

TRANSPARENCY INTERNATIONAL FRANCE'S POSITION PAPER ON THE WORK OF THE EUROPEAN COMMISSION ON THE RULE OF LAW HOW DID THE FIGHT AGAINST CORRUPTION AND TRANSPARENCY IN FRANCE FARE IN 2023?

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INTRODUCTION

Transparency International France (TI-France) is the French chapter of Transparency International, a global movement driven by the vision of a world in which governments, businesses, civil society and individual citizens are free from corruption in all its forms. With over 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to make this vision a reality. Our values are justice, democracy, transparency, accountability, integrity, solidarity and courage.¹

As part of its mandate, Transparency International France pays particular attention to and advocates for the proper functioning of the judiciary and its resources, as well as the judicial and legal resources deployed to contribute to better detection and punishment of corruption.

FINDINGS

In France, the fight against corruption is running out of steam.

- ❖ According to Transparency International's [2023 Corruption Perceptions Index](#) published on 30 January 2024, France shows little progress over the last ten years: ranked 20th out of 180 countries and territories, France obtained a score of 71 in the 2023 Corruption Perceptions Index, the same score as in 2013. While this score has slightly changed over the decade, fluctuating between 69 and 72/100, this ten-year stagnation is a sign that the executive has not made the fight against corruption a priority, despite legislation and an institutional apparatus that are among the best in Europe.

In ten years, France does not seem to have benefited from the rise of the Haute Autorité pour la Transparence de la Vie Publique (HATVP), the Agence Française Anticorruption (AFA), the Parquet national financier (PNF), the Commission nationale des comptes de campagne et des financements politiques (CNCCFP) and one of the most ambitious whistleblower statuses in the world.

- ❖ A recent survey by Transparency International France and the Fondation Jean-Jaurès shows that more than 6 out of 10 French people believe that elected representatives and political leaders such as MPs and senators (68%), MEPs (67%) and the executive (64%) are corrupt, although these levels have fallen by 5 to 6 points since 2019. This perception of high levels of corruption in France is also reflected in their personal experience, with over a third of French people contending that they have been told about such incidents.²

¹ <https://transparency-france.org/>

² [Survey on French attitudes to corruption - Harris Interactive FR \(harris-interactive.fr\)](#)

RECOMMENDATIONS

- **On the lack of an ambitious public policy to fight corruption:** Transparency International France put forward – particularly during the last presidential elections – that the fight against corruption should be organised around a structured and ambitious public policy. This holistic policy should be embodied in a strategy, to be made public, that is based on four closely linked and complementary axes: prevention, detection, punishment, and reparation. In this vein, France should:
 - ❖ Link the domestic fight against corruption with the European and international efforts being made in this field.
 - ❖ Affirm that the fight against corruption and the protection of human rights go hand in hand.
 - ❖ Combat all the sectoral impacts of corruption: in the environment, the fight against climate change, public health, and new technologies.
 - ❖ Raise public awareness of the fact that integrity is a shared concern and that any breach undermines the social contract.
 - ❖ Intensify the initial and ongoing training of economic operators and public-sector managers.
 - ❖ Involve civil society actors as mediators and watchdogs for the rule of law.
 - ❖ On the reform of the criminal investigation police: it is essential that the impact of this reform on the resources and effectiveness of criminal investigations can be assessed across the board, and not just from the point of view of the police.

- **On the independence and resources of the judiciary:**
 - ❖ Abolish the Court of Justice of the Republic (“Cour de justice de la République”).
 - ❖ Align the status of public prosecutors with that of judges, in terms of disciplinary and appointment rules and policies.
 - ❖ Grant public prosecutors constitutional protection equivalent to that afforded to judges by providing that for equivalent positions in the public prosecutor's office (Parquet général de la Cour de cassation, procureurs généraux and procureur de la République), candidates should be put forward by the High Council of the Judiciary (“Conseil supérieur de la magistrature”).

- **On the approval of anti-corruption organisations:**
 - ❖ Increase the accreditation period to 5 years, equivalent to that which applies to consumer and environmental protection organisations.
 - ❖ Introduce an obligation to give reasons for the refusal of an accreditation.

- **On non-trial resolutions and the public interest judicial agreement (“convention judiciaire d'intérêt public”, “CJIP”):**
 - ❖ Entrench the exceptional nature of the public interest judicial agreement, given the seriousness and complexity of the facts as well as their extraterritoriality. Provide the

necessary reasons in the agreement for resorting to the judicial agreement. Ensure that these criteria are verified at the validation hearing.

- ❖ In order to guarantee a preventive mechanism audited by the French Anti-Corruption Agency (AFA), systematise the implementation of a compliance plan by companies entering into a public interest judicial agreement.
 - ❖ Prosecute natural persons through ordinary procedural channels even if a CJIP has been concluded. Ensure consistency between the prosecution of individuals and the prosecution of legal entities.
 - ❖ Ensure that victims of breaches of integrity obligations are systematically identified and effectively compensated, paying special attention to them from the outset of CJIP negotiations with the company. Record the victim's observations at the validation hearing regarding the choice of the non-trial resolution.
 - ❖ Restrict the scope of the CJIP for companies that contravene the protection of whistleblowers as provided for in the law of 21 March 2022; take significant account of this as an aggravating factor for calculating the fine.
 - ❖ Give reasons for the agreements reached so that any citizen can assess the complexity and nature of the facts, their seriousness and the reasons for this procedural choice in relation to the public interest. Ensure that validation hearings are widely publicised and give *in concreto* reasons for validation. Ensure wide publicity for decisions rendered, including as regards databases relating to judicial decisions.
 - ❖ Ensure that the validation hearing is a collegial one.
 - ❖ Impose, where appropriate, remedial tax measures and prosecute individuals involved in tax fraud or tax avoidance schemes.
 - ❖ Allocate all or part of the fines paid by the company to the financial authorities and to accredited anti-corruption organisations.
- **On whistleblowing, whistleblowing culture and the protection of whistleblowers:**
- ❖ Raise public awareness of whistleblowers by means of a comprehensive public policy to combat corruption, including campaigns aimed at the public.
 - ❖ Develop, particularly within public organisations, a strong educational approach to promote the culture of early warning and improve awareness of it.
 - ❖ Reinforce the promotion of the subject within private sector organisations.
 - ❖ Maintain soft law principles on internal investigations.
- **On the transparency of lobbying:**
- ❖ Amend the Sapin II Law and Decree no. 2017-867 of 9 May 2017 on the digital directory of interest representatives to broaden and specify the information to be disclosed by lobbies, remove the disclosure exemption of religious associations and associations of local elected representatives, and include the President of the Republic and members of the Council of State in the list of public decision-makers for whom lobbying activity must be disclosed.

- ❖ Harmonise the standard framework for disclosing government members' work diaries in open data format and make it compulsory to publish their meetings with lobbyists.

- On the publication of court decisions:
 - ❖ Accelerate the timetable for open data publication.

- On the transparency of the European Recovery Plan:
 - ❖ Publish a centralised open data dataset of public funding recipients in France.

- On Transparency International France's main proposals within the framework of the OGP:
 - ❖ Create a common digital tool to harmonise government members' work diaries, including their meetings with lobbyists.
 - ❖ Create an online platform to centralise and make accessible public procurement data from all French public purchasers.
 - ❖ Increase the use of open public consultations and transparency by the executive and strengthen the link between lobbying contributions collected during these consultations and the HATVP's lobby directory.
 - ❖ Launch citizen consultation campaigns for the subjects investigated by the general inspection services of the central ministries, on the model of the citizen consultation platform successfully launched by the Court of Auditors ("Cour des Comptes") as part of the OGP.
 - ❖ Create a centralised public directory of public funding recipients.

- On the repression of corruption:
 - ❖ Make more extensive use of the legal presumption of money laundering.

I- THE LACK OF AN AMBITIOUS PUBLIC POLICY TO COMBAT CORRUPTION

While the first five-year term of the Macron government – which came to an end in May 2022 – achieved some positive results, these were limited to specific themes and were sometimes called into question by other contradictory actions in the second term.

In addition, the first [multi-year national anti-corruption plan](#), published by the French Anti-Corruption Agency (AFA) in 2020, proved to be imprecise and incomplete. Its complex governance (dual steering by the Ministries of Justice and the Economy) is one of the main reasons for the allegations made regarding the agency's lack of vision. The second plan is yet to be published.

