprehensive list of situations that might impede the ascertainment of the truth and, consequently, the concern to avoid an *a contrario* reading by establishing such a list. However, on the one hand, this provision reflects the essence of Article 5 by recalling that the use of secrecy to impede the ascertainment of the truth is prohibited and punishable by criminal penalties, and on the other hand, that safeguarding national defence and security are the only legitimate reasons for classifying and maintaining the classification of information.

At the same time, over and above the regulatory field, this commitment on the part of the French authorities to the strictly legitimate use of national defence secrecy is also driving ongoing work to professionalise what are known as “security officers”, who are responsible for overseeing implementation thereof within public or private organisations that hold or process information covered by national defence secrecy. Three certification courses, which most ministries want to make compulsory, are currently being designed (see links to France Compétence⁴⁷ website) and include modules on:

- the use of national defence secrecy "with discernment, ethics and integrity", in accordance with "the rule of law";
- the use of classification markings "in accordance with the regulations", following the principle of "better classification for better protection" (no over-classification / no under-classification);
- the organisation by security officers of internal training/awareness-raising sessions within their organisations in order to use secrecy "to best effect", to explain the legal implications thereof, the responsibility incumbent on the authors of classified documents, the need to be able to justify classification and the regular monitoring of procedures.

Finally, the French authorities would like to point out that when examining requests for declassification submitted to the Commission du secret de la défense nationale (CSDN) for its opinion, the Commission takes into account the obligations arising from Article 5 of the Convention. The criteria used by the Commission in its deliberations include not only the contribution of the document in question to the establishment of the truth, but also France's compliance with its international commitments.

Since the data that were available at the time of the Phase 4 evaluation, it should be noted that the CSDN has issued six opinions in two cases relating to bribery involving foreign public officials in international business transactions. These opinions were either partially favourable (in the first case) or unfavourable, it being specified that the information that remained covered by national defence secrecy was so covered for reasons relating to the preservation of the fundamental interests of the Nation. These opinions were all accepted by the relevant ministry.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(a):

10. Regarding **the PNF's role in foreign bribery cases**, the Working Group urges France to:

(a) Take urgent steps to preserve the PNF's role in the investigation, prosecution and non-trial resolution of foreign bribery cases by restoring an appropriate environment for the investigation and prosecution of its cases. [Convention, Article 5, 2009 Recommendation, V and Annex I.D.]

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

⁴⁷ [RS5546 - Officier de sécurité - Animer la chaîne fonctionnelle de la protection du secret de la défense nationale](#); [RS5540 - Officier de sécurité – Gérer les personnes habilitées et les informations et supports classifiés](#); [RS5541 - Officier de sécurité – Assurer la protection physique, logique et organisationnelle du secret de la défense nationale](#)

The PNF is an integral part of the French judicial landscape and has proven its effectiveness in the fight against financial and economic crime. Its role in foreign bribery cases must be preserved.

Firstly, with regard to the criticisms levelled at certain PNF prosecutors, the inspection report dated 15 September 2020 concludes, with regard to the investigations carried out by the PNF's prosecutors, that the framework for intervention is legal and emphasises that *"the investigative requirements that justified these investigations are set out in clear and factual minutes. The way in which the minutes on the receipt and exploitation of the collected data are drafted demonstrates the investigators' concern not to unduly expose the private lives or professional secrecy of the owners of the data lines being used. Only information likely to shed light on the investigations was transcribed by name"*. **There is therefore no criticism of the methods used by the PNF prosecutors.**

Secondly, with regard to the disciplinary proceedings referred to in the report and decided by the previous Prime Minister pursuant to a decree in which the Minister of Justice deferred to the PM (Decree No. 2020-1293 of 23 October 2020), they gave rise to two hearings held on 20 and 21, then 26 and 27 September 2022. No disciplinary action was taken and no penalty imposed.

On the disciplinary role of the Conseil supérieur de la magistrature (CSM):

Traditionally, the Minister of Justice can initiate a referral to the CSM by reporting facts that are grounds for disciplinary proceedings (Articles 50 and 63 of [Ordinance No. 58-1270 of 22 December 1958 which organises the status of the judiciary](#)). In urgent cases, the CSM also has the option of requesting a temporary suspension when it receives a complaint or is informed of facts that appear likely to lead to disciplinary proceedings, after consulting the heads of court and jurisdiction, when the magistrate is the subject of an administrative or criminal investigation. If the magistrate is the subject of criminal proceedings in particular, and the disciplinary decision depends on this, the CSM may suspend the magistrate from his or her duties until a final decision is taken on the criminal proceedings. The Minister of Justice is required to refer the matter to the CSM within two months of being notified of the decision of temporary suspension.

Since Organic Law No. 2002-539 of 25 June 2001, disciplinary proceedings may also be initiated by the heads of court (Articles 50-2 and 63 of the aforementioned Order of 22 December 1958).

Lastly, [Organic Law No. 2010-830 of 22 July 2010](#) created the possibility for any person who considers that, in the course of proceedings concerning him or her, the conduct adopted by a trial or investigative judge or a prosecutor in the performance of his or her duties is liable to be classified as disciplinary, to lodge a complaint with the CSM's committee for the admission of applications.

The CSM with jurisdiction in disciplinary matters meets in two separate panels depending on whether it is examining the situation of a trial or investigative judge or a prosecutor.

The CSM panel with jurisdiction over trial and investigative judges acts as a disciplinary board and the panel with jurisdiction over prosecutors issues an opinion to the Minister of Justice. This opinion is not binding on the Minister of Justice, who may not however impose a more severe sanction without referring the matter back to the disciplinary body.

The disciplinary panel is made up of the first president or the public prosecutor of the Court of Cassation, five trial or investigative judges or prosecutors, the trial or investigative judge or prosecutor belonging to the other panel, and eight qualified persons who are not magistrates.

Disciplinary proceedings before the CSM are conducted with due respect for the adversarial process and the rights of the defence. As soon as the matter is referred to the disciplinary body, the accused member

of the judiciary has the right to see his or her case file and to access information on the preliminary investigation. They may also be assisted by a lawyer.

The president of the relevant disciplinary panel may appoint one or more rapporteurs to conduct an investigation. The rapporteur may conduct hearings of members of the judiciary, parties to proceedings and witnesses. He or she may commission expert reports and, more generally, carry out any useful investigations. The rapporteur does not take part in the deliberations of the relevant disciplinary panel.

The CSM's disciplinary hearings are open to the public unless a request to the contrary is made to hold the hearing in camera (to protect public order or privacy). The member of the judiciary in question must appear in person, assisted if they so wish by one of their peers or a lawyer. They may be represented in the event of illness or recognised and justified impediment.

The Minister of Justice is represented by the Director of Judicial Services or their representative and supports prosecutions even when he or she has not initiated them.

The relevant disciplinary panel may impose one of the penalties provided for in Article 45 of the Statutory Ordinance of 22 December 1958, i.e.:

- reprimand with entry in the record;
- removal from office;
- removal from certain duties;
- disqualification from being appointed or designated as a single judge for a maximum period of 5 years;
- relegation in step;
- temporary removal from duties for a maximum of one year with total or partial loss of salary;
- demotion
- compulsory retirement or permission to end duties if the member of the judiciary is not entitled to a retirement pension;
- dismissal.

The penalty of removal from office may be imposed concurrently with the penalties of removal from certain duties, disqualification from being appointed as a single judge, relegation in step, temporary removal from duties or demotion.

The CSM's decision takes effect as soon as it is communicated to the judge (Article 58 of the aforementioned Ordinance of 22 December 1958).

In the case of a prosecutor, the Minister of Justice's decision, following the opinion of the CSM, takes effect as soon as the prosecutor is notified.

The CSM's disciplinary decision regarding trial judges may be appealed to the Council of State. The decision of the Minister of Justice taken on the advice of the CSM concerning a prosecutor may be referred to the Council of State by way of an appeal for abuse of authority.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(b):

10. Regarding the **PNF's role in foreign bribery cases**, the Working Group urges France to:

(b) Take the necessary legislative measures to extend the duration of preliminary investigations in foreign bribery cases to allow for the timely and effective enforcement of the foreign bribery offence. [Convention, Article 5, 2009 Recommendation, V and Annex I.D.]

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

The French system for determining the duration of investigations has recently been significantly overhauled. The Ministry of Justice's Orientation and Programming Bill, adopted by Parliament on 11 October 2023, amended Article 75-3 of the Code of Criminal Procedure on a number of major points: determining the starting point for calculating the duration, the possibilities and conditions for extending the duration and the consequences of exceeding the duration.

Firstly, with regard to the starting point for calculating the duration, the amended article now provides that **the time period no longer applies from the start of the investigation but only from the first act involving the exercise of powers of enforcement**, i.e. acts relating to voluntary interviews of suspects, police custody or searches of premises concerning a person. Consequently, the act of referring the case to an investigating department, the time taken to analyse the files - which can be considerable in cases of bribery of a foreign public official - and the investigations, which are often multiple and complex in this area, which do not include measures of enforcement, will not mark the start of the time limit.

Secondly, the new wording of Article 75-3 of the Code of Criminal Procedure provides **(i) that the two-year period may be extended by one year with the written authorisation of the Public Prosecutor, giving reasons, and (ii) that at the end of the two-year period, which may be extended by one year, a further exceptional period of two years may be granted by the Public Prosecutor. The total period could therefore be extended to five years**, provided that the proceedings are conducted in accordance with the enhanced adversarial procedure set out in Article 77-2 of the Code of Criminal Procedure.

In addition, **in the event of a request for mutual legal assistance, these time limits are suspended** between the signature of the request by the issuing public prosecutor and the receipt of the enforcement documents by the same public prosecutor. Investigations into international bribery involve numerous investigations carried out abroad, and recourse to international cooperation in criminal matters is systematic in this type of case. As a result, investigations will be able to continue beyond the two-year period, which can be extended by one year, and which will be suspended each time international mutual assistance is requested.

Lastly, the new text provides for the invalidation of any investigative act concerning a person who has been the subject of a voluntary interview as a suspect, police custody or searches, if it is carried out after the time limit has expired. Invalidation will therefore be limited to acts concerning that person.

As a reminder, although the Act of 22 December 2021, known as the "Act for Confidence in the Judiciary", regulated the time limit for preliminary investigations in order **to better guarantee the rights of suspects** when they are searched or held in police custody, **the new provisions resulting from this Act have not significantly affected the practice of investigations into international bribery.**

The fight against corruption in France is based not only on investigations carried out under the direction of prosecutors but also on investigations that may be entrusted to investigative judges,

who are not bound by the deadlines specific to the preliminary investigation framework. Given the complexity of the investigations and, in particular, the number of investigations to be carried out abroad, **the judicial inquiry procedure is useful and regularly used in international bribery cases.** Judicial inquiries already account for more than 30% of cases of bribery of a foreign public official. Once the time limits set out in article 75-3 of the Code of Criminal Procedure have expired, the public prosecutor will have the option of opening a judicial inquiry in order to continue the investigations in this procedural framework - it should be remembered that the CJIP can also be signed during the judicial inquiry phase.

The effects of the Orientation and Programming Act 2023 on the handling of investigations have been evaluated by the Ministry of Justice, in close collaboration with the judicial authorities, and the text adopted reflects a balanced and coherent compromise between the advances introduced by the Act of 22 December 2021 and the efficiency of procedures.

This legislative amendment, which was adopted by Parliament on 11 October 2023 and then validated by the Constitutional Council on 16 November 2023, applies immediately and comes into force as soon as the law is passed.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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. With regard to the **non-trial resolution of cases of foreign bribery**, the Working Group recommends that France:

(a) Take the necessary steps as soon as possible to make public certain elements of the CRPC, such as the terms of the agreement and, in particular, the sanction or sanctions approved. [Phase 3, Recommendation 4.c., Convention, Articles 3 and 5; 2009 Recommendation III.ii.]

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

The CRPC (Comparution sur Reconnaissance Préliminaire de Culpabilité - akin to a plea bargain) is an extremely useful tool that the PNF can use to resolve quickly and efficiently, completely transparently, proceedings involving individuals who admit to the facts, particularly in cases of bribery of a foreign public official.

Pursuant to Article 495-9 of the Code of Criminal Procedure, the approval hearing is public. The approving judge verifies the reality of the facts and the legal classification pursuant to the paragraph 2 of Article 495-9 of the Code of Criminal Procedure. **In practice, he or she sets out the detailed charges, i.e. the facts with which the person is charged and their legal classification.** In the 32nd Correctional Chamber, the judge publicly reiterates the charges against the defendant and proceeds to question him or her. The purpose of the defendant's hearing is to clarify the points on which the approving judge has doubts, and to ensure that the admission of the facts is genuine.

A member of the National Financial Prosecutor's Office (PNF) is systematically present at approval hearings, although under Article 495-9 of the Code of Criminal Procedure, this attendance is in principle optional. They can ask questions about the facts of the case and systematically makes detailed submissions explaining the facts, justifying the use of the CRPC and explaining the nature and level of the proposed sentences.

Accordingly, the essential information concerning the facts is made public at the approval hearing.

The PNF has put in place innovative working methods to ensure a high level of transparency in the use of this procedure. Consultations were initiated in 2015 between the investigative and trial judges and the public prosecutor's office (PNF and Paris Prosecutor's Office), then involving the Paris Bar, to set up this procedure for economic and financial matters. At the end of these consultations, the PNF, in agreement with the President of the Judicial Court of Paris, experimented with the use of the CRPC in its cases, and then made it a permanent feature, based on the following operating principles:

- involving counsel for the accused party in the negotiations as early as possible,
- the procedure should be referred to the approving judge as early as possible, to enable him or her to examine the case in detail.

In practice, and in support of effective and immediate transparency, the PNF has put in place a process enabling the press to identify the PNF's CRPC approval hearings as accurately as possible. The dates of the hearings are sent to journalists in advance via the Judicial Court of Paris' rolling order and also in a calendar of PNF hearings (including CRPCs) published on its website. These hearings are also posted digitally in the court on the day they are held. It appears that the press has become accustomed to attending these monthly hearings. At the end of the hearings and the approval decision, the PNF responds to journalists' requests for clarification of the facts or the sentence, even if they were not present at the hearing.

In addition, and **in order to guarantee the transparency of all court decisions and the accuracy of the information transmitted,** Article R. 166 of the Code of Criminal Procedure provides that "in criminal matters, a copy [...] of the decisions of the courts of first or second instance may be issued to third parties without prior authorisation when they are final and have been rendered publicly following a public debate". **In practice, the PNF regularly sends copies of these decisions to people who request them, particularly journalists.**

More broadly, these rules are part of the Ministry of Justice's desire for greater transparency in decisions handed down in matters of bribery of a foreign public official. In this sense, the availability of court decisions handed down publicly, online and free of charge, commonly known as "open data of court decisions" was introduced by the [Act of 7 October 2016 for a Digital Republic](#), and enables citizens to learn more about the justice system and promotes access to the law.

