UNODC
United Nations Office on Drugs and Crime

Mechanism for the Review of Implementation of the United Nations Convention against Corruption

Country review report of France

Reviewing States: Denmark and Cape Verde

UNOFFICIAL TRANSLATION

Review cycle: 2010-2015

Chapters under review: Chapter III – Criminalization and Law Enforcement, and Chapter IV – International Cooperation

Abbreviations

AGRASC : Agence de gestion et de recouvrement des avoirs saisis et confisqués

DNIF : National Financial Investigations Unit Investigations PIAC

FICOBA : National Database of Bank Accounts

GRECO : Group of States of Council of Europe against corruption

JIRS : Inter-regional Specialized Court

JIT : Joint Investigation Team

JORF : Official Journal of the Republic of France

JUDEVI : Judge delegated for victims

OCDE : Organization for Economic Cooperation and Development

OCRGDF : Central Office for Fighting Major Financial Crime

OLAF : European Antifraud Office

PIAC : Platform for the Identification of Criminal Assets

SCPC : Service Central de Prévention de la Corruption

TRACFIN : French Financial Intelligence Unit

I. Introduction

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

II. Process

The following review of the implementation by France of the Convention is based on the completed response to the comprehensive self-assessment checklist received from France, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Cape Verde and Denmark, by means of telephone conferences, e-mail exchanges and country visit, involving the following experts in the review process.

France:

- Mr Thomas Rossignol, Ministry of Foreign and European Affairs.

Denmark:

- Mr Flemming Denker, Deputy State Prosecutor.

Cape Verde:

- Ms Edelfride Semedo Sousa Barbosa Almeida, Public Auditor, Finance Inspectorate, Ministry of Finance.

- Mr Guntar Samory de Oliveira Campos, Head, Anti-fraud Division, Directorate General of Customs.

Secretariat:

- Mr Stefano Betti, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch, UNODC.

- Ms Thi Thuy Van Dinh, Associate Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch, UNODC.

6. A country visit, agreed to by France, was conducted from 6 to 8 of July 2011 in Paris, France. During the on-site visit, meetings were held with the following governmental institutions

III. Executive summary (unofficial translation

Legal System

According to article 55 of the Constitution, international treaties or agreements duly ratified are part of the legal system and prevail over any contrary provisions of the domestic law.

France ratified the United Nations Convention against Corruption on 11 July 2005 and deposited its instrument of ratification with the Secretary- General on 12 December 2005. The implementing legislation, published in the Official Journal of 05 July 2005, entered into force on 14 December 2005.

France has a civil law/continental legal system. Criminal law provisions are contained in the Criminal Code and the Criminal Procedure Code (CPC).

General Conclusion

Generally, the reviewers considered that France duly implemented the provisions of chapters III and IV of the Convention. A range of good practices has been found. For example, the reviewers took note of a remarkable synergy resulting from the close cooperation among authorities in charge of fighting corruption.

The creation of the "Agency for the management of seized and confiscated assets" by Law of 09 July 2010 is an interesting experience to be shared with other countries. This Agency may dispose of frozen or confiscated assets even before the sentencing to avoid depreciation risks. It is mandated to assist French jurisdictions in seizing or confiscating assets upon request by another State. Part of its budget derives from the selling of confiscated assets.

The Cour de Cassation, by its decision of 9 December 2010, considered admissible the complaint made by a non-governmental organization active in the anti-corruption field in the name of its mission. This decision might also be a model for other States parties to the Convention.

With regard to international cooperation, noting that France established 29 joint investigation teams, of which several were related to international corruption cases, the reviewers encouraged French authorities to share this experience with other States.

Criminalization and law enforcement

Criminalization

In the French legal system, corruption and related offences are set forth in the Criminal Code.

Active and passive bribery of national public officials is criminalized in articles 433-1 and 432-11; a "national public official" is defined in a broad sense, covering any "person holding public authority, discharging a public service mission, or vested with a public electoral mandate". Passive bribery of members of the judiciary is criminalized in article 434-9. However, in practice, convictions for the offences of « illegal vested interest » (art. 432-12) and « favoritism » (art. 432-14) occur more regularly than those under bribery provisions.

Active and passive bribery of foreign or international public officials is criminalized in articles 435-1 and 435-3. The same offence regarding members of international or foreign judiciary is set forth in articles 435-7 and 435-9. These provisions are contained in Law of 14 November 2007 on fighting corruption.

Embezzlement, misappropriation or other diversion of property by a public official are criminalized (art. 432-15), including when the offence results from acts of negligence by the concerned official (art. 432-16).

Active and passive trading in influence is regulated, including situations where influence is only alleged and has not been exerted. The law criminalizes active trading in influence regarding an international public official, an elected member of an international organization and members of the international judiciary. Nevertheless, trading in influence was not punishable if committed in connection with a decision-making by a foreign public official or by a member of a foreign political assembly.

The law does not contain a specific provision on abuse of functions, as this notion is already adequately covered by several offences (misappropriation, illegal taking of interests, favoritism). Similarly, with regard to illicit enrichment, given that articles 321-1 and 321-6 of the Criminal Code on concealment and non-justification of resources, as well as article 168 of the General Tax Code pursue the same objective, France did not create a new offence on illicit enrichment.

Bribery in the private sector is an offence (art. 445-1 and 445-2). Embezzlement in the private sector is covered by articles L.241-3 and L.242-6 of the Commercial Code (misuse of social goods) and article 314-1 of the Criminal Code (breach of trust).

Article 121-2 of the Criminal Code applies the principle of liability of legal persons to all offences, including when committed abroad. Corporate liability can be administrative or criminal. A range of penalties are applicable to legal persons, including fines, confiscation of the object or equipment used or intended to be used to commit the offence, public display or dissemination of the decision, ban of carrying out the activity in the course of which or on the occasion of the performance of which the offence was committed, and even

dissolution. The maximum amount of fines applicable to a legal person is five times higher than the maximum amount of fines applicable to an individual.

Obstruction of justice is criminalized by several provisions of the Criminal Code : 431-14 (false testimony), 432-15 (subornation of witnesses), 433-3 (use of threats and any intimidating act against public official) and 431-12 (subornation abroad).

Money laundering and the concealment of proceeds of crime are contemplated in articles 324-1 and 324-2. Concealment is also criminalized (art. 321-1 and 324-1).

Participation in and attempt to commit an offence are criminalized with regard to all corruption and related offences.

Under the Criminal Procedure Code, the statute of limitation is ten years for felony and three years for misdemeanours. Therefore, except for passive bribery of members of national judiciary, which constitutes a felony, all other offences foreseen in the Convention have a limitation period of three years. The law and the jurisprudence foresee the suspension of this period in the presence of legal and factual obstacles. The judge may consider in some cases the recounting of the limitation period from the beginning. According to the Ministry of Justice, the current statute of limitation does not create any problem even if investigations might take time.

While noting the high level of compliance with the Convention in this area, the reviewers identified some grounds for improvement as follows :

- Explore the possibility to criminalize trading in influence committed in connection with foreign public officials or members of foreign political assemblies,
- Consider to increase the maximum amount of fines applicable to legal persons, especially when the legal person made huge profits from important contracts obtained by means of corruption and related offences,
- Envisage to extent the statute of limitation period from three to five years for misdemeanours punishable of less than three years of prison, and from three to seven years for misdemeanours punishable of more than three years of prison.

Law enforcement

Corruption and related offences are punishable up to ten years of imprisonment and a fine up to 150,000 euros. The Criminal Code foresees optional additional penalties, which include an ineligibility period applicable to elected officials convicted of corruption.

In France, parliamentarians do not enjoy any immunity. They can be the object of an arrest or any other measure which restricts liberty only with the authorization of the Bureau of the House of which they are members. Ministers enjoy only jurisdictional privilege: they are tried by a special Court of Justice of the Republic for acts performed in the holding their office. The President of the Republic shall incur no liability by reason of acts carried out in his official capacity and cannot, during his term of office and before any French

court or administrative authority, be required to be a witness nor be the object of a civil action, any preferring of charges, prosecution or investigatory measures.

Witnesses and experts are protected by the law (art. 706-57). Victims can start a civil action at all stages of the proceeding. Upon their request, a judge delegated to victims may intervene to ensure the protection of their rights.

According to article 40 of the Criminal Procedure Code, any person who wants to report an offence must refer to a public prosecutor. This article also applies to public officials who have the duty to report any suspicious act. If an official does not fulfill this duty, disciplinary measures may be imposed. Since 2007, article L.1161-1 of the Labor Code protects in the private sector reporting persons against all forms of disciplinary and abusive sanctions. The prosecutor can make use of the principle of discretionary prosecution. However, when the identity and domicile of the perpetrator are known, and when there is no legal obstacle to the setting in motion of a public prosecution, the prosecutor can only close the case without taking any further action when "the particular circumstances linked to the commission of the offence justify this". Public prosecutors are placed under the hierarchy of political power via the Minister of Justice.

Whatever their nature, direct or indirect proceeds of crime can be seized or confiscated. Confiscation can be ordered in value if the property has not been previously seized or cannot be produced.

In France, the Service central de la prévention de corruption (SCPC), a team of six persons, is only responsible for preventive measures. The Cour des Comptes controls a posteriori the budget management of all public authorities, public or semi-public organizations. TRACFIN- the French FIU- gathers suspicious transaction reports made in the area of money-laundering and terrorist financing. The Central Office for Fighting Major Financial Crime, the "Brigade centrale de lutte contre la corruption" (Anti-Corruption Task Force), the Financial Unit of the Prefecture of Paris, and specialized jurisdictions are responsible for law enforcement.

Victims have two means to obtain compensation, either by bringing a civil action in the civil court or by becoming a civil party in the context of criminal proceedings.

A person who has attempted to commit a felony or misdemeanour can be exempted from penalty if he cooperated effectively with the competent authorities. For the same reason, a perpetrator of a felony or misdemeanour can be granted only a reduction of his custodial sentence.

Bank secrecy does not constitute an obstacle for investigations and prosecutions. Moreover, investigative services can obtain information on accounts held by individuals and companies from the national registry of bank accounts (FICOBA), created in 2003 and managed by the General Directorate of Public Finance, which contains tax return information and all records related to an account holder.

Cooperation with the private sector is foreseen by the Monetary and Financial Code which requires all citizens to report offences to public prosecutors and requires specific professionals to report to TRACFIN any suspected transaction of which they have knowledge.

With regard to criminal records, a network of judicial records exists based on the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, to which Belgium, Bulgaria, Czech Republic, Germany, France, Italy, Luxembourg, Poland, Slovakia, Spain, and the United Kingdom are parties. The network allows for an exchange of both convictions and extracts in an automatic and secure manner, with a translation system using a table of unique code of offences and penalties for all states. This system has been reinforced recently by the Commission of the European Union, of which relevant framework decisions have not yet been transposed into French legislation.

French criminal law is applicable to all offences committed within the territory and offences committed within its territory and against a national. If an offence is committed abroad but the victim is a national, French courts have jurisdiction only regarding a felony or a misdemeanour punishable by imprisonment. France courts also have jurisdiction regarding nationals who are not extraditable in principle, and regarding foreigners that France has refused to extradite. However, a national who has committed an offence abroad can be prosecuted in France only if there is either an official claim from the authorities of the country where the offence had been committed, or a lawsuit by the victim (art. 113-8-1 of the Criminal Code). France is a member of Eurojust, a network that facilitates the coordination of competent authorities of European Union countries, regarding investigations and prosecutions.

Several recommendations have been made with a view to improving the implementation of the law enforcement provisions.

- Consider carrying out a study on the principle of discretionary prosecution in order to avoid political interference in decisions made by public prosecutors;
- Explore the possibility of making systematical the penalty of ineligibility period against elected public officials when they committed or took part of corruption and related offences;
- Explore the possibility of allowing individuals and legal persons to refer to the SCPC or to a new authority to be established, in case of suspicious commission of corruption offences ;
- Explore the possibility of allowing all citizens to report anonymously to the SCPC of suspicious act of corruption;
- Ensure the independence of public prosecutors vis-à-vis the Minister of Justice;
- Consider increasing the number of staff members of the Brigade centrale, currently composed of 13 professionals, so as to ensure their efficiency;
- Consider removing the conditions set forth in article 113-8-1 of the Criminal Code in order to ensure the jurisdiction of France in any cases regarding offences committed abroad by a French national

International Cooperation

Extradition

In the absence of international treaty stipulating otherwise, provisions related to extradition- articles 696 to 696-47 of the CPC- apply to extradition procedures.