Recommendations

During the last presidential election, Transparency International France pushed for organising the fight against corruption around a structured and ambitious public policy. This holistic policy should be embodied in a strategy, to be made public, that is based on four closely linked and complementary axes: prevention, detection, punishment, and reparation. In this vein, France should:

- ❖ Link the domestic fight against corruption with the European and international efforts being made in this field.
- ❖ Affirm that the fight against corruption and the protection of human rights go hand in hand.
- ❖ Combat all the sectoral impacts of corruption: in the environment, the fight against climate change, public health, and new technologies.
- ❖ Raise public awareness of the fact that integrity is a shared concern and that any breach undermines the social contract.
- ❖ Intensify the initial and ongoing training of economic operators and public-sector managers.
- ❖ Involve civil society actors as mediators and watchdogs for the rule of law.

Two indicators of the weakness of a genuine anti-corruption policy should be noted in 2023:

A- VACANCY AT THE HEAD OF THE AGENCE FRANCAISE ANTICORRUPTION

The management of the French Anti-Corruption Agency was vacant for four months, between the end of Mr Charles Duchaine's term of office in March 2023 and the appointment of Ms Jégouzo in July 2023. Although the end of Mr Duchaine's six-year, non-renewable term of office was entirely foreseeable, the appointing authorities failed to avoid a period of latency that ultimately harmed the agency at a time when it was meant to evaluate the 2020-2022 multi-year national anti-corruption plan and draw up the new plan for the 2023-2027 period.

Lawmakers have not made the French Anti-Corruption Agency an independent administrative authority. To reinforce its independence, lawmakers chose to make the director's term of office non-renewable and to require that they be a magistrate. Isabelle Jégouzo was appointed Director of the Agency by decree of the President of the Republic on 26 July 2023. She was previously an Advisor to the Minister of Justice.

B- REFORM OF THE CRIMINAL INVESTIGATION POLICE

2023 was the year in which the reform of the criminal investigation police (or judicial police, in French “police judiciaire”) was implemented, albeit with a great deal of indifference. After a major mobilisation of the judicial police, the judicial world and civil society, the Interior Ministry implemented a reform of the National Police force along two lines:

- At local level: organisation at departmental level is unified under the authority of a Departmental Director of the National Police who has authority over the former Departmental Directorates (public security, judicial police, air and borders, territorial intelligence).
- At central level: the Directorate General of the National Police is strengthened at the expense of the Sectoral Directorates that make it up (including the Central Directorate of the Judicial Police, which became the National Directorate of the Judicial Police on 1^{er} July 2023).

This reform of the national police force had been tried and then rolled out in certain territories from 2022. This reform, designed for the Interior Ministry by the Interior Ministry, will have consequences for judges, public prosecutors and investigating judges, who have functional responsibility for criminal investigations. The Minister of Justice remained unconcerned in the face of protests from the judiciary.

This reform clearly prioritises the maintenance of law and order and public safety, and the 4,000 investigators of the specialised judicial police are likely to be heavily mobilised therefor. The long and complex investigations required for economic and financial crime are at risk of being sacrificed to satisfy a logic of results, efficiency and visibility linked to everyday crime.³ Recently, the National Financial Prosecutor expressed his concern that he was “beginning to see the negative effects of this reform”.⁴

This merger into a single body also raises the question of the link between the judicial authority and the investigating police services. Without purporting to revise the fundamental articles of the code of criminal procedure, the government's reform threatens the essential principles of:

- the availability of resources and the effective management of investigations by investigating judges;
- the free choice of the investigating department by judges;
- the ability of the public prosecutor's office to implement criminal policy, in competition with the new departmental director of the national police, who reports to the prefect.

Recommendation

Even if the major bodies continue to exist, in particular the Central Office for Combating Corruption and Financial and Tax Offences (OCLCIFF) and the Central Office for Combating Serious Financial Crime

³ [POSITION PAPER] REFORM OF THE JUDICIAL POLICE - Hearing of Transparency France as part of the Senate Law Commission's fact-finding mission - Transparency France International (transparency-france.org)

⁴ <https://information.tv5monde.com/international/le-procureur-national-financier-constate-les-premiers-effets-negatifs-de-la-reforme>

(OCRGDF), it is essential that the impact of this reform on the resources and effectiveness of judicial investigations can be assessed across the board, and not just from the point of view of the police.

II- THE JUSTICE SYSTEM'S LACK OF INDEPENDENCE AND INADEQUATE RESOURCES

The recent [survey](#) carried out in December 2023 by Transparency International France and the Fondation Jean-Jaurès shows that the perception of corruption among people in positions of responsibility is very widely shared, although it has declined since the last survey.⁵

The [Rule of Law Indicator](#) reveals an overall deterioration in the functioning of judicial systems, as highlighted by [Transparency International's 2023 Corruption Perceptions Index](#) (CPI), published on 30 January 2024. The countries with the lowest scores on this first Indicator also score very low on the CPI, highlighting a clear link between obstacles in access to justice and corruption.

The independence of the judiciary, an essential condition of the rule of law, is a strong democratic requirement. Suspicions about the political manipulation of the justice system will persist as long as the issue of the independence of public prosecutors has not been definitively resolved. This special system, which distinguishes prosecutors from judges, continues to attract criticism from European and international organisations, such as the European Court of Human Rights, the Council of Europe⁶ and the OECD in its report published in December 2021 on France's implementation of the Convention on Combating Bribery of Foreign Public Officials.⁷

Mention should also be made of the persistent criticisms that appear in the assessment by the Group of States against Corruption (GRECO) of the French authorities' commitment to preventing corruption by members of parliament, judges, and prosecutors and in its second addendum to the second compliance report published on 30 January 2024.⁸ The GRECO notes that in ten years, France has implemented six of its eleven recommendations made in 2013, but points to a persistent disagreement on the independence of the judiciary. It recommends that the power of administrative investigation of the Minister of Justice be entrusted to the High Council of the Judiciary.⁹

The Justice Reform project, promised at every presidential election, was supported by the candidate and now President of the Republic. The project, which was to involve a reform of the Constitution and be presented to the Council of Ministers in August 2019, was ultimately abandoned. With regard to judicial institutions, this reform project provided for the strengthening of the independence of the public prosecutor's office and the abolition of the Court of Justice of the Republic. These two aspects catered to Transparency International France's demands.

⁵ <https://transparency-france.org/2023/12/09/sondage-defiants-face-aux-politiques-les-francais-reclament-davantage-dexemplarite-et-de-moyens-pour-lutter-contre-la-corruption/>

⁶ <https://rm.coe.int/rapport-avec-couv-18-09-2018-fr/16808def9d>

⁷ Phase 4 Report: France (oecd.org) Among its recommendations to France for better application of the Convention, the OECD calls on the country to "complete as soon as possible the necessary reforms, including the constitutional reforms initiated in 2013 and 2019, in order to give the public prosecutor's office the statutory guarantees enabling it to carry out its duties with all the independence necessary for the proper functioning of the justice system and to protect public prosecutors from any influence or appearance of influence from political power, in particular in the fight against bribery of foreign public officials (CAPE)".

⁸ Cf. [GRECO ANALYSIS / EVALUATION OF THE COMMITMENT OF THE FRENCH AUTHORITIES TO PREVENT CORRUPTION OF PARLIAMENTARIANS, JUDGES AND PROSECUTORS - Transparency France International \(transparency-france.org\)](#)

⁹The other persistent disagreement concerns members of parliament. GRECO (like Transparency International France) considers that the current system for making public the asset declarations of MPs and senators is a sham. Ten years after the passing of the 2013 law on the transparency of public life, these declarations should now be as easily accessible to the public as those of ministers.

Since then, and in the absence of any progress on the issue, suspicions that the judiciary has been manipulated by the political authorities have persisted and are the subject of parliamentary enquiries.¹⁰ The work of the National Financial Prosecutor's Office (PNF) is often hampered by suspicions of interference with the current leadership.

A- THE NEED TO ABOLISH THE COURT OF JUSTICE OF THE REPUBLIC

The Court of Justice of the Republic (“Cour de justice de la République”, or CJR) was created in 1993, not only to try ministers implicated in the contaminated blood scandal, but also because of the proliferation of politico-financial affairs in the late 1980s and early 1990s. Previously, ministers were answerable to the High Court of Justice (“Haute Cour de justice”), which was composed entirely of members of parliament. The result was virtual immunity for members of the government. The creation of the CJR was initially seen as a democratic step forward because it had the merit of being a court presided over by a magistrate and subject to the control of the Cour de cassation. It also included an investigating committee made up of three magistrates from the Cour de cassation and a public prosecutor's office provided by the Attorney General of the Cour de cassation. In 30 years, the CJR has handed down 9 decisions concerning 12 ministers or secretaries of state, 7 of whom were found not guilty. As for those who were found guilty, they were most often discharged from serving their sentence or sentenced to symbolic penalties, while their co-perpetrators or accomplices were more severely sentenced by the ordinary courts to which they were subject. This preferential treatment is mainly due to the fact that the CJR's judging panel is made up of 12 members of parliament and 3 judges from the Cour de cassation. Like its ancestor, the High Court of Justice, the CJR appears to be a court of peers.