The French authorities therefore consider that the recommendation has been implemented.

If no action has been taken to implement this recommendation, 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(b):

11. With regard to the **non-trial resolution of cases of foreign bribery**, the Working Group recommends that France:

(b) Continue its efforts to develop effective non-trial resolution mechanisms and in particular, reconsider, as soon as possible, the possibility of permitting individuals to be covered by the CJIPs or other appropriate non-trial mechanisms and, to take the necessary measures to ensure better co-ordination between non-trial resolution mechanisms respectively applicable to natural and legal persons

in foreign bribery cases. [Convention, Articles 3 and 5; 2009 Recommendation, III.ii.]

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

If no action has been taken to implement this recommendation, 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 CJIP is a specific settlement procedure based on a compromise adapted to the situation of legal persons. The settlement does not entail a declaration of guilt for the legal person and is not entered in Bulletin No. 1 of the criminal record, thus avoiding economic consequences, particularly in terms of access to international markets. In return, the amount of the fine incurred under a CJIP is higher than the amount set by law.

Such a compromise is not suited to the situation of individuals for whom conviction and an entry in Bulletin No. 1 of the criminal record do not entail such economic consequences. Consequently, the compromise on which the CJIP is based cannot be transposed to individuals.

On the other hand, there are other transactional mechanisms applicable to individuals, such as the CRPC, which, unlike the CJIP, is a prosecution method available to the public prosecutor. In accordance with Article 495-7 of the Code of Criminal Procedure, this procedure is applicable to the offence of bribery of foreign public officials.

This approach of reserving a specific settlement procedure for legal persons is not unique to France, as the United Kingdom has chosen the same approach for the Deferred Prosecution Agreement, the equivalent of the French CJIP. The United Kingdom, like France, does not therefore have a common settlement procedure for legal persons and individuals.

Although co-ordination of non-trial resolution mechanisms applicable to individuals and legal persons is not a requirement of the Convention per se, it is at the heart of the strategy of French public prosecutors, and of the PNF in this case, in order to ensure a clear and coherent judicial response. This co-ordination of mechanisms is carefully scrutinised and checked by the judges responsible for approving these measures. In practice, the PNF intervenes specifically at the CRPC public hearing to present the case, justify the prosecution method, particularly in relation to the possible CJIP, and explain the proposed sentences. The judges responsible for approving the CRPC and the president of the court during the validation procedure for the CJIP may, through the provisions of [Articles 41-1-2](#) and [495-11-1 of the Code of Criminal Procedure](#), question this coordination of the use of different mechanisms. In this respect, they may refuse to validate or approve the procedure if they consider that the interests of society justify a criminal court hearing in the case of a CRPC, or that the use of the procedure is ill-founded or that the measures are not proportionate in the case of a CJIP.

Accordingly, the French authorities consider that it is neither appropriate or necessary to adopt additional legislative provisions that would have the effect of making procedures more complex and that could be contrary to the principle of discretionary prosecution.

Text of recommendation 12(a):

12. With regard to **mutual legal assistance**, the Working Group recommends that France:

(a) Take the necessary steps without further delay to: (i) Ensure that sufficient resources are allocated to law enforcement authorities to guarantee the provision of prompt and effective MLA to other Parties to

the Convention; (ii) Implement the BEPI's plans to develop IT tools to maintain detailed statistics on the incoming and outgoing MLA requests that are accepted or rejected, the grounds for refusals, the types of measures requested, and the time it took to execute the requests; and (iii) Ensure more systematic follow-up of its outgoing MLA requests when foreign authorities fail to respond. [Phase 3 recommendation 4.e; Convention, Article 9; 2009 Recommendation, III.ix.]

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

- (i) **Take the necessary steps without further delay to: (i) Ensure that sufficient resources are allocated to law enforcement authorities to guarantee the provision of prompt and effective MLA to other Parties to the Convention;**

All incoming requests for international mutual assistance in criminal matters relating to bribery of a foreign public official are centralised at the PNF, which ensures that they are processed quickly and expeditiously. As soon as they are received by the PNF, requests for mutual assistance are recorded immediately by the registry and allocated to the leader of the international co-operation group. If a mirror investigation exists within the PNF, execution of the request is transferred to the team in charge of the French proceedings. Otherwise, the request is handled by the international co-operation group, which may execute it internally within the PNF (requisitioning a company, for example) or sub-delegate it to an investigation service (mainly to a central office: the *Office central de lutte contre la corruption et les infractions financières et fiscales* (OCLCIFI - the Central Office for Combating Corruption and Financial and Fiscal Offences) or the *Office central pour la répression de la grande délinquance financière* (OCRGDF - Central Office for Fighting Major Financial Crimes) depending on the investigations to be carried out). If the request is made by an investigative judge, it is forwarded without delay to the dean of investigative judges of the Judicial Court of Paris. The request is also systematically analysed to determine whether it contains information likely to justify opening an investigation in France.

The average execution time by France is perfectly satisfactory, around 9 months for requests issued by parties to the Convention and 14 months for non-parties to the Convention. Over the period 2014-2021, 86 requests for mutual assistance in cases of foreign bribery involving French companies/citizens were received by the PNF: 63 came from States party to the Convention and 23 from countries not party to the Convention. Of the requests that were executed, those from States party to the Convention were executed within an average of **9 months** (47 requests concerned; 37 requests executed in less than a year, 9 requests executed in one to two years and one request executed in 30 months), while those from countries not party to the Convention were executed on average within **14 months** (18 requests concerned; 13 requests executed in less than a year, one request executed in 15 months, and 4 requests executed in 2 years or more). These timescales are all the more satisfactory given that some requests for mutual assistance from a State party to the Convention, involving the transmission of several thousand items of evidence collected in the course of French proceedings or to be collected in order to respond to the request, may have posed execution difficulties that have increased the time taken (the judicial authority having to check each item of evidence before transmitting it).

The most recent requests for international mutual assistance in criminal matters relating to bribery of a foreign public official executed by the PNF include the following:

- a European investigation decision from Sweden concerning aggravated active bribery received on 10 January 2023 and returned with the relevant documents on 25 May 2023;
- a request for mutual assistance in criminal matters from Norway concerning bribery of foreign public officials, received on 11 January 2023 and returned with the relevant documents on 22 May 2023;
- a request for mutual assistance in criminal matters from the United Kingdom relating to money laundering, bribery and fraud by abuse of position, received on 15 August 2022, with an initial

partial return of the relevant documents on 22 December 2022 and a complete return of the relevant documents and exhibits on 18 January 2023.

These three requests were executed within a period of 4 to 5 months, which testifies to the high level of involvement and efficiency of the National Financial Prosecutor's Office (PNF) in processing them.

The States party to the Convention benefit from prompt and effective mutual legal assistance through the PNF, which is recognised by foreign judicial authorities - including the DOJ and the SFO, with which it regularly collaborates - as an essential partner in the fight against foreign bribery.

The French authorities therefore consider that this recommendation has been implemented.

- (ii) Implement the BEPI's plans to develop IT tools to maintain detailed statistics on the incoming and outgoing MLA requests that are accepted or rejected, the grounds for refusals, the types of measures requested, and the time it took to execute the requests**

The International Mutual Assistance in Criminal Matters software (LEPI) developed by the Bureau for International Mutual Assistance in Criminal Matters (BEPI), which is scheduled to go live as a "minimum viable product" in the first half of 2024, will enable all the requests for mutual assistance in criminal matters that pass through the Bureau to be managed electronically. The statistics will be available for use, via an Infocentre, from the time LEPI is upgraded, which will probably take place after it goes live. The need to extract data relating to accepted and rejected incoming and outgoing requests, with the reasons for rejection, as well as the type of measures requested and the calculation of execution times, has been taken into account in the expression of need.

- (iii) Ensure more systematic follow-up of its outgoing MLA requests when foreign authorities fail to respond. [Phase 3 recommendation 4.e; Convention, Article 9; 2009 Recommendation, III.ix.]**

The aforementioned International Mutual Assistance in Criminal Matters software (LEPI) will enable more systematic monitoring of active mutual assistance requests. LEPI is to include a system for notifying due dates and reminder dates. The scheduling built into the software and these notifications will enable more detailed monitoring of mutual assistance requests, particularly those issued by the French judicial authorities. **LEPI will also make it possible to identify sensitive cases, such as cases of bribery of a foreign public official. These flagged files will thus be clearly identified and will be easier to track.**

Pending the introduction of this new software, for active requests that pass through the central authority, **the BEPI sends reminders to the foreign authority as soon as the requesting French judicial authority asks for them. In addition, BEPI staff regularly review their portfolios in order to identify pending requests and follow up with the foreign authorities concerned.**

If no action has been taken to implement this recommendation, 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(b):

12. With regard to **mutual legal assistance**, the Working Group recommends that France:

(b) (i) Clarify the scope and consequences of the blocking statute; (ii) clarify the criteria under which the French authorities select, produce, withhold or request businesses to withhold certain information about businesses involved in foreign bribery cases under the blocking statute or article 694-4 CCP; (iii) expedite the execution of formal mutual assistance, including when the blocking statute or article 694-4 CCP are applicable – even though both mechanisms operate at different stages and in different formal settings and the blocking statute may have only an indirect effect on formal mutual assistance – and in particular at the stage of referral to the Ministry of Justice or any other authority, including, as foreseen in the draft decree under discussion at the time of finalising this report; and (iv) ensure that the conditions for access to information held by French businesses under the blocking statute, in its current form or after any future reform, do not impede the conduct of foreign investigations and prosecutions for foreign bribery. [Phase 3, recommendation 6 and 4.h, Convention Article 9, 2009 Recommendation, XIII]

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

- (i) **Clarify the scope and consequences of the Act of 26 July 1968 (known as the blocking statute);**

Act No. 68-678 of 26 July 1968^[1] on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal persons, incorrectly referred to as "the blocking statute", is a criminal law which aims to ensure two things:

On the one hand, it establishes the principle that any communication of sensitive information held by a French company to a requesting foreign public authority must not pose a threat to security, the essential economic interests of the Nation or public order (Art. 1). The amount of data covered by Article 1 is therefore extremely limited.^[2]

On the other hand, it ensures that requests for the communication of information and/or the gathering of information in the context of judicial (civil or criminal) or administrative proceedings with a view to gathering evidence must be made through dedicated international co-operation channels (Art. 1 bis). It is for this reason that the Act is also referred to as a "referral" Act. In the latter case, its aim is to guarantee the international legal order and preserve the mutual legal assistance negotiated in advance between States. The aim of the French Act is in this case to ensure compliance with existing international conventions and treaties on mutual administrative and legal assistance, by creating the possibility of sanctions against companies incorporated under French law that fail to comply with international law in situations involving the communication of economic information. While the scope of Article 1 is restricted (prohibition on communicating sensitive information that threatens national sovereignty) in that it only concerns certain companies, the scope of Article 1 bis is broader and concerns all French companies.

Finally, the law requires all those subject to the Act to inform the competent minister (Art. 2).

The French authorities therefore consider that this recommendation has been implemented.

- (ii) **clarify the criteria under which the French authorities select, produce, withhold or request businesses to withhold certain information about businesses involved in foreign bribery cases under the blocking statute or article 694-4 CCP;**

- **The criteria used by the French authorities to ask companies to withhold certain information in application of Article 1 of the Act of 26 July 1968 are very clear, and**

the 2022 reform has further clarified them. These criteria are now recognised by foreign judicial authorities.

Accordingly, the decree of 18 February 2022^[3] clarifies the implementation of the procedure for notifying any request for communication which may concern the documents and information referred to in Article 1 or 1 bis of the Act. It designates the Minister of the Economy as the competent authority within the meaning of Article 2 of the Act, and grants the Service de l'information stratégique et de la sécurité économiques (SISSE - Department of Strategic Information and Economic Security) - designated as the "single window" - the possibility of issuing legally non-binding opinions to these persons on the applicability or otherwise of Articles 1 and 1 bis to a given case. These opinions are the result of an inter-ministerial consultation involving at least the Ministries of Justice, Economy and Finance, and Europe and Foreign Affairs. Where appropriate, depending on the activities of the company concerned by the request, other authorities may be invited to join in the consultation. These opinions are intended to be transmitted in the course of the proceedings, and are therefore known to all parties, and in particular to the foreign court which has issued the request. **The aim of this practice is to ensure uniform application of the law, by promoting a single interpretation of the Act by the authorities, thereby guaranteeing legal certainty both for companies and for foreign administrative and judicial authorities.**

Moreover, the Order of 7 March 2022^[4] clarifies the documents expected in a notification from the authorities and guarantees the obligation to use secure means of transmission for data exchanged with the authorities.

At the same time as the reform, the *Association française des entreprises privées* (AFEP - Association of French Private-sector Companies) and the *Mouvement des entreprises de France* (MEDEF - French employers' federation) published **a guide for companies^[6]**, to help them determine which data are likely to fall within the scope of Article 1 of the Act of 26 July 1968. This guide proposes an operational methodology to enable companies to determine whether they are likely to be affected by Article 1 of the 1968 Act: it cross-references, on the one hand, the analysis of the impact of disclosure for the company (serious) and, on the other hand, the strategic nature of the company and/or the activity in question (assessed through relations with the State, with particular supplies, etc.). This restrictive assessment of the applicability of Article 1 of the Act is common to all stakeholders, which makes it possible to satisfy both the protection of France's economic sovereignty and the proper conduct of criminal proceedings. **This guide has been widely distributed** via employers' federations and at numerous conferences throughout France. It is also available on the MEDEF, AFEP and SISSE websites. While the main aim of this communication campaign is to raise awareness of the fact that the authorities can now issue legal opinions and that the terms of application of Article 1 of the Act of 26 July 1968 are restrictive, **it is also intended to prevent abusive use of the Act to oppose foreign investigations, whether administrative or judicial.**

Since the reform of the arrangements in 2022, a growing tendency towards their acceptance by foreign jurisdictions has been observed. In Germany, although several public prosecutors' offices have been able to request information outside the scope of mutual assistance in criminal matters provided for under European law, the fact that the companies in question can approach the authorities and that the authorities can formalise their position by issuing opinions has enabled proceedings to be redirected within a short space of time to the competent national courts. In the United States, recognition of the need for international mutual assistance in gathering evidence is increasing in both civil and commercial matters (e.g. *Behrens v. Arconic Inc.* US Eastern District of Pennsylvania, 13 March 2020). Similarly, Franco-British mutual legal assistance in criminal matters was observed during the hearing of witnesses in the proceedings following the Grenfell Tower fire in 2019 and the SISSE issued an opinion stating that Article 1 bis had been complied with in these circumstances.

