Financial Prosecution Office in France

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Abstract
The fight against corrupted practices, especially as regards foreign agents, has been the focus of renewed international efforts especially since the signature and ratification of the OECD convention in 1997 and the United Nations convention in 2003. In the last decade, the French landscape and legal framework in the fight against corruption have significantly changed, in an effort to improve its capacity to detect, deter, prevent and sanction corruption in both the private and public spheres. The penal code defines crimes and misdemeanors as "integrity violations" in public activities.It includes bribery (the act of asking or receiving a favor from a public official in exchange for an act performed within the scope of his public duties), extortion (the fact that a public official can receive income from taxes or public contributions), embezzlement or misappropriation of funds (using by the public official of public funds, for a purpose other than the intended one) - illicit appropriation of interests or prise illégale d'interêts (the fact that a public official obtains advantages in a company or operation over which he exercises direction, direction or control) and favoritism (the fact that a public official grants a favor in violation of public procurement regulations). The French anti-corruption and fraud strategy has been updated to promote integrity and prevent corruption, with two important legal rules. First is the law on transparency in public life (11 October 2013). The law reaffirms the principles of dignity, integrity and impartiality which apply to public officials (first and foremost the elective executive authorities) as well as civil servants. To prevent conflicts of interest, it creates a general obligation to report and actively avoid conflicts of interest. In addition, members of government (executive power) and elected officials such as deputies or mayors must complete public declarations of assets and interests (including in the context of extra-professional activities). The law creates a protection mechanism for "whistleblowers". The second is the law relating to transparency, the fight against corruption and the modernization of the economy (December 9, 2016). It is created by the "French Anti-Corruption Authority (AFA)", a new administrative unit for the prevention and detection of corruption. The law also creates a new offense of active bribery of a foreign public official. In the private sector, it broadens the approach to sanctioning economic delinquency by defining new faults for a company (compliance obligation).

Keywords: *France, corruption, Financial Prosecution Office, cooperation.*

JEL Classification: K33

1. Introduction

The National Financial Prosecution Service was established in 2013 with jurisdiction over foreign corrupt practices and, more generally, all types of crimes that suggest a breach of honesty. The Anti-Corruption Agency was established in 2016 as an inter-agency structure (Ministry of Justice/Ministry of Economy) to implement the new compliance obligations approved by the French legislator.

Prevention and enforcement capacities have been strengthened, as has

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cooperation with international partners.

2. General aspects

Passive corruption and active corruption are illegal under French law.[2]

Passive corruption occurs when a domestic or foreign official or private actor illegally solicits bribes, directly or indirectly.

Active corruption occurs when another person, directly or indirectly, illegally induces or attempts to induce a domestic or foreign public official or private actor to accept a bribe.

However, corruption occurs as soon as a bribe is offered or requested, regardless of its acceptance by the other party. In response to criticism of the absence of convictions for transnational corruption in France, Law No. 2016-1691 of December 9, 2016, relating to transparency, the fight against corruption and the modernization of the economy (Sapin II law) was adopted.[3]

The Sapin II law requires companies operating in France with more than 500 employees and an annual turnover of more than 100 million euros to implement compliance programs to detect corruption.

The law also created a new anti-corruption agency (*Agence française anticorruption*) to oversee the implementation of corporate compliance programs. The anti-corruption agency can impose regulatory sanctions of up to 200,000 euros on directors and 1 million euros on companies if they fail to take appropriate compliance measures.

In December 2020, the anti-corruption agency issued non-binding guidelines on implementing compliance programs to detect corruption.[4]

Although financial institutions were not created to fight corruption or fraud, but to ensure the accountability of officials and civil servants and to evaluate public finances.

French financial courts – Court of Auditors, regional audit chambers, budgetary and financial disciplinary tribunals – have always been naturally involved in the detection and repression of financial crimes.[5]

Their role is not exclusive; ordinary judicial authorities are the first responsible for punishing bribes or attacks on integrity.

French financial jurisdictions are able to contribute to the fight and prevention of corruption.

Their role is based on two characteristics.[6]

First, its mandate includes judicial activities which give it extensive powers of investigation and sanction in complete independence.

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[2] Antoine Kirry and Alexandre Bisch, *Financial Crime in France: Overview*, 01-Jun-2022, https://www.debevoise.com/-/media/files/pdf/financial-crime-in-france-overview.pdf?rev=0f94d10d6c674d0f8cb914ebf6b13a82&hash=8C9B24146F885AE3BEFA1ECA42238C40, consulted on 1.05.2024, p. 8.