France has concluded 44 bilateral treaties, but does not make extradition conditional on the existence of a treaty. France may consider the Convention as a legal basis when it receives an extradition request from another State party with which France has no extradition treaty. Extradition is subject to dual criminality except for requests made under the European Arrest Warrant. Extraditable offences shall be punishable by at least two years of imprisonment. If the request was made against a sentenced person, the sentence shall be at least two months of imprisonment.

In general, France does not extradite its nationals. However, extradition of nationals may be granted for the purpose of criminal proceedings only on the basis of reciprocity, in the context of the simplified extradition procedure between Member States of the European Union.

France may refuse to execute a European Arrest Warrant when the person sought for the enforcement of a sentence or measure that deprives liberty is of French nationality and the competent authorities are committed to his prosecution (art. 695-24 of the CPC).

Extradition under the European Arrest Warrant takes in average two months and includes only one judicial phase: the decision made by the investigating chamber of the Court of Appeal is subject to appeal before the Cour de cassation. Extradition procedures with non-European countries may take one year and envisage a criminal and an administrative phase. The Government is bound by a negative decision of the investigating chamber. If the Government decides to extradite, it adopts an extradition decree. This decision is subject to appeal before the "Conseil d'Etat" who verifies if the offence is of political nature or not, and may annul the decree on this basis. In urgent situations, the person sought may be kept in custody, and other measures may be taken measures to ensure his presence at the proceedings.

France does not extradite a person even temporarily on the condition that the person would be sent back to France to serve the pronounced sentence. If a treaty so provides for, such extradition may be possible.

In case of refusal of a request against a national made for purposes of enforcing a sentence, the law does not envisage the possibility to enforce in France a sentence pronounced by a foreign court. In this case, the national shall be tried again in France for the same facts.

The French legal system ensures fair and non-discriminatory treatment towards any person subject to a criminal proceeding. Provisions of the European Convention on Human Rights are directly applicable in French law and prevail over conflicting domestic provisions.

Before refusing an extradition request, France consults with the requesting State via its diplomatic representations. Extradition requests shall not be refused on the sole ground that the offence is also considered to involve would involve fiscal matters.

Thus, France has put in place the measures required by the Convention in its legislative and treaty regime. The reviewers recommended that relevant authorities consider enforcing in France a foreign sentence in cases that France refused an extradition request against a national.

Mutual Legal Assistance

In French law, the scope of mutual legal assistance is quite broad, including in urgent cases. Besides the treaties concluded within the European Union and the Council of Europe, France has concluded 42 bilateral treaties with countries of all continents. Bilateral agreements may go beyond relevant provisions in the Criminal Procedure Code (arts. 694 to 694-4) with a view to ensuring mutual legal assistance to the fullest possible extent.

Mutual legal assistance is not subject to dual criminality, regardless of the nature of the measures requested (coercive or not), and can be granted with regard to offences committed by a legal persons.

Every year France submits and receives hundreds of requests. Between 2009 and 2010, France received thirty requests related to cases of international corruption. France does not face any particular problem regarding their execution.

Bank secrecy does not pose a problem to the execution of mutual legal assistance requests. France does not reject a request on the ground that it would also involve fiscal matters.

When the needs of inquiry or investigation justify it, France organizes hearing or interrogation of witnesses or experts, by videoconference, by foreign judicial authorities (art. 706-71 of the CPC).

A prisoner who might assist foreign authorities in an investigation or a trial taking place in another country, may, with his/her consent, be transferred to that country for that purpose. This is possible under the 1959 Convention on Mutual Legal Assistance between countries of the Council of Europe, and, with other states, on other conventional base, or on the basis of reciprocity.

The central authority responsible for mutual legal assistance is the Direction des Affaires Criminelles et de grace of Ministry of Justice. Requests and communications shall be addressed to this Direction via diplomatic channels. In urgent cases, requests and communications via the International Criminal Police Organization are accepted. Requests or communications shall be made in one of the official languages of the United Nations.

When the central authority receives a request that has not been formulated according to the prescribed form, or does not contain all elements required by the law, prior to rejecting the request, the authority consults with representatives of the requesting State to provide them with relevant information with a view to completing the request.

Law Enforcement Cooperation

France cooperates with other countries for the transfer of sentenced persons in the framework of the 1983 Convention of the Council of Europe. Bilateral agreements have also been concluded for this purpose. The transfer of criminal procedures is foreseen in the framework of the European Conventions on Mutual Legal Assistance of 1959 and 2000.

France has concluded bilateral protocols, in particular with member states of the European Union, thus ensuring direct cooperation between French law enforcement authorities and their foreign counterparts.

France can establish joint investigation teams (art. 695-2 and 695-3 of the CPC) with member states of the European Union. With other states, this form of cooperation is possible, provided that these states be party to any convention containing provisions that are similar to those of the convention of 29 May 2000 on mutual legal assistance in criminal matters between states of the European Union.

Certain special techniques are allowed in investigations, prosecutions and adjudications regarding offences related to corruption and trading in influence committed by or against public officials (art. 706-1-3 of the CPC). These techniques include surveillance, infiltration, interceptions of correspondence made by means of telecommunication, soundtrack, image capture of places or vehicles. The law also provides for the use of surveillance technique regarding money-laundering and concealment by organized gangs.

IV. Implementation of the Convention

A. Ratification of the Convention

France signed the Convention on *9 December 2003* and ratified it on *11 July 2005*. *France* deposited its instrument of ratification with the Secretary-General on *12 December 2005*.

The implementing legislation — in other words, the *Law No. 2005-743 of 4 July 2005* — was adopted by *the Parliament* on *4 July 2005*, entered into force on *14 December 2005* and was published in *the Journal Officiel de la République française (JORF) n°155 of 5 July 2005, page 11072*.

B. Legal system of France

Article *55* of the Constitution states that *"Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, in regard to each*

agreement or treaty, to its application by other party". International agreements prevail over domestic law in France but they do not have direct effect in the domestic legal system, and implementing legislation is required to give them effect. The two most prominent jurisdictions – the Cour de Cassation and the Conseil d'Etat - have affirmed the prevalence of international agreements that were ratified by France.

C. Implementation of selected articles

CHAPTER III – CRIMINALIZATION AND LAW ENFORCEMENT

Article 15 Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

France has provided the text of articles 433-1 and 434-9 of the Criminal Code to illustrate the implementation of the provision under review.

Article 433-1 of Criminal Code

Unlawfully proffering, at any time, directly or indirectly, any offer, promise, donation, gift or advantage, in order to induce a person holding public authority, discharging a public service mission, or vested with a public electoral mandate:

1° to carry out or abstain from carrying out an act pertaining to his office, duty, or mandate, or facilitated by his office, duty or mandate;

2° or to abuse his real or alleged influence with a view to obtaining distinctions, employments, contracts or any other favourable decision from a public authority or the government;

is punished by ten years' imprisonment and a fine of €150,000.

The same penalties apply to yielding before any person holding public authority, discharging a public service mission, or vested with a public electoral mandate who, unlawfully, at any time, directly or indirectly solicits offers, promises, donations, gifts or advantages to carry out or to abstain from carrying out any act specified under 1, or to abuse his influence under the conditions specified under 2.

Article 434-9 of Criminal Code

To be punished by ten years' imprisonment and a fine of €150,000:

1. a judge or prosecutor, a juror or any other member of court of law;

2. an official of the Court Registrar;

3. an expert appointed either by a court or by the parties;

4. a person appointed by a judicial authority to carry out conciliation or mediation;

5. an arbitrator carrying out his mission under the national law on arbitration

who, directly or indirectly, at any time, unlawfully requests or accepts any offers, promises, donations, gifts or advantages, for himself or another, in return for performing or abstaining from performing an act of his office or facilitated by this office.

Yielding to the solicitations of a person described in 1 to 5, or unlawful proposing, directly or indirectly, at any time, any offer, promise, donation, gift or reward, for such person or another, with a view to obtaining from such a person the performance or non-performance of an act pertaining to his office at any time, is subject to the same penalties.

Where the offence referred to under the seventh paragraph is committed by a judge or prosecutor in favour or against a person who is being criminally prosecuted, the penalty is increased to fifteen years' criminal imprisonment and a fine of €225,000.

Concerning passive bribery, France has provided articles 432-11 and 434-9 (cited previously) of the Criminal Code to illustrate its implementation of the provision under review.

Article 432-11 of the Criminal Code:

The direct or indirect request or acceptance without right and at any time of offers, promises, donations, gifts or advantages, when done, for himself or another, by a person holding public authority or discharging a public service mission, or by a person holding a public electoral mandate, is punished by ten years' imprisonment and a fine of €150,000 where it is committed:

1. to carry out or abstain from carrying out an act relating to his office, duty, or mandate, or facilitated by his office, duty or mandate;

2. or to abuse his real or alleged influence with a view to obtaining from any public body or administration any distinction, employment, contract or any other favourable advantage.

Penalties of this offence are included in articles 433-22, 433-23, 434-44, 434-46 of the Criminal Code.

Article 433-22 of Criminal Code

Natural persons convicted of any of the offences provided for under the present Chapter also incur the following additional penalties:

1. forfeiture of civic, civil and family rights, pursuant to the conditions set out under article 131-26;

2. prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, for a maximum period of ten years, or, for offences set out in articles 433-1, 433-2 and 433-4, to undertake a commercial or industrial profession, to direct, administer, manage or control, in whatever title, directly or indirectly, for their own or another's account, a commercial or industrial enterprise or a commercial company. These prohibitions may be given cumulatively.

3. the public display or dissemination of the decision, pursuant to the conditions set out under article 131-35.

Article 433-23 of Criminal Code

In the cases referred to under articles 433-1, 433-2 and 433-4, the confiscation of the funds or

articles unlawfully received by the offender may also be imposed, with the exception of articles subject to restitution.

Article 434-44 of Criminal Code

Natural persons convicted of any of the offences provided for under articles 434-4 to 434-9-1, 434-11, 434-13 to 434-15, 434-17 to 434-23, 434-27, 434-29, 434-30, 434-32, 434-33, 434-35, 434-36 and 434-40 to 434-43 are also liable to forfeiture of civic, civil and family rights pursuant to the conditions set out under article 131-26.

In the cases set out under articles 434-9, 434-9-1, 434-16 and 434-25, the public display or dissemination of the decision pronounced may also be ordered, pursuant to the conditions set out in article 131-35.

Natural persons convicted of one of the offences under the third paragraph of article 434-9 to article 434-33 and in the second paragraph of articles 434-5 are also liable to prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, or, only for offences set out in the last paragraph of articles 434-9 and 434-33, to undertake a commercial or industrial profession, to direct, administer, manage or control, in whatever title, directly or indirectly, for their own or another's account, a commercial or industrial enterprise or a commercial company. These prohibitions may be given cumulatively.

In all the cases set out under the present Chapter, the confiscation of the thing which was used or intended for the commission of the offence is also applicable, with the exception of articles subject to restitution.

Article 434-46 of Criminal Code

Any alien convicted of any of the offences referred to under the eighth paragraph of article 434-9, articles 434-9-1 and 434-30, the last paragraph of article 434-32 and article 434-33 may be banished from French territory either permanently or for a maximum period of ten years, pursuant to the conditions set out under article 131-30.

Article 432-17 of Criminal Code

Natural persons convicted of any of the offences provided for under the present Chapter may also incur the following additional penalties:

1. forfeiture of civic, civil and family rights, pursuant to the conditions set out under article 131-26;

2. prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, or, for offences set out in the second paragraph of article 432-4 and articles 432-11, 432-15 and 432-16, to undertake a commercial or industrial profession, to direct, administer, manage or control, in whatever title, directly or indirectly, for their own or another's account, a commercial or industrial enterprise or a commercial company. These prohibitions may be given cumulatively.

3. The confiscation, according to the modalities of article 131-21, of the money or things illegally received by the author of the offence, with the exception of articles subject to restitution.

4. In the cases provided by articles 432-7 and 432-11, the public display or dissemination of the decision, pursuant to the conditions set out under article 131-35

France has also provided statistics on the implementation of these texts from 2003 to 2009. For example, in 2009, there were 63 cases of active bribery of public officials committed by individuals. Active bribery of members of the judiciary was less regular: one case in 2004 and 1 cases in 2008.

These statistics come from the data of the National Criminal Records. They were collected and analyzed by the same way as other statistics provided in the checklist.

The statistical tables provided feature the offences that resulted in conviction, meaning that the number of violations that resulted in final sentencing. It should be noted that the total number of these offences may be higher than the actual number of convictions. Indeed in France several offences may be counted within a single conviction, and a person can be convicted of several offences in a single court sentencing.