Similarly, the Act of 26 July 1968 has been taken into account by the US authorities when implementing monitoring measures in the context of settlement agreements between French companies and the US Department of Justice. Between 2010 and 2023, several French companies (Alcatel-Lucent, Technip, Total, Alstom, Société Générale and Airbus) entered into settlement agreements with the Department of Justice for corruption offences. As part of this process, these companies were required to submit to a monitored compliance procedure to bring their internal measures for preventing and detecting corruption into line with the law. The Act of 9 December 2016 establishes the role of the French Anti-Corruption Agency (AFA) in enforcing the Blocking Act, *“in the context of the enforcement of decisions by foreign authorities imposing on a company whose registered office is located on French territory an obligation to submit to a procedure to bring its internal procedures for the prevention and detection of corruption into compliance”*. The AFA has therefore been identified on several occasions as the competent French authority to assist the DOJ, in compliance with the Act of 26 July 1968, in providing the information required. The National Financial Prosecutor's Office (PNF) also plays a particularly significant role in coordinating with foreign authorities, particularly with regard to opening international mutual assistance channels.

• **The criteria for applying Article 694-4 of the Code of Criminal Procedure**

Article 694-4 of the Code of Criminal Procedure provides that requests for international mutual assistance in criminal matters likely to “pose a threat to public order or the essential interests of the nation” may ultimately be blocked by the Minister of Justice. In such cases, the magistrate who has received the request for international mutual assistance in criminal matters, or who has been notified by the investigative judge if the request has been received thereby, must forward it to the Public Prosecutor so that the latter can refer the matter to the Minister of Justice (DACG). The latter may then decide to refuse to recognise or enforce the application. It should be noted that the assessment of whether the essential interests of the Nation have been compromised may be made before the investigations are carried out, up to the point at which the investigations are forwarded to the requesting judicial authority.

The offence identified by the foreign State must be incompatible with French public policy, such as blasphemy or adultery, **or the penalty must be incompatible with French public policy**, such as the death penalty or hard labour. In the latter case, France may refuse to execute such a request, unless it receives guarantees that the penalty incurred will not be enforced. Similarly, mutual assistance may be refused if it were to be granted to a country where there is no guarantee of a fair trial. According to information from the Ministry of Justice, cases of refusal to execute an international request for mutual assistance in criminal matters are extremely rare.

The French authorities therefore consider that this recommendation has been implemented.

- (iii) **expedite the execution of formal mutual assistance, including when the blocking statute or article 694-4 CCP are applicable – even though both mechanisms operate at different stages and in different formal settings and the blocking statute may have only an indirect effect on formal mutual assistance – and in particular at the stage of referral to the Ministry of Justice or any other authority, including, as foreseen in the draft decree under discussion at the time of finalising this report;**

The responsiveness of the French administration, which can issue an opinion in a matter of days or within a month^[5], is a guarantee that the implementation of the Act of 26 July 1968 will never be an obstacle to the execution of formal mutual assistance.

The French authorities therefore consider that this recommendation has been implemented.

- (iv) **ensure that the conditions for access to information held by French businesses under the blocking statute, in its current form or after any future reform, do not impede the conduct of foreign investigations and prosecutions for foreign bribery. [Phase 3, recommendation 6 and 4.h, Convention Article 9, 2009 Recommendation, XIII]**

In practice, since the "single window" began issuing opinions under Article 1 of the Act, it has been notified of 54 cases representing a total of 83 referrals. **On only three occasions have restrictions been placed on the disclosure of documents and information, without the foreign authorities that made the request considering that the procedure had been affected.**

Still on the subject of the results since the reform of the arrangements set out in the Act of 26 July 1968, 40 of the 54 cases mentioned above only concerned questions relating to the applicability of Article 1 bis and therefore only referred to problems of non-compliance with the channels for mutual assistance provided for in international law.

The French authorities therefore consider that this recommendation has been implemented.

^[1]<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000501326>

^[2] This restrictive interpretation of the scope of Article 1 is shared by employers' federations (cf. the *Guide à usage des entreprises*, cited below in endnote 6).

^[3]<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045190519>

^[4]<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045358485>

^[5] Article 4 of the decree of 18 February 2022 refers to a one-month deadline.

^[6][Guide à usage des entreprises d'identification des données sensibles visées à l'article 1er de la loi dite de blocage ou d'aiguillage](#)

^[7] Article 3 of Act No. 2016-1691 of 9 December 2016 on transparency, combating corruption and the modernisation of economic life, known as Sapin 2.

^[8] Article L. 632-1 et seq.

If no action has been taken to implement this recommendation, 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 concerning the liability of legal persons

Text of recommendation 13(a):

13. With regard to the **liability of legal persons**, the Working Group recommends that France:

(a) Clarify in law the requirements for corporate criminal liability, to ensure that: (i.) Its approach takes into account Annex I to the 2009 Recommendation; and (ii.) A legal person cannot avoid liability for bribery by using an intermediary, including a related legal person. [Phase 3 recommendation 2.a, Convention, Article 2, 2009 Recommendation, Annex I.B.]

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

If no action has been taken to implement this recommendation, 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:

- (i) **The French approach is compliant with Annex I to the 2009 Recommendation**

In accordance with Article 2 of Annex I of the 2009 Recommendation, the legal person may be held criminally liable under Article 121-2 of the French Criminal Code, irrespective of the prosecution or conviction of one or more individuals.

A proposal for an anti-corruption directive is currently being negotiated at European Union level. This proposed directive provides for the introduction of criminal or administrative liability for legal persons for lack of supervision.

France is in favour of examining the possibility of extending the scope of corporate criminal liability, in line with European and international requirements.

While the principle of sincere (sometimes called loyal or fair) cooperation set out in Article 4(3) of the Treaty on the Functioning of the European Union does not in principle preclude the adoption of new legislation in parallel with Community negotiations still in progress, such a step appears premature at this stage.

In practice, it seems reasonable to refrain from legislating in order to avoid national legislation that would only partially reflect the measures contained in the EU instrument under negotiation or that would run counter to the provisions finally adopted.

Indeed, a multiplication of successive legislative amendments in an area as sensitive as that of the corporate criminal liability, with potentially significant repercussions in the economic sphere, would give rise to considerable legal uncertainty.

(ii) A legal person cannot avoid liability for bribery by using an intermediary, including a related legal person. [Phase 3 recommendation 2.a, Convention, Article 2, 200 Recommendation 2009, Annex I.B.]

Since France's answers to the Phase 4 questionnaire, the Court of Cassation has clarified the definition of the " bodies or representatives " of a legal person, which must be identified in order to find a legal person guilty of an offence, such as bribery of a foreign public official.

In an initial ruling on 16 June 2021 (Crim., 16 June 2021, No. 20-83-098), the Court of Cassation clarified the scope of corporate criminal liability regarding a group of companies in a case involving active bribery of a foreign public official. In this ruling, the Court of Cassation held a holding company criminally liable for the involvement of three employees who were de facto representatives of the parent company, due to the group's cross-functional organisation and the tasks entrusted to them.

Then, in a ruling dated 21 June 2022 (Crim., 21 June 2022, No. 20-86.857), the Court of Cassation held that the body or representative may itself be a legal person, for example a company that chairs the company being prosecuted. This solution allows the judge to designate this legal person without needing to identify the individuals who run it. This recent case-law clarification makes it easier to hold legal persons liable, particularly in complex international corruption cases involving several legal persons.

Consequently, French case law, with a view to facilitating corporate liability, has clearly confirmed that a legal person cannot avoid liability for acts of international corruption by using an intermediary, including a related legal person, with the result that legislative intervention does not appear necessary for this purpose.

Text of recommendation 13(b):

13. With regard to the **liability of legal persons**, the Working Group recommends that France:

(b) Seize the opportunity of the proposed law to broaden the scope of corporate liability for lack of supervision to clarify the conditions when it would apply, and, in particular, whether to take into account the existence (or absence) of internal corporate compliance measures that are either promoted or required by the Sapin 2 Act. [Convention, Article 2, 2009 Recommendation, Annex I.B.]

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

If no action has been taken to implement this recommendation, 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:

As indicated in the answer to recommendation 13.a., an anti-corruption directive is currently being negotiated at European Union level. This proposal provides in particular that the legal person may be held criminally or administratively liable for lack of supervision and that the implementation of effective internal corporate compliance programmes should be a mitigating circumstance.

While the principle of loyal cooperation set out in Article 4(3) of the Treaty on the Functioning of the European Union does not **in principle** preclude the adoption of new legislation in parallel with Community negotiations still in progress, such a step appears premature at this stage.

In practice, it seems reasonable to refrain from legislating in order to avoid national legislation that would only partially reflect the measures contained in the EU instrument under negotiation or that would run counter to the provisions finally adopted.

Indeed, a multiplication of successive legislative amendments in an area as sensitive as that of the corporate criminal liability, with potentially significant repercussions in the economic sphere, would give rise to considerable legal uncertainty.

In addition, the non-existence or inadequate nature of internal corporate compliance measures at the legal person is already sanctioned under French law by the Sanctions Committee of the French Anti-Corruption Agency in accordance with Article 17 of the Act of 9 December 2016 on transparency, combating corruption and the modernisation of economic life.

Text of recommendation 13(c):

13. With regard to the **liability of legal persons**, the Working Group recommends that France:

(c) Expand its professional development trainings for prosecutors, investigative judges, and trial judges on corporate liability for foreign bribery and related economic and financial crimes. [Phase 3 recommendation 2.b; Convention, Article 2, 2009 Recommendation, III.ii. and V, Annex I.B.]

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

Over the years, the National School for the Judiciary (ENM) has developed a wide range of training courses dedicated to the fight against economic and financial crime, in particular the fight against corruption and bribery of a foreign public official, for French magistrates, prosecutors and trial judges. The Continuing Education Sub-Directorate has developed sessions and training courses dedicated to or

dealing with this topic.

These high-quality training courses, conducted by experts in the field and in particular by the National Financial Prosecutor's Office (PNF), are offered not only to French judges but also to foreign judges, specialist investigators and specialist assistants.

The aim is to train the entire criminal justice system in order to guarantee effective repressive measures in the fight against bribery.

Corporate liability is systematically covered in all of these training courses and is also the subject of a dedicated course during which investigation techniques and strategies, specific case law, the conditions under which legal persons incur criminal liability, the adapted seizure and confiscation regime, the CJIP and the trial of legal persons before the criminal court are specifically explained.

In addition, on 25 January 2023, the Ministry of Justice and its Directorate of Criminal Affairs and Pardons, in partnership with the ENM, **organised a seminar dedicated to combating bribery of foreign public officials. The seminar brought together all the stakeholders – trial judges and prosecutors, from first instance and appeal courts - to respond specifically to certain points raised by the OECD Working Group on Bribery. Among the key points discussed by all those involved were the relaxation of the conditions for initiating corporate liability and solutions for a global judicial resolution of foreign bribery cases.**

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 14(a):

14. With regard to the **enforcement of the corporate liability through CJIPs**, the Working Group recommends that France:

(a) Disseminate more widely the joint PNF-AFA's joint guidelines on the CJIP. [Convention, Articles 2, 3 and 5, 2009 Recommendation III.ii.; Annex I.B.];

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

The PNF's guidelines, updated on 16 January 2023 are disseminated on the PNF's [website](#) (with an [English translation](#) also available, primarily for companies).

The new guidelines were published on 16 January 2023 on the PNF website, but were also [presented at a conference](#) organised in partnership with the Université Panthéon-Assas on the day of publication. Both specialist and non-specialist legal publications and the general national media ([Les Echos](#), [Le Figaro](#), [La Tribune](#) etc.) reported on the new guidelines.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 14(b):

14. With regard to the enforcement of the corporate liability through CJIPs, the Working Group recommends that France:

(b) Ensure that the information made public on the CJIP in relation to foreign bribery is (i) complete and equivalent for all cases, including in relation to the PNF's approval order and press release, (ii) published promptly and in a format that facilitates dissemination and use among the Parties to the Convention, and (iii) clearly aggregated and accessible on the website of at least one government agency with a recognised role in tackling foreign bribery. [Convention, Articles 2, 3 and 5, 2009 Recommendation III.ii.; Annex I.B.]

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

All CJIPs signed in relation to foreign bribery are now promptly available once they have been approved:

- On the [PNF website](#) (first page of "CJIP" tab) containing agreements and press releases;
- On the websites of the [Ministry of the Economy, Finance and Industrial and Digital Sovereignty](#), [Ministry of Justice](#) and [the AFA](#) in the sections on agreements and approval orders.

The press release and the text of the agreement are also disseminated via social networks (Twitter and LinkedIn accounts), which provide a link to the CJIP page on the PNF website.

The publication format of these documents allows both the use of online translation software and keyword searches, so that the information can be widely disseminated among the Parties to the Convention.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 15:

15. With regard to the **framework and means for confiscation for legal persons**, the Working Group recommends that France (i) Through a circular or any other appropriate means, clarify the procedures for identifying and quantifying the proceeds of foreign bribery offence obtained by the legal person, with a view to confiscating such proceeds as an additional penalty or as a component of the fine imposed; and (ii) Develop more precise guidelines in order to also clarify the arrangements for calculating the confiscatory component of the public interest fine. [Convention, Article 3(3), 2009 Recommendation, III.ii.]

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

- (i) **Through a circular or any other appropriate means, clarify the procedures for identifying and quantifying the proceeds of foreign bribery offence obtained by the legal person, with a view to confiscating such proceeds as an additional penalty or as a component of the fine imposed;**

In response to this recommendation by the OECD Working Group on Bribery, the Ministry of Justice sent all French public prosecutors' offices in July 2023 a particularly comprehensive fact sheet on the CJIP, entitled "Focus", which explains in detail the procedures for identifying and quantifying the proceeds obtained by a legal person from the foreign bribery offence.^[1]

Following the example of the Minister of Justice's circular of 31 January 2018, which called for the systematic quantification of the benefits for the legal persons doing the bribing derived from the misconduct observed under the offence and specified that a broad definition should be adopted, this new technical note insists that:

"Public prosecutors must assess the direct and indirect benefits derived from the misconduct at the date of the CJIP. The company will be asked to provide all relevant information and evidence to enable this assessment to be made. The following may be provided: accounting documents supporting the main economic flows, such as contracts, invoices or proof of payment, an extract from the accounting ledgers or cost accounting, as well as internal procedures and forward-looking and historical management reports relating to the facts.

In the most complex cases or where access to information is difficult, the services of an economic and financial expert will be considered.

Public prosecutors must consider the diversity of direct benefits resulting from the misconduct that fall within the material scope and timeframe of the acts covered by the CJIP.

These advantages are assessed in the light of the situation in which the company found itself at the time of the offending acts. These advantages include:

- profits resulting from the performance of a fraudulently obtained contract;
- profits derived from the receipt or use of laundered funds;
- the amount of taxes or customs duties evaded by the company;
- tax credits and refunds obtained fraudulently;
- all profits linked to the unduly obtained authorisation. The profit is then calculated on the basis of the revenue generated or forecast (in the case of a contract with staggered execution) by the infringing contract, minus the direct and legitimate variable costs linked to the contract.