[3] Ibid, p. 8.

[4] Ibid, p. 8.

[5] Dominique Dujols, *Fight against corruption: the role of French financial jurisdictions and their cooperation with others anticorruption authorities*, Cour de Comptes Francais, https://www.ccomptes.fr/system/files/2022-04/20220404-french-SAI-and-fight-against-corruption.pdf, consulted on 1.05.2024, p. 1.

[6] Ibid, p. 1.

Second, their wide range of powers and methods, as supreme or regional supervisory institutions provide financial jurisdictions with a solid basis for countering corruption.

The fact that the French system is "jurisdictional" means that financial jurisdictions issue cross-executive judgments and can sanction individuals responsible for their individual financial liability.

The Court of Auditors and regional chambers have the full right to punish accounting violations, some of which may be fraudulent or promote corruption.

If the prosecutor of the Court of Auditors or the Regional Chamber considers such suspicion to be justified, he will initiate criminal proceedings leading to new investigations carried out by a rapporteur with broad investigative powers.

The result is written down in a final report, which is accompanied by relevant evidence.

This report will be submitted to a separate collegiate body for assessment.

The members are judges whose status protects their independence.

This process is very similar to a court trial.

The French "Cour des comptes" has its own attorney general (financial prosecutor for the regional courts)

The Attorney General holds those responsible accountable and recommends sanctions.[7]

We must analye for the beginning of the role of the prosecutor in general in the French judicial system.

As a judicial officer, whose independence from both the police and the executive is sometimes questioned, the prosecutor's status is ambivalent.

This ambivalence extends to the demands of his ever-growing role.[8]

As a judicial officer, he was given additional powers to manage and deal with cases, while at the same time having to participate in local decision-making, alongside criminal justice actors and politicians.

While it is his capacity as a judicial officer that lends legitimacy to this political role, fellow judges believe that this level of cooperation with the police and politicians underlines his place within the executive hierarchy.

As in many other jurisdictions, French prosecutors have seen their role grow exponentially in recent years.

Originally, their function was conceived as a simple, binary decision.

They received cases from the police and had to decide whether to prosecute or not.[9]

Given the growing burden on the criminal justice system, they have been given the task of diverting cases away from the courts and moving them towards expeditious proceedings.

Their status as judges also justified prosecutors taking on some functions traditionally assigned to judges.

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[7] Ibid, p. 1.

[8] Hodgson, Jacqueline and Soubise, Laurène (2016) *Prosecution in France.* In: Oxford Handbooks online. New York: Oxford University Press, Available at SSRN: https://ssrn.com/abstract=2980309 or http://dx.doi.org/10.2139/ssrn.2980309, p. 8.

[9] Ibid, p. 8.

In parallel, they were also encouraged to intervene earlier and more quickly in criminal investigations and to develop close relationships with local criminal justice and political actors through their participation in regular crime prevention meetings attended by several other agencies such as the police and other local authorities.[10]

The scale and nature of the law enforcement function mean that prosecutors are more than ever the lynchpins of the criminal justice system, but the different and sometimes contradictory aspects of their role also create tensions.

3. Specific aspects

Established by organic law no. 2013-1115 of December 6, 2013, is the financial prosecutor with national jurisdiction (hereinafter referred to as PRF or PNF) took office on February 1, 2014, and gradually took over his place in the institutional landscape. Autonomous institutions, placed at the High Court of Paris, under the authority of the Prosecutor General of Paris, its jurisdiction is defined by article 705 and 705-1 of the Criminal Procedure Code. It extends, on the one hand, to breaches of probity and highly complex tax fraud offences, as well as to the laundering of all such offences, and on the other hand, to stock market offences.[11]

The legislator assigned it an objective: to improve the treatment of crimes that present a high degree of complexity in terms of corruption and tax fraud that require highly technical investigations, most often in an international context.

Controlling tax fraud, which, like money laundering, cannot be dissociated from corruption, is also essential for democratic balance. Tax fraud endangers the finances of states, depriving them of the resources necessary for the success of public policies. Made up today of 18 magistrates (as of August 28, 2017), five specialized assistants and 10 civil servants, the financial prosecutor's office continues to fight against all forms of attack on probity and public finances.[12]

He initiated dynamic working methods, used all the legal instruments of positive law, invested himself fully in international cooperation and took particularly offensive requisitions before the court.