The specific case of the judgment handed down by the CJR concerning the current Minister of Justice

In the case at hand, the Minister was accused of disregarding the conflict between his recent interests while serving as a criminal lawyer (filing a personal complaint in June 2020 for invasion of privacy in connection with investigation no. 306 and advising a person implicated by the Monegasque investigating judge) and the public interest, which alone should guide his action. Despite our warnings, this situation received no appropriate response from either the Minister or the Prime Minister.

In 2023, the CJR tried a serving minister for the second time.

The task was doubly impossible: the judges of the Cour de cassation were required to rule on the culpability of their minister in office, while the parliamentary judges had the same responsibility concerning a minister whom they supported or challenged in ordinary parliamentary life.

Transparency International France therefore considered that the trial of the Minister of Justice before the CJR was made impossible, both for him because he has authority over the Public Prosecutor's Office and for the judges of the Cour de cassation responsible for investigating and then judging their minister in office. The government took no action to respond to this exceptional situation and retained the minister.¹¹

In fact, the Minister of Justice remained in office after the opening of the judicial investigation entrusted to the investigating committee of the Court of Justice of the Republic (January 2021), after the

¹⁰ <https://www.dalloz-actualite.fr/flash/independance-de-justice-l-heure-des-conclusions#.YcH12mjMLIX>

¹¹ [RELAXATION OF ERIC DUPOND-MORETTI BY THE COURT OF JUSTICE OF THE REPUBLIC: LEARNING THE LESSONS OF AN IMPOSSIBLE TRIAL - Transparency France International \(transparency-france.org\)](#)

Minister's indictment (16 July 2021) and after his referral to the trial panel of the Court of Justice of the Republic (2 October 2022). On that date, Transparency International France called for the Minister's resignation, considering that his continuation in office would make it impossible to hold a fair trial and would plunge the judicial institutions into a damaging impasse.¹²

The executive's deficient handling of this conflict-of-interest situation is fairly representative of the executive's weaknesses in terms of government ethics, as highlighted in the GRECO's evaluation report on preventing corruption and promoting integrity in central governments and law enforcement agencies.¹³

In addition, the Minister's continuance in office created the appearance of a new conflict of interest at a time when the departments under his authority were preparing the appointment of François Molins' successor as head of the public prosecutor's office at the Court of Cassation. As this magistrate is the public prosecutor before the Court of Justice of the Republic, the Minister could reasonably be suspected of selecting the person who would lead the prosecution. Thus, on July 1st 2023, the President of the Republic appointed Rémy Heitz as Attorney General to the Court of Cassation. The Minister's withdrawal from the appointment decision (extended in February 2023) was not a sufficient response to this highly sensitive appointment.

The final stage in this impossible trial was the ruling handed down by the CJR, a court made up of twelve parliamentary judges and three magistrate judges.

After a week of debates, the Minister of Justice was acquitted. This decision by the CJR has been widely criticised by legal experts, insofar as it deviates from the well-established case law of the Court of Cassation on the subject of unlawful taking of interest ("prise illégale d'intérêts"), which is considered to be a quasi-strict liability offence for which the perpetrator's intention is of little importance.

In its ruling, the Court of Justice of the Republic recognised the existence of a conflict of interest, which constituted the *actus reus* of the offence, but acquitted the Minister on the grounds of insufficient intent. In the case of the unlawful taking of interest, the Court of Cassation has consistently held that defendants brought before an ordinary court never benefit from such a careful analysis of the perpetrator's intentions. The decision of the Court of Justice of the Republic appears to be a political decision that gives an appearance of indulging the plaintiffs whilst clearing the accused Minister.

The Attorney General of the Court of Cassation, Rémy Heitz, after leading the prosecution and requesting a suspended prison term of one year for the Minister, chose not to appeal and thus to put an end to this impossible trial. However, it would have been interesting to see the Cour de Cassation examine this ruling in the light of its case law.

Will this be the last trial to be conducted by the Court of Justice of the Republic? The abolition of this jurisdictional privilege has been on the agenda for several years. The constitutional bill prepared in 2018 by the government of former Prime Minister Edouard Philippe provided for the abolition of the Court of Justice of the Republic. Under the terms of the bill, after screening by a Petitions Committee, the Paris Court of Appeal would have been responsible for judging complaints against ministers. In our view, this quasi-ordinary law solution is the only one capable of restoring confidence.

¹² [Transparency International France calls for resignation of Garde des Sceaux Éric Dupond-Moretti referred to the Court of Justice of the Republic - Transparency France International \(transparency-france.org\)](#)

¹³ [GRECO says France must continue its efforts to ensure that the culture of integrity reaches the highest levels of government - Transparency France International \(transparency-france.org\)](#)

Transparency International France therefore recommends abolishing the Court of Justice of the Republic and replacing it with a credible procedure: an ordinary court (Paris Court of Appeal) with a filter for complaints.

Recommendation

- ❖ Abolition of the Court of Justice of the Republic.

B- THE NEED TO COMPLETE THE INDEPENDENCE OF THE PUBLIC PROSECUTOR'S OFFICE

Unlike judges, who have been protected by constitutional provisions since 1993, the career and disciplinary system of public prosecutors remains under the authority of the Minister of Justice.

For appointments, the opinion of the High Council of the Judiciary is a simple, non-binding opinion and not an assent. Since 2012, consecutive justice ministers have abided by these non-binding opinions, but this good practice is not enshrined in the Constitution.

For public prosecutors, unlike judges, the Minister of Justice exercises disciplinary powers and is not bound by the mandatory opinions of the High Council of the Judiciary.

In concrete terms, the case of Minister of Justice Eric Dupond Moretti concerns four administrative investigations into three prosecutors from the National Financial Prosecutor's Office and a former investigating judge seconded to Monaco. These administrative investigations led to three referrals to the High Council of the Judiciary by the Prime Minister (due to the Justice Minister's disengagement) which, in October 2022 and after a year of proceedings, finally found no disciplinary misconduct. As a result of these procedures, no sanctions were imposed by the Prime Minister.

This was a critical case, with a spectacular referral to the High Council of the Judiciary and the publication of a press release by the Ministry of Justice.

Transparency International France recommends that, faced today with possible pressure from the executive, the status of public prosecutors be brought in line with that of judges, in terms of discipline and appointment.¹⁴

We propose to go even further. For judges, the High Council of the Judiciary also has the power to make proposals for the main judicial positions (members of the Cour de cassation, first presidents of the Cour d'appel and presidents of lower tribunals). Prosecutors should enjoy equivalent constitutional protection: for equivalent positions in the public prosecutor's office (Parquet général près la Cour de cassation, procureurs généraux and procureur de la République), candidates should be put forward by the High Council of the Judiciary.

In his speech to mark the 65th anniversary of the Constitution of 4 October 1958, the French President reaffirmed his desire to strengthen the independence of the public prosecutor's office. As with the abolition of the Court of Justice of the Republic, the constitutional bill for "a more representative, accountable and effective democracy" provided that members of the public prosecutor's office would

¹⁴[Justice - Transparency France International \(transparency-france.org\)](https://www.transparency-france.org/en/justice)

be appointed with the assent of the High Council of the Judiciary, rather than by simple assent. It also provided for the Council to act as a disciplinary board.

No one denies the political difficulty in obtaining this reform, which has already failed twice (1999 and 2013-2016), but the executive's desire to strengthen the independence of the public prosecutor's office remains largely rhetorical. Transparency International France recommends strengthening the guarantees of the independence of the public prosecutor's office (appointment, discipline, proposal of the High Council of the Judiciary for the highest positions).¹⁵

Recommendations

- ❖ Align the status of public prosecutors with that of judges in terms of discipline and appointment.¹⁶ Prosecutors should enjoy constitutional protection equivalent to that of judges by providing that for equivalent positions in the public prosecutor's office (Parquet général de la Cour de cassation, procureurs généraux and procureur de la République), candidates should be proposed by the High Council of the Judiciary.