In addition, public prosecutors will also take into account indirect benefits such as gains in market share, knowledge and visibility, as well as the cash flow benefit associated with the monetary flows obtained as a result of the misconduct"

Public prosecutors are then asked to apply a multiplying factor to this benefit, depending in particular on the seriousness of the offences, their repetition and any previous history involving the legal person. As a general rule, this coefficient will be at least equal to two, so that once the agreement has been executed, the cost to the company of committing the fraud will ultimately be greater than the return.

This "Focus" is accompanied by templates designed to make it easier for practitioners to use the CJIP. These include a model agreement detailing the methods for calculating the public interest fine and suggesting that the amount of the fine should distinguish between the benefits derived from the breaches and the punitive part.

This tool, which is specific to the CJIP, is part of a very strong and broader effort that the Ministry of Justice has been making for several years in support of a proactive criminal law policy on seizure and

confiscation, in particular through its criminal policy dispatches and circulars (developed in response to recommendation 8b), with the aim of encouraging a genuine reflex in magistrates to target assets, both at the time of the investigation and at the hearing stage.

This method of calculating the public interest fine, which has been distributed to all magistrates, including those involved in criminal hearings, is perfectly applicable to the calculation of the proceeds of the offence with a view to their confiscation as an additional penalty or as a component of the criminal fine.

The French authorities therefore consider that this recommendation has been implemented.

- (i) **Develop more precise guidelines in order to also clarify the arrangements for calculating the confiscatory component of the public interest fine. [Convention, Article 3(3), 2009 Recommendation, III.ii.]**

This technical note, sent to all French public prosecutors' offices, is in line with the [new guidelines drafted by the PNF^{\[2\]}](#) which set out in particularly clear terms the methods for calculating the public interest fine, which has two components, the first being restitutive, and equal to the amount of the benefits derived from the misconduct observed, and the second being punitive, calculated on the basis of the amount of the benefits derived from the misconduct observed, to which increasing and decreasing factors are applied.

The French authorities therefore consider that this recommendation has been implemented.

^[1] This Focus features in the Annex to the report ([Annex 10: DACG - La convention judiciaire d'intérêt public \(CJIP\) – July 2023](#)).

^[2] These guidelines feature in the Annex to the report. ([Annex 9: PNF - Lignes directrices sur la mise en œuvre de la convention judiciaire d'intérêt public – 16 January 2023](#))

If no action has been taken to implement this recommendation, 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 16:

16. With regard to the implementation of the **additional sanction of exclusion from public procurement**, the Working Group recommends that France take the necessary measures to give access to all authorities in charge of public procurement contracts to the criminal records of legal persons. [2009 Recommendation XI.i.]

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

France has embarked on a major reform aimed at enabling entities awarding public contracts to check that tenderers have not been convicted of a criminal offence that could lead to exclusion from these contracts, by making it possible to obtain and produce an extract from their criminal record known as "Bulletin No. 3".

The creation of this new Bulletin No. 3 for legal persons requires the adoption of a new Article 777 A of the Code of Criminal Procedure.

The bill provides that the Bulletin No. 3 for legal persons is the record of criminal convictions handed down by a national court for a crime or offence, where they are not excluded from Bulletin No. 2, including:

- Either an unsuspended fine [*whether or not it exceeds a certain amount is to be determined, it being specified that currently for Bulletin No. 2 the fine making the conviction eligible for registration is 30 000 euros*];
- Or exclusion from public contracts imposed by a national court, pursuant to Article 131-39 (5°) of the Criminal Code, for as long as the period of exclusion has not expired.
- A legislative solution is currently being sought for prompt adoption.

The creation of a Bulletin No. 3 for legal persons will subsequently require the creation of a new module in the Criminal Records system, so that the reform can be technically implemented during 2026.

In the meantime, the old system will continue to apply. Some of the authorities awarding public contracts can already obtain an extract from the criminal record, known as “[Bulletin No. 2](#)”, of legal persons applying for public contracts on simple request: [Article 776-1 1°](#) of the Code of Criminal Procedure provides that "Bulletin No. 2 of the criminal record of legal persons shall be issued to: 1° Prefects, State administrations and local authorities to whom proposals or tenders for the award of public works or public contracts are referred (...)". Similarly, depending on the rules governing the procedure within the EU, foreign authorities may ask the French authorities, via the criminal records authorities to which they are attached, to issue copies of Bulletin No. 2 when French legal persons are applying for public contracts in their country.

For other contracting entities, the declaration of honour mechanism resulting from the Sapin 2 Act of 9 December 2016 on transparency, combating corruption and the modernisation of economic life, will continue to apply.

As a reminder, the accuracy of this declaration is guaranteed by the following penalties for the tenderer concerned:

- rejection of the bid (Art. R.2144-7 CCP);
- termination of the contract, if the contract has been awarded on the basis of a false declaration;
- criminal prosecution and a penalty of up to 3 years' imprisonment and a fine of 45 000 euros for producing a false sworn statement.

If no action has been taken to implement this recommendation, 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 17:

17. With regard to promoting the development of **corporate compliance programmes**, the Working Group recommends that France step up its efforts with intermediate-sized enterprises and SMEs involved in international trade to promote the adoption and implementation of compliance programmes that are appropriate and proportionate to the specific circumstances of each group, paying particular attention to those operating in regions and sectors at high risk of bribery. [Phase 3 recommendation 8.b; 2009 Recommendation, X.C i. and v.; Annex II]

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

In response to the recommendation by OECD's Working Group on Bribery, the French Anti-Corruption Agency has stepped up its efforts with SMEs and intermediate-sized enterprises through a number of initiatives:

- the publication and translation of a practical anti-corruption guide for SMEs and small intermediate-sized enterprises (co-written with the CPME (French confederation of SMEs), METI (confederation of intermediate-sized enterprises) and two intermediate-sized enterprises);
- raising awareness among professional organisations some of whose members are SMEs and intermediate-sized enterprises: SNITEM, FIM, GIMELEC (Export SME with AFD), Order of chartered accountants, etc.;
- a survey on the sophistication of anti-corruption measures in companies and publication of the results (20% of respondents were SMEs and 45% were intermediate-sized enterprises);
- the launch of a survey on requests for facilitation payments from the network of economic services in 15 countries (via the General Directorate of the Treasury).

In order to focus in particular on companies operating in high-risk regions, Team France Export (TFE) informs its contacts about preventing and detecting corruption:

- the brochures given to SMEs and intermediate-sized enterprises wishing to export include information on the prevention and detection of corruption;
- the Team France Export website provides links to the "*l'AFA vous conseille*" ("the AFA advises you") page, which lists the Agency's recommendations, all the practical guides published for economic players, and the charter specifying the support services offered by the Agency;
- In association with the team in charge of coordinating the TFE network in the regions, Business France organised a presentation by the AFA at regional International Days, notably in Hauts-de-France, Normandy and Pays de la Loire, and has proposed similar initiatives in the future in other regions (Auvergne Rhône-Alpes, Occitanie, Bourgogne-Franche-Comté). A joint review of the implementation of these various initiatives, based on feedback on the ground, is scheduled for the end of the year between Business France and the AFA.

In the policy framework set by the 2024-2027 PNPLC (National multi-year plan to fight corruption) currently being adopted, several objectives are aimed at preventing the risk of corruption among SMEs and intermediate-sized enterprises:

- the economic services of the General Directorate of the Treasury will hold an annual awareness-raising session for the French business community abroad (foreign trade advisors, the French Tech community and local Chambers of Commerce and Industry) in priority countries;
- the theme of bribery and corruption will be included in all relevant training/awareness-raising sessions, for example those offered by Business France, including "Selling abroad: the basics for negotiating and securing your commercial offer";
- Generally speaking, the PNPLC recognises that securing growth companies is a sovereignty issue, for example in the key technology sectors of the future. These often recent or even nascent entities (start-ups, unicorns) that are actively exporting to the dollar zone, or working under licence in the USA, will be able to benefit from educational and documentary support from government departments.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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:

Other recommendations to strengthen the implementation of the Convention

Text of recommendation 18(a):

18. With regard to **the AFA's role in the development of corporate compliance measures**, the Working Group recommends that France:

(a) (i) Preserve, including in the context of the reforms currently envisaged, the role, the mandates, and – at a minimum – the funding currently allocated to the AFA for developing and monitoring compliance measures by the companies subject to the obligations of article 17b of the Sapin 2 Act; and (ii) Provide the AFA with sufficient resources to promote and monitor companies' development of compliance measures in the context of its advisory and audit functions for entities subject to the compliance obligation, including in the context of the possible overhaul of the AFA's mandates or the potential transfer of its mandates to another institution. [2009 Recommendation, II; III.v. and viii.; V, X.C; and Annex II]

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

- (i) **Preserve, including in the context of the reforms currently envisaged, the role, the mandates, and – at a minimum – the funding currently allocated to the AFA for developing and monitoring compliance measures by the companies subject to the obligations of article 17b of the Sapin 2 Act**

The AFA's role in developing and monitoring compliance measures for businesses is now undisputed and fully recognised.

Created by the Act of 9 December 2016 on transparency, combating corruption and the modernisation of economic life, known as "Sapin 2", the French Anti-Corruption Agency (AFA) spearheads the prevention of corruption in private companies through the promotion and monitoring of compliance measures.

Pursuant to **Article 17 of the Sapin 2 Act**, the chairs, CEOs and managers of a company or public institution of industrial and commercial nature, as well as the members of the management board of public limited companies employing at least five hundred employees, are required to take measures to prevent and detect the commission, in France or abroad, of acts of bribery or trading in influence. This obligation also applies to the directors of a company, or of a public institution of industrial and commercial nature, as well as to the members of the management board of public limited companies, belonging to a group of companies with the following characteristics: the parent company has its registered office in France and the total workforce of the group comprises at least five hundred employees, and whose revenue or consolidated revenue exceeds 100 million euros. Where the company prepares consolidated accounts, the obligations set out in this article apply to the company itself and to all its subsidiaries or the companies under its control.

After six years of existence, the French framework is efficient and the assessment that can be made thereof is particularly positive. In its 2021 activity report, AFA emphasises the confirmation of the trend towards compliance with the obligation to adopt the measures and procedures defined by Article 17. While there is room for improvement in terms of the quality and effectiveness of certain measures and procedures, non-compliance due to the complete absence of the mandatory measure or procedure is on the decline. Private companies warned by the AFA Director after the initial inspection show a clear desire to comply with the recommendations addressed to them, and thus to achieve compliance. In addition, the results of the assessment of the level of sophistication of companies' anti-corruption measures, published by the AFA in September 2022 on the basis of an anonymous survey of companies

conducted by the Agency, showed a clear improvement on the previous assessment, with 92% of respondent companies stating that they had implemented anti-corruption measures (compared with 70% in 2020).

Similarly, pursuant to Article 3 of the Act of 9 December 2016, the AFA monitors, on its own initiative, the quality and effectiveness of the procedures implemented within State administrations, local authorities, their public establishments, semi-public companies and companies governed by Title II of Book V of Part I of the General Local Authorities Code, and associations and foundations recognised as being of public interest, in order to prevent and detect bribery, trading in influence, corruption, misappropriation of public funds, favouritism and unlawful acquisition of an interest. It also monitors compliance with the measures mentioned in II of Article 17 of this Act within these structures. In its 2021 activity report, the AFA notes a growing awareness of the need to strengthen control of integrity violation risks. It emphasises compliance with ethical rules and the ability of public bodies to deploy an effective and structured "internal control and audit" function. It points out that these audits have also provided an opportunity to observe good practices such as the creation of steering committees in local authorities responsible for making all strategic or political decisions. Even if there is still room for improvement, the statistical surveys conducted by the AFA on the knowledge and implementation of the French anti-corruption guidelines in public authorities (local public sector, State and operators, associations and foundations) confirm a growing awareness of the risk and the gradual adoption and use of the guidelines in these entities.

Accordingly, the French system fully complies with the provisions of the 2009 anti-bribery recommendation as revised on 15 November 2021, and in particular its **Annex II**, which provides for and encourages countries to urge companies, including public companies, to introduce internal control, ethics and compliance programmes.

More generally, the AFA's role with regard to companies is acknowledged and not in doubt.

The bill to strengthen the fight against corruption, submitted by Deputy Gauvain on 19 October 2021 to the office of the National Assembly, proposed in particular to transfer the AFA's missions of advising and overseeing public players to the High Authority for Transparency in Public Life (HATVP). First of all, it should be remembered that the AFA and the HATVP, while both contributing to public integrity, do not address the same types of public. Whereas the HATVP deals with individual situations, i.e. those of senior public officials, the AFA is mainly aimed at legal persons under both public and private law, in order to help them prevent and detect integrity violations on the one hand, while at the same time monitoring the implementation of anti-corruption measures on the other.

This bill has not been placed on the agenda of the National Assembly. It was tabled during the previous parliamentary term and has now lapsed. To date, no other bills or proposals have been put forward to modify the AFA's missions or statutes, which guarantee the uniform application and monitoring of the implementation of the French preventive anti-corruption guidelines by all the legal persons concerned, whether private companies, public companies or public bodies.

The AFA's missions, as defined by law, and the guarantees of independence given to the AFA's Director in the performance of its supervisory missions,^[1] are thus fully maintained, and the French authorities are particularly intent on enabling the existing system to continue its progress in the pursuit of the objectives assigned to it.

The French authorities therefore consider that this recommendation is implemented.

- (ii) **Provide the AFA with sufficient resources to promote and monitor companies' development of compliance measures in the context of its advisory and audit functions for entities subject to the compliance obligation, including in the context of the possible**

overhaul of the AFA's mandates or the potential transfer of its mandates to another institution. [2009 Recommendation, II; III.v. and viii.; V, X.C; and Annex II]

The human and operational resources allocated to the AFA for its compliance audits of companies have been maintained at a high level.

The AFA's human resources and personnel appropriations have varied ever since its creation, and returned to a stable level in 2022. When it was set up in 2017, the AFA had 36 employees. In 2022, the number of paid staff was 50, rising to 52 in 2023. Staff costs have always been maintained at a high level, i.e. 5 019 736 euros in 2022.

Year	2017	2018	2019	2020	2021	2022	2023
Total headcount in December	36	62	63	52	57	50	52

The government is committed to providing the AFA with additional resources to match the increase in its remit, and the target of 70 jobs set in the impact study attached to the Act of 9 December 2016 remains an objective in line with the changing needs expressed annually by the Agency in its management reviews.

Accordingly, 2 new jobs were created for 2023 in order to implement audits related to the Rugby World Cup in 2023 and the Olympic and Paralympic Games in 2024, and to step up audits of local public companies, ad hoc audits of foreign companies operating in France, and follow-up audits of public bodies and companies. **Subject to the vote on the 2024 Finance Act, the drive will continue in 2024 with the creation of 3 additional posts** enabling the AFA to step up its inspections.