The first mission of the PNF is the management of a homogeneous, visible and coherent national criminal policy in economic and financial matters. This means consultation and dialogue with the judicial and extrajudicial interlocutors who are the prosecutors, especially the eight prosecutors of the specialized interregional jurisdictions, with the Financial Markets Authority, the Court of Accounts, the regional chambers of accounts, the Ministry of Economy and Finance, Customs Services, Tracfin, the High Authority for Transparency in Public Life, administrations. Through regular working meetings, the financial prosecutor's office carries out exchanges and exchanges of information, adapts its organization, defines, adopts and coordinates new lines of action to constitute a real strike force. The rare conflicts of competence have been resolved thanks to the founding circular of 31 January 2014. This entails the establishment, on a case-by-case basis, of behaviors that deserve a global approach at

[10] Ibid, p. 8.
[11] Eliane Houlette, *Le parquet national financier. Bilan, actions, perspectives*, „Archives de politique criminelle", 2017/1, no. 39, p. 67-87.
[12] Ibid, p. 69.

the national level, those that require specific means of investigation by specialized police or fiscal. Services, those that require centralized processing because they are the work of persons exercising high-level responsibilities or whose involvement could have significant financial or social repercussions, and finally those that involve an international dimension. Its second mission is to strengthen and develop international judicial cooperation.[13]

Since 1990, states have joined forces to fight corruption and tax fraud, and judicial cooperation in Europe has continued to improve. The transnational nature and complexity of the facts that fall under the jurisdiction of the financial prosecutor, often involving protagonists domiciled in France and accomplices or co-authors domiciled abroad, explain its strong international sensitivity. It is identified as an active partner in specialized judicial cooperation in matters of integrity violations or complex tax fraud. Sustained participation in the work undertaken by the OECD on corruption has also enabled it to establish links with its foreign counterparts, in particular to facilitate and promote mutual international criminal assistance. These meetings provided an opportunity to find that our concerns about corruption and, more generally, serious economic and financial crime, are shared.[14]

With the mission to effectively combat serious economic and financial delinquency, it operates around five axes: (rapid processing of procedures by favoring, as much as possible, preliminary research, an offensive participation before the court criminally, in order to obtain exemplary sentences, especially in tax matters, a selective choice of cases in matters of violations of probity and market abuse, and moralizing the financial markets together with a systematic practice of asset seizures).[15]

Advances in the field of criminal incriminations, supplemented by several recent texts, have made it possible to concretely strengthen the means of this struggle. They now make it possible to understand all fraudulent actions and do not currently require major changes. Three years after their entry into force, these provisions, on the contrary, need a certain stability in order for magistrates and investigative services to be able to take full ownership of them and give them their full potential.

In relation to legal entities, however, it appears necessary not only to increase the maximum amounts incurred, but also to relax the conditions necessary for incurring criminal liability.[16]

Reporting procedures to the Fiscal Offenses Commission (CIF) have also been extended, taking into account the fact that tax fraud laundering is now an independent crime that does not require prior reporting to the CIF. As for anti-corruption associations, in 2013 they were offered the possibility to become a civil party in cases involving integrity violations, a possibility they use sparingly and especially in emblematic cases.

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[13] Ibid, p. 71.
[14] Ibid, p. 71.
[15] Ibid, p. 72.
[16] Sandrine Mazetier and M. Jean-Luc Warsmann, *Rapport D'Information, dépose en application de l'article 145-7 du Règlement, sur l'évaluation de la loi n° 2013-1117 du 6 décembre 2013, relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière et de la loi organique n° 2013-1115 du 6 décembre 2013 relative au procureur de la République financier, Enregistré à la Présidence de l'Assemblée nationale le 8 février 2017,* https://www.assemblee-nationale.fr/14/rap-info/i4457.asp, consulted on 1.05.2024, p. 7.

The laws of December 6, 2013, tended to further specialize both the prosecutor's office and the administrative and investigative services in order to increase the effectiveness of the fight against the most complex forms of tax fraud and serious economic and financial crimes.[17]

This primarily resulted in the creation of the financial prosecutor at the High Court of Paris. The initial fears sometimes expressed at his birth have been allayed. The fact that it now has, for a certain number of crimes, concurrent jurisdiction with that of the specialized interregional courts (JIRS) and the high court of common law hardly raises difficulties in practice.