The National Criminal Records of individuals record all final sentences handed down by the criminal courts for felony, misdemeanor and 5th class violation offences. A number of pieces of date are recorded on the conviction (date, jurisdiction, nature of the sentence ...), on the convicted person (age at the time, nationality, final period spent on remand ...), on the offences (code number in the records, time of commission of the violation, mode of participation ...) and measures (quantum, method of execution ...).

The statistical services of the Ministry of Justice list all this information in annual statistical tables (according to the year when sentence is pronounced). Given any delay in notification of the decision, or appeal, or also transmission and recording, one must wait until the end of the year following the year in question to obtain a satisfactory first collation. These data are nevertheless designated provisional because they are subject to adjustment to account for unrecorded convictions. One year later, the final data will be released. Thus, in September 2010, the provisional convictions of 2009 and interim final convictions of 2008 are available.

France has provided statistics on the implementation of these provisions from 2003 to 2009. For example, in 2009, there were 40 cases of passive bribery by a public official (art. 432-11). Passive bribery of a member of the judiciary (art. 434-9) was less regular: there was only one case in 2007.

	2 004	2 008
(ctive corruption of staff of the judiciary – art. 434-9 of Penal Code	1	1

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Active corruption committed by an individual person – art. 433-1 of Penal Code	86	60	56	50	52	70	63

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Passive corruption committed by a national public official – art. 432-11 of Penal Code	38	44	51	50	35	35	40

	2 007
(Passive corruption committed by staff of the judiciary bodies art. 434-9 of Penal Code	1

(b) Observations on the implementation of the article

In practice, representatives of the French Government mentioned offences relating to "illegal vested interest"(432-12 of the Criminal Code) and favoritism (432-14 of the Criminal Code) as offences that appear more frequently and more easily than those of bribery *stricto sensu.*

In practice, it seems that in France, cases of petty corruption do not pose a serious problem whereas grand corruption is an important challenge for law enforcement authorities, including public procurements. This issue was confirmed by representatives of civil society who further mentioned a worry decrease in public trust vis-à-vis political leaders of the country. The discovery of a number of conflicts of interests between politics and the business world could further contribute to create this negative perception.

Experts observed that article 443-1 is about "unlawfully proffering (…) any advantages" whereas the Convention uses the term "undue advantage". They raised concerns with regard to the compatibility of both terms. According to experts from the Ministry of Justice, the term "unlawfully proffering" could be much more broader than the term "undue advantage" as provided for in the Convention.

Facilitation payments, or the so called "hush money" are not authorized in France. As far as there is a causal link between the committed fact and the payment offered, the concerned person can be criminalized without any difficulty. France confirmed that criminalization is possible under article 443-1 when the briber has not proposed "hush money", but has simply given it. There is no need proving the existence of an agreement between the briber and the bribed person.

A more sensitive case concerns a French citizen who offers in abroad a sum of money to a foreign public official, which is considered acceptable in that country. According to French experts who were interviewed, criminalizing a French citizen in such a case would depend on the very large margin of appreciation of the French judge or prosecutor as well as the key role played by the latter in the qualification of facts.

A French public official can receive a minor gift from a person who is grateful for the treatment he has received or expects to receive from the public official. There are no general provisions regulating the reception of gifts. Nevertheless, the Commission of Reflection for the Prevention of Conflicts of Interests in the public sector, in a report submitted to the President of the Republic, recommended that be banned all gifts of which the value is above 150 Euros. It is necessary to demonstrate a bribery pact that was concluded prior to the offering of gift so that disciplinary measures be pronounced against the public official. If such causal link is not proved, no disciplinary measures could be pronounced.

There is no general statute of the public sector. Nevertheless, the general statute of government officials which has been updated several times, including by the law dated 13 July 1983 on the responsibility of government officials and civil servants as well as various articles of the Criminal Code on the criminal liability, , serves as an ethics code in case of reckless criminal offences; in this statute, ethics being understood as a set of legislative and regulating texts, for ministerial instructions or department heads, appealing to liability (in the sense of accountability) of government officials. Similarly, the national police adopted a regulation entitled "National Police Code" in order to remind policemen of the core values and principles regulating their activity. The Ministry of Equipment also adopted a Reference guide for Head of Departments, entitled "Liability and Ethics". The Paris prefecture also adopted in 1995 a Prefecture's Charter which targets essentially the agencies of public health, environment, nutrition or labor. Within liberal professions, the ethics code (composite parts of a profession containing specific rules) applies as a rule. Among these professions, some partly carry out a quasi-mission of public service (attorneys, doctors, architects, etc.), which leads to the cumulative application of statute and code. As a consequence, one can observe that in France there is an attempt to generalize the ethics corpus in public professions, but this occurs more notably in risky sectors (health, nuclear, armament…). Contrary to public officials, these professionals are more and more subject to a public declaration of interest, an approach that illustrates an increased commitment to control behaviors by the state.

The question relating to gift is not posed directly in the public official code but most often (except the health code which comprises the so-called rules regarding anti-gift for medical professions, rules that make reference to penalties featured by the Criminal Code) by the obligation to disinterest and probity (during and upon completion of official duties). Thus, many texts, prescriptions or domestic measures regulate this issue, administrative sector by administrative sector.

A facilitation payment received by a French official in abroad is likely to be prosecuted in France. To the question whether there are guidelines for authorities in charge of investigating and prosecuting bribery by national public officials, representatives of specialized jurisdictions answered that the principle of discretionary prosecution exists only in texts. In practice, all offences are prosecuted as soon as they are detected.

Article 16 Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to active bribery, France has provided articles 435-3 and 435-9 of the Criminal Code to illustrate the implementation of the provision under review.

Article 435-3: Active corruption by a foreign or international public official

The unlawful proffering, at any time, directly or indirectly, of any offer, promise, gift, present or advantage of any kind to a person holding public office or discharging a public service mission, or an electoral mandate in a foreign State, or within a public international organization, to carry out or abstain from carrying out an act of his function, duty or mandate or facilitated by his function, duty or mandate is punished by ten years' imprisonment and a fine of €150,000.

The same penalties apply to yielding to any person specified in the previous paragraph who unlawfully solicits, at any time, directly or indirectly, any offer, promise, donation, present or advantage of any kind, for himself or another, to carry out or abstain from carrying out an act specified in the previous paragraph.

Article 435-9: Active corruption of foreign judicial officers

To be punished by 10 years imprisonment and a fine of 150,000 euros anyone who unlawfully proposes, at any time, directly or indirectly to:

1. any person exercising judicial office in a foreign state or at an international court;

2. any official at the Court Registrar of a foreign jurisdiction or an international court;

3. any expert named by such a jurisdiction or court, or by the parties;

4. any person discharging a mission of conciliation or mediation for such a jurisdiction or court;

5. any arbitrator carrying out his mission under the law on arbitration of a foreign state

for himself or another, any offers, promises, donations, gifts or advantages in return for performing or abstaining from performing an act of his office or facilitated by his office.

Yielding to the solicitations of a person described in 1 to 5, directly or indirectly, at any time, for

any offer, promise, donation, gift or reward, for such person or another, with a view to the performance or non-performance of an act pertaining to his office , is subject to the same penalties.

With regard to passive corruption, France has provided article 435-1 and 435-7 of the Criminal Code to illustrate the implementation of the provision under review.

Article 435-1: Passive corruption by a foreign or international public official

To be punished by ten years imprisonment and a fine of 150,000 euros when a person holding public office or discharging a public service mission, or an electoral mandate, in a foreign State, or within a public international organization solicits or agrees, unlawfully, at any time, directly or indirectly, any offers, promises, donations, presents or favours, for himself or another, with a view to carry out or abstain from carrying out an act of his function, duty or mandate or facilitated by his function, duty or mandate.

Article 435-7: Passive corruption by foreign judicial officers

To be punished by 10 years imprisonment and a fine of 150,000 euros:

1. any person exercising judicial office in a foreign state or at an international court;

2. any official at the Court Registrar of a foreign jurisdiction or an international court;

3. any expert named by such a jurisdiction or court, or by the parties;

4. any person discharging a mission of conciliation or mediation for such a jurisdiction or court;

5. any arbitrator carrying out his mission under the law on arbitration of a foreign state

who unlawfully solicits or agrees, at any time, directly or indirectly any offers, promises, donations, gifts or advantages, for himself or another, in return for performing or abstaining from performing an act of his office or facilitated by his office.

Additional penalties are included in articles 435-14 and 435-15 of the Criminal Code.

Article 435-14

Natural persons convicted of any of the offences provided for under the present Chapter also incur the following additional penalties:

1. forfeiture of civic, civil and family rights, pursuant to the conditions set out under article 131-26;

2. prohibition, for a maximum period of five years, to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed,

3. the public display or dissemination of the decision, pursuant to the conditions set out under article 131-35.

4. The confiscation, according to the modalities of article 131-21, of the thing used or was intended to commit the offence or the thing resulting from it.

Any alien convicted of any of the offences referred to in this Chapter may be banished from French territory either permanently or for a maximum period of ten years, pursuant to the conditions set out under articles 131-30 to 131-30-2.

Article 435-15

Corporate persons criminally liable, under the provisions of Article 121-2, for offences under articles 435-3, 435-4, 435-9 and 435-10 incur the following penalties:

1. A fine, according to the terms of article 131-38;

2. For a period of at most five years, the sanctions under 2° to 7° of article 131-39;

3. The confiscation, according to the terms of article 131-21, of the thing used or was intended to commit the offence or the thing resulting from it;

4. the public display or dissemination of the decision, pursuant to the conditions set out under article 131-35.

(b) Observations on the implementation of the article

Twelve years after the entry into force of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, French jurisdictions pronounced only two condemnations regarding bribery of foreign public officials.

It must be highlighted that, following the reviewer's visit, a third definitive conviction has been pronounced dealing with corruption of foreign public officials.

The case relates to the conviction of two general presidents of a French company, specializing in drilling hydraulics. The company had branches in Africa. The Paris court held that there had been bribery of an official of the Ministry of Agriculture of an African country in the course of the award of a drilling contract. The two presidents of the company have been sentenced to a 10 000 Euro fine each by judgment of the Paris Correctional Court dated 25 March 2011.

To the question whether ongoing cases relating to bribery of international public officials exist, France responded that the principle of respect of secrecy of proceedings, as well as the principle of presumption of innocence, do not allow disclosure of any information regarding ongoing cases. This also applies to other criminalization set forth in the Convention.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

France has provided article 432-15 of the Criminal Code to illustrate its implementation of the provision under review.

> Article 432-15
>
> The destruction, misappropriation or purloining of a document or security, of private or public funds, papers, documents or securities representing such funds, or of any other object entrusted to him, committed by a person holding public authority or discharging a public service mission, a public accountant, a public depositary or any of his subordinates, is punished by ten years' imprisonment and a fine of €150,000.
>
> Attempt to commit the misdemeanor referred to under the previous paragraph is subject to the same penalties.

Moreover, article 432-16 of the Criminal Code criminalizes even the negligence of a public official.

> Article 432-16
>
> Where the destruction, misappropriation or purloining of assets referred to under article 432-15 was committed by a third party as a result of the negligence of a person holding public authority or discharging a public service mission, a public accountant or a public depositary, the latter is punished by one year's imprisonment and a fine of €15,000.

France has provided statistics on cases prosecuted during the period of 2003-2009. For example, in 2009, there were 79 cases of embezzlement/misappropriation of public property.

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Purloining and misappropriating property – arts. 432-15 and 432-16 of Penal Code	59	76	83	72	73	85	79

(b) Observations on the implementation of the article

The reviewers observed that France criminalizes acts of negligence by public officials.

Article 18 Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public

authority of the State Party an undue advantage for the original instigator of the act or for any other person;

b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to active trading in influence, France has provided articles 433-1, 433-2-1, and 434-9 of the Criminal Code to illustrate the implementation of the provision under review (articles 433-1 and 434-9 being cited previously).

Article 433-2

The direct or indirect request or acceptance, at any time, of offers, promises, donations, gifts or advantages, for oneself or another, made to abuse one's real or supposed influence with a view to obtaining distinctions, employments, contracts or any other favourable decision from a public authority or administration, is punished by five years' imprisonment and a fine of €75,000.

The same penalties apply to yielding to the demands set out under the previous paragraph, or unlawfully proffering, directly or indirectly any offer, promise, donation, gift or advantage, to the person in question or another, so that that person may unlawfully use his real or supposed influence with a view to obtaining distinctions, employments, contracts or any other favourable decision from a public authority or administration.