In the same way, France provides the AFA with the resources it needs for its audit missions and takes into account the specific management of advances on CJIPs. The overall budget allocated to AFA for its expert appraisal expenses has therefore been maintained at a high level, i.e. 350 000 euros per year for the period 2024 to 2027. In top of this come the costs of expert appraisals for CJIPs, advances that the companies subject to the CJIP subsequently repay. These advances can amount to as much as 2 to 3 million euros a year, depending on the number and size of the CJIPs in progress.

The Government will carefully examine the AFA's recent request to internalise some of the expertise related to compliance programmes, which would require an increase in staff numbers.

Against a backdrop of budget restrictions, the French Government is particularly concerned to preserve the resources allocated to the AFA and to develop them in line with the needs inherent in the pursuit of its missions, demonstrating the importance attached by the French authorities to the fight against corruption.

The French authorities therefore consider that this recommendation has been implemented.

[1] Article 2 of the Sapin 2 Act states that, "the magistrate who heads the agency shall not receive or seek instructions from any administrative or governmental authority in the performance of the duties referred to in 3° and 4° of Article 3".

If no action has been taken to implement this recommendation, 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 18(b):

18. With regard to **the AFA's role in the development of corporate compliance measures**, the Working Group recommends that France:

(b) Continue to rely on the AFA's expertise: (i) before imposing penalties and compliance obligations on companies and (ii) to monitor their implementation in the context of post-resolution audits of companies as well as the implementation of the administrative injunction sanction imposed by the AFA Sanction Commission to implement corporate compliance measures in the context of overseeing companies' compliance programmes. [2009 Recommendation, II; III.v.; X.C; and Annex II]

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

The AFA's expertise, before imposing penalties and compliance obligations on companies, as well as in monitoring their implementation and the proper implementation of the administrative injunction sanction imposed by the AFA Sanction Commission to implement corporate compliance measures, is particularly valuable and its recognised role has been highlighted since the December 2021 evaluation. For example, in its new guidelines published on 16 January 2023, the PNF stresses the need for close cooperation with the AFA on these issues.

In order to complete the French anti-corruption reference framework, a practical guide to internal anti-corruption investigations in companies, the result of a joint effort by the AFA and the PNF, was published on 14 March 2023 on the AFA and PNF websites. It has been the subject of several articles and commentaries in online legal journals such as "Daloz Actualité". Since its publication, the AFA and the PNF have taken part in several conferences and workshops aimed at explaining its content to business professionals, such as the AFEP (Association of French Private-sector Companies), MEDEF (French employers' federation), the Conseil national du Barreau (National Council of Bar Associations) and the AFJE (French association of lawyers and in-house counsels), and answering their questions.

The French authorities therefore consider that this recommendation has been implemented.

If no action has been taken to implement this recommendation, 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 19:

19. With regard to the AFA's **Sanctions Commission**, the Working Group recommends that France consider re-examining the legal framework within which the Sanctions Commission makes its decisions in order to align its approach and its sanctioning power with that of other existing sanctions commissions in France, which decide on the issues submitted to them as established by the administrative authority referring the matters. [2009 Recommendation, II; III.v.; X.C; and Annex II]

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

If no action has been taken to implement this recommendation, 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:

[Article 17 of Act No. 2016-1691](#) sets out the procedure to be followed in the event of non-compliance:

- The judge heading the AFA may issue a warning to the company's representatives, refer the matter to the Sanctions Commission to order the company and its representatives to adapt internal compliance procedures, or refer the matter to the Sanctions Commission to impose a financial penalty.

- When a case is referred to it, the AFA's Sanctions Commission can order the company to adapt its internal compliance procedures. It can also impose a fine of up to 200 000 euros for individuals and up to 1 million euros for legal persons. The amount of the fine imposed is proportionate to the seriousness of the violations observed and to the financial situation of the individual or legal person being punished.

Although the Sanctions Commission's interpretation of its sanctioning power in the two cases submitted to date does not appear to comply with the law, this does not call for a revision of the legal framework.

Indeed, the Sanctions Commission drew on Article 17 VI of the Act, which provides that appeals against its decisions are appeals of full jurisdiction, to consider that it had to assess the existence of the violation not on the date on which it was established by the AFA, but on the date on which it gave its decision.^[1] This interpretation appears to be contrary to both the spirit and the text of the Sapin 2 Act.

However, it seems premature to draw conclusions as to the inappropriate nature of the AFA's Sanctions Commission decisions, given its recent creation and the small number of cases submitted to it.

Indeed, if the latter were to maintain its practice despite everything, the AFA would not fail to lodge an appeal with the Administrative Court against the decisions of the Sanctions Commission, if such an appeal were granted to it in the absence of any legal provisions. It will therefore be appropriate to await any new decisions by the Sanctions Commission and to ascertain the case law of the Conseil d'État on this issue.

Consequently, the French authorities see no need to modify the legal framework for the AFA Sanctions Commission's intervention as it stands.

^[1] cf. [paragraph 44 of decision No. 19-01 of 4 July 2019](#), referred to in the OECD report, states that, “it follows from the foregoing that since, at the date of its decision, none of the violations cited by the Director of the Agency as grounds for proposing an injunction have been observed by the Sanctions Commission, there is no reason for it to issue an injunction or a financial penalty”.

Text of recommendation 20:

20. With respect to the **implementation of the offence of laundering of foreign bribes**, the Working Group recommends that France ensure that both the laundering of the instrumentalities of bribery and the proceeds obtained from the offence can be prosecuted as money laundering predicated on foreign bribery [Convention, Article 7].

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

Article 7 of the Convention requires each Party to have legislation enabling it to prosecute the laundering of proceeds, which are understood to comprise the amount of the illegally obtained contract in the case of active bribery and the amount of the bribe in the case of passive bribery of one of its own public officials. French criminal law is perfectly in line with this provision, since the legislation applicable to money laundering is applicable in both cases.

Firstly, it should be remembered that the seizure of the proceeds of the foreign bribery offence is greatly facilitated by the French system of seizure and confiscation set out in Article 131-21 of the Criminal Code. This makes it possible to seize and confiscate all assets (movable or immovable property, cash or sums deposited in bank accounts, securities or shares, or even various virtual currencies, etc.) that are the direct or indirect proceeds of the offence. This system makes it possible to

deal with all the proceeds of the offence, particularly from bribery, and to seize them insofar as they are the direct or indirect product of the offence, without having to initiate the money laundering offence.

Secondly, as has already been pointed out, Article 324-1 of the French Criminal Code gives an extremely broad definition of money laundering, which consists of "*facilitating by any means the false justification of origin of the property or income of a perpetrator of a crime or offence from which the perpetrator has directly or indirectly benefited*". It also includes "*aiding and abetting an investment transaction aimed at concealing or converting the direct or indirect proceeds of a crime or offence.*"

The prosecution of money laundering predicated on foreign bribery, whether active or passive, is systematically sought by the PNF, in accordance with the recommendations of the circular on criminal policy of 2 June 2020, which invites public prosecutors to prosecute money laundering as a useful additional offence. This is all the more important as proof of this offence is made easier by the fact that Article 324-1-1 of the Criminal Code establishes a presumption of illegality when it appears that the material, legal or financial conditions of an investment, concealment or conversion operation can have no other justification than to conceal the origin or the actual beneficiary of these assets or income.

With regard to passive bribery, bribes can be seized directly as proceeds of the foreign bribery offence. Subsequent transactions involving the reinvestment of the proceeds are easily classified as money laundering, in particular through the concepts of investment or conversion. The money laundering offence therefore makes it possible to prosecute wire transfers or simple transfers of funds. This solution is applicable to the laundering of all offences, including the bribery of a foreign public official.

For example, on 26 June 2019, under a CRPC, the Judicial Court of Paris convicted a number of companies acting on behalf of an Uzbek dignitary of money laundering by a criminal gang of the proceeds of foreign bribery, and ordered the confiscation of several property assets, including a flat in Paris worth more than 13 million euros and a château with a minimum net sale price of 9 500 000 euros, along with its furnishings.

With regard to active bribery, it should be reiterated that French criminal law makes no distinction between money laundering predicated on active or passive bribery. Once the active bribery of a public official has been established, the proceeds obtained by the offender are also seizable under Article 131-21 of the Criminal Code. **Subsequent investment or conversion transactions, regardless of whether they are concealed or hidden (which may be criteria for detection by TRACFIN), constitute money laundering under article 324-1 of the Criminal Code.** While the hidden or concealed nature of these transactions may indeed be a criterion for the detection of a criminal offence by TRACFIN, it is not a condition for the offence of money laundering. Consequently, a simple transfer of the sums corresponding to the bribes to a dedicated account is punishable under French criminal law as money laundering.

To address the **issue of gains - in particular funds derived from the conclusion of contracts - obtained through the action of the direct perpetrator of the bribery offence, the French criminal courts endeavour to demonstrate the criminal liability of the beneficiary legal person**, either with regard to the contractual conditions binding the legal person with the intermediary, or with regard to the responsibilities of the briber within the company. As mentioned above, the conditions set out in Article 121-2 of the French Criminal Code have been made much more flexible by case law in order to facilitate corporate liability, particularly in cases of bribery of public officials.

As soon as the beneficiary of the contract is held criminally liable, the funds received can be considered as the direct or indirect proceeds of the offence, without the need to resort to the money laundering offence.

Thirdly and more generally, France's efforts to combat money laundering have not ceased in recent years, as noted in the December 2021 evaluation of France.

These excellent results were also highlighted in the FATF March 2022 evaluation of France, which ranked France first among countries effectively combating financial crime.

Work to combat money laundering, and in particular the laundering of the proceeds of bribery, is continuing in four areas:

- strengthening the system for coordinating the fight against money laundering and linking it to the fight against corruption, through the *Conseil d'orientation de lutte contre le blanchiment de capitaux et le financement du terrorisme* (COLB - Advisory Board for the Fight Against Money Laundering and Terrorist Financing), which includes the Ministry of Justice, the AFA and the HATVP;
- drawing up a national risk analysis on corruption and applying it to specific sectors;
- drafting guidelines, in partnership with TRACFIN, to cover sectors and activities at risk of money laundering;
- organising awareness-raising and training initiatives through the supervisory authorities, representative bodies of the professions involved and regulated entities themselves.

The French authorities therefore consider that this recommendation is implemented.

If no action has been taken to implement this recommendation, 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 21:

21. With regard to the **non-tax deductibility of bribes**, the Working Group recommends that France (i) collect information on the enforcement, in overseas territories, of the non-deductibility of bribes paid to foreign public officials; (ii) take measures, throughout the French territory, to ensure that the judicial authority systematically discloses to the tax authorities information necessary for the latter to ascertain that bribes have not been improperly deducted in accordance with article L. 101 of the Manual of Tax Procedures; and (iii) re-examine, also throughout the entire country, the adequacy of the limitation period for re-assessing tax returns for the purposes of the effective application of article 39 2 bis General Tax Code. [2009 Recommendation on tax measures, I.i. and ii.]

Action taken as of the date of the follow-up report to implement this recommendation:**(i) collect information on the enforcement, in overseas territories, of the non-deductibility of bribes paid to foreign public officials**

The actions taken in the overseas *départements* which are under the authority of the tax administration (DGFIP) - Guadeloupe, French Guiana, Reunion, Martinique and Mayotte-, and which therefore have the same legal status as all the *départements* in mainland France, are the same as those described in the DGFIP's answers. The same laws, rules and methodological guidelines apply.

In New Caledonia, the non-deductibility of bribes paid to foreign public officials is provided for in the Tax Code. Article 21 of this code provides that, "*The following are excluded from deductible expenses [...] 9° Amounts paid or advantages granted directly or through intermediaries to a public official within the meaning of Article 1(4) of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or to a third party for that official to act or refrain from acting in the performance of official duties with a view to obtaining or retaining a contract or other undue advantage in international business transactions*".

This is also the case in Saint Pierre and Miquelon and French Polynesia, since the adoption of the measures outlined in the Phase 4 report.

(ii) take measures, throughout the French territory, to ensure that the judicial authority systematically discloses to the tax authorities information necessary for the latter to ascertain that bribes have not been improperly deducted in accordance with article L. 101 of the Manual of Tax Procedures;

French law is particularly clear on the obligation for public prosecutors to communicate to the tax authorities any information that could give rise to a presumption of tax evasion, such as bribes uncovered in the course of an investigation into bribery of a foreign public official. Under the terms of Article L.101 of the French Book of Tax Procedures (LPF), the judicial authorities must inform the tax authorities of any information they may obtain that could give rise to a presumption of tax evasion or any other tactic with the purpose or outcome of evading or compromising taxation (for example, the use by a French tax resident of instruments or procedures that facilitate tax evasion such as anonymous prepaid cards, the massive use of cash, the ownership of undeclared foreign accounts or the payment of funds for the purpose of bribing a national or foreign public official and their wrongful deduction from tax).

As reiterated in the [Inter-ministerial circular of 7 March 2019 on the fight against tax fraud](#), the circulation of information between the tax authorities and the judicial authorities must be systematic, in support of an effective fight against fraud: "the effectiveness of administrative action as well as criminal enforcement action in the renewed legislative framework implies by definition an intensification of relations between the authorities and the Public Prosecutor's Office" and in this

context, "public prosecutors are invited to ensure (...) that the transmission of information carried out on the basis of [Article L.101 of the LPF](#) is systematically carried out". The same circular reiterates the tax authorities' obligation to inform the judicial authorities of the action taken on the information received and introduces regular operational meetings, throughout France, between public prosecutors and the tax authorities with a view to the proactive handling of the cases transmitted and, in particular, informing the public prosecutor of the action taken by the tax authorities.

Similarly, the Minister of Justice's circular of 4 October 2021 on tax fraud, citing in particular the OECD's Multilateral Agreement between Competent Authorities on the Automatic Exchange of Financial Account Information of 29 October 2014, points out that tax fraud represents a major challenge for the judicial authorities and stresses the need for regular operational meetings throughout France between public prosecutors and the tax authorities.

In order to ensure that these exchanges are systematic, particularly in the context of investigations into bribery of a foreign public official involving the payment of bribes, the Ministry of Justice and, within it, the Directorate of Criminal Affairs and Pardons, distributed a FOCUS in June 2022 to all public prosecutors' offices, which is permanently available to all magistrates, and which sets out the legal framework for exchanges of information between the judicial authorities and the tax authorities and ensures that they are systematic, in particular through the introduction of exhaustive and regular monitoring.

In order to effectively combat the bribery of foreign public officials, France has chosen to entrust this particularly technical and legal matter to a specialised prosecutor's office, the National Financial Prosecutor's Office (Parquet National Financier - PNF), which appoints a central investigation unit, the Central Office for Combating Corruption and Financial and Tax Offences (OCLCIFI), to carry out these complex investigations. The PNF, which is responsible for tax evasion and laundering of the proceeds of tax evasion, has two specialist tax assistants who interact with the tax authorities, while the OCLCIFI benefits from the dual expertise of the *Brigade nationale de répression de la délinquance fiscale*, a tax crime investigation unit made up equally of police officers and public finance officials, and two investigation attachés from the *Brigade nationale des enquêtes économiques* (BNEE - National Brigade of Economic Investigations), a DGFIP research unit made available to the *Direction centrale de la Police judiciaire* (DCPJ - Central Directorate of the Judicial Police). Such a system is likely to facilitate the effective communication of information enabling the tax authorities to carry out the necessary checks to ensure the taxation of sums paid as bribes.