A circular from the Minister of Justice dated 31 January 2014 provides precise information to help guide as best as possible. As the number of referrals has steadily increased, the financial prosecutor now deals with 360 cases, most of which he manages in the form of preliminary investigations in order to avoid excessive prolongation of the proceedings.[18]

Only a few marginal adjustments, in terms of powers and procedure, seem necessary today in this respect.

The 2013 law then came to establish the specialization approach undertaken for several years within the tax administration, the general directorate of customs and indirect rights (DGDDI) or TRACFIN, but also in the investigation services, which are increasingly in demand. Office.

The Central Office for Combating Corruption and Financial and Fiscal Crimes (OLCCIFF), created in October 2013, currently deals with 300 investigations.[19]

To increase efficiency and complementarity, the 2013 laws gave these investigative services new tools, such as the possibility of using special investigative techniques. They also facilitated the cross-supply of experts between administrations and established the principle of information exchange between competent national actors, with strict respect for the procedures and respective fields of intervention of each. In the same spirit, the fiscal investigation judicial procedure, the scope of which was widened by the law of December 6, 2013, now makes it possible to bring together and coordinate the investigation means of the judicial police and the tax administration for a better fight. complex tax fraud, presenting significant financial problems.[20]

However, this flow of information still faces certain obstacles. For example, public finance inspectors placed at the disposal of JIRS lose access to all databases of their home administration. In practice, when a magistrate wants information, he has to proceed by requisition even though he has a public finance specialist by his side. Legislative authorization, which we may regret did not come sooner, must quickly put an end to this operational limitation that nothing justifies. Also, JIRS today only works with an informal network based on personal relationships.

Creating a JIRS information system is essential today.[21]

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[17] Ibid, p. 8.
[18] Ibid, p. 8.
[19] Ibid, p. 8.
[20] Ibid, p. 8.
[21] Ibid, p. 8.

4. Institutional context (framework)

The first results obtained in the last three years are positive. The action of the various tax services resulted in a very sharp increase in the number of adjustments which, for the first time in 2015, exceeded 20 billion euros in adjusted taxes and penalties, including more than 12 billion euros collected.

The sanctions contained in the first judgments handed down in 2016 in the files handled by the national financial prosecutor's office were marked by increased severity, targeting all persons involved in the fraud (including avccasions that advised taxpayers).[22]

The reform of the seizure and confiscation regime carried out by the law of 6 December 2013 was another success. It is possible to judge this from the perspective of the activity of the financial prosecutor in the matter of seizures, both in the context of preliminary investigations (more than 75 million euros seized) and in the context of judicial information (seizure for the protection of immovable property and movable property with a total value greater than 100 million euros in the unique context of the so-called improper assets business.

If the preventive seizure system is well understood in the investigation phase by magistrates and investigators, the cultural evolution still needs to be perfected in the judgment phase.

On the other hand, it is more difficult to draw up an evaluation of the completed fiscal operations, due to the lack of up-to-date transmission of the report provided for by Article L. 251 a of the Book of Fiscal Procedures regarding the application of the policy of discounts and transactions courtesy of the administration. Despite the will expressed by the legislator in 2013, there is nothing today that knows the general policy on fiscal transactions or ensures the homogeneity of practices throughout the territory.

Internationally, although administrative cooperation (between intelligence cells or between administrations) has clearly progressed, the results of judicial cooperation are more mixed. The situation varies greatly by country. There are also technical hurdles: only about ten countries in the European Union currently have a centralized bank account file.

The National Financial Prosecutor's Office is a judicial institution created by the law of December 6, 2013, on combating fiscal fraud and serious economic and financial crimes. Its creation is part of the fight against integrity violations. Thus, by the law of December 17, 2013, the High Authority for Transparency in Public Life was established, then by the decree of October 25, 2013, the central office for combating corruption and financial and fiscal crimes was created. The Office (PNF) was established on February 1, 2014. It is attached to the Paris Tribunal.[23]

The PNF has assignment power resulting from the law of December 6, 2013. Article 705 of the Code of Criminal Procedure thus defines the offenses for which it is competent, together with the other prosecutors' offices, specialized courts (JIRS), investigating judges and the criminal court in Paris.

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[22] Ibid, p. 8.

[23] Avocat Chapelle, *Le parquet national financier et la criminalité financière* (2022), https://www.lekbinet.com/blog/le-parquet-national-financier-et-la-criminalite-financiere, consulted on 1.05.2024, p 1.