Additional penalties imposed by provisions cited previously apply to this offence.

France also criminalizes active trading in influence of an international public official or an elected member of an international organization (art. 435-4), and active trading in influence of members of the international judiciary (art. 435-10).

Article 435-4 of Criminal Code

The unlawful proffering, at any time, directly or indirectly, of any offer, promise, gift, present or advantage of any kind, to a person, for himself or another, to unlawfully use his real or supposed influence with a view to obtaining distinctions, employments, contracts or any other favourable decision from a person holding public office or discharging a public service mission, or an electoral mandate within a public international organization, is punished by five years' imprisonment and a fine of €75,000.

The same penalties apply to yielding to any person who unlawfully solicits, at any time, directly or indirectly, any offer, promise, gift, present or advantage of any kind, for himself or another, to abuse his real or supposed influence with a view to obtaining distinctions, employments, contracts or any other favourable decision from a person specified in the previous paragraph.

Article 435-10 of Criminal Code

> Anyone who unlawfully proffers, at any time, directly or indirectly, any offer, promise, gift, present or advantage of any kind, for himself or another, in order for him to abuse his real or supposed influence with a view to obtaining any decision of opinion favourable from a person specified in article 435-9, when he is performing his office within or at an international court or when he is appointed by such court, is punished by five years' imprisonment and a fine of €75,000.
>
> The same penalties apply to yielding to any person who unlawfully solicits, at any time, directly or indirectly, any offer, promise, gift, present or advantage of any kind, for himself or another, to abuse his real or supposed influence with a view to obtaining any favourable decision of opinion from a person specified in the previous paragraph.

France has provided statistics on the implementation of relevant provisions during the period 2003-2009. For example, in 2009, there were 8 cases of active traffic of influence committed by an individual to a public official.

With regard to passive trading in influence, France has provided articles 432-11 (passive influence trading by a public official), 433-2 para. 2 (passive influence trading by a private individual), and 434-9-1 para. 2 (passive influence trading by a member of the judiciary) of the Criminal Code to illustrate the implementation of the provision under review. These provisions were cited previously.

France also criminalizes passive trading in influence regarding an international public official (art. 435-2) and passive influence trading regarding judicial officials of international courts (art. 435-8).

> Article 435-8 of Criminal Code
>
> To be punished with five years imprisonment and a fine of 75,000 euros is anyone who solicits or agrees, at any time, directly or indirectly, any offers, promises, donations, presents or advantages, for himself or another, in order to abuse his real or supposed influence with a view to obtain any favourable decision or opinion from a person specified in article 435-7, when exercising his duties within or at an international court or when appointed by such court.

Additional penalties are provided by articles 432-17, 433-2, 433-23, 434-44, 434-46, 435-14 and 435-15 of the Criminal Code.

France has provided statistical information on the implementation of relevant provisions. For example, in 2009, there were 14 cases of passive traffic of influence committed by public officials.

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Active trafficking in influence of public official committed by private persons (art. 433-1 of Penal Code)	11	13	22	5	11	3	8

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Passive trafficking in influence committed by public officials (art. 432-11 of Penal Code)	17	13	15	15	19	4	14

(b) Observations on the implementation of the article

The reviewers observed that according to French law trading in influence is an offence in France in both its active and passive forms, including situations where the influence is only supposed, not real, and not actually exerted. France also criminalizes active trading in the influence of an international public official or an elected member of an international organization and active trading in influence of member of international judiciary. However it is not a criminal offence when it applies to decision making by a foreign public official or a member of a foreign public assembly.

The reviewers think that making trading in influence an offence in every country is an important means of improving the transparency and impartiality of public decision making and eliminating the risk of corruption attached to it. Moreover the on-site discussions showed that, generally, persons seeking to corrupt foreign public officials used subtle methods and employed intermediaries which made it very difficult to prove the intention by the foreign public official to accept bribes as the trace of money in many situations could not be detected. In these situations it was of very great importance to have the trading in influence article to secure that the corruption offence could be punished. Therefore, the reviewers agreed to draw the attention of the law enforcement authorities on the necessity to look into this matter in order to consider criminalizing trading in influence in connection with foreign public officials or members of foreign public assemblies.

Article 19 Abuse of Functions

> *Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

(a) Summary of information relevant to reviewing the implementation of the article

France has indicated that the provision under review has been implemented by provisions related to corruption offences already cited, since these provisions do not distinguish between the legality or illegality of the act performed by public officials.

French law punishes the conducts of abuse of functions but slightly different:
- The offence of misappropriation is intended to punish the public official who has received taxes which he knew were not due or, conversely, unduly exempted amounts due. There is no need to establish that he acted for a particular reason (art. 432-10 of the Criminal Code).

- Moreover, the offence of the unlawful taking of interest allows the prosecution of a public official who takes any interest (both for himself and for others, directly or indirectly) in a transaction that he should be familiar with under his functions. It is not necessary that the act in question is *per se* illegal (art. 432-12 of the Criminal Code).
- In addition, the offence of favoritism punishes the act by a public official that favors another by the violation of rules on public procurement (art. 432-14 of the Criminal Code).
- Finally, there is also a specific offence for several types of abuse of office but that do not require the existence of a counterpart (i.e., art. 432-1, 432-2, 432-4 of the Criminal Code).

The following provisions have been provided to illustrate the prosecution of such conducts.

Article 432-1 of the Criminal Code

The taking of measures designed to obstruct the implementation of a law, committed by a person holding public authority in the discharge of his office, is punished by five years' imprisonment and a fine of €75,000.

Article 432-2 of the Criminal Code

The offence set out under article 432-1 is punished by ten years' imprisonment and fine of €150,000 where it was successful.

Article 432-4 of the Criminal Code

The arbitrary ordering or carrying out of a violation of personal freedom committed by a person holding public authority or discharging a public service mission, acting in the exercise or on the occasion of his office or mission, is punished by seven years' imprisonment and a fine of €100,000.

Where the violation consists of a detention or a restraint exceeding seven days, the penalty is increased to thirty years' criminal imprisonment and to a fine of €450,000.

Article 432-10 of the Criminal Code

Any acceptance, request or order to pay as public duties, contributions, taxes or impositions of any sum known not to be due, or known to exceed what is due, committed by a person holding public authority or discharging a public service mission is punished by five years' imprisonment and a fine of €75,000.

The same penalties apply to the granting by such persons, in any form and for any reason, of any exoneration or exemption from dues, contributions, taxes or impositions in breach of statutory or regulatory rules.

Attempt to commit the offences referred to under the present article is subject to the same penalties.

Article 432-12 of the Criminal Code

The taking, receiving or keeping of any interest in a business or business operation, either directly or indirectly, by a person holding public authority or discharging a public service mission, or by a person holding a public electoral mandate who at the time in question has the duty of ensuring, in whole or in part, its supervision, management, liquidation or payment, is punished by five years' imprisonment and a fine of €75,000.

However, in municipalities of no more than 3,500 inhabitants, mayors, their deputies or municipal counselors acting by delegation from or in substitution for the mayor, may contract with the municipality of which they are the elected representatives for the transfer of movable or

immovable property or for the supply of services within the limit of an annual sum of €16,000.

Furthermore, in those municipalities, mayors, their deputies or the municipal counselors acting by delegation from or in substitution for the mayor may acquire a plot in a municipal housing development to build their personal dwelling, or enter into a residential tenancy agreement with the municipality for their personal accommodation. These contracts must be authorized by a reasoned decision from the municipal council after a valuation of the property concerned has been made by the public domain service.

In the same municipalities, the same elected officials may acquire property belonging to the municipality for the establishment or development of their professional activity. The price may not be lower than the valuation made by the public domain service. The contract must be authorized by a reasoned decision from the municipal council, whatever the value of the property concerned.

For the application of the three previous paragraphs, the municipality is represented in accordance with the conditions laid down under article L.2122-26 of the General Local Authorities Code and the mayor, deputy or the municipal counselor concerned must abstain from participating in the deliberation of the municipal council regarding the completion or approval of the contract. Furthermore, notwithstanding the second paragraph of article L.2121-18 of the General Local Authorities Code, the municipal council may not decide to meet in camera.

Article 432-14 of the Criminal Code

An offence punished by two years' imprisonment and a fine of €30,000 is committed by any person holding public authority or discharging a public service mission or holding a public electoral mandate or acting as a representative, administrator or agent of the State, territorial bodies, public corporations, mixed economy companies of national interest discharging a public service mission and local mixed economy companies, or any person acting on behalf of any of the above-mentioned bodies, who obtains or attempts to obtain for others an unjustified advantage by an act breaching the statutory or regulatory provisions designed to ensure freedom of access and equality for candidates in respect of tenders for public service and public service delegations.

Tables of statistics were attached in the checklist.

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
(Unlawful taking of interests – article 432-12 of Penal Code)	28	44	44	51	38	42	44

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Offences against equal access in respect of public tenders and public delegations – article 432-14 of Penal Code	53	43	48	67	38	27	26

(b) Observations on the implementation of the article

The reviewers are satisfied with the answer provided by France.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

While there is no penal provision in French law that contemplates illicit enrichment within the meaning of article 20 of the Convention, there are, however, various provisions that have the same target.

Thus article 321-1 of the Criminal Code criminalizes concealment and article 321-6 of the same code punishes the non-justification of income. These provisions apply to all persons without distinction as to their being public officials or not.

Article 321-1 of the Criminal Code

Receiving is the concealment, retention or transfer of a thing, or acting as an intermediary in its transfer, knowing that that thing was obtained by a felony or misdemeanor.

Receiving is also the act of knowingly benefiting in any manner from the product of a felony or misdemeanor.

Receiving is punished by five years' imprisonment and a fine of €375,000.

Article 321-6 of the Criminal Code

The inability of a person to justify the income corresponding to his lifestyle, or to justify the origin of detained property, when he has habitual connections with one or more persons who engage in the commission of crimes or misdemeanours which are punishable by at least five years' imprisonment and provide them with a direct or indirect profit, or are the victims of one of these offences, is punished by three years' imprisonment and a fine of €75,000.

The same penalty applies to the act of facilitating the justification of fictitious income for persons engaged in the commission of crimes or misdemeanours punishable by at least five years imprisonment and providing them a direct or indirect profit.

Finally, article 168 of the General Tax Code allows a minimum global assessment of taxable income according to certain aspects of lifestyle, but this provision does not contain criminal penalty.

Article 168 of the General Tax Code (first para):

If there is a clear mismatch between a taxpayer's lifestyle and his income, the tax base of the income is calculated as an overall sum determined by applying certain elements of the lifestyle to the scale below, taking into account, if any, of the increase provided at 2, when this sum is greater than or equal to 44,111 euros. This limit is raised every year at the same rate as the upper

limit of the first band of income tax.

Statistics on the implementation of the concealment provisions have been provided.

	2 007	2 008	2 009
Non justification of property – art. 321-6 of Penal Code	1	15	15

(b) Observations on the implementation of the article

The reviewers observed that France did not consider adopting legislative measures to establish illicit enrichment as a criminal offence when the act has been committed intentionally, and the concealment is a specific provision of the Convention (art. 24). In relation to this, France responded that illicit enrichment is a general offence. France has adopted the laws that allow criminalizing all offences that generate illicit enrichment, in particular with regard to offence against probity. The concealment of property obtained from such offence is punishable. Therefore, France does not need to create a new type of offence.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

France has provided article 445-1 and 445-2 of the Criminal Code to illustrate the implementation of the provision under review.

Article 445-1 of the Criminal Code

Proffering at any time, directly or indirectly, offers, promises, gifts, presents or any other advantages, to obtain, for oneself or another, from a person who, not being a public official, charged with a public service mission, or invested with a public electoral office, holds or occupies, within the scope of his professional or social activity, a management position or any occupation for any person, whether natural or legal, or any other body, in order to obtain the

performance or non-performance of any act within his occupation or position or facilitated by his occupation or position, in violation of his legal, contractual and professional obligations, is punished by five years' imprisonment and a fine of €75,000.

The same penalties apply to giving in to any person referred to in the above paragraph who unlawfully solicits, at any time, directly or indirectly, any offers, promises, donations, presents or advantages, for himself or another, to carry out or refrain from carrying out any act referred to in the above paragraph, in violation of his legal, contractual or professional obligations.

Article 445-2 of Criminal Code

Any person who, not being a public official, carrying on a public service mission or invested with public electoral office, but carrying on, in the context of a professional or social activity, any management position or any occupation for any person, whether natural or legal, or any other body, unlawfully solicits or accepts, at any time, directly or indirectly, any offers, promises, donations, presents or advantages, for himself or another, in order to carry out or refrain from carrying out any act within his occupation or position or facilitated by his occupation or position, in violation of his legal, contractual and professional obligations, is punished by five years' imprisonment and a fine of €75,000.