The French authorities therefore consider that the objective of this recommendation has been achieved.

If no action has been taken to implement this recommendation, 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:

- (iii) **re-examine, also throughout the entire country, the adequacy of the limitation period for re-assessing tax returns for the purposes of the effective application of article 39 2 bis General Tax Code. [2009 Recommendation on tax measures, I.i. and ii.]**

In line with the instructions given by the DGFIP to its services to systematically pass on to the judicial authorities any cases of tax provisions concerning the non-deductibility of bribes being applied, the closer links established with the judicial authorities should lead them to pass on information more systematically and at an earlier stage, with a view to use for taxation. The tax limitation period is already 10 years for any case brought to light by the judicial authorities. There is no proposal to extend the limitation period, as the situation has never arisen where a case was not dealt with by the courts because the time limit expired.

Part II: Issues for follow-up by the working group

Under Part II, and in accordance with procedures approved by the Working Group, countries are invited to provide information on any of the follow-up issues identified below where significant developments have taken place since the Phase 4 report. The Secretariat and reviewers may also identify follow-up issues for which information is required from the country being reviewed.

22. The Working Group will follow up on the following issues as case law and practice develop:

Text of issue for follow-up 22.a.:

(a) The implementation of the Belloubet circular with regard to the organisation, by the PNF and the H3C of joint training and awareness-raising for statutory auditors on the offence of foreign bribery.

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:

Although the PNF has not yet organised specific training for the H3C on detecting kickbacks, as encouraged by the [circular on criminal policy in the fight against international corruption of 2 June 2020](#), **there is nevertheless a close relationship between the H3C and the PNF, particularly on the subject of bribery**. This relationship recently resulted in a half-day meeting on 8 March 2023 at the PNF offices between the PNF prosecutors and the H3C's General Rapporteur and his deputy.

Text of issue for follow-up 22.b.:

(b) The impact of obstacles to detection by investigative journalists, including claims to protect trade secrets and classified defence information.

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:

By definition, journalists do not have access to material considered to be classified national defence information. However, if they become aware of the existence of classified information that, according to their sources, is useful for their investigation, they can apply to the issuing authority for declassification. The issuing authority may then decide whether or not to grant declassification, after analysing the extent to which the information is still sensitive. This procedure aims to strike a balance, in a democratic system, between the right to information and the safeguarding of the fundamental interests of the nation.

Regarding trade secrets, the Conseil d'État (3 June 2020, *Association Pouvoir Citoyen et Les Effrontées*, No.°421615) considers that the provisions of Article 10 of the European Convention on Human Rights and Fundamental Freedoms may give rise to a right of access to information held by a public authority where access to such information is crucial to the exercise of the right to freedom of expression and, in particular, the freedom to receive and impart information, depending on the nature of the information requested, its availability, the purpose pursued by the applicant and their role in receiving and imparting information to the public. Consequently, the public authority may only refuse to disclose information requested by a journalist if this is strictly necessary and proportionate to the protection of secrecy. It is

then up to the judge, if necessary, to find a balance between the freedom of the press and the protection of trade secrets according to the triple test of necessity, adaptation and proportionality of the measure in the event of a refusal by the administration.

Text of issue for follow-up 22.c.:

(c) The use of the new offence of trading in influence concerning foreign public officials under article 435-4 CC to ensure that all magistrates are sufficiently aware of this new offence so that they make full use of it, thereby strengthening efforts to combat indirect bribery.

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 offences of active and passive trading in influence concerning foreign public officials, provided for in Articles [435-2](#) and [435-4](#) of the Criminal Code and punishable by 5 years' imprisonment and a fine of 500,000 euros, the amount of which may be increased to double the proceeds of the offence, **are well known to specialist magistrates, prosecutors, investigative judges and trial judges, both at first and second instance.. They are punishable in the criminal courts, but also under a CJIP. These offences have been presented to all magistrates through the [circular on criminal policy in the fight against international corruption of 2 June 2020](#).**

The TIAPE offence is currently the subject of 4 preliminary investigations and one follow-up judicial inquiry by the PNF.

In the first case, a Franco-Somali businessman filed a complaint for foreign bribery and trading in influence, alleging kickbacks paid to European Union officials in a contract for the construction of a European Union residential area in Somalia won by a French consortium. This was followed by the opening of a Preliminary investigation by the PNF on 4 May 2016 into the charges of foreign bribery and TIAPE, entrusted to the OCLCIFE. The investigations carried out in France and Belgium enabled searches to be carried out and European officials to be heard as witnesses or suspects. Following a report by TRACFIN, an administrative investigation was conducted in parallel by the European Anti-Fraud Office (OLAF). Other requests for mutual assistance in criminal matters were sent to Morocco and the United Kingdom, and a complaint from an unsuccessful bidder was attached to the file. The case has recently been referred to the PNF for a decision on the next steps in the procedure.

Similarly, following an AFA report on 2 June 2021 concerning a French company that had allegedly used various intermediary contracts to obtain contracts in Mexico, including two concluded with two companies run by people close to a former governor and the former president of Mexico, the PNF opened a preliminary investigation, entrusted to the OCLCIFE, not only for foreign bribery but also for TIAPE. A request for International mutual legal assistance in criminal matters, which is currently being executed, was sent to the Mexican authorities in May 2022, and searches were carried out in France in early 2023.

In addition, the TIAPE offence was also upheld by the PNF as part of a judicial inquiry opened on 10 March 2020, on charges of foreign bribery, TIAPE, private bribery and concealment of these offences. The case involves the Russian subsidiary of a major French trading group that may have committed acts of bribery in Russia. The investigations are taking place in France through searches and hearings, and are currently being delayed due to the current international situation.

An analysis of these three cases shows that magistrates are well aware of the benefits of using the TIAPE offence in foreign bribery cases to punish the fraudulent involvement of certain

intermediaries in the conclusion of international contracts.

Furthermore, in response to the recommendation of the OECD's Working Group on Combating Bribery in International Business Transactions, awareness of the TIAPE offence has been further raised among all magistrates. The offence appears in the PNF's new CJIP guidelines published on 16 January 2023 and in the [CJIP "FOCUS" fact sheet](#) distributed by the DACG to all French magistrates. It was also discussed at the seminar organised by the DACG on 25 January 2023 for all magistrates of first and second instance dealing with foreign bribery cases.^[1] Lastly, the benefits of using the TIAPE offence were also discussed with all the participants in the training course dedicated specifically to dealing with foreign bribery cases, held on 2 December 2022 at the French National School for the Judiciary (ENM).^[2]

^[1] Cf. presentation of the seminar in the Annex (**Annex 16**: Seminar on bribery of a foreign public official held at the OECD on 25 January 2023).

^[2] Cf. training deliverable in the Annex (**Annex 14**: ENM material for the course on serious economic crime – 28 November to 02 December 2022 and **Annex 15**: DACG - Presentation as part of the Serious Economic Crime training course – 2 December 2022).

Text of issue for follow-up 22.d.:

(d) The use of the fall-back offences, trading in influence offence, misuse of corporate assets, money laundering, the publication or presentation of false or misleading annual accounts, as well as tax evasion in cases involving elements of foreign bribery

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 [circular on criminal policy in the fight against international corruption of 2 June 2020](#) urges all French public prosecutors' offices to investigate offences associated with the bribery of a foreign public official, evidence of which is sometimes easier to obtain. These related offences specifically include money laundering, concealment, misuse of corporate assets, publication or presentation of false or misleading annual accounts, fraud, forgery of private documents and tax evasion.

The number of international bribery cases involving misuse of corporate assets, money laundering or tax evasion is particularly high, with 70 international bribery cases currently in progress - 28 preliminary investigations and 20 judicial inquiries - involving fall-back offences, most often alongside the main offence of bribery of a foreign public official. In addition, the TIAPE offence is currently the subject of 4 preliminary investigations and one follow-up judicial inquiry by the PNF.

An analysis of convictions for bribery of a foreign public official reveals a large number of cases in which fall-back offences were upheld by the trial courts.

On 26 February 2016, the Paris Court of Appeal sentenced 11 defendants to fines for bribery of a foreign public official, misuse of corporate assets and trading in influence. On 3 October 2016, the Paris Criminal Court convicted several individuals of bribery of a foreign public official, misuse of corporate assets, use of forgery and concealment and, in a separate judgment on 27 January 2017, convicted one individual of tax evasion. These individuals received suspended prison sentences and fines. In a judgment dated 6 October 2020, the Paris Court of Appeal convicted two legal persons and three individuals for bribery of a foreign public official and a fourth for bribery of a foreign public official, forgery and use of forgeries. The individuals were sentenced to suspended prison terms and fines and the legal persons were given fines. Similarly, in a ruling handed down on 30 September 2020, the Colmar

Court of Appeal sentenced three individuals on charges of bribery of a foreign public official and misuse of corporate assets to suspended prison sentences and a fine. More recently, in a Judgment of 7 June 2022, the Paris Criminal Court sentenced two individuals for bribery of a foreign public official, complicity in bribery of a foreign public official and money laundering to prison sentences accompanied by arrest warrants and confiscation of real estate assets and receivables.

An analysis of the decisions handed down through the plea bargain procedure (CRPC - *comparution sur reconnaissance de culpabilité*) also reveals that the courts are addressing not only foreign bribery offences but also fall-back offences. On 13 September 2016, an individual was sentenced under a CRPC for bribery of a foreign public official and misuse of corporate assets to six months' imprisonment and a fine of 25 000 euros. Similarly, on 26 June 2019, three legal persons were sentenced for money laundering by a criminal gang predicated on bribery of a foreign public official to the confiscation of several high-value real estate assets and ordered to pay 60 285 000 euros in damages to the Republic of Uzbekistan. More recently, on 5 April 2022, in a case opened for money laundering predicated to the bribery of a foreign public official and laundering of the proceeds of tax evasion, an individual was sentenced under a CRPC for the laundering of aggravated tax evasion and misuse of corporate assets to a suspended sentence of three years' imprisonment and confiscation of up to 1 million euros of sums seized from accounts held in Luxembourg. This conviction follows a settlement with the tax authorities under which the person concerned paid the sum of 4.9 million euros.

An analysis of the convictions handed down for bribery of a foreign public official therefore shows that the French courts are not only able to use fall-back offences when the main foreign bribery offence cannot be established, but that they also make full use of these offences alongside the main offence.

Text of issue for follow-up 22.e.:

- (e) The implementation of the foreign bribery offence by the European Public Prosecutor's Office when French individuals or legal persons are involved, in particular to verify whether the European Delegated Prosecutors in France have the necessary resources and independence to manage these cases in accordance with the Convention, and to ascertain how these Delegated Prosecutors coordinate, where appropriate, with the French authorities during joint investigations.

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 European Public Prosecutor's Office started its operations on 1 June 2021.

85 investigations are currently under way in France. This figure includes cases opened by European Delegated Prosecutors in France as well as requests for assistance sent to them by their counterparts in the other States involved in the European Public Prosecutor's Office.

Pursuant to Article 4 of Directive (EU) 2017/1371 of 5 July 2017, the European Public Prosecutor's Office may investigate the offence of corruption committed by a national or European public official provided that the offences harm, or are likely to harm, the financial interests of the European Union.

An investigation into a European official on corruption charges is currently being led by a European Delegated Prosecutor in France following a tip-off from the European Anti-Fraud Office.

The Delegated Prosecutors in France have the necessary resources and independence to manage

cases of cross-border corruption affecting the financial interests of the European Union and any other offence falling within the remit of the European Public Prosecutor's Office. The independence of the Delegated European Prosecutors is guaranteed not only by their status but also by the operating rules of the European Public Prosecutor's Office.

The Delegated European Prosecutors appointed by the Member States are appointed for a renewable term of 5 years by the College of Prosecutors on a proposal from the Head of the European Public Prosecutor's Office. In conducting their investigations, they have the same powers as national prosecutors and may not take instructions from anyone outside the European Public Prosecutor's Office, whether a Member State, an EU institution, body or agency.

The monitoring of investigations by Permanent Chambers is an additional guarantee of independence. The European Public Prosecutor of the nationality of the State in which the investigation is taking place cannot be a member of the Permanent Chamber responsible for supervising and leading the case. Furthermore, while the Permanent Chambers have the power to give instructions to the Deputy European Public Prosecutors where this is necessary for the effective management of the investigation or prosecution, they cannot go against a decision to open an investigation or bring a case to trial, taken by a Deputy European Public Prosecutor.

The European Public Prosecutor's Office maintains smooth relations with the French courts. However, its role is not to conduct investigations in coordination with the French courts. Indeed, Article 24 of Council Regulation (EU) 2017/1939 of 12 October 2017 requires the competent national judicial authority to inform the European Public Prosecutor's Office, without undue delay, of an ongoing investigation concerning matters falling within its remit so that it can decide whether or not to exercise its right of evocation. If the European Public Prosecutor's Office chooses to evoke proceedings, the court concerned will have to relinquish jurisdiction in favour of the European Public Prosecutor's Office. It should be noted that the European Public Prosecutor's Office in France has never been faced with a positive conflict of jurisdiction in any of the 21 proceedings that it has evoked since it began operating.

Lastly, the procedures for transmitting alerts issued by the national authorities have been facilitated by the Act of 22 December 2021. The latter provides, in accordance with the provisions of Article 24 of the Regulation of 12 October 2017, that alerts shall be sent directly to the European Public Prosecutor delegated by the competent national authorities. Prior to the adoption of this text, alerts had to be sent via the National Financial Prosecutor or the Public Prosecutor with territorial jurisdiction over the specialised interregional court.

Text of issue for follow-up 22.f.:

(f) The impact of the new rules on defence secrecy classification on company practice in this area.

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:

It should be noted that this indicator is of little relevance: classification by companies - i.e. within the framework of a classified contract - is strictly governed by the classification guide attached to the classified contract concerned, and the reform has no impact on this issue.

More specifically, when the classification guide attached to the classified contract is prepared, the programme directors in the relevant ministry ensure that the classification is consistent with protection requirements.

In addition, the ministries are responsible for carrying out audits of these companies to ensure that the regulatory conditions for holding and handling classified information and the classification guide are being properly respected.

Text of issue for follow-up 22.g.:

(g) The impact of data protection regulations on foreign bribery investigations and prosecutions, including in particular where companies and the PNF co-operate in concluding a CJIP.