The PNF is specialized and its competence focuses on three types of crimes: stock market crimes, integrity violations and tax fraud. The PNF focuses on cases involving great complexity, often with millions of euros involved, a large number of perpetrators, accomplices and victims, or extending to a national and international scale. The PNF does have national competence and deals with issues that extend to national, European and international levels.

The PNF investigates insider trading, price manipulation and the dissemination of misleading information about financial markets. These crimes represent the smallest share of PNF investigations, less than 10% of them.[24]

Attacks on probity are attacks on justice and morality. They mainly refer to offenses where a person abuses the prerogatives available to him in the context of his functions. Integrity violations essentially include crimes of corruption, influence peddling, favoritism, misappropriation of public funds and illegal taking of interests. PNF is contacted for violations of integrity committed by agents or legal persons whose involvement is likely to have significant national and international, economic and financial repercussions.[25]

On June 28, 2019, the National Financial Prosecutor's Office of France (Parquet National Financier) ('PNF' and the French Anticorruption Agency (Agence française Anticorupcie) ('AFA') have published guidelines on the relatively new corporate settlement mechanism in France known as the Judicial Public Interest Agreement or Convention Judiciaire d'Interêt Public ('CJIP'). It is the first time that the PNF and the AFA have issued joint guidelines on CJIP agreements. The new settlement mechanism was introduced in the French criminal system. Code and Code of Criminal Procedure, respectively, when France reformed its anticorruption framework in December 2016.[26]

While the joint PNF-AFA guidelines are a welcome development, they are imprecise in many parts and do not provide much new insight into the CJIP mechanism that has not already been addressed in previous guidelines or in the Sapin 2 law itself and related legislation.

These guidelines are part of a larger effort by AFA and PNF to disseminate guidance and information on how French authorities investigate and prosecute acts of corruption and implement France's Sapin 2 Law. The guidelines followed other resources and tools previously shared by AFA and PNF that companies subject to law enforcement in France should consult and consider. Such documents include, among others: AFA recommendations for legal entities regarding the prevention and detection of corruption, Ministry of Justice Circular regarding the implementation of certain provisions of the Sapin Law, AFA-PNF Cooperation Protocol and Guidelines on the Implementation of Whistleblower Protection under the Sapin Law.[27]

The guidelines state that if a company wishes to be considered for a CJIP, a company must share the results of its internal investigation with the PNF in a detailed

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[24] Ibid, p. 2.
[25] Ibid, p. 2.
[26] Amanda N. Raad, *France's National Financial Prosecutor and Anticorruption Agency Issue Joint Guidelines on Corporate Settlement Mechanisms*, Ropes and Gray, 2019, https://www.ropesgray.com/en/insights/alerts/2019/08/france-national-financial-prosecutor-anti-corruption-agency-corporate-settlement-mechanisms, consulted on 1.05.2024, p. 1.
[27] Ibid, p. 1.

report (including summaries of the company's witness interviews). The guidelines seek to reassure companies that if a CJIP is not agreed to or ultimately granted by the PNF or approved by the presiding judge, the PNF may not use the evidence or information shared. By company against company. However, the guidelines are silent on whether the AFA can use such evidence in the context of administrative proceedings relating to the same conduct. In addition, PNF may use the shared information to initiate criminal proceedings against individuals involved in the alleged misconduct or may share the information with foreign law enforcement authorities (e.g. USDOJ, UKSFO, etc.).[28]

The French Anticorruption Agency (Agence française Anticorruption) ('AFA') was established by Law no. 2016-1691 recently issued (December 2016) of France on transparency, the fight against corruption and the modernization of economic life (Loi no. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernization of economic life). The AFA operates under the umbrella of France's Ministers of Justice and Budget and is tasked with assisting the relevant authorities and officials in preventing and detecting acts of corruption, influence peddling, corruption, undue advantage and embezzlement or misappropriation of public funds.[29]

The PNF is charged with enforcing the provisions of the French Penal Code (such as corruption, influence peddling, embezzlement and so on). The AFA, on the other hand, is an administrative entity that, among other activities, monitor compliance with Article 17 of the Sapin Law. As part of its oversight mandate, the AFA can refer violations of Article 17 to the AFA Sanctions Commission to initiate administrative proceedings for alleged misconduct related to corruption that could lead to administrative sanctions and sanctions under the Sapin Law.[30]

The Financial Prosecutor's Office is a new institution.