Statistics on the implementation of article 445-1 during the period 2003-2009 have been provided. For example, in 2009, there were 10 cases. Equally, statistics on the implementation of article 445-2 during the period 2003-2009 have been provided. For example, in 2009, there were 3 cases.

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Active corruption in private sector – art. 445-1 of Penal Code	6	2	7	12	8	6	10

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Passive corruption in private sector – art. 445-2 of Penal Code	13	7	18	16	9	19	13

(b) Observations on the implementation of the article

The reviewers are satisfied with the answer provided.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

France has indicated that the provision under review was implemented through articles L.241-3 and 242-6 of the Commercial Code (as abuse of company property) and article 314-1 of the Criminal Code (as breach of trust). Article L.241-3 applies to the directors of so-called limited liability companies, while article L.242-6 applies to the directors of public limited companies. Moreover, article 314-4 of the Criminal Code criminalizes the misuse committed by a private person.

Article L.241-3 of the Commercial Code

The following shall be punished by a prison sentence of five years and a fine of 375,000 euros:

1. If any person fraudulently assigns to a contribution in kind a valuation higher than its real value;

2. If managers distribute sham dividends between the members in the absence of an inventory or using fraudulent inventories;

3. If managers present to the members, even in the absence of any distribution of dividends, annual accounts not providing, for each financial year, a fair representation of the results of the operations for the financial year, financial situation and assets on the expiration of this period, in order to hide the company's true situation;

4. If managers use the company's property or credit, in bad faith, in a way which they know is contrary to the interests of the company, for personal purposes or to encourage another company or undertaking in which they are directly or indirectly involved;

5. If managers use the powers which they possess or the votes which they have in this capacity, in bad faith, in a way which they know is contrary to the interests of the company, for personal purposes or to encourage another company or undertaking in which they are directly or indirectly involved.

Article L242-6 of the Commercial Code

The following shall be punished by a prison sentence of five years and a fine of 375,000 euros:

1. If the chairman, directors or managing directors of a public limited company distribute sham dividends between the shareholders in the absence of an inventory or using fraudulent inventories;

2. If the chairman, directors or managing directors of a public limited company publish or present to the shareholders, even in the absence of any distribution of dividends, annual accounts not providing, for each financial year, a fair representation of the results of the operations for the financial year, financial situation and assets on the expiration of this period, in order to hide the company's true situation;

3. If the chairman, directors or managing directors of a public limited company use the company's property or credit, in bad faith, in a way which they know is contrary to the interests of the company, for personal purposes or to encourage another company or undertaking in which they are directly or indirectly involved;

4. If the chairman, directors or managing directors of a public limited company use the powers which they possess or the votes which they have in this capacity, in bad faith, in a way which

they know is contrary to the interests of the company, for personal purposes or to encourage another company or undertaking in which they are directly or indirectly involved.

Article 314-1 of the Criminal Code

Breach of trust is committed when a person, to the prejudice of other persons, misappropriates any funds, valuables or property that were handed over to him and that he accepted subject to the condition of returning, redelivering or using them in a specified way.

Breach of trust is punished by three years' imprisonment and a fine of €375,000.

Article 314-2 of the Criminal Code

The penalty is increased to seven years' imprisonment and to a fine of €750,000 where the breach of trust was committed:

1. by a person making a public appeal with a view to obtaining the transfer of funds or securities, either in a personal capacity, or as the manager or legally employed or de facto employee of an industrial or commercial enterprise;

2. by any other person who habitually undertakes or assists, even in a minor role, in operations regarding the property of a third party on whose account he recovers funds or securities;

3. to the prejudice of a charity making a public appeal in order to raise funds to be used for humanitarian or social aid;

4. to the prejudice of a person whose particular vulnerability, due to age, sickness, infirmity, a physical or psychological disability or to pregnancy, is apparent or known to the perpetrator.

Article 314-3 of the Criminal Code

The penalty is increased to ten years' imprisonment and to a fine of €1,500,000 where the breach of trust is committed by a judicially appointed official or by a public legal official or by a public official either in the course of or on the occasion of the performance of his duties, or by reason of his official capacity.

Statistics on the implementation of these provisions during the period 2003-2009 have been provided. For example, there were 808 cases to which articles L.241-3 and L.241-6 applied in 2009, and 4197 cases to which article 314-1 applied in the same year.

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Offences related to abuse of company property - arts. L. 241-3 and L.242-6 of Commercial Code	707	708	801	799	771	887	808

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Fraudulent breach of trust – arts. 314-1 to 34-3 of Penal Code	3 812	3 809	4 025	4 035	4 253	4 197	4 197

(b) Observations on the implementation of the article

The reviewers are satisfied with the answer provided.

Article 23 Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article

For purposes of implementing or applying paragraph 1 of this article:

(a)Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b)Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c)For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to subparagraph 1 (a), France has provided article 324-1 of the Criminal Code to illustrate the implementation of the provision under review. Additional penalties are provided by article 324-3 of the same code.

Article 324-1 of Criminal Code

Money laundering is facilitating by any means the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanor which has brought him a direct or indirect benefit.

Money laundering also comprises assistance in investing, concealing or converting the direct or indirect proceeds of a felony or misdemeanor.

Money laundering is punished by five years' imprisonment and a fine of €375,000.

Article 324-3 of Criminal Code

The fines referred to under articles 324-1 and 324-2 may be raised to amount to half the value of the property or funds in respect of which the money laundering operations were carried out.

Statistics on the implementation of these provisions during the period 2003-2009 have been provided. For example, there were 29 cases in 2003 and 116 cases in 2009. Relevant prosecutions increased considerably during this period.

With regard to subparagraph 1 (b), France has provided article 324-1 of the Criminal Code, cited previously, and statistics on the implementation of this provision. This provision criminalizes the participation in concealing things obtained by a felony or misdemeanor.

Moreover, in general, article 126-6 of the Criminal Code provides that any person participating in a money-laundering transaction can be prosecuted as an accomplice or co-author on the facts.

Article 121-6 of the Criminal Code

The accomplice to the offence, in the meaning of article 121-7, is punishable as a perpetrator

Article 121-7 of the Criminal Code

The accomplice to a felony or a misdemeanor is the person who knowingly, by aiding or abetting, facilitates its preparation or commission.

Any person who, by means of a gift, promise, threat, order, or an abuse of authority or powers, provokes the commission of an offence or gives instructions to commit it, is also an accomplice.

Article 324-2 of Criminal Code foresees a more serious punishment when the acts are committed by organized gangs. The definition of an organized gang can be found in article 132-71, covering the case of "agreement or association" mentioned in this provision of the Convention.

Article 324-2 of the Criminal Code

Money laundering is punished by ten years' imprisonment and a fine of €750,000:

1. where it was committed habitually or by using the facilities offered by the exercise of a professional activity;

2. where it was committed by an organized gang.

Article 132-71 of the Criminal Code

An organized gang within the meaning of the law is any group formed or association established with a view to the preparation of one or more criminal offences, preparation marked by one or more material actions.

France also criminalizes the attempt to commit money-laundering in article 324-6 of the Criminal Code.

Article 324-6 of the Criminal Code

Attempt to commit the offences referred to under the present Section is subject to the same penalties.

Article 121-5 of the Criminal Code

An attempt is committed where, being demonstrated by a beginning of execution, it was suspended or failed to achieve the desired effect solely through circumstances independent of the perpetrator's will.

With regard to subparagraph 2 (a), France has indicated that article 324-1 of the Criminal Code makes a predicate offence of all felonies or misdemeanours which have brought the perpetrator a direct or indirect benefit. This very general formulation makes it possible to target both the felonies and misdemeanors punishable under the Criminal Code itself, such as theft, fraud, breach of trust, misappropriation of public property, procuring and of course, corruption, influence peddling, etc., but also those under other codes or external laws such as those on illegal gaming or betting or offences relating to weapons and foreigners under subparagraphs 12 and 13 of article 706-73 of the Criminal Procedure Code or by the General Tax Code for financial offences.

With regard to subparagraph 2 (c), France has indicated that the criminalization of money laundering does not require that the predicate offence was committed in France. It is of little importance, then, whether the original offence was committed abroad, by a foreigner, by a French citizen or even by a perpetrator who remains unknown.

Moreover, France is bound to apply the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime developed under the auspices of the Council of Europe of 8 November 1990. This Convention provides in its article 9.2 that "it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party".

With regard to subparagraph 2 (d), France has indicated that it has not yet furnished copies of its laws to the Secretary-General of the United Nations.

With regard to subparagraph 2 (e), France has indicated that the fundamental principles of its legal system do not require that the offence of laundering of proceeds of crime apply to the persons who committed the predicate offence.

The Criminal Division of the Court of Cassation has enshrined the principle that "the authorship of the predicate offence was not the sole preserve of the author of the subsequent crime of money laundering". The Court first applied this theory to the situation referred to in

paragraph 1 of article 324-1 of the Criminal Code, namely the facilitation by any means, of the false justification of the origin of property or income from the author of a felony or misdemeanor which has brought him a direct or indirect benefit (Cass. Crim., 25 June 2003, No. 02-86.182 or Cass. Crim., 14 January 2004, No. 03-81.165) and then applied it a second time to the situation referred to in paragraph 2 of that article, namely providing assistance to an operation of investment, concealment or conversion of the direct or indirect proceeds of a crime or misdemeanor. (Cass. Crim., 20 February 2008).

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Money-laundering (arts. 324-1 and 324-2 Penal Code)	29	51	71	98	131	150	116

(b) Observations on the implementation of the article

France affirmed that article 321-2 relating to concealment criminalizes the concealment, disguise or transfer of property, knowing that such property is the proceeds of crime.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

France has provided articles 324-1 and 321-1 of the Criminal Code, as well as relevant statistics.

Article 324-1 of the Criminal Code

Money laundering is facilitating by any means the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanor which has brought him a direct or indirect benefit.

Money laundering also comprises assistance in investing, concealing or converting the direct or indirect proceeds of a felony or misdemeanor.

Money laundering is punished by five years' imprisonment and a fine of €375,000.

Article 321-1 of the Criminal Code

Receiving is the concealment, retention or transfer a thing, or acting as an intermediary in its transfer, knowing that that thing was obtained by a felony or misdemeanor.

Receiving is also the act of knowingly benefiting in any manner from the product of a felony or misdemeanor.

Receiving is punished by five years' imprisonment and a fine of €375,000.

	2003	2004	2005	2006	2007	2008	2009
Concealment : fraudulent breach of trust	208	223	196	231	219	219	215
Concealment : improper demands or exemptions in relation to taxes		1					
Concealment : active corruption of public officials committed by private persons	1	1	2		3		
Concealment : passive corruption by public officials		1	6		4		2
Concealment : purloining or misappropriation of public property	4	4			4	2	
Concealment : offences against equal access in respect of public tenders and public service delegations	18	7	7	13	5	4	6
Concealment : unlawful taking of interests	2	3	2	4		1	2
Concealment : active trafficking in influence committed by private persons			2		2	1	
Concealment : passive trafficking in influence committed by public officials		1	1	2			

(b) Observations on the implementation of the article

Article 321-1 of the Criminal Code is relevant to concealment. It criminalizes not only the dissimulation or retention of things obtained by a felony or misdemeanor, but also the act of knowingly benefiting in any manner from the product of such a thing.

Article 25 Obstruction of Justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of

offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to subparagraph 25 (a), France has provided articles 431-11 (false testimony), 432-15 (subornation), and 431-12 (subornation abroad) of the Criminal Code.

Article 434-14 of the Criminal Code- False testimony is punished by seven years' imprisonment and a fine of €100,000:

1. where it is procured by the handing over of any gift or reward;

2.where the person against whom or in favor of whom the false testimony was given is liable to a penalty applicable to a felony.

Article 434-15 of the Criminal Code- The use of promises, offers, presents, pressures, threats, acts of violence, manoeuvres or tricks in the course of proceedings or in respect of a claim or defence in court to persuade another to make or deliver a statement, declaration or false affidavit, or to abstain from making a statement, declaration or affidavit, is punished by three years' imprisonment and a fine of €45,000, even where the subornation of perjury was ineffective.

Art.435-12 of the Criminal Code - The use of promises, offers, presents, pressures, threats, acts of violence, manoeuvres or tricks in the course of proceedings or in respect of a claim or defence in a foreign state or before an international court to persuade another to make, or abstain from making, a statement, declaration, or false testimony is punished by three years' imprisonment and a fine of €45,000, even where the subornation of perjury was ineffective.