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 protection of individuals with regard to the processing of personal data is a fundamental right recognised by numerous international texts, such as Article 8 of the [Charter of Fundamental Rights of the European Union](#) and Article 16 of the [Treaty on the Functioning of the European Union](#). In France, personal data protection is governed by [EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016](#) on the protection of individuals with regard to the processing of personal data and on the free movement of such data and by Title III of the ["Informatique et Libertés" Act 78-17 of 6 January 1978](#), which transposes Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 known as the "Police-Justice" Directive. In its [decision of 3 May 2019](#), the OECD General Secretariat recognised that personal data protection was a right and a major issue and adopted rules in this area that apply to data processing carried out by all OECD groups, including the Working Group on Bribery.

Nevertheless, the fundamental right to personal data protection is not an absolute right and should be balanced with other fundamental rights, in compliance with the principle of proportionality.

In the first place, personal data protection cannot be invoked for all judicial investigations and resulting prosecutions, including those relating to transnational corruption. Furthermore, the IT resources used to protect personal data must not enable the needs of the judicial investigation to be circumvented. Accordingly, [Article 434-15-2 of the French Criminal Code](#) provides that refusal to hand over an encryption agreement for a telephone that may have been used to prepare, facilitate or commit a crime or offence is punishable by three years' imprisonment and a fine of €270,000. This provision was also deemed compliant with the French constitution in a [decision by the Constitutional Council on 30 March 2018](#).

Secondly, personal data protection does not prevent cooperation between a legal person and the PNF. If the CJIP is not concluded, statements made or documents handed over voluntarily by the legal person may not be referred to by the public prosecutor in court, not for reasons of personal data protection, but because they do not result from investigative acts and were handed over as part of a negotiation. This provision is likely to encourage the full cooperation of the legal person at this stage of the proceedings, which is required by the PNF to validate the very principle of the CJIP and will be a factor reducing the amount of the public interest fine imposed. In addition, documents handed over voluntarily may be presented before the criminal court in the event of prosecution if, at the time they were handed over, the company expressly consented to their inclusion in the case file. On the other hand, the approval of the CJIP in open court and its compulsory publication on the websites of the Ministry of the Economy and Finance and the Ministry of Justice meet the objective of transparency and of deterring new offences.

Text of issue for follow-up 22.h.:

(h) The time limits for the execution of requests for mutual assistance by France.

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:

All incoming requests for international mutual assistance in criminal matters relating to bribery of a foreign public official are centralised at the PNF, which ensures that they are processed quickly and expeditiously. As soon as they are received by the PNF, requests for mutual assistance are recorded immediately by the registry and allocated to the leader of the international co-operation group. If a mirror investigation exists within the PNF, execution of the request is transferred to the team in charge of the French proceedings. Otherwise, the request is handled by the international co-operation group, which may execute it internally within the PNF (requisitioning a company, for example) or sub-delegate it to an investigation service (mainly to a central office: the *Office central de lutte contre la corruption et les infractions financières et fiscales* (OCLCIFI - the Central Office for Combating Corruption and Financial and Fiscal Offences) or the *Office central pour la répression de la grande délinquance financière* (OCRGDF - Central Office for Fighting Major Financial Crimes) depending on the investigations to be carried out). If the request is made by an investigative judge, it is forwarded without delay to the dean of investigative judges of the Judicial Court of Paris. The request is also systematically analysed to determine whether it contains information likely to justify opening an investigation in France.

The average execution time by France is perfectly satisfactory, around 9 months for requests issued by parties to the Convention and 14 months for non-parties to the Convention. Over the period 2014-2021, 86 requests for mutual assistance in cases of foreign bribery involving French companies/citizens were received by the PNF: 63 came from States party to the Convention and 23 from countries not party to the Convention. Of the requests that were executed, those from States party to the Convention were executed within an average of **9 months** (47 requests concerned; 37 requests executed in less than a year, 9 requests executed in one to two years and one request executed in 30 months), while those from countries not party to the Convention were executed on average within **14 months** (18 requests concerned; 13 requests executed in less than a year, one request executed in 15 months, and 4 requests executed in 2 years or more). These timescales are all the more satisfactory given that some requests for mutual assistance from a State party to the Convention, involving the transmission of several thousand items of evidence collected in the course of French proceedings or to be collected in order to respond to the request, may have posed execution difficulties that have increased the time taken (the judicial authority having to check each item of evidence before transmitting it).

Requests from countries not party to the Convention were executed on average within **14 months** (18 requests concerned; 13 requests executed in less than a year, one request executed in 15 months, and 4 requests executed in 2 years or more).

The most recent requests for international mutual assistance in criminal matters relating to bribery of a foreign public official executed by the PNF include the following:

- a European investigation decision from Sweden concerning aggravated active bribery received on 10 January 2023 and returned with the relevant documents on 25 May 2023;
- a request for mutual assistance in criminal matters from Norway concerning bribery of foreign public officials, received on 11 January 2023 and returned with the relevant documents on 22 May 2023;
- a request for mutual assistance in criminal matters from the United Kingdom relating to money laundering, bribery and fraud by abuse of position, received on 15 August 2022, with an initial

partial return of the relevant documents on 22 December 2022 and a complete return of the relevant documents and exhibits on 18 January 2023.

These three requests were executed within a period of 4 to 5 months, which testifies to the high level of involvement and efficiency of the National Financial Prosecutor's Office (PNF) in processing them.

Text of issue for follow-up 22.i.:

(i) On the evolution of the PNF's role in the resolution of multi-jurisdictional cases.

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 PNF continues to play a very active role in the resolution of multi-jurisdictional cases referred to it in coordination with its foreign partners.

Text of issue for follow-up 22.j.:

(j) The level of enforcement of the corporate liability regime by the courts and through the CJIP

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 France's response to the Phase 4 questionnaire, the implementation of corporate liability for bribery of a foreign public official has gathered pace with the definitive conviction of 6 additional legal persons by the criminal courts^[1], and the approval of 4 CJIPs for bribery of a foreign public official, the latest of which was signed in June 2023. This increase in the number of convictions confirms that the general overhaul of France's anti-corruption system continues to facilitate the prosecution of legal persons involved in foreign bribery.

^[1] Decision by the Court of Cassation of 10 March 2021 ([Crim., 10 March 2021, No. 19.82-9259](#)). These convictions for foreign bribery provided an opportunity for the Court of Cassation to confirm the illegality of the practice of "surcharges", without contractual cause and in the absence of legal provisions providing for them, applied to a contract concluded with foreign public authorities.

Text of issue for follow-up 22.k.:

(k) The possible development of the CJIP to ensure that it continues to be guided, in its conditions and enforcement means, by the non-trial resolution systems and good practices in this field used by the other Parties to the Convention.

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 introduction of the CJIP is one of the good practices and positive developments identified in

France's Phase 4 report. The CJIP has enabled a significant strengthening of France's anti-corruption system in terms of corporate liability, paving the way for more efficient and rapid handling of this type of proceedings and imposing fines that are much higher than those previously imposed by the criminal courts, as demonstrated again recently by the public interest fine of 208 938 000 euros imposed in June 2023.

The creation of the CJIP has also enabled France to strengthen coordinated and simultaneous resolutions with other Parties to the Convention. As a result, by drawing inspiration from the settlement mechanisms used in Anglo-Saxon countries, the CJIP has enabled France to meet the best international standards for non-trial resolution systems. In order to continue improving this tool, a number of resources are being used to facilitate the use of the CJIP and disseminate best practice in this area.

With this in mind, the National Financial Prosecutor's Office (PNF) published new [guidelines for implementing the CJIP](#), on 16 January 2023, replacing those published in June 2019. These guidelines aim to make the CJIP more transparent, predictable and easier to understand. In particular, they specify how the company's good faith is to be assessed, how the public interest fine is to be calculated, the arrangements for exchanges between the defendant and the public prosecutor and the consequences of the company's cooperation.

In these guidelines, the PNF states that when a legal person is the subject of simultaneous investigations by several authorities, recourse to a CJIP should create the conditions for coordination with the other authorities. Accordingly, the CJIP is now seen as a non-trial resolution mechanism that promotes both the simultaneous conclusion of coherent agreements and the implementation of a single compliance programme by the legal person. This has been made possible by the collaboration between the PNF and the French Anti-Corruption Agency (AFA), which in 2023 published a [joint guide on internal anti-corruption investigations](#) focusing in particular on the conditions for implementing the CJIP and the implementation of compliance programmes.

Lastly, **the Ministry of Justice has also distributed to all French magistrates a fact sheet on the CJIP in economic and financial matters, together with templates to enable as many people as possible to use this instrument easily.**

All these initiatives are fully in line with the recommendations of the Gauvain and Marleix parliamentary report of 2021, and the French CJIP model is now recognised at the highest level internationally and is a source of inspiration for the Parties to the Convention.

Text of issue for follow-up 22.1.:

(1) Sanctions applied in practice against legal persons convicted of foreign bribery to ensure that they are effective, proportionate and dissuasive in accordance with Article 3 of the Convention.

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:

Sanctions applied in practice against legal persons convicted of foreign bribery are particularly effective and dissuasive.

In addition to the figures given above, it should be remembered that convicted legal persons incur, in

addition to particularly heavy fines, a particularly dissuasive sanction of automatic exclusion from public contracts. Articles [L. 2141-1](#) and [L. 3123-1](#) of the French Public Procurement Code provide for an automatic sanction of exclusion from public contracts in the event of the final conviction for a foreign bribery offence of a legal person, or a member of the management, administrative, executive or supervisory body thereof, or of an individual who holds a power of representation, decision-making or control therein.

In the event of conviction of the legal person, this penalty is imposed for a period of five years, unless a final judicial decision is handed down to the contrary. In the event of the conviction of a member of a management or supervisory body or of an individual with powers of representation, decision-making or control, the legal person's exclusion from the contract award procedure is valid for as long as that individual exercises those functions.

This measure is particularly **effective** - since it prevents the legal person from repeating the offence - **proportionate**, since it is limited in time and can be adjusted by the judge, and finally **dissuasive**, because of the financial consequences resulting from a significant loss of market share in public contracts.

Text of issue for follow-up 22.m.:

(m) The level of sanctions imposed in practice through a CJIP to ensure that these are effective, proportionate and dissuasive.

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:

Pursuant to Article 41-1-2 of the Code of Criminal Procedure, the amount of the public interest fine is set in proportion to the benefits derived from the misconduct observed, up to a limit of 30% of the average annual revenue calculated on the basis of the last three known annual revenues at the date on which the misconduct was observed.

The level of fines imposed in practice through a CJIP is particularly dissuasive. Since its creation, 25 CJIPs have been signed and approved, 10 relating to tax evasion and laundering of the proceeds of tax evasion, 15 relating to bribery and trading in influence, including 9 concluded by the PNF relating to bribery of a foreign public official. These 25 CJIPs resulted in the payment of public interest fines totalling almost 4 billion euros (3 992 422 531 euros). The fines imposed for bribery of a foreign public official are much higher than those imposed for other offences. For example, the 9 CJIPs approved in the case of bribery of a foreign public official resulted in the payment of 2 591 599 567 euros in public interest fines to the French Treasury.

The years 2022 and 2023 are significant as 4 CJIPs were signed and approved in relation to bribery of a foreign public official for a cumulative amount of public interest fines of 236 215 357 euros.

07.07.2022	IDEMIA	PNF	Bribery of a foreign public official	Public interest fine of 7 957 822 euros
07.07.2022	DORIS GROUP	PNF	Bribery of a	Public interest fine of 3 463 491

	SA		foreign public official	euros
30.11.2022	AIRBUS II	PNF	Bribery of a foreign public official	Public interest fine of 15 856 044 euros + Compensation of 20 000 euros for damages suffered by the association ANTICOR + 1 euro in compensation for damages suffered by the association SHERPA
28.06.2023	TECHNIP (Energies France & UK)	PNF	Bribery of a foreign public official	Public interest fine of 208 938 000 euros

Text of issue for follow-up 22.n.:

(n) The AFA's development of its anti-corruption guidelines as well as the number and scope of its *ad hoc* audits of companies' implementation of their compliance obligations under the Sapin 2 Act.

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:

- *Regarding the AFA's development of its anti-corruption guidelines.*

The creation of a French anti-corruption reference framework is one of the key outcomes of the Sapin 2 Act and the AFA's action, in that it complements the Sapin 2 Act and its implementing regulations. It consists of the [AFA's recommendations published in the Official Gazette on 12 January 2021](#). These are supplemented and illustrated by the AFA's theme-based and sector-specific practical guides, published [on the AFA website](#). New resources are regularly added to this collection of documents.

- Publication of guides since the creation of the AFA.

The AFA has published **several practical guides** to help economic operators put in place their anti-corruption system.

All these guides are listed below. It should be noted that there have been a number of publications since autumn 2021 and the publication of the OECD's Phase 4 evaluation report on France.

2019	<ul style="list-style-type: none"> • The corporate anti-corruption compliance function (French) / English version
2020	<ul style="list-style-type: none"> • Gifts & Hospitality Policy in Private and Public Sector Corporations and Non-Profits (French) / English version • Anti-corruption due diligence for mergers and acquisitions (French) / English version

2021	<ul style="list-style-type: none"> • Preventing conflicts of interest in the private sector (French) / English version • Anti-corruption guide for SMEs and smaller intermediate-sized enterprises (French) / English version
2022	<ul style="list-style-type: none"> • Corporate anti-corruption accounting controls (French) / English version • Setting up a system to prevent corruption risks in the Building and Public Works sector (French)
2023	<ul style="list-style-type: none"> • Internal anti-corruption investigations (French) / English version
In preparation	<ul style="list-style-type: none"> • Draft guide on areas requiring attention to prevent corruption in patronage and sponsorship operations • Draft guide on third-party assessments • Setting up a system to prevent the corruption risks in the banking sector

The publication of a number of guides, particularly those aimed at economic operators, is subject to prior **public consultation**, which has a number of advantages:

- it provides an insight into the practical reality of companies and the difficulties they face;
- it also makes it possible to propose achievable best practices for the parties concerned, taking into account the limitations they have identified.

The guides are also prepared **with the help of working groups** made up of representatives of the sector in question and, in the case of theme-based guides, may be drafted in collaboration with institutional partners.

The guides are also **presented at external events**, which helps to disseminate the anti-corruption guidelines:

- presentations to universities, professional federations, companies, law firms, public establishments, government departments, public service schools, etc.;
- explanations of the guides and discussions with compliance professionals in France.

The publication of several guides on sometimes complex or sensitive subjects (conflicts of interest, anti-corruption accounting inspections, internal anti-corruption investigations) is a real asset for the AFA as it:

- informs and clarifies the French anti-corruption reference framework;
- helps public-sector and economic operators deal with issues that may present risks for them.

It should be noted that, in addition to the guides, the AFA provides companies with a range of educational and operational resources in the form of a collection of practical fact sheets, PPT presentations and awareness-raising tools:

- a [collection of practical fact sheets: useful public databases for assessing third-party integrity](#)
- a [collection of practical fact sheets: indices for measuring a geographic area's exposure to corruption risk](#);
- the [presentation of international standards promoting integrity in business life](#);
- a [presentation](#) on the implementation of the anti-corruption measures provided for in Article 17 of the Sapin 2 Act.
- an updated PPT presentation on [facilitation payments](#).