The intended impact of the creation of such a prosecutor's office was therefore clear, as it was about making it the instrument for strengthening the policy of repressing financial crimes, by strengthening the visibility of this struggle in order to increase transparency in public life.[31]

The competences initially conferred by the Financial Prosecutor's Office, led by the Financial Prosecutor, were consistent with this legislative objective, although they were later considerably enriched. Currently, according to art. 705 of the Code of Criminal Procedure (CPP), the financial prosecutor's office has three levels of jurisdiction: exclusive jurisdiction for the prosecution of stock market crimes, concurrent jurisdiction with the ordinary court of first instance (TGI) for corruption crimes. And concurrent jurisdiction with the specialized interregional courts (JIRS) and the ordinary TGI for violations of probity, VAT fraud, tax evasion and money laundering of all the above-mentioned crimes and related crimes.[32]

The major innovation associated with the establishment of the Financial Prosecutor's Office consists in its national competence; Otherwise, it essentially follows the logic that led to the creation of the 36 specialized regional courts, then the 8 JIRS. It is worth noting the paradoxical continuity of the imperative to fight financial

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[28] Ibid, p. 6.
[29] Ibid, p. 7.
[30] Ibid, p 7
[31] Anne-Charlène Bezzina, *Les trois ans du parquet financier: économie d'une institution financière*, „Revue française de droit constitutionnel", 2017/4, nr. 112, p. 795-820.
[32] Ibid, p. 796.

crime and the legislative responses given to it through these different implementations. Such a national jurisdiction marks the objective of the legislator to centralize and isolate the fight against economic and financial crime from the general criminal policy. Since the highly technical and international character of financial crimes no longer needs to be proven, the emphasis should be placed on the expertise that would be required by a prosecutor's office that would literally personify this struggle.[33]

Due to its exclusive competence in the issue of the stock market and stock market crimes, the financial prosecutor's office was led to think about new ways of dialogue with the Financial Markets Authority (AMF).[34]

With strong resources, the tax administration has always been strong-armed in the fight against fraud. Cells with national jurisdiction, specialized in dealing with tax crimes, existed long before the financial prosecutor's office with institutions specific to the fight against clandestine circuits, money laundering and even serious tax fraud. This is the example of TRACFIN (Information processing and action against clandestine financial circuits) at the Ministry of Economy and OCRGDF (Central Office for the Repression of Serious Financial Crimes) at the Ministry of Justice.[35]

Thus, the tax administration already intended to respond to the specialization induced by the complexity of fraud schemes by aggregating highly specialized entities. That is why it is up to the financial prosecutor's office to at least integrate into this landscape and, in the best case, succeed in streamlining the transmission of information by simplifying the structures. In order to make information more efficient in the investigation phase, OCLCIFF (the Central Office for the Fight against Corruption and Financial and Fiscal Offenses) was created simultaneously with the criminal investigation; this interlocutor is added to an information-sharing system.[36]

It is reasonable to doubt that there was a real simplification, since the creation of the prosecutor's office is coupled cu the creation of new institutions.

Specifying the terms of the 2013 law, the circular of January 31, 2014, gives competence to the Financial Prosecutor's Office to prosecute crimes involving 'agents exercising high-level duties', 'companies or leaders with high economic visibility', which does not refer. To legislative qualifications. Is it about the prosecution of elected officials?[37]

The financial prosecutor's office has a wide field of action. It was created to strengthen the means of combating financial crimes and was presented as a specialized institution in its sector. However, prosecution jurisdiction is independent only for stock market offences. Otherwise, it is in competition with the general prosecutor's offices or specialized courts, which does not facilitate its autonomy of action in a financial matter that is still seeking consistency. In addition, the procedural choices of the financial prosecutor's office deserve a critical analysis in terms of fundamental procedural rights.

The financial prosecutor's office has concurrent powers with the JIRS and the general prosecutor's offices. The sharing criteria must be taken into account to identify

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[33] Ibid, p. 796.
[34] Ibid, p. 805.
[35] Ibid, p. 805.
[36] Ibid, p. 805.
[37] Ibid, p. 806.

the financial prosecutor's scope of action.

The PNF is competent for VAT fraud, for complex financial arrangements, tax fraud carried out through tax havens or through several companies, shell companies and trusts, complex cases of money laundering and any case of tax fraud in organized gangs or on an international scale. PNF opens investigations related to the taxation of natural or legal persons.

The PNF has finally seen its powers extended by the law of 24 December 2019 on the European Public Prosecutor's Office, environmental justice and specialized criminal justice. Competition offenses under Article L. 420-6 of the Commercial Code can be reported.