C- THE LACK OF RESOURCES FOR THE JUSTICE SYSTEM

Economic and financial crime is unaffected by crises.

Developments in Ukraine sorely highlight the extent to which freezing and then seizing the proceeds of corruption is genuinely effective in terms of economic and financial sanctions, but has been used too little due to a lack of political will.

The current Senate committee of enquiry into drug trafficking – which infiltrates public officials through corruption and is likely to destabilise our democracies – demonstrates the need for resources, action, and coordination of services, which are lacking.¹⁷

However, this financial justice is being neglected in favour of “everyday” justice, which is the focus of all our attention; it is being undermined by the allocation of very inadequate resources to the judiciary and the judicial police.

In this regard, it should be noted that while the OECD's report that evaluates France in terms of bribery of foreign public officials praises the work of the OCLCIFE, it is strongly alarmed by the lack of resources allocated to these services.¹⁸

¹⁵ Transparency had asked the candidates in the presidential election to bring the conditions for appointing public prosecutors into line with those for judges, and to give the High Council of the Judiciary greater powers to appoint judges and manage their careers. Transparency has also called for the abolition of the Court of Justice of the Republic.

¹⁶ [Justice - Transparency France International \(transparency-france.org\)](https://www.transparency-france.org/)

¹⁷ [Position paper | International France's contribution to the work of the Senate Committee of Inquiry into the impact of drug trafficking in France and measures to be taken to remedy the situation - Transparency France International \(transparency-france.org\)](https://www.transparency-france.org/)

¹⁸ "The examiners welcome the creation of the OCLCIFE and the allocation to it of a clearly identified role as lead investigator of CAPE cases, thus implementing this point of recommendation 4.e. However, the examiners are very concerned about the significant lack of resources allocated to the Office, which weighs heavily on its ability to carry out investigations as complex as CAPE cases effectively, and to play an active detection role in this area. This aspect of recommendation 4.e has therefore not been implemented. The examiners therefore urge France to take, as a matter of urgency, the necessary steps to ensure that: (i) Sufficient resources are allocated to specialised investigation services, in particular to OCLCIFE and BNLCFF; and (ii) These services can recruit and retain the necessary staff specialised in the financial and economic field, including taking into account cost of living constraints in the most important economic centres." OECD Evaluation Report on France, December 2021, p 53.

In addition to financial resources, all international reports, including those of the FATF and the OECD, point to a lack of human resources. By way of example, the lack of specialised assistants available to the National Financial Prosecutor's Office, despite the fact that the cases being prosecuted require specific skills that are useful for successful prosecution, is particularly glaring.¹⁹

We wish to point out that the creation of the National Financial Prosecutor's Office is a response to France's international commitments in the fight against corruption, in order to combat all forms of fraud and dishonesty that undermine both national solidarity and the exemplary nature of the Republic.

Transparency International France, which called for the creation of the PNF,²⁰ is delighted with its achievements and fully supports its work.²¹

However, the resources allocated to the PNF remain woefully inadequate and are lower than those envisaged in the impact study carried out at the time of its creation.²²

An infinitesimal minority of economic and financial crime cases, admittedly some of the most serious and complex, are handled by specialised courts or judicial police departments. These courts or departments have proved their worth and are supported by the international organisations responsible for assessing France's anti-corruption policy (OECD, Council of Europe, FATF). However, their staffing levels are far from commensurate with the amount of cases brought before them. They need to be strengthened, including through a human resources policy that encourages specialisation and performance-related pay.

III- THE FRAGILITY OF THE APPROVAL PROCEDURE FOR ANTI-CORRUPTION ASSOCIATIONS

A- THE CURRENT LEGISLATIVE FRAMEWORK

Article 1 of the Law of 4 December 2013 on combating tax fraud and serious economic and financial crime introduced a new article 2-23 into the Code of Criminal Procedure, which gives anti-corruption organisations the right to bring civil actions in relation to an exhaustive list of criminal offences, on two conditions: their purpose must be to combat corruption, and they must have existed for five years.

The implementing Decree by the Council of State no. 2014-327 of 12 March 2014 is more specific and restrictive, as it requires organisations to have an "effective and public activity", "a sufficient number

¹⁹ "The number of registry officers, assigned mainly on graduation, has continued to grow since 2016. Since 2015, the PNF has been strengthened by specialist assistants, who have increased from four to seven in five years. Their profiles and missions have evolved over time. Since 1 January 2017, it has also had a legal assistant in charge of international mutual assistance in criminal matters and a communications officer²⁸. IGF Report, Sept 2020, p 23

²⁰ <https://transparency-france.org/actu/22-juin-2011-etat-de-droit-menace-lindispensable-reforme-de-justice-financiere/>

²¹ . In particular, the PNF has taken its place in the field of international cooperation in criminal matters. As a result, the PNF's international profile has enhanced France's image of efficiency and rigour in the field. The PNF has also helped to clear cases and speed up their referral to the courts. According to the report of the General Inspectorate of Justice of 15 September 2020, "the PNF has seen a gradual increase in the number of cases in progress, rising from 211 proceedings in 2014 to 578 in 2020. According to internal data, the average portfolio of a magistrate is 30 cases. He referred 69 criminal cases to the Paris Court of First Instance, bringing in more than €7.7 billion for the State between 2014 and 2019".²¹ According to the PNF's 2022 activity report, the sums ordered in favour of the Treasury in 2022 in proceedings completed in 2022 amounted to €1.78bn, and the total sums ordered in favour of the Treasury since 2014 reached €11.9bn.

²² The impact study carried out by the government prior to the law establishing the PNF stated that "one prosecutor cannot monitor more than eight cases, given the complexity of these cases (complex monitoring and settlement, long hearings that may involve more than one prosecutor)". In his opening speech in January 2021, the Financial Public Prosecutor stated that the PNF had 16 magistrates, 8 specialised assistants and a legal assistant, and 15 registry officials, which is far too few given the number of cases handled by the PNF (708 proceedings in progress at the end of 2022, 44% of which concern breaches of probity), which is likely to have an impact on its law enforcement action. The PNF has benefited only marginally from the increase in Ministry of Justice funding obtained by the Minister of Justice in the PLFs for 2021, 2022, 2023 and 2024.

of members", "a disinterested and independent nature in its activities" and "to operate regularly and in accordance with their articles of association".

While the recognition of anti-corruption organisations as accredited bodies is a welcome step forward, the system set out in article 2-23 of the Code of Criminal Procedure and its implementing decree raises administrative difficulties that call for reform.

The material criteria (a "sufficient number of members" and the "source of funds") set out in Article 1 of the Decree are insufficiently defined and leave room for arbitrariness or the appearance of arbitrariness. The exclusive role given to the Minister of Justice is unsatisfactory. The administrative investigation procedure carried out by the Directorate of Criminal Affairs and Pardons (DACG) is not transparent and completely lacks collegiality.

Transparency International France recommends that the investigation procedure should include a collegiate hearing by a panel open to representatives of the Court of Auditors, the Ministry of Foreign Affairs, the Ministry of the Economy and the Haute Autorité pour la Transparence de la Vie Publique.

This collegiate procedure would compensate for the difficulties associated with the material criteria, which are always difficult to formulate, either too broadly or too precisely.

In addition, Transparency International France recommends that the current approval period, which is too short, be extended to 5 years, the same as for consumer or environmental protection organisations. Finally, reasons should be given for refusing accreditation.

B- THE WEAKENED POSITION OF THE THREE ANTI-CORRUPTION ASSOCIATIONS

Since the law was passed, only three associations have been accredited: Transparency International France, Sherpa and Anticor.

On 23 June 2023, the Paris Administrative Court cancelled the accreditation granted to Anticor by the Prime Minister in April 2021. Since that date, Anticor has been deprived of its accreditation, without any justification, and is working to recover it through numerous legal and administrative initiatives. Transparency International France condemns the treatment meted out to Anticor, in particular the implicit rejection decision whereby the government refused Anticor's accreditation without providing reasons therefor.²³ The government has persisted in its incomprehensible attitude, failing to this day to provide any explanations as required by Article L.232-4 of the Code of Relations between the Public and the Administration.

This is not the first time that one of the three anti-corruption organisations has encountered difficulties in renewing its approval. In 2019, another association, Sherpa, encountered similar difficulties with an implicit refusal of accreditation, eventually followed by the granting of the accreditation.