France has also provided statistics on the implementation of these provisions during the period 2003-2009. For example, there were 89 cases in 2009.

With regard to subparagraph 25 (b), France has provided articles 433-3 and 435-13 of the Criminal Code to illustrate the implementation of the provision under review.

Article 433-3 of the Criminal Code

The threat to commit a felony or a misdemeanor against persons or property made against a person holding elected public office, a judge or prosecutor, a juror, an advocate, a legal professional official or a public official, a member of the Gendarmerie or national police, customs, the inspector of works, the prisons' administration, or any other person holding public authority, a professional or volunteer fireman, the accredited warden of a building or group of buildings or an agent carrying out on behalf of the tenant the duty of caring for or watching an inhabited building in pursuance of article L.127.1 of the Code of Construction and Habitation, in the exercise or on account of his functions, when the capacity of the victim is known or apparent to the perpetrator, is punished by two years' imprisonment and a fine of €30,000.

The threat to commit a felony or a misdemeanor against persons or property made against a person employed by a public transport network, an educator or any member of staff at educational establishment, or any other person carrying out a public service mission, as well as a health professional in the exercise of his duties, where the status of the victim is apparent or

known to the perpetrator, is subject to the same penalties.

These provisions also apply to threats made against the spouse, the ascendants and direct descendants of these persons mentioned in the two paragraphs above or against any other person who habitually resides in their home, because of the duties carried out by these persons.

The penalty is increased to five years' imprisonment and to a fine of €75,000 where this is a death threat or a threat to attack property in a manner involving danger to other persons.

The use of threats, violence or the commission of any other intimidating act to obtain, from a person referred to under the first or second paragraph, either the performance or the abstention from performance of any act pertaining to his office, duty or mandate, or facilitated by his office, duty or mandate, or the misuse of his real or supposed authority with a view to obtaining distinctions, employments, contracts or any other favourable decision is punished by ten years' imprisonment and a fine of €150,000.

Article 435-13 of the Criminal Code

The use of threats, violence or the commission of any other intimidating act to obtain from a judge or prosecutor, a juror, any person serving in a judicial body or participating in the public administration of justice or an agent in the services for the detection and suppression of crime, in a foreign state or at an international court, the performance or the abstention from performance of any act of his office or mission or facilitated by his office or his mission is punished by ten years imprisonment and a 150,000 euro fine.

France has provided statistic table for the period 2003-2009. For example, there were 3602 cases in 2009.

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Threat and intimidation against persons holding public office – art. 433-3 of Penal Code	775	1 384	1 929	2 525	3 124	3 606	3 602

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Corruption of witnesses – article 434-15 of Penal Code	105	140	104	107	118	95	89

	2 004	2 005	2 006	2 007	2 008	2 009
False testimony – article 434-14 of Penal Code	1	3	4	4	3	5

(b) Observations on the implementation of the article

French law criminalizes subornation committed in France and abroad. The penalties applicable to corrupt witnesses are more severe than the penalties applicable to the perpetrator of subornation.

Article 26 Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions

(a) Summary of information relevant to reviewing the implementation of the article

France has indicated that the Law No. 2004-204 of 9 March 2004 (effective from 31 December 2005) generalizes the liability of legal persons to all crimes except for press offences and related offences. This principle is enshrined in article 121-2 of the Criminal Code. Legal persons can be convicted of corruption, influence peddling and all other offences under this Convention.

Article 121-2 of the Criminal Code

Legal persons, with the exception of the State, are criminally liable for the offences committed on their account by their organs or representatives, according to the distinctions set out in articles 121-4 and 121-7.

However, local public authorities and their associations incur criminal liability only for offences committed in the course of their activities which may be exercised through public service delegation conventions.

The criminal liability of legal persons does not exclude that of any natural persons who are perpetrators or accomplices to the same act, subject to the provisions of the fourth paragraph of article 121-3.

French law distinguishes between three types of offences (art. 111-1 of the Criminal Code):

- Felonies: punishable by a term of imprisonment of 10 years to life,
- Misdemeanors: carrying a sentence of imprisonment for a maximum of 10 years,
- Violations: punishable only by fines.

With the exception of the passive corruption of a judge or prosecutor in favor of or against a person subject to criminal prosecution (article 434-9, last paragraph) which is considered a felony by reason of exceptional gravity, all other previous offences are misdemeanours.

For felony and misdemeanor matters, the penalties are: fine (the amount incurred is five times that which is incurred by individuals, specified in the articles on the offence), one or more of the penalties listed in article 131-39 (various prohibitions or measures going as far as the dissolution of the legal person).

Concerning previous offences cited in the answers to the questions, the following articles of the

Criminal Code provide for the application of all or part of the penalties listed in article 131-39 Criminal Code: 314-12, 314-13, 324-9, 433-25, 434-47,435-15, 445-4. These additional penalties are not provided for offences involving extortion, corruption and passive influence peddling when committed by a public official, taking unlawful interest, favoritism and misappropriation of public property. The legislator has in effect ruled out that the public official can be a legal (rather than natural) person.

Article 314-12 of the Criminal Code

Legal persons deemed criminally liable, pursuant to the conditions set out under article 121-2, for the offences referred to under articles 314-1 and 314-2 are also fined in the manner prescribed under article 131-38.

The prohibition referred to by 2. of article 131-39 applies to the activity in the course of which or on the occasion of the performance of which the offence was committed.

Article 314-13 of the Criminal Code

Legal persons deemed criminally liable, pursuant to the conditions set out under article 121-2, for the offences referred to under articles 314-5, 3l4-6 and 314-7, incur, in addition to the fine in the manner prescribed under article 131-38 , the penalties referred to under paragraphs 8 and 9 of article 131-39.

Article 324-9 of the Criminal Code

Legal persons deemed criminally liable, pursuant to the conditions set out under article 121-2, for the offences referred to under articles 324-1 and 324-2, incur, in addition to the fine in the manner prescribed under article 131-38 , the penalties referred to under article 131-39.

The prohibition referred to under 2. of article 131-39 applies to the activity in the course of which or on the occasion of the performance of which the offence was committed.

Article 433-25 of the Criminal Code

Legal persons deemed criminally liable, pursuant to the conditions set out under article 121-2, for the offences referred to under articles 433 -1, 433-6, 433-7, 433-9 and 433-10, incur, in addition to the fine in the manner prescribed under article 131-38:

1. (repealed);

2. for a maximum period of five years, the penalties referred to under points 2, 3, 4, 5, 6 and 7 of article 131-39;

3. confiscation provided for by article 131-21;

4. the public display or dissemination of the decision, pursuant to the conditions set out under article 131-35.

The prohibition referred to under 2. of Article 131-39 applies to the activity in the course of which or on the occasion of the performance of which the offence was committed.

Article 434-47 of the Criminal Code

Legal persons recognized as criminally liable, pursuant to the conditions set out under article 121-2, for the offences referred to under the eighth paragraph of article 434-9, the second paragraph of article 434-9-1 and articles 434-39 and 434-43 incur the following penalties:

1. a fine, pursuant to the conditions set out under article 131-38;

2. for a maximum period of five years, the penalties referred to under points 2, 3, 4, 5, 6 and 7 of article 131-39;

3. confiscation set out by article 131-21;

4. the public display or dissemination of the decision, pursuant to the conditions set out under article 131-35;

5. for the offences of the second and third paragraphs of article 434-43, the penalty of dissolution referred to under 1. of article 131-39.

The prohibition referred to under 2. of article 131-39 applies to the activity in the course of which or on the occasion of the performance of which the offence was committed.

Article 435-15 of the Criminal Code

Legal persons recognized as criminal liable, pursuant to the conditions set out under article 121-2, for the offences referred to under articles 435-3, 435-4, 435-9 et 435-10 incur the following penalties:

1. a fine, pursuant to the conditions set out under article 131-38;

2. for a maximum period of five years, the penalties referred to under points 2 to 7 of article 131-39;

3. confiscation as set out by article 131-21 of the thing that was used or intended to be used to commit

4. the public display or dissemination of the decision, pursuant to the conditions set out under article 131-35;

Article 445-4 of the Criminal Code

Legal persons deemed criminally liable, pursuant to the conditions set out under article 121-2, for the offences referred to under articles 445-1 and 445-2, incur, in addition to the fine in the manner prescribed under article 131-38:

1. (abrogated);

2. for a maximum period of five years, the penalties referred to under points 2, 3, 4, 5, 6 and 7 of article 131-39

3. confiscation as set out by article 131-21 of the thing that was used or intended to be used to commit the offence, or the thing produced by it, with the exception of things subject to restitution;

4. the public display or dissemination of the decision, pursuant to the conditions set out under article 131-35;

(b) Observations on the implementation of the article

French authorities claimed that if the offence is committed abroad, the legal person is liable.

France foresees a number of important penalties applicable to legal persons, including fines, confiscation of thing used or intended to be used to commit offence, public display or dissemination of the decision, prohibition to continue an activity in the course of which the offence was committed, and even dissolution.

France affirmed that penalties applicable to legal persons who are guilty of bribe are limited. For the time being, the maximum amount of fine applicable to legal persons is five times higher than the maximum amount of fine applicable to natural persons. The reviewers

recommend that be reassessed the maximum amount of fine applicable to legal persons. They argue that, in terms of bribery, a company may obtain huge amount of profits from contracts which are obtained due to corruption. In this case, a maximum amount of fine as set out under article 321-39 of the Criminal Code might not have a sense. Furthermore there may be situations where the intent not was to obtain money but the corruption offence constituted an aggravated crime e.g. a breach on a weapon-embargo where it was not possible to make any natural person in the company responsible for the offence.

Article 27 Participation and attempt

> *1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*
>
> *2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*
>
> *3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention*

(a) Summary of information relevant to reviewing the implementation of the article

With regard to paragraph 1, France has provided article 121-7 of the Criminal Code to illustrate its implementation of the provision under review.

> Article 121-7 of the Criminal Code
>
> The accomplice to a felony or a misdemeanor is the person who knowingly, by aiding or abetting, facilitates its preparation or commission.
>
> Any person who, by means of a gift, promise, threat, order, or an abuse of authority or powers, provokes the commission of an offence or gives instructions to commit it, is also an accomplice.

With regard to paragraph 2, in France an attempted felony is always punishable, attempted misdemeanors only if it is expressly provided. Thus, with regard to offences under the Convention, there are specific laws for money laundering offences (art. 324-6 of the Criminal Code), favoritism (art. 432-14 of the Criminal Code), extortion (at. 432-10 of the Criminal Code) and misappropriation of public funds (art. 432 -15 of the Criminal Code).

Furthermore, it follows from the wording of the articles on corruption and influence peddling that these misdemeanor offences are immediately and fully completed when the benefit is offered or requested whether the offer or the request has been accepted or followed or has no effects. So there is no place for an attempt when it is already regarded as constituting the offence, such as is the case with the offences of corruption or influence peddling.

Article 121-4 of the Criminal Code

The perpetrator of an offence is the person who:

1. commits the criminally prohibited act;

2. attempts to commit a felony or, in the cases provided for by law, a misdemeanor.

Article 121-5 of the Criminal Code

An attempt is committed where, being demonstrated by a beginning of execution, it was suspended or failed to achieve the desired effect solely through circumstances independent of the perpetrator's will.

To illustrate that the mere presentation of an offer constitutes the offence of corruption regardless of whether the offer was accepted or not, opinions often cite both the following examples:
- The case of a student in 2nd year of law school wishing to obtain a mark of 13/20 in his exam and who sent his teacher a check for 10,000 francs, asking for his "indulgence". The teacher refused and the student was convicted of active corruption (Cass. Crim., 16 October 1985);
- The case of a foreigner offering a sum of money to customs officers to avoid the reporting of an offence (Court of Appeal, Nancy, 2 December 1992)

With regard to paragraph 3, France has indicated that article 450-1 of the Criminal Code criminalizes the association of criminals. This offence applies to the preparation of felonies and misdemeanors subject to at least 5 years' imprisonment. It thus applies to the principal offences under the Convention.

Article 450-1 of the Criminal Code

A criminal association consists of any group formed or any conspiracy established with a view to the preparation, marked by one or more material actions, of one or more felonies, or of one or more misdemeanors punished by at least five years' imprisonment.

Where the offences contemplated are felonies or misdemeanours punished by ten years' imprisonment, the participation in a criminal association is punished by ten years' imprisonment and a fine of €150,000.

Where the offences contemplated are misdemeanours punished by at least five years' imprisonment, the participation in a criminal association is punished by five years' imprisonment and a fine of €75,000.