The Agency also performs its support role by committing to respond to requests for information on legal issues^[1] or technical questions within one month of receiving them.

- Looking ahead

The development of sector-specific or theme-based practical guides is continuing, to complement the French anti-corruption reference framework.

The following guides are currently in preparation (see table above):

- the guide on areas requiring attention to prevent corruption in patronage and sponsorship operations
- the guide on setting up a system to prevent corruption risks in the banking sector
- the guide on third-party assessments

In addition to the guides, the following educational and operational resources are currently being prepared:

- a collection of practical information sheets on compliance with regulations on protecting personal data when implementing an internal anti-corruption whistleblowing system.
 - a series of free podcasts scheduled for 2024
- **Regarding the number and scope of its ad hoc audits of companies' implementation of their compliance obligations under the Sapin 2 Act.**

AFA publishes detailed statistics on its audit work in its activity reports.

A distinction is made between audits carried out at the AFA's initiative in order to ensure the quality of measures to prevent and detect integrity violations by economic operators or public bodies, and remediation audits carried out at the request of the judicial authority (CJIP) or following a decision by the AFA's Sanctions Commission.

Remediation audits include:

- compliance checks, which are carried out following a decision by the Sanctions Commission;
- preliminary examinations, which are assessments carried out at the request of the Public Prosecutor as part of the negotiations for a CJIP, enabling the Public Prosecutor to assess the need to include, in addition to the fine, a compliance programme measure and, where appropriate, its scope;
- audits of the compliance programmes entrusted to the AFA by the Public Prosecutor's office in the context of the CJIPs, over a maximum period of 3 years.

In 2022, the AFA initiated 39 new audits - 36 *ad hoc* audits and 3 remediation audits carried out within the framework of CJIPs.

Of the 36 *ad hoc* audits, 18 concerned companies subject to Article 17 III of the Sapin 2 Act. 12 of these 18 audits are initial inspections of the main companies in a particularly exposed business sector and 6 are follow-up audits of companies previously audited in 2018, 2019 and 2020 (see answer to recommendation 22o on inspection procedures).

The 18 audits launched in 2022 concern companies with revenues ranging from 434 million euros to 81 billion euros and a workforce of between 800 and 300 000 employees. 10 are French subsidiaries of international groups. On the start date of the audit, they owned between zero and 600 subsidiaries.

Between October 2017 and the end of 2022, 198 audits and examinations were launched by the AFA, including:

- 129 audits and examinations of business entities subject to Article 17(III) of the Sapin II Act, 69 audits of public-sector entities as outlined in Article 3(3) (including one combined audit);
- 20 audits and examinations relating to remediation audits, 152 initial audits and 26 follow-up audits.

One third of the businesses audited are in manufacturing, 13% are in finance, 12% in construction, 11% in transport and 10% in information and communication. Most of these companies have extensive international business.

In 2022, AFA changed the way audits were carried out to adapt them even more effectively to the risk profiles of the entities audited take into account its feedback. The Audit Charter was updated in June 2022 to incorporate these changes, for audits of both business and public-sector entities (see comments in response to issue 22o).

There has also been an increase in the number of audits carried out as part of CJIPs, with 10 preliminary reviews carried out between 2017 and 2022, compared with 8 carried out between January and September of 2023. In total, 10 compliance programme measures were entrusted to the AFA between 2017 and September 2023.

The following table shows the type of audits carried out by the AFA.

Audits/examinations launched since 2017	2017-2021		2022		Overall total
	Business entities	Public entities	Business entities	Public entities	
Remediation audits	17		3		20
Compliance remediation order audits	2				2
Compliance remediation programme audits	6		2		8
Preliminary examinations	9		1		10
Audits initiated by the AFA	91	51	18	18	178
Initial audits	79	43	12	18	152
Follow-up audits	12	8	6		26
Overall total	108	51	21	18	198

¹¹ although these answers do not constitute analyses of individual situations.

Text of issue for follow-up 22.o.:

(o) The AFA's implementation of its supervisory duty to ensure that it continues to accord high priority to monitoring companies' implementation of compliance obligations when they are subject to article 17 of the Sapin 2 Act.

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:

One of the AFA's priority missions is to ensure that companies subject to the Sapin 2 Act comply with their obligations under Article 17.

The AFA's Business Audit Department has been reorganised to ensure more effective and enhanced auditing, with more versatile staff with broader expertise. In addition, building on the experience gradually acquired and on the adoption of the Sapin 2 Act by business entities, this department has updated its audit procedures since June 2022 with a view to improving its assistance to businesses to help them refine their action plan and meet their expectations.

There are several noteworthy developments:

- **The audits are conducted in two phases** to adapt them even more effectively to the risk profiles of the entities audited. The first phase of the audit aims to ascertain the existence, quality and effectiveness of the anti-corruption system deployed by the entity under audit regarding its risk environment. At the end of this first phase, the Director can decide to end the audit or launch a second phase aimed at further analysing the anti-corruption system of the entity under audit (for example, focus on one of the system's measures, a specific geographical area or activity, or one or more high-risk processes);
- When submitting the provisional audit report, the Director may ask the entity to send him an **action plan** specifying the procedures and timetable for the actions envisaged to address the recommendations made in the report, as well as the individuals responsible for their implementation. This action plan may entail exchanges with the entity under audit to ensure its relevance, and is appended to the final report. This change aims to help entities identify relevant actions to implement;
- Changing the observation date: **in order to make the best possible use of the work carried out by the audited entities during the audit and after receiving the provisional report**, the findings of the final reports are now based on the observations updated on the date for responding to the provisional report, rather than the closing meeting date. However, in order to be able to take these elements into account, it is essential that the entity informs AFA of any evidence of measures likely to alter the observations, recommendations and any breaches contained in the report as part of any adversarial procedure.
- The performance of **audits of combined entities** falling under both Article 3 and Article 17 of the Act of 9 December 2016 (business and public sector), illustrates the relevance of the single reference framework proposed by the AFA.

Text of issue for follow-up 22.p.:

(p) The progress of the companies' implementation of the accounting provisions set out in article 17 of the Sapin 2 Act, implementing Article 8 of the Convention, through the records produced from the AFA and other specialised bodies.

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 AFA supports companies in fulfilling their accounting obligations in a number of ways:

- the publication of the practical guide on corporate anti-corruption accounting controls in April 2022, developed in consultation with the Order of Chartered Accountants (OEC), the National Company of Auditors (CNCC), the High Council of Statutory Auditing (H3C), the French Institute of Internal Audit and Control (IFACI) and the Association of Finance Directors and Management Controllers (DFCG);
- the release of a podcast with legal publisher Dalloz on anti-corruption accounting audits in June 2022;
- raising the awareness of professional associations on the implementation of anti-corruption accounting audits in companies, in particular through two presentations to the Order of Chartered Accountants (OEC), each of which was attended by 2 500 accountancy professionals;
- training courses under the aegis of the High Council of Statutory Auditing (H3C), which will be organised jointly with the National Company of Auditors (CNCC).

Text of issue for follow-up 22.q.:

(q) The measures taken by Bpifrance Assurance Export to strengthen internal mechanisms for examining export credit applications, particularly with regard to the use of agents to ensure their effectiveness in practice.

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:

Detection systems have been strengthened by **the introduction of (i) an internal tool called Flaminem** which enables anti-corruption due diligence to be carried out, as well as AML/CFT due diligence and compliance with economic sanctions regulations during the investigation of any case. Flaminem enables Bpifrance Group employees to identify corruption red flags, in particular through Flaminem's "E-Reputation" module, which is directly connected to the Dow Jones platform and enables due diligence to be carried out on each of the parties involved in the transaction (i.e. negative press articles relating to regulatory corruption issues against one of the parties involved; investigations or convictions relating to regulatory corruption issues). It should be noted that after each case has been investigated, Flaminem has a monitoring system which allows Bpifrance's Compliance and Permanent Control Department to reopen for review a case, in which a point relating to regulatory corruption issues has been identified after the fact; **(ii) additional questions asked in the Credit Insurance Application form (DAC) relating to the use of an agent.** Bpifrance Assurance Export's operational staff must therefore analyse the answers provided by the **exporter; and (iii) an Annex to the Credit Insurance Application form** entitled "*Statement relating to the fight against corruption and to the protection of personal data*" which incorporates the recommendations of the OECD's 2019 "Anti-Bribery Recommendation" and which must be signed and dated by the exporter and the credit institution.

In other words, as soon as an element of risk/alarm signal is identified, the case is referred to Bpifrance's Compliance and Permanent Control Department for study and opinion, which must, if applicable, make a declaration to the public prosecutor.

Part III: Foreign bribery and related enforcement actions since phase 4

Enforcement of the foreign bribery offence and related offences since Phase 4

We would kindly ask you to update this table and provide information on:

- The status of foreign bribery cases referred to in Annex 2 of [Phase 4 Report: France](#).
- Foreign bribery cases identified in the matrix since Phase 4, including two cases that the Secretariat will propose for inclusion in the edition of the matrix to be circulated in December 2023. You will note that to make it easier to identify these cases, we have included a summary in a separate category at the end of the table.
- Any additional investigations underway or terminated since Phase 4.

Please update the table in the Annex of this form. You will recall that these cases were classified according to their state of progress in different categories of the table annexed to the Phase 4 report. When you update the table, we would also be grateful if you could move these cases to the relevant category in the table based on their state of progress. You can also add information below.

Annex to the written follow-up: recap of foreign bribery cases

Annex shared with the evaluation team.

Part IV: Dissemination of evaluation report

<p>Please describe the efforts made to publicise and disseminate the Phase 4 Report:</p>
<p>Action taken as of the date of the follow-up report:</p> <p>The French authorities took the necessary steps to publicise the Phase 4 Report and soon as it was published by the OECD:</p> <ul style="list-style-type: none"> - The evaluation report was published on the Ministry of Justice website on 16 December 2021. The report was also referred to in the 2021 activity summary of the National Financial Prosecutor's Office (PNF). It was also published on the Ministry of Justice intranet,⁴⁸ was the subject of a specific session at the seminar on bribery of foreign public officials held on 25 January 2023 for all members of the judiciary and international bribery experts⁴⁹ and is mentioned in various training courses on bribery at the National School for the Judiciary (<i>l'École nationale de la magistrature – ENM</i>) (Annexes 17 to 23). - The Ministry of the Economy, Finance and Industrial and Digital Sovereignty published a summary of the report on its website "L'OCDE salue le rôle de TRACFIN dans la lutte contre la corruption d'agents publics étrangers (CAPE) economie.gouv.fr", on 16 January 2022, with a link to the OECD website for accessing the report. - The AFA dedicated an article on its website on 28 January 2022 to the OECD evaluation when the Phase 4 report was published, and the Agency also quotes extracts from the report in its 2021 activity report (in particular on pages 25, 26 and 27).

⁴⁸ **Annex 33:** DACG – Screenshot from the Ministry of Justice intranet.

⁴⁹ **Annex 29:** Ministry of Justice and ENM – The organisation of a seminar on combating bribery of foreign public officials and the recommendations of OECD Working Group on Bribery in International Business Transactions – 25 January 2023.

ANNEXES

Annex 1: General Directorate of the Treasury - Code of Ethics – June 2023

Annex 2: General Directorate of the Treasury - Training – Presentation of the OECD and combating bribery of foreign public officials

Annex 3: General Directorate of the Treasury – Preview for the *Journées internationales du Trésor* (JIT) on 26 June 2023

Annex 4: JIT Programme for 26 June 2023

Annex 5: General Directorate of the Treasury - JIT - OCLCIFI on 26 June 2023

Annex 6: General Directorate of the Treasury - JIT - reporting obligation

Annex 7: Bpifrance - Code of ethics - Assurance Export

Annex 8: Bpifrance - Code of ethics - Financing

Annex 9: Bpifrance - Code of ethics - Management Company procedure

Annex 10: Bpifrance - Bpifrance - Code of conduct on fighting bribery, favouritism and trading in influence

Annex 11: MEAE, General Directorate of the Treasury – Questionnaire sent to the officials in the twenty positions consulted in the summer of 2023

Annex 12: DGFIP - Practical assistance in drafting reports under Article 40 of the Code of Criminal Procedure

Annex 13: PNF – Guidelines for implementing the *Convention judiciaire d'intérêt public* (CJIP) – 16 January 2023

Annex 14: DACG - *La Convention judiciaire d'intérêt public* (CJIP) – July 2023.

Annex 15: TRACFIN - Model case of bribery of a foreign public official

Annex 16: AFD – Training material on preventing, detecting and combating Prohibited Practices - 20 June 2023

Annex 17: ENM - Material for the anti-bribery session - 14 to 18 November 2022

Annex 18: ENM - Material for the anti-bribery session - 5 to 09 December 2022

Annex 19: ENM, AFA – Material for the anti-bribery session - 13 to 17 November 2023

Annex 20: ENM – Material for the anti-bribery session- 4 to 8 December 2023

Annex 21: ENM material for training on serious economic crime - 28 November to 2 December 2022

Annex 22: DACG - Presentation as part of training on serious economic crime - 2 December 2022

Annex 23: ENM - Material for training on serious economic crime - 27 November to 1 December 2023

Annex 24: Presentation of the fight against foreign bribery and the report on France by the OECD WGB - 25 January 2023

Annex 25: ENM - Cycle on "Advanced study of economic and financial criminal law" - 20 to 22 June 2022

Annex 26: ENM - Cycle on "Advanced study of economic and financial criminal law" - 21 to 23 June 2023

Annex 27: ENM - Session on corporate criminal liability from 21 to 23 September 2022

Annex 28: ENM - Session on corporate criminal liability from 8 to 10 February 2023

Annex 29: Ministry of Justice and ENM - Organisation of a seminar on combating bribery of a foreign public official and the recommendations of the OECD Working Group on Bribery in International

Annex 30: ENM – Training programme on the detection, identification, seizure and confiscation of criminal assets - 17 and 18 April 2023

Annex 31: ENM – Advanced training programme at the ENM on the detection, identification, seizure and confiscation of criminal assets – 6 and 7 October 2022

Annex 32: ENM - Advanced training programme at the ENM on the detection, identification, seizure and confiscation of criminal assets – 5 and 6 October 2023

Annex 33: DACG – Screenshot from the Ministry of Justice intranet

ADDITIONAL ANNEXES

4.a, 4.b – AFD 2024 procurement guidelines

7.a – Response of France to the recommendation

7.c – Job description - Specialised assistant for cybercrime

7.c – Judicial Court of Paris - Job description - Specialised assistant - Fiscal

10.a – Background note of the Working Group on the celebration of ten years of the PNF

11.a – The PNF pays particular attention to public hearings - CRPC

18.b – DACG dispatch → Relations between the AFA and public prosecutors' offices – 10 January 2022

www.oecd.org/corruption/anti-bribery