The "Anticor affair" began as early as the investigation phase, which revealed a political desire to use the organisation's internal conflicts to call it into question. The approval granted by the Prime Minister in April 2021 immediately appeared to be legally fragile, given the discrepancy between the very negative motivations and the approval decision.

²³ <https://transparency-france.org/2024/01/15/communique-lutte-contre-la-corruption-le-gouvernement-doit-sexpliquer-et-cesser-dentraver-laction-des-associations/>

Apart from Anticor, the other two main anti-corruption organisations will be approaching the renewal of their accreditation with some trepidation: 2025 for Sherpa and 2026 for Transparency International France.

To date, Transparency International France has encountered no difficulty in obtaining its accreditation, but the opacity of the investigation and the lack of dialogue with the administration can legitimately raise questions. Today, the procedure is too opaque and unilateral to achieve the legislator's initial objective: to secure legal action by anti-corruption organisations.

Recommendations

- ❖ Extend the current accreditation period to 5 years, equivalent to that granted to consumer or environmental protection organisations.
- ❖ Provide reasons for refusing accreditation.

IV- NON-TRIAL RESOLUTIONS AND THE PUBLIC INTEREST JUDICIAL AGREEMENT: THE NEED TO STRIKE A BALANCE TO ENSURE SOCIAL ACCEPTABILITY

The judicial public interest agreement (CJIP) is a non-trial resolution mechanism that applies to legal entities, introduced by Article 22 of the Sapin II Law 2016-1691 of 9 December 2016, and enshrined in Article 41-1-2 of the Code of Criminal Procedure (CPP). Its scope, initially limited to corruption offences, has been extended to:

- tax fraud and money laundering by Law no. 2018-898 of 23 October 2018,
- offences relating to environmental justice by Law no. 2020-1672 of 24 December 2020, which created article 41-1-3 of the Criminal Procedure Code.

Under certain conditions defined under soft law, the CJIP allows companies to benefit from the exemption of a criminal conviction through payment of a fine, compensation of victims and, in some cases, implementation of a corruption prevention plan (compliance penalty). The fine paid by the company is paid into the French Treasury; it differs from the confiscation of an individual offender's assets under traditional criminal proceedings, which may in principle be subject to measures of restitution to the victims or allocation to a societal project.

The agreement is then approved by a judge during a public hearing.

A- THE TRACK RECORD

As of February 1st, 2024, out of 54 CJIPs signed, more than 30 judicial public interest agreements have been signed by the Financial Public Prosecutor²⁴ in relation to integrity breaches, tax fraud and the laundering of this offence since 9 December 2016: ***never before have breaches of integrity obligations***

²⁴ [The PNF's 2023 report: it was a productive year but corruption has not diminished - DECIDEURS MAGAZINE - Access to all the latest business news: strategy, finance, HR, innovation - Every day, the latest news from business law professionals. \(decideurs-juridiques.com\)](#)

*been penalised to such an extent, yielding more than €1.6 billion in public interest fines through CJIPs since 2018.*²⁵

The agreements signed over the last 6 years by the National Financial Prosecutor's Office as regards breaches of integrity²⁶ demonstrate the usefulness and relevance of this mechanism: they concern serious offences, for which the investigation duration would have been particularly drawn out and the burden of proof challenging. In its evaluation report of 9 December 2021, the OECD highlighted the "remarkable progress" made by France.²⁷ As a sign of this new effectiveness, it welcomed the final sanctions imposed on 23 legal entities and 19 individuals between the end of 2012 and the end of 2021.²⁸

This is undoubtedly a step in the right direction.

However, the financial success of the CJIPs²⁹ should not obscure the sometimes-questionable conditions under which some of them were concluded.

B- THE LIMITS OF THE PUBLIC INTEREST JUDICIAL AGREEMENT

The public interest judicial agreement is a balancing mechanism that must be used when it is in the public interest (serious and complex facts, mainly with extraterritorial elements).

On 23 January 2023, the PNF published new guidelines³⁰ on which Transparency International France has published an analysis,³¹ pointing out certain concerns regarding the "flexible" conditions for opening the way for non-trial mechanisms to companies:

Firstly, it should be noted that some CJIPs are concluded even though cooperation with the judicial authorities is late (Bolloré SE), minimal (HSBC) or non-existent (SAS Poujaud). In any event, the criterion of lack of cooperation is only mentioned as an aggravating factor, increasing the fine.

In some cases, a total lack of cooperation or late cooperation is only cited as a reason for reducing the fine, but not as a factor in increasing it (SAS Poujaud, SAS Kaefer Wanner).

Secondly, in financial matters, no company has ever come forward prior to a judicial investigation or following an internal investigation, a judicial investigation always being the prelude, in France, for entering into negotiations. However, the Belloubet circular of 2 June 2020 reiterated that voluntary disclosure was the counterpart of the leniency measure represented by the CJIP.³²

Furthermore, while the penalty for the aggravating factor is often quantified, the penalty for the mitigating factor is not, making it difficult to carry out a cost-benefit analysis of fine increases.

²⁵ [PlaquettePNF.pdf \(justice.fr\)](#)

²⁶ <https://www.tribunal-de-paris.justice.fr/75/convention-judiciaire-dinteret-public-cjip>

²⁷ <https://transparency-france.org/actu/communiqu-e-en-pointant-le-manque-de-moyens-et-dindependance-des-acteurs-de-la-lutte-contre-la-corruption-locde-dessine-en-creux-labsence-de-volonte-politique-d/#.Ytf62HZBxRY>
<https://crimhalt.org/2022/11/11/crimhalt-sur-rtl-la-belgique-nouvel-eldorado-de-la-mafia/>

²⁸ <https://www.oecd.org/fr/daf/anti-corruption/France-Rapport-Phase-4-FR.pdf>

²⁹ [Political cases, negotiated justice, lack of resources... Ten years after its creation, the head of the PNF takes stock \(nouvelobs.com\)](#)

³⁰ <https://www.tribunal-de-paris.justice.fr/sites/default/files/2023-01/Lignes%20directrices%20sur%20la%20mise%20en%20oeuvre%20de%20la%20convention%20judiciaire%20d%27int%C3%A9r%C3%AAt%20public%20PNF%20version%20sign%C3%A9e.pdf>

³¹ [POSITION PAPER] THE PUBLIC INTEREST JUDICIAL CONVENTION (PIJC) - Transparency France International (transparency-france.org)

³² *Although the directors of these companies are not obliged to report such facts to the judicial authorities, it may nevertheless be in their interest to do so in order to request a certain form of leniency in return with regard to the prosecution procedures that may be envisaged by the PNF. The possibility of requesting the conclusion of a CJIP has the advantage, for the companies behind the voluntary disclosure, of protecting them from the risk of being excluded from public procurement procedures in the event of conviction by a court".*

In addition, there is a significant difference between the theoretical maximum fine incurred and the fine ultimately imposed on the company.³³

The difficulties in coordinating proceedings between legal entities and individuals, highlighted by the Bolloré case, have further demonstrated the fragility of a global agreement that can ensure the security and reliability of the system.³⁴

Finally, most CJIPs do not include a remedial plan.³⁵

An analysis of the CJIPs that have been signed and the related validation orders, as well as the plans to extend the CJIP beyond the scope of the offences covered by the Sapin II Law,³⁶ in particular to favouritism,³⁷ mean that we must remain vigilant against attempts to subvert transactional justice, in order to preserve its balance³⁸ and its acceptability in the name of democratic values. The judicial convention must retain its public interest character. In addition to these reasons for concern, there are others, such as the extensive use of connexity for offences that have no connection whatsoever with probity³⁹ and the lack of coordination between the prosecution of companies and that of individuals.⁴⁰

C- THE INSUFFICIENT ATTENTION PAID TO VICTIMS

Of the 54 CJIPs recorded until February 1st, 2024, only 24 include an obligation to compensate victims, though 36 identified victims. It should be noted that 10 of these cases related to tax fraud and thus identified the DGFIP or the French State as the victim.

Victims do not take part in the CJIP negotiations and are only entitled to assert their losses. However, they can take civil action to obtain compensation that may be more satisfactory if this was not the case under the judicial public interest agreement. Approved organisations can claim compensation under this procedure.

³³ For SAS Egis, the theoretical fine is €11,133,700 for a fine of €2,600,000. For Systra, the theoretical fine is €187,217,100, out of a total fine of €7,496,000. For Airbus, the theoretical amount of the fine is €18.9 billion, compared with a final fine of €2,083,137,455. For Google France, the theoretical fine is €103,587,237, compared with a final fine of €46,728,709.