	2 003	2 004	2 005	2 006	2 007	2 008	2 009
Improper demands or exemptions in relation to taxes – article 432-10 of Penal Code	2	4	2	9	4	6	8

(b) Observations on the implementation of the article

The reviewers were satisfied with the answer provided

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

In French law, intent is a key element for proving the commission of an offence. Article 121-3 of the Criminal Code provides in paragraph 1 that "there is no felony or misdemeanor without intent to commit it".

However, consistent jurisprudence from the Court of Cassation has come to further explain this requirement by stating that "the mere finding of the violation with knowledge that there is a law or regulatory requirement implies its author for having intent required by Article 121-3 paragraph 1 (Cass. Crim., 25 May 1994). This applies to the violation of rules on public procurement regarding favoritism, or for example the ethical rules for public officials for example.

In all cases, the courts are committed to proving the existence of the element of intent by gathering a body of indicators. Thus, given the difficulty of directly establishing a psychological attitude, trial judges have often resorted to indirect methods of proof such as presumptions of fact to infer from acts carried out the intention of their author. Intent in abuse of trust can, for example, be inferred from such facts and the Court of Cassation does not make judges expressly establish that intent, which is necessarily included in the finding of misappropriation (Cass. Crim., 12 January 1977). One can again take the example of receiving for which the intent is defined as a willingness to receive things whose fraudulent origin the author knows. The proof of this knowledge is very often inferred from the circumstances in which the accused has obtained the things, the very low price he paid to acquire them or the concealment of these things (Cass. Crim., 22 May 1997).

It is also common for judges in the criminal courts to take into account the fact that the perpetrator had a certain quality that ought to lead him to be fully aware of committing the offence.

The element of intent in the offence is related to the psychology of the agent, the characterization of which comes down solely to trial court judge, the Court of Cassation is limited to reviewing whether judges have drawn out all the conclusions from their own findings.

In any event, article 427 of the Criminal Procedure Code provides that "except where the law otherwise provides, offences may be proved by any mode of evidence and the judge decides according to his innermost conviction. The judge may only base his decision on evidence which was submitted in the course of the hearing and adversarial discussed before him".

(b) Observations on the implementation of the article

The reviewers were satisfied with the answer provided.

Article 29 Statute of limitations

> *Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

(a) Summary of information relevant to reviewing the implementation of the article

In French law, article 7 of the Criminal Procedure Code sets a 10 year limitation for public action for felonies and article 8 of the same code sets a three year limitation for the public action for misdemeanours. Article 7 applies only to offences of passive corruption by a member of the judiciary, which constitutes a felony (the last paragraph of article 434-9 of the Criminal Code), and article 8 applies to all other offences mentioned previously.

> Article 7 of the Criminal Procedure Code
>
> Subject to the provisions of article 213-5 of the Criminal Code, prosecution in felony cases is time-barred by the passing of ten years from the day of the commission of the felony if, during this period, no step in investigation or prosecution was taken.
>
> Where such steps were taken, it is time-barred only after the passing of ten years starting from the last step taken. This applies even in respect of those persons who would not have been affected by this investigation or prosecution step.
>
> The limitation period for the prosecution of the felonies set out in article 706-47 of the present code and the felony under article 222-10 of the Criminal Code, when committed against minors, is twenty years, and only starts to run from their coming of age.
>
> Article 8 of the Criminal Procedure Code:
>
> For misdemeanours, the prosecution limitation period is three complete years; it operates according to the distinctions set out in the previous article.
>
> The limitation period for the prosecution of the misdemeanours set out in article 706-47 and committed against minors is ten years; for the offences set out in articles 222-12 and 227-26 of the Criminal Code, it is twenty years. These limitation periods only start to run from when the victim comes of age.

However, the statute of limitations may be suspended by the law and by the judges.

According to the law, articles 7 and 8 provide that every act of investigation or prosecution interrupts the limitation period and sets a new deadline. Thus, when the investigations are ongoing to establish the facts of the suspected infringement, the limitation period is interrupted and resumes for three more years.

Moreover, the law and the jurisprudence also provide grounds for suspension of the limitation

that only stop the running of the limitation period so that the time already elapsed is taken into account. Legal grounds for suspension of limitation are:

• Article 6 para. 2 of the Criminal Procedure Code: a court decision which declares the public prosecution extinguished for a particular offence when the decision was the result of falsification,

• Referral to the commission of tax crimes (maximum 6 months) and referral to the Board of Conciliation and Customs Expertise (maximum one year),

• Consultation of the Competition Council regarding anti-competitive practices,

• Sex crimes against minors: limitation suspended until his majority,

• Implementation by the public prosecutor of an alternative to prosecution (legal caution, mediation, regularization ..).

> Article 6 of the Criminal Procedure Code
>
> Public action for the imposition of a penalty is extinguished by the death of the defendant, by limitation, amnesty, the repeal of the criminal law and res judicata.
>
> However, if a prosecution resulting in conviction has revealed the falsity of the judgment or decision which declared the public prosecution extinguished, the prosecution may be resumed. The limitation period is then treated as suspended from the date when the judgment or decision became final until that of the conviction of the person guilty of forgery or the use of forgery.
>
> It may also be extinguished by compounding where the law expressly so provides, or by a conditional suspension of prosecution. It is the same in the event of the withdrawal of a complaint, where such complaint is a condition necessary to prosecution.
>
> Article 6-1 the Criminal Procedure Code
>
> Where a felony or misdemeanor is alleged to have been committed in the course of a judicial prosecution and would imply the violation of a provision concerning criminal procedure, prosecution may only be initiated if the criminal court dealing with the case found the prosecution or step taken on that occasion to be unlawful. The limitation period for the prosecution runs from this last decision.

The jurisprudential causes for suspension are obstacles of law or fact to the exercise of action: *de jure* obstacles (e.g. prejudicial issue, appeal in Cassation, appeal by a civil party to dismissal orders or decisions to acquit, etc.) and *de facto* obstacles (flood, enemy invasion of the territory, retrieval of the case file, etc.).

Moreover, case law has come to further lengthen the statute of limitations considering that for all offences of concealment (embezzlement, misuse of company assets, corruption, influence peddling, misappropriation of public funds, etc.) the starting point for the limitation period is fixed as the date of discovery of the offence and not the date of its commission. The formulation of the principle of the Criminal Division is as follows: public action only begins to run in cases of concealment "from the day when the offence became apparent and could be observed under conditions permitting the exercise of prosecution".

Similarly, for offences called "continuous" (as opposed to the instant offence) legal reasoning has specified that the period of limitation for prosecution only runs from the day they came to an end. The Court of Cassation has particularly applied this reasoning to acts of concealment, considering that the limitation period only starts the day the offence came to an end, even if at

that time the offence that acquired the thing was statute bar.

Finally, the jurisprudence has also made allowances with respect to corruption for example. Thus, it found that:

- Corruption is an instantaneous offence, completed after the conclusion of the agreement between the corrupter and the corrupted, but that it is renewed at every act carrying out this agreement. Hence it follows that every act of carrying out the agreement restarts the period of limitation for prosecution for another 3 years.
- The starting point of the limitation is put back to the date of the last payment or last receipt of things promised, that is the unfair advantage given to the public official or conversely the act or failure to act of the corrupted public official.
- In case of "collusion" that is to say when successive agreements between the corrupter and the corrupted concern successive deals within the same "collusion," the delay of the starting point of the limitation to the last installment of the things promised within the last deal also applies to the first deal.

France has thought a lot about the desirability of amending the statute of limitations. Thus, under the proposed reform of the Criminal Procedure Code, it is envisaged that the limitation for the prosecution for misdemeanours will remain at three years, but to include in the law the legal theory that defers the beginning of the period of limitation for prosecution for offences of concealment. Finally, by comparing its system to foreign systems with its legal and jurisprudential developments, France felt that it was appropriate.

(b) Observations on the implementation of the article

The reviewers observed that the three-year limitation for the prosecution for misdemeanors as set out in article 8 of the Criminal Procedure Code could be insufficient and, in certain cases, represent a hindrance to investigation. However, according to representatives of specialized courts, the three-year limitation for prosecution for misdemeanors does not constitute a hindrance, even though investigation may take time. Prosecution of corruption offences requires a sufficiently long limitation period to counteract their covert nature and the difficulties of adducing evidence. An extended limitation period from 3 to 7 years for offences punishable by over three years' imprisonment and from 3 to 5 years for those punishable by under three years would also bring the French limitation periods into line with those most other European countries.

The reviewers are aware that there are several ways in which the French criminal procedure system reduces the constraints of the limitation period. However they maintain the stance that the three year limitation period for cases of bribery and trading in influence is insufficient, particularly given the special difficulties encountered in detecting and establishing proof of these offences, and as an example it can be mentioned that some cases detected and mentioned in the reports from the auditors concerning the governmental and municipal entities were given up in Cour de Comptes because of the limitation period.

Article 30 Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to paragraph 1, France has argued that the texts which criminalized offences established under the Convention take into account the gravity of these offences, by applying to all offences under the Convention penalties of imprisonment with long terms and fines; both

sentences can be imposed together. Moreover, to these principal penalties are added additional penalties that have already been cited and which can be particularly severe (dissolution for legal persons, prohibitions for individuals ...).

With regard to paragraph 2, France has indicated that in its system, there is no such thing, properly speaking, as immunity for public officials.

The President of the Republic shall incur no liability by reason of acts carried out in his official capacity and cannot, during his term of office and before any French court or administrative authority, be required to be a witness nor be the object of a civil action, any preferring of charges, prosecution or investigatory measures. All limitation periods shall be suspended for the duration of said term of office. All actions and proceedings thus stayed may be reactivated or brought against the President one month after the end of his term of office (article 67 of the Constitution).

> Article 67 of the Constitution
>
> The President of the Republic shall incur no liability by reason of acts carried out in his official capacity, subject to the provisions of Articles 53-2 and 68 hereof.
>
> Throughout his term of office the President shall not be required to testify before any French Court of law or Administrative authority and shall not be the object of any civil proceedings, nor of any preferring of charges, prosecution or investigatory measures. All limitation periods shall be suspended for the duration of said term of office.
>
> All actions and proceedings thus stayed may be reactivated or brought against the President one month after the end of his term of office.

Members of the Government, for acts performed in the holding of their office must be tried by a special court, the Court of Justice of the Republic. On the other hand they do not enjoy any immunity or privilege of jurisdiction for acts performed outside the exercise of their office (articles 68-1 and following of the Constitution). Procedure before the Court of Justice of the Republic is laid down in a fundamental law of 23 November 1993 (law attached to the checklist). Article 652 of the Criminal Procedure Code lays down that the Prime Minister and the other members of the government can only appear as witnesses after the authorization of the Cabinet, on the report of the Minister of Justice.

> Art. 68-1 of the Constitution
>
> Members of the Government shall be criminally liable for acts performed in the holding of their office and classified as serious crimes or other major offences at the time they were committed.
>
> They shall be tried by the Court of Justice of the Republic.
>
> The Court of Justice of the Republic shall be bound by such definition of serious crimes and other major offences and such determination of penalties as are laid down by statute.
>
> Art. 68-2 of the Constitution
>
> The Court of Justice of the Republic shall consist of fifteen members: twelve Members of Parliament, elected in equal number from among their ranks by the National Assembly and the Senate after each general or partial renewal by election of these Houses, and three judges of the

Court of Cassation, one of whom shall preside over the Court of Justice of the Republic.

Any person claiming to be a victim of a serious crime or other major offence committed by a member of the Government in the holding of his office may lodge a complaint with a petitions committee.

This committee shall order the case to be either closed or forwarded to the Chief Public Prosecutor at the Court of Cassation for referral to the Court of Justice of the Republic.

The Chief Public prosecutor at the Court of Cassation may also make a referral ex officio to the Court of Justice of the Republic with the assent of the petitions committee.

An Institutional Act shall determine the manner in which this article is to be implemented.

Members of parliament cannot be the object, in a criminal or disciplinary matter (with the exception of felonies or cases in *flagrante delicto* and when a conviction has become final) of an arrest or any other measure that deprives or restricts liberty without the authorization of the Bureau of the House of which he is a member.

Article 26 of the Constitution

No Member of Parliament shall be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or votes cast in the performance of his official duties.

No Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorization of the Bureau of the House of which he is a member. Such authorization shall not be required in the case of a serious crime or other major offence committed in flagrante delicto or when a conviction has become final.

The detention, subjecting to custodial or semi-custodial measures, or prosecution of a Member of Parliament shall be suspended for the duration of the session if the House of which he is a member so requires.