The right to deal with Competition law has until now been a monopoly of the Competition Authority. The expansion of the powers of the PNF therefore makes it possible to ensure criminal repression in the field of competition.[38]

AMF is an independent public authority that ensures the proper functioning of financial markets. It is competent for stock market crimes such as false information, price manipulation and insider trading.

It conducts an investigation and imposes administrative sanctions, which are monetary or disciplinary. The AMF deals with administrative litigation, and the PNF deals with criminal litigation.

The PNF limits its intervention to the most serious cases, which must be subjected to criminal repression.

The two authorities act jointly to distribute files between them.

The PNF is not a duplicate of the AMF.

It is useful for cases where the AMF has not initiated proceedings.

It also has its own means of investigation and sources of information.[39]

5. Working methods

The PNF is primarily contacted by the prosecutors of the jurisdictions who inform it of any investigation or report that may fall within its jurisdiction. The files are also sent to him by other public authorities, such as the General Directorate of Public Finances, the AMF and the Court of Accounts. Almost three quarters of the proceedings were opened in 2020 by other prosecutors or other public authorities. Finally, he can be contacted by any public official, individual, association or company by sending a letter detailing the facts. Any litigant can thus seize the PNF.

The number of referrals continues to grow, rising from 108 when it was created to 513 in 2020. Investigations are mainly open for breaches of probity and complex tax fraud offences.[40]

Before the anti-fraud law of 23 October 2018, prosecutions for tax fraud could only be initiated by a prior complaint to the tax administration. This was called the 'Bercy locks'. The law of 23 October 2018 on tax fraud imposed the obligation to submit a complaint to the tax administration as long as certain criteria are met: if the tax administration finds an irregularity that leads to an increase in the tax owed by the

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[38] Avocat Chapelle, *op. cit.*, p. 2.

[39] Ibid, p. 2.

[40] Ibid, p. 3.

taxpayer, it must inform the prosecutor's office with regarding any violations related to obligations exceeding 100,000 euros. This amount is reduced to 50,000 euros for taxpayers subject to the obligations of political life (for example, parliamentarians).[41]

A criticism regularly leveled at the PNF is the delay in investigation and judgment it demonstrates. To overcome this, preliminary investigation is favored over the opening of a judicial investigation.

A criticism regularly leveled at the PNF is the delay in investigation and judgment it demonstrates. To overcome this, preliminary investigation is favored over the opening of a judicial investigation. Preliminary investigations thus represent 84% of ongoing proceedings in 2020. Preliminary investigations are carried out by the police services and led by the prosecutor when judicial information is the task of the investigating judge.[42]

Thus, the PNF magistrates take over the investigation, carry out all the documents useful for the investigation themselves, then close the file or send it to the criminal court for trial.

The judicial convention of public interest or CJIP was established by the law of December 9, 2016, known as the Sapin II Law.[43]

It is also governed by the guidelines on the implementation of the CJIP adopted on June 27, 2019, by the PNF and the French Anticorruption Agency. It is defined in article 41-1-3 of the Criminal Procedure Code.

The CJIP is narrower than the CRPC. In fact, it can only apply to legal entities and crimes of corruption, money laundering and influence peddling. Its scope was, however, extended by the law of 23 October 2018 to tax fraud offences.[44]

Unlike the CRPC, the CJIP is an alternative measure to trial. The public action ends when the legal entity agrees to comply with the obligations established by the agreement. Three types of obligations can be formulated: payment of a public interest fine, which cannot exceed 30% of the company's average annual turnover, creation of a program to bring compliance procedures in line with the prevention and fight against corruption, and reparation of the damage to possible victims.

The financial prosecutor decides, as part of an investigation prior to a judicial investigation, carrying out a CJIP. It informs the legal entity about this procedure and the proposed obligations. If the legal entity accepts, a public hearing takes place during which the president of the court validates or rejects the agreement. The legal entity cannot appeal against the president's decision, but it has ten days to withdraw from the procedure.[45]

The most important effect of a CJIP is to end the judicial procedure against the legal person.[46]

This person therefore avoids an assignment to pay a fine that could be up to

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[41] Ibid, p. 5.

[42] Ibid, p. 4.

[43] Ibid, p. 5.

[44] Ibid, p. 6.

[45] Ibid, p. 6.