³⁴ While the legal entities involved had negotiated a CJIP with a total fine of €12m and a compliance programme, the directors had opted for an appearance on a plea of guilty (CRPC) with the national financial prosecutor's office. However, at the homologation hearing, the president of the Paris judicial court homologated the CJIP for the benefit of the legal entities, but refused to homologate the CRPC, arguing that the seriousness of the facts required a public trial. This temporal disagreement between the CJIP and the CRPCs left the directors admitting their guilt without any certainty as to the outcome of the ongoing proceedings. Following an appeal relating to the consequences of the refusal of homologation, the Criminal Division ruled, in a decision handed down on 29 November 2023, that in the event of the failure of a CRPC, the accused's requests or agreements for referral to a CRPC, as well as the documents relating thereto, should be removed from the investigation file. The main risk inherent in the implementation of a CRPC during a judicial investigation lies in the fact that, if the process fails, the file retains a record of the defendant's acknowledgement of the facts and his acceptance of the criminal characterisation.

³⁵ Only the CJIPs Bolloré SE, Doris Group SA, Société Générale, SAS Kaefér Wanner and SAS Set Environnement impose a remediation plan under the supervision of the AFA. The Airbus CJIP found that the plan had been implemented and subjected the company to regular audits by the AFA. In tax matters, only the Atalian CJIP considered that: "Since the Agence Française Anticorruption considers that the internal malfunctions that led to the events covered by this agreement highlight points of vulnerability in terms of compliance, the imposition of such a measure to assist the company in its restructuring is justified".

³⁶ [https://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-lois/missions-d-information/evaluation-de-la-loi-relative-a-la-transparence-a-la-lutte-contre-la-corruption-et-a-la-modernisation-de-la-vie-economique/\(block\)/79182](https://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-lois/missions-d-information/evaluation-de-la-loi-relative-a-la-transparence-a-la-lutte-contre-la-corruption-et-a-la-modernisation-de-la-vie-economique/(block)/79182)

³⁷ The Legal Forum.

³⁸ <https://www.lemonedudroit.fr/decryptages/78257-preservons-equilibre-convention-judiciaire-interet-public.html>

³⁹ https://www.lemonde.fr/idees/article/2022/02/17/espionnage-de-francois-ruffin-une-justice-expeditive-et-complaisante-aux-interets-des-puissants-est-ce-encore-une-justice_6114023_3232.html

⁴⁰ https://www.lemonde.fr/societe/article/2021/05/07/affaire-bolloré-nouveau-revers-pour-le-parquet-national-financier_6079502_3224.html

The main difficulty lies in identifying the victims and getting them to come forward in the context of the CJIP (they do not have access to the criminal file if they have not filed a civil claim), both in the context of the agreement and when it is approved during a public hearing.

It is in this context that the new version of the guidelines published by the PNF on 16 January 2023⁴¹ – which Transparency International France praised for its transparency and educational approach – was analysed in a comprehensive position paper to which this note refers.⁴² TI-France draws the following recommendations from this analysis.

Recommendations

- ❖ Entrench the exceptional nature of the public interest judicial agreement, given the seriousness and complexity of the facts as well as their extraterritoriality. Provide the necessary reasons in the agreement for resorting to the judicial agreement. Ensure that these criteria are verified at the validation hearing.
- ❖ In order to guarantee a preventive mechanism audited by the French Anti-Corruption Agency (AFA), systematise the implementation of a compliance plan by companies entering into a public interest judicial agreement.
- ❖ Prosecute natural persons through ordinary procedural channels even if a CJIP has been concluded. Ensure consistency between the prosecution of individuals and the prosecution of legal entities.
- ❖ Ensure that victims of breaches of integrity obligations are systematically identified and effectively compensated, paying special attention to them from the outset of CJIP negotiations with the company. Record the victim's observations at the validation hearing regarding the choice of the non-trial resolution.
- ❖ Restrict the scope of the CJIP for companies that contravene the protection of whistleblowers as provided for in the law of 21 March 2022; take significant account of this as an aggravating factor for calculating the fine.
- ❖ Give reasons for the agreements reached so that any citizen can assess the complexity and nature of the facts, their seriousness and the reasons for this procedural choice in relation to the public interest. Ensure that validation hearings are widely publicised and give *in concreto* reasons for validation. Ensure wide publicity for decisions rendered, including as regards databases relating to judicial decisions.
- ❖ Ensure that the validation hearing is a collegial one.
- ❖ Impose, where appropriate, remedial tax measures and prosecute individuals involved in tax fraud or tax avoidance schemes.
- ❖ Allocate all or part of the fines paid by the company to the financial authorities and to accredited anti-corruption organisations.

⁴¹ [00206B394257230116112832 \(justice.fr\)](https://www.justice.fr/00206B394257230116112832)

⁴² [\[POSITION PAPER\] THE PUBLIC INTEREST JUDICIAL CONVENTION \(PIJC\) - Transparency France International \(transparency-france.org\)](#)

V- THE NEED TO STRENGTHEN THE WHISTLEBLOWING CULTURE TO BETTER PROTECT WHISTLEBLOWERS

A- THE WORK OF TRANSPARENCY INTERNATIONAL FRANCE

Transparency International France has a long history of advocacy on whistleblowers, having played an active role in the legal recognition of whistleblowers through the Sapin II Law,⁴³ in working actively to adopt the European directive and to transpose it into French law through the Law of 21 March 2022⁴⁴ and its implementing Decree no. 2022-1284 of 3 October 2022 on procedures for collecting and processing whistleblower reports and establishing the list of competent external authorities.

At its Centre for legal support and citizen action (CAJAC),⁴⁵ Transparency International France receives and processes integrity alerts in conjunction with the Maison des Lanceurs d'Alerte.

Created in 2018, [the Maison des Lanceurs d'Alerte](#) provides support for whistleblowers, including legal, psychological, and financial assistance.

In conjunction with the movement, Transparency International France is participating in the development of work to document the reality of whistleblower protection.⁴⁶

B- POINTS OF VIGILANCE

Financial and psychological support for whistleblowers

Despite ambitious French legislation, Transparency International France notes that legislative measures to provide psychological and financial support have never been implemented, so whistleblowers remain in a precarious and fragile situation, despite better legal protection.

Internal investigation and flexible law

When it comes to internal whistleblowing (within companies), Transparency International France pays particular attention to internal investigations.

The internal investigation is a practice already familiar with criminal labour law, but it is a recent development in the case of breaches of integrity obligations, in particular due to the development of the public interest judicial agreement.

Even though the status given to whistleblowers by the Sapin II Law, as enriched by the Wasserman Law of 21 March 2022, imposed an obligation to conduct an investigation following a report and strengthened the guarantees given to whistleblowers, adding a mandatory legal framework to the exercise,⁴⁷ no complete body of law regulates the internal investigation procedure as of yet.

⁴³ You searched for ALERT LAUNCHER - Transparency France International (transparency-france.org)

⁴⁴ LAW no. 2022-401 of 21 March 2022 aimed at improving the protection of whistleblowers (1) - Légifrance (legifrance.gouv.fr)

⁴⁵ Legal Assistance Centre (CAJAC) - Transparency France International (transparency-france.org)

⁴⁶ Whistleblowers: what are the best practices in companies? - Transparency France International (transparency-france.org) REPORT | European Union Member States must strengthen their whistleblower protection laws - Transparency France International (transparency-france.org)

⁴⁷ LAW no. 2022-401 of 21 March 2022 aimed at improving the protection of whistleblowers - Legislative files - Légifrance (legifrance.gouv.fr)

By entrusting the investigation of facts likely to be classified as criminal to private actors, the internal investigation runs the risk of privatising the justice system. Transparency International France is keen to ensure that the Public Prosecutor's Office can fully exercise its prerogatives with regard to the criminal classification of facts, the appropriateness of prosecutions and the scope of investigations, particularly in cases where the internal investigation is followed by a public interest judicial agreement.

We are observing developments in internal investigations with the full knowledge that this subject requires our justice system to be acculturated and a period in which a soft law is building the subject matter and thinking, framed by the major general principles of criminal and social law,⁴⁸ as well as those relating to lawyers' ethics.⁴⁹ To legislate at this stage seems to us premature, to say the least.

Communication and awareness-raising

There is little public communication on the rules of procedure for internal investigations, even though, as a guarantee of an appropriate procedure, these rules must be transparent, i.e. accessible to all those who have questions about the investigations to which they may be subject and their legal framework, either from an ethical point of view or in relation to facts that may be classified as criminal.

This transparency guarantees the reliability of the procedure initiated and ensures that any current or future whistleblower, witness or respondent has a framework in which to be heard. It fosters a culture of integrity and encourages the use of whistleblowers to report contentious issues.

Widely distributed, it also enables observers and stakeholders to ensure that the fundamental principles of law are abided by in the collection of factual elements.

It must also be accompanied by internal communication and appropriate awareness-raising so that everyone can be sure that the procedure to which they may be called, as a witness or defendant, will be carried out under conditions of strict compliance with the right to privacy, without *a priori* psychological brutality, data protection compliance and with the impartiality that governs the exercise. This is all the more necessary when the company conducting the investigation does not offer any structural guarantees of independence with regard to the facts in question.

Internal investigations and follow-up

Lastly, we believe that companies should be more transparent in communicating the action taken in response to the whistleblower's report (subject to the applicable rules of confidentiality: protection of privacy, etc.), as they have difficulty informing whistleblowers of the action taken in response to their reports.

Anonymised communication of the results of internal investigations is essential to the coherence of the whistleblowing policy. It ensures that the whistleblower's report is taken into account and dealt with throughout the process.

⁴⁸ [Internal investigations \(moral or sexual harassment\): overview of 2022 case law. By Frédéric Chhum, lawyer, and Marion Coadic, legal expert \(village-justice.com\)](#)

⁴⁹ [guide-cnb_enquetes-internes_juin2020.pdf](#)

Impermeability of the survey and company director

Additional vigilance is required when the investigation involves the head of the company or the highest level in the hierarchy, who cannot be informed of the investigation in progress; the impermeability of the internal investigation procedure is essential to its credibility, as its impartiality is a sensitive issue which requires a clear and transparent procedure.

On this point, one might think that lawyers, as legal representatives, are the best guarantors of this impartiality. However, fears arise when the internal investigation is a prerequisite for litigation that the company may initiate against the employees who took part in it. Faced with such a procedure, employees often consider that, through the lawyers chosen, it is the company that intends to dispense justice, which is then considered to be biased, and consequently not very trustworthy. Further, the choice of a lawyer, paid for by the company, is seen by many as a sign that the facts under investigation will become the subject of legal proceedings, which is worrying rather than conducive to the expected conditions for the trust.

It seems to us, therefore, that it is not so much the quality of the people involved that creates confidence in impartiality as the way in which decisions are made following the investigation: What action should be taken on the internal investigation? Who makes the decision and how? Is this decision sufficiently transparent to ensure the trust that all employees, including whistleblowers, are entitled to expect? This is the sole responsibility of the company.

Finally, it seems to us that, at the very least, an ad hoc committee of the board of directors should have sole responsibility for the procedure initiated and its results, in order to allow impartial treatment of the facts and the resulting responsibilities when the facts in question concern the highest level of the organisation, i.e. its director. The guidelines issued by the AFA and the PNF provide a framework on which the protagonists in the matter can rely.⁵⁰

Internal investigation and CJIP

In our view, compliance with this legal framework is all the more essential given that an individual implicated in a breach of integrity obligations must cooperate under the duty of loyalty that underpins his or her employment contract without benefiting from leniency measures, while the company, which intends to benefit from leniency measures, must ensure an internal investigation that will reveal the responsibility of all the individuals involved and identify the victims. There is therefore a risk of an internal investigation "under pressure" when the conclusion of a negotiated settlement is at stake.

This tension argues in favour of strict compliance with employees' rights, who may also refuse to incriminate themselves (and will accept the possible disciplinary consequences), in order to ensure the security of the investigations carried out and the admissibility of the evidence in the context of the follow-up to the internal investigation.

More generally, the relationship between the fate of the natural person and the legal entity, in a possible context of a public interest judicial agreement, must be considered within a framework that will link the two liability mechanisms, from the internal investigation to the agreements reached.

⁵⁰ [The AFA and the PNF publish a guide to internal anti-corruption investigations | Agence française anticorruption \(agence-francaise-anticorruption.gouv.fr\)](https://www.agence-francaise-anticorruption.gouv.fr/)

A culture of whistle-blowing that is insufficiently promoted

The Sapin II Law, supplemented by the Law of 21 March 2022, represented decisive progress in this area, on the one hand by recognising the legal status of whistleblowers and, on the other, by establishing a unified system for the protection of internal whistleblowing in Europe.⁵¹ Transparency International France played a major role in this work in order to obtain European legislation and a satisfactory French system.⁵² It is now time to move from declarations to action.

There is no doubt that **the whistleblowing culture needs to be improved within organisations so that whistleblowers can fully assume their role in detecting corruption.** However, despite more protective legislation and the efforts that have been made, whistleblowing is not sufficiently promoted in companies, and the public sector is not very familiar with this mechanism, which overlaps with other mechanisms, making it difficult to understand.

Current obstacles: For Transparency International France, which, through its Centre for legal support and citizen action (CAJAC)⁵³ and the Maison des lanceurs d'alerte,⁵⁴ provides support and assistance to whistleblowers, the situation is clear: the whistleblower's **path remains too perilous⁵⁵ and costly to constitute a real incentive.** Whistleblowers still have a pejorative connotation, and as a result their role is not highly valued within organisations (lack of commitment from top management on the subject, lack of sufficient training, lack of confidence in the systems, lack of incentives for whistleblowing, unsatisfactory communication on the systems in place, significant lack of data on the number, nature and handling of whistleblowers).⁵⁶

When it comes to cross-border corruption involving entities established in France that act fraudulently abroad, holding the information is crucial. Whistleblowers possess this information: they must be valued and protected so that they can act in complete legal security within organisations. **Transparency International France would particularly like to draw the attention of the public sector to this point.**

Furthermore, from a legal point of view, whistleblowers have no guarantee other than the status of anonymous witness, which creates an additional obstacle to the disclosure of information without which neither corruption nor money laundering would be revealed. The French Anti-Corruption Agency is the authority responsible for receiving and dealing with whistleblowers: it should be given the means to devote itself fully to this task and to ensure the development of education in this area.

Faced with the dangers facing society and the challenges posed by their actions, whistleblowers need to be promoted as part of a comprehensive public policy to combat corruption: awareness-raising campaigns, education on the concept of whistleblowers and their role, education on protection mechanisms, confidence in anonymity in particular, confidence in internal investigation mechanisms within companies, and financial provision to ensure their defence. The subject is still deeply rooted in

⁵¹ Transparency International France, [Guide pratique à l'usage du lanceur d'alerte](#), 2018.

⁵² *Ibid.*

⁵³ <https://transparency-france.org/aider-victimes-de-corruption/cajac/>

⁵⁴ <https://transparency-france.org/actu/communiqu-17-associations-et-syndicats-creent-la-maison-des-lanceurs-dal-erte-et-son-fonds-de-dotation/>

⁵⁵ "These "whistleblowers" often put their careers and livelihoods at risk and, in some cases, suffer serious and long-lasting repercussions on their finances, health, reputation and personal lives. In order to prevent wrongdoing and defend the public interest, it is essential to ensure that those who dare to speak out are properly protected", European Commission, Communication to the European Parliament, the Council and the European Economic and Social Committee: Strengthening the protection of whistleblowers at EU level, [COM\(2018\) 214 final](#), 23 April 2018, p. 2.

⁵⁶ <https://transparency-france.org/actu/tribune-une-loi-pour-mieux-defendre-les-lanceurs-dal-erte/>

prejudice. This kind of education is particularly necessary in the public sector, which must be put to pragmatic and effective use in detecting breaches of probity.

Recommendations

- ❖ Promote whistleblowers to the public by means of a comprehensive public policy to combat corruption, including public campaigns.
- ❖ Develop, particularly within public organisations, a strong educational approach to promote the culture of early warning and improve awareness of it.
- ❖ Strengthen promotion of the subject within private sector organisations.
- ❖ Maintain soft law principles on internal investigations.

VI- TRANSPARENCY IN LOBBYING: AN AMBITIOUS FRENCH FRAMEWORK THAT HAS YET TO REACH ITS FULL POTENTIAL

Since the adoption of the Sapin II Law in 2016, France has had one of the most ambitious lobbying regulation frameworks in the world.⁵⁷ This framework nevertheless suffers from significant shortcomings, largely stemming from the 2017 implementing Decree for the Register of Interest Representatives, which in large part gutted the law.⁵⁸

The executive has not initiated any reform of this decree since 2017. The main hope for progress lies with Parliament, with two bills tabled in the summer of 2023 in the [Senate](#) and [the National Assembly](#), aimed at rewriting the Sapin II Law and consequently forcing the executive to rewrite the decree. However, to date, neither of these bills has been included on the parliamentary agenda and therefore neither has been examined.