[46] Autorite Francaise Anticorruption – *Guidelines on the implementation of the Convention Judiciaire D'Interet Public (Judicial Public Interest Agreement – CIJP)* (2019), https://www.agence-francaise-anticorruption.gouv.fr/files/files/EN_Lignes_directrices_CJIP_revAFA%20Final%20(002).pdf, consulted on 1. 05.2024, p. 4.

five times that would be responsible for natural people (for a violation of active corruption, for example, the maximum fine that can be made is 5,000,000 euros or an equivalent up to double the proceeds deriving from the violation).

In this regard, a CJIP offers the legal person the advantage that the amounts regarding the fine of public interest are granted and informed its shareholders.[47]

The speed of the process, enhanced by the cooperation of the legal entity in the investigation, mitigates the damage to the company's reputation. It also limits the negative impact of criminal proceedings on the legal entity's ability to finance itself and on its commercial relations, particularly when its co-contractors carry out due diligence on third parties.

If the legal entity adheres to a compliance program, the CJIP also contributes to reassuring the company's social environment by demonstrating the commitment of its managers to the prevention and detection of delinquency.

Finally, if the legal entity is pursued simultaneously by several authorities, a CJIP (or its equivalent under foreign law) facilitates coordination between these authorities and allows the simultaneous adoption of parallel resolution agreements.[48]

The adoption of a CJIP by the directors of the legal entity, which will not be pursued, for example if there has been a change in corporate governance since the commission of the crimes, is an expression of their commitment ethics and transparent management of the new management team.

It makes it possible to send previous practices and promotes the approval of corrective measures to prevent the commission of new crimes.

CJIP is only available for legal persons.[49]

The legal representatives of the legal person to be faced remain responsible as natural people.

For natural people investigated, including top managers and employees (or former top managers and employees) of the legal person who arrives at a CJIP, the prosecutor makes an evaluation of what further actions should be taken in relation to their situation,

The updated guidelines (2023) emphasize that the PNF will work with foreign law enforcement agencies as necessary to ensure that a comprehensive global agreement is reached within one day and will also oversee the implementation of a unified compliance program under the supervision of the AFA.[50] The new guidelines also reiterate the PNF's commitment to avoiding companies being prosecuted twice for the same matter, while respecting the ne bis in idem principle.

The updated guidelines specify that the PNF will decide on a case-by-case basis whether to communicate all or part of the filing documents to the lawyers representing the company.

To make this decision, the PNF will assess whether granting access would

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[47] Ibid, p. 5.

[48] Ibid, p. 5.

[49] Ibid, p. 5.

[50] Selim Brihi, Pauline Dufourq, *French National Financial Prosecutor's Office publishes new guidelines on judicial conventions of public interest*, International Bar Association (2023), https://www.ibanet.org/French-National-Financial-Prosecutor%E2%80%99s-Office-publishes-new-guidelines-on-judicial-conventions-of-public-interest, consulted on 1. 05.2024, p. 3.

harm the ongoing investigation.[51]

The company and its legal representatives have the right to make a copy of the documents.

This is a significant improvement as it could provide companies and their lawyers with earlier access to the dossier, making them aware of the allegations and charges they may face.

If an agreement is reached on the CJIP during the investigation phase, the accused parties or those who have the status of assisted witnesses will have access to the file and will be able to make a copy.[52]

6. Conclusions

When it comes to fighting corruption, France is widely considered to be lagging behind.

However, the creation of the National Prosecutor's Office (PNF), with the Law of 6 December 2013, gave a different direction to the application of the law in corruption cases in France.

The Sapin II law, promulgated on 9 December 2017, also suggested evolution in French anticorruption policy.

French authorities appeared willing to take steps towards meaningful regulation and enforcement.

Over the course of its five years of operational existence, the positive results obtained by the PNF in combating corruption crimes can be evaluated based on several criteria. First of all, it is important to highlight the significant increase in international corruption cases filed with the PNF. By prosecuting almost all international corruption cases in France, the PNF gains a better understanding of the problems and enables the Prosecutor's Office to effectively develop investigative strategies.

With the creation of the PNF, oral arguments have become much more appropriate to the issues at stake.

This has had important consequences for court decisions.

Furthermore, the Sapin II law created a French equivalent of the deferred prosecution agreement, called the Public Interest Judicial Convention. The objective is to provide the French authorities with a tool for pragmatic cooperation with companies in order to avoid lengthy investigations and to promote authorizations and the efficiency of the verification and cooperation process.

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[51] Ibid, p. 3.

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