During 2023, the National Assembly's parliamentary Committee of Enquiry into the Uber Files highlighted areas for improvement in France's lobbying framework. Transparency International France was heard by the Committee and was able to defend its proposals for improvement.⁵⁹

In addition to revising the Sapin II Law and its implementing Decree, one important area in which France could make more progress is the transparency of meetings between members of government and interest representatives. Transparency International France has analysed the publication of government members' work diaries. Without being able to presume the exhaustiveness of the declaration of appointments with interest representatives, we noted that the publication formats were heterogeneous,⁶⁰ which makes them difficult to use by civil society.

⁵⁷ See this [comparative study](#) by Transparency International EU

⁵⁸ See our [recommendations](#) for correcting the shortcomings of the implementing decree and the Sapin 2 Act.

⁵⁹ See the [recommendations](#) sent by Transparency France to the members of the Uber Files Commission of Inquiry.

⁶⁰ On 28 February 2024: 66% of executive members publish their diary online, 9% publish an online diary in open data format (Sylvie Retailleau, Stanislas Guérini, Gabriel Attal), 29% archive past weeks' diaries online.

Recommendations

- ❖ Amend the Sapin II Law and Decree no. 2017-867 of 9 May 2017 on the digital directory of interest representatives to broaden and specify the information to be disclosed by lobbies, remove the disclosure exemption of religious associations and associations of local elected representatives, and include the President of the Republic and members of the Council of State in the list of public decision-makers for whom lobbying activity must be disclosed.
- ❖ Harmonise the standard framework for disclosing government members' work diaries in open data format and make it compulsory to publish their meetings with lobbyists.

VII- PUBLICATION OF COURT RULINGS: PROGRESS IS SLOW

The Decree of 28 April 2021 set out the progressive timetable for the open data publication of court decisions. This long-term project made progress in 2023 with the publication online, since 23 December 2023, of judgments handed down in civil matters by several courts on the Cour de cassation's website.⁶¹

Recommendation

- ❖ Accelerate the timetable for publishing court decisions in open data.

VIII- THE TRANSPARENCY OF THE EUROPEAN RECOVERY PLAN: LATE AND INSUFFICIENT TRANSPARENCY

In 2023, France was one of the last three EU Member States to publish the open data list of its top 100 beneficiaries of public money from the European Recovery Plan ("Resilience and Recovery Fund"), in application of European regulation 2023/435 of 27 February 2023.

This publication was ultimately made at the end of 2023, but with a very inadequate level of detail, even though the transparency of the beneficiaries of public aid is a legal obligation that derives from multiple sources of legislation.⁶² Most of the beneficiaries of the recovery plan indicated by France in this dataset are in fact non-final public operators, responsible for redistributing European public money to private final beneficiaries.

Recommendation

- ❖ Publish a centralised open data dataset of recipients of public funding in France.

⁶¹ See "[Open data: the decisions of nine TJs are now available](#)".

⁶² See Transparency France's more detailed analysis "[France must be fully transparent about the beneficiaries of the recovery plan](#)".

IX- OPEN GOVERNMENT PARTNERSHIP: TRANSPARENCY INTERNATIONAL FRANCE'S MAIN PROPOSALS

None of Transparency International France's proposals have been taken up directly by France in its new three-year action plan for 2024/2027. The civil society consultation process was launched very late, at the end of 2023.

Transparency International France continues to advocate the following proposals:

Recommendations

- ❖ Create a common digital tool to harmonise the publication of the diaries of members of the Government, including their meetings with lobbyists.
- ❖ Create an online platform to centralise and make accessible public procurement data from all French public purchasers.
- ❖ Increase the use of open public consultations and transparency by the executive, and strengthen the link between the contributions of lobbies collected during these consultations and the HATVP's directory of lobbies.
- ❖ Launch citizen consultation campaigns for the subjects investigated by the general inspectorates of the central ministries, on the model of the citizen consultation platform successfully launched by the Cour des Comptes as part of the OGP.
- ❖ Create a centralised public directory of public funding recipients.

X- PROSECUTING CORRUPTION: INSUFFICIENT USE OF THE MONEY LAUNDERING PRESUMPTION

Because of the difficulty of proving the existence of a corruption pact, many prosecuting and investigating authorities prefer to use underlying offences, such as money laundering, to hold economic criminals criminally liable. In this respect, France introduced a tool ten years ago to facilitate the prosecution and conviction of money laundering offences: the money laundering presumption.

The money laundering presumption was created under the Law of 6 December 2013 on combating tax fraud and serious economic and financial crime, adopted in the wake of the "Cahuzac scandal". Under the terms of Article 324-1-1 of the Criminal Code, *"assets or income are presumed to be the direct or indirect proceeds of a crime or offence if the material, legal or financial conditions of the investment, concealment or conversion operation have no other justification than to conceal the origin or the beneficial owner of these assets or income"*.

With the money laundering presumption,⁶³ France has acquired a legal tool enabling it to tackle unnecessarily complex financial circuits devoid of economic rationality that cannot be explained other than by the desire to conceal the illegal origin of the assets or income used or the identity of the beneficial owners.⁶⁴ According to the prosecution authorities, the presumption of money laundering is more than just a rule of evidence: it is *"a remarkable and revolutionary tool in the fight against the*

⁶³ S. Brimbeuf, E. Bornstein, La présomption de blanchiment d'argent. A miracle solution to catch economic criminals at their own game, Recueil Dalloz, July 2023.

⁶⁴ Report Nos 1348 and 1349 of the Law Commission on Act 2013-1117 of 6 December 2013 on combating tax fraud and serious economic and financial crime, Yann Galut.

laundering of the proceeds of crime, particularly in that it does not require the prosecution to prove a prior offence". With the presumption mechanism, the illegal origin of funds is presumed, deduced from the modalities of a given transaction, without it being necessary to characterise the elements of the underlying offence.⁶⁵

While in the early years, the application of the presumption was limited to the discovery of cash concealed at borders, the aim now seems to be to tackle more sophisticated operations, such as schemes involving cryptoassets,⁶⁶ or the assets of Russian oligarchs.⁶⁷ Transparency International France intends to support wider use of this relevant legal tool.

Recommendation

- ❖ Make greater use of the money laundering presumption.

⁶⁵ This was recently confirmed by the Court of Cassation, which ruled that "the criminal court is not required to identify or, a fortiori, to characterise the crime or offence that procured the product that was the subject of an investment, concealment or conversion operation", Cass. Crim. 18 December 2019, no. 19-82.496.

⁶⁶ Cass. Crim. 15 February 2023, no. 22-81.326.

⁶⁷ Abdelhak EL IDRISSE, [La "présomption de blanchiment", arme redoutable contre les montages financiers occultes](#), published on 29 April 2023, Le Monde.

APPENDICES: TRANSPARENCY INTERNATIONAL FRANCE'S WORK ON THE ISSUES ADDRESSED

Public policy to combat corruption

Poll | French people distrust politicians and want more exemplary behaviour and more resources to fight corruption - Transparency France International (transparency-france.org)

<https://www.transparency.org/fr/press/cpi2023-corruption-perceptions-index-weakening-justice-systems-leave-corruption-unchecked>

Reform of the judicial police

[POSITION PAPER] REFORM OF THE JUDICIAL POLICE - Hearing of Transparency France as part of the Senate Law Commission's fact-finding mission - Transparency France International (transparency-france.org)

Court of Justice of the Republic and independence of the public prosecutor's office

Justice - Transparency France International (transparency-france.org)

Whistleblowing and whistleblower protection

Whistleblowers - Transparency France International (transparency-france.org)

Public interest judicial agreement

[POSITION PAPER] THE PUBLIC INTEREST JUDICIAL CONVENTION (PIJC) - Transparency France International (transparency-france.org)

Combating corruption and presumption of money laundering

Money laundering and tax havens - Transparency France International (transparency-france.org)

Transparency in lobbying

Lobbying - Transparency France International (transparency-france.org)

Open Government Partnership

<https://transparency-france.org/2021/12/22/position-de-transparency-france-sur-les-engagements-2021-2023-de-la-france-dans-le-cadre-de-lopen-government-partnership-ogp/>