The House concerned shall meet as of right for additional sittings in order to permit the application of the foregoing paragraph should circumstances so require.

With regard to paragraph 3, according to article 31 of the Criminal Procedure Code, the "Prosecution Service brings public action and requests the application of the law". Part of its mission is stated in articles 40 (paragraph 1) and 40-1 of the Criminal Procedure Code. The prosecution service has the discretion to prosecute.

Article 40 of the Criminal Procedure Code, paragraph 1

The district prosecutor receives complaints and denunciations and decides how to deal with them, in accordance with the provisions of article 40-1.

Article 40-1 of the Criminal Procedure Code

Where he considers that facts brought to his attention in accordance with the provisions of article 40 constitute an offence committed by a person whose identity and domicile are known, and for which there is no legal provision blocking the implementation of a public prosecution, the district prosecutor with territorial jurisdiction decides if it is appropriate:

1. to initiate a prosecution;

2. or to implement alternative proceedings to a prosecution, in accordance with the provisions of articles 41-1 or 41-2;

3. or to close the case without taking any further action, where the particular circumstances linked to the commission of the offence justify this.

However, when the identity and domicile of the perpetrator are known, and when there is no legal obstacle to the setting in motion of a public prosecution, the prosecutor can only close the case without taking any further action when "the particular circumstances linked to the commission of the offence justify this".

Article 40-2 of the Criminal Procedure Code

The district prosecutor informs the complainants and the victims, if these have been identified, as well as the persons or authorities mentioned in the second paragraph of article 40, of any prosecution or alternative measures which have been decided upon in consequence of their complaint or notification.

If he decides to close the case without taking further action he also informs them of his decision, and indicates the legal or factual reasons that justify this course of action.

Article 40-3 of the Criminal Procedure Code grants the person who has denounced facts to the district prosecutor the right to appeal to the Prosecutor General against a decision not to prosecute.

Article 40-3 of the Criminal Procedure Code

Any person who has reported an offence to the district prosecutor may lodge an appeal with the prosecutor general if, following his report, the decision is taken to close the case without taking further action. The district prosecutor may, under the conditions provided for by article 36, instruct the district prosecutor to initiate a prosecution. If he feels that the appeal is unfounded, he informs the party concerned of this.

France has indicated that the Directorate of Criminal Affairs and Pardons at the Ministry of Justice regularly sends to the prosecutors at the courts circulars stressing the importance of firm and appropriate response to certain types of acts. Thus, for example, a circular of 21 June 2004 stressed the importance of a strong response in the matter of international corruption (see attachment). It was stated in particular:

"Therefore, I call your attention to the need to examine with the utmost firmness basic complaints that could be made to you regarding the active corruption of foreign public officials and conduct the prosecution vigorously when it seems to you that the circumstances underlying them admit the possibility of the existence of the alleged damage and the direct relation of it with an offence of the active corruption of a foreign public official."

With regard to paragraph 4, France has provided provisions on pre-trial detention as well as explanation on their implementation.

The criteria for placement in pre-trial detention are enumerated in article 144 of the Criminal Procedure Code. Among these is the fact "to guarantee that the person under judicial examination remains at the disposal of the law".

> Article 144 of the Criminal Procedure Code
>
> Pre-trial detention may only be ordered or extended if it demonstrated, with regard to the specific elements and circumstances resulting from the proceedings, to be the only way to meet one or more of the following objectives and that these could not be achieved by judicial supervision or house arrest with electronic tagging:
>
> 1. to preserve material evidence or clues needed to ascertain the truth;
>
> 2. to prevent either witnesses or victims or their families being pressurized.
>
> 3. to prevent a fraudulent conspiracy between persons under judicial examination and their co-principals or accomplices;
>
> 4. to protect the person under judicial examination;
>
> 5. to guarantee that the person under judicial examination remains at the disposal of the law;
>
> 6. to put an end to the offence or to prevent its renewal;
>
> 7. to put an end to an exceptional and persistent disruption of public order caused by the seriousness of the offence, the circumstances in which it was committed, or the gravity of the harm that it has caused. This disorder may not result solely from media coverage of the case. However, this paragraph is not applicable in correctional cases.

The investigating judge or the liberty and custody judge must order the immediate release of the person in custody as soon as the conditions laid down in article 144 no longer apply. This means, conversely, that if there is no guarantee of the defendant appearing, it is possible to keep him in custody, once again on the basis of one or more criteria of article 144.

> Article 144-1 of the Criminal Procedure Code
>
> Pre-trial detention may not exceed a reasonable length of time in respect of the seriousness of the charges brought against the person under judicial examination and of the complexity of the investigations necessary for the discovery of the truth.
>
> The investigating judge, or where heard by him, the liberty and custody judge, must order the immediate release of the person placed in pre-trial detention, pursuant to the terms provided for by article 147, as soon as the conditions provided under article 144 and under the present article are no longer fulfilled.

Article 148-1 of the Criminal Procedure Code provides that release may also be requested by "any person under judicial examination, defendant or accused person and at any stage of the proceedings." In such case, the court may refer to the criteria of Article 144 which are still justified, particularly that of ensuring representation.

> Article 148-1 of the Criminal Procedure Code
>
> A release may also be requested in every case by any person under judicial examination,

defendant or accused person and at any stage of the proceedings.

Where a trial court is hearing the case, it must rule on the pre-trial detention; before referral to the court of assizes and during the session within which it must judge, this power lies with the investigating chamber.

Where an application is made for cassation, then until the Court of Cassation rules, the decision upon the release application is made by the court which last heard the case on the merits. If the application is made against a judgment of the assize court, the investigating chamber decides on the detention.

In the event of a finding of lack of jurisdiction and generally in every case where no court is seized of the case, the investigating chamber decides on applications for release.

With regard to paragraph 5, France has provided explanation on its regime of release.

From the trial stage, sentences are individualized by the judge according to the seriousness of the facts and the personality of their author. Article 132-24 of the Criminal Code provides in this regard that: "To the extent permitted by law, the court imposes penalties and determines their regime according to the circumstances and the personality of the offender".

Regarding parole, French law takes into account the seriousness of the offence when considering parole of a convicted person in several ways.

First, parole may only be granted when the duration of the sentence served by the sentenced person is at least equal to the length of sentence remaining to be served. However, those convicted in a state of legal recidivism cannot qualify for conditional release unless the length of sentence served is at least equal to twice the length of sentence remaining (Article 729 of the Criminal Procedure Code). In this way, the seriousness of the offence is taken into account.

Moreover, there is no automatic right and it is up to a magistrate or a collegiate court to decide whether to grant conditional release. The penalty enforcement judge (the sole judge with jurisdiction where the remaining penalty is less than or equal to 3 years or when the sentence is less than 10 years) and the penalty enforcement court (a collegiate court composed of three competent judges when the custodial sentence imposed is for a term exceeding ten years and the duration of detention is still more than three years) have competence to carry out sentences of the first degree and which are responsible, as provided by law, for determining the principle terms of the implementation of deprivation of liberty, directing and controlling the conditions of their application.

Finally, article 707 of the Criminal Procedure Code provides: "The execution of the sentences favors the integration or reintegration of convicted persons as well as the prevention of recidivism, whilst respecting the interests of society and the rights of victims." The concern for "prevention of recidivism" is consistent in French law and in particular for parole, which seeks to rehabilitate prisoners and "prevent recidivism" under section 729 of the Criminal Procedure Code. The courts for the implementation of sentences must necessarily take into account the seriousness of the offences involved, as they must ensure that the rehabilitation of the convicted person is achieved, which means in particular checking the attitude of the convict to the past offence. The offender must also, where appropriate, demonstrate serious efforts at social

rehabilitation and justify his efforts to compensate his victims (Article 729 of the Criminal Procedure Code).

> Article 707 of the Criminal Procedure Code
>
> At the decision or under the supervision of the judicial authorities, sentences imposed by the criminal courts are, except in insuperable circumstances, enforced effectively and as soon as possible.
>
> The execution of the sentences favours the integration or reintegration of convicted persons as well as the prevention of recidivism, whilst respecting the interests of society and the rights of victims.
>
> To this end, the sentences may be modified before their implementation or during the course of their implementation if the personality and the material, familial and social situation, or their development, allow. The individualization of the sentences must, whenever possible, allow the progressive return of the convicted person to freedom, and avoid release without any form of judicial support.
>
> Upon issuance of an order for committal or arrest, deprivation of liberty may be immediately appointed, as provided by this code, without waiting for the sentence to be enforceable under this section, subject to the right of appeal suspending by the prosecution under section 712-14.
>
> Paragraphs 1 to 9 of article 729 of the Criminal Procedure Code
>
> The aim of parole is the social reintegration of prisoners and the prevention of re-offending.
>
> Convicted persons who have to serve one or more custodial sentences may be granted parole if they show serious efforts towards social reintegration, especially if they can prove:
>
> 1. that they work, or prove their regular attendance at teaching or training courses, or a temporary job or their commitment to education or professional training;
>
> 2. or their essential participation in family life;
>
> 3. or their need to undergo medical treatment;
>
> 4. or their efforts with regard to compensating their victims;
>
> 5. or their involvement in any other serious project for integration or reintegration.
>
> Subject to the provisions of article 132-23 of the Criminal Code, parole may be granted when the length of the sentence served by the convicted person is at least equal to the length of the sentence remaining to be served. However, prisoners in the legal situation of recidivists in the meaning of articles 132-8, 132-9 or 132-10 of the Criminal Code may only be paroled if the length of the sentence served is at least twice the length of the sentence remaining to be served. In the situations covered by the present paragraph, the probation term may not exceed fifteen years or, if the convicted person is in a state of legal recidivism, twenty years.
>
> The probation term is eighteen years for persons sentenced to life imprisonment; it is twenty-two years if the convicted person is in a state of legal recidivism.

With regard to paragraph 6, France has not provided answers to questions under this provision.

With regard to paragraph 7, France has indicated that, for each of the offences under the Convention a specific article of the Criminal Code provides for additional penalties applicable to natural persons. Among these there is always the ban on holding public office or carrying on

the social or professional activity in the course of or in connection with which the violation was committed (art. 314 -10- 2 °, 321-9, 324-7-1° 432-17-2°, 433-22, 434-44, 435-14-2° and 445-3 of the Criminal Code).

Article 314-10 of the Criminal Code

Natural persons convicted of any of the offences provided for under articles 314-1, 314-2 and 314-3 also incur the following additional penalties:

1° prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, or to carry on a commercial or industrial profession, to direct, administer, manage or control, under any designation, directly or indirectly, for his own or another's account, a commercial or industrial enterprise, or a commercial company. These prohibitions on activity can be given cumulatively.

Article 321-9 of the Criminal Code

Natural persons convicted of any of the offences provided for under the present chapter also incur the following additional penalties:

1° prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to discharge the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed; such prohibition being permanent or temporary in the cases set out under articles 321-2 and 321-4, and limited to five years in the cases set out under articles 321-1, 321-6, 321-7 and 321-8, or to carry on a commercial or industrial profession, to direct, administer, manage or control, under any designation, directly or indirectly, for his own or another's account, a commercial or industrial enterprise, or a commercial company. These prohibitions on activity can be given cumulatively.

Article 324-7 of the Criminal Code

Natural persons convicted of any of the offences provided for under articles 324-1 and 324-2 also incur the following additional penalties:

1° prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, this prohibition being permanent or temporary in the case referred to under article 324-2, and limited to five years in the case referred to under article 324-1, or to carry on a commercial or industrial profession, to direct, administer, manage or control, under any designation, directly or indirectly, for his own or another's account, a commercial or industrial enterprise, or a commercial company. These prohibitions on activity can be given cumulatively.

Article 432-17 of the Criminal Code

The following additional penalties may be pronounced in the cases referred to under the present chapter:

1° prohibition, pursuant to the conditions set out under article 131-27, either to exercise a public office or to undertake the social or professional activity in the course of which or on the occasion of which the offence was committed, or for offences under paragraph 2 of article 432-4

and articles 432-11, 432-15 and 432-16 to carry on a commercial or industrial profession, to direct, administer, manage or control, under any designation, directly or indirectly, for his own or another's account, a commercial or industrial enterprise, or a commercial company. These prohibitions on activity can be given cumulatively.

Article 433-22 of the Criminal Code

Natural persons convicted of any of the offences provided for under the present Chapter also incur the following additional penalties:

1° prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, for a maximum period of temporary prohibition of ten years, or for offences under articles 433-1, 433-2 and 433-4 to carry on a commercial or industrial profession, to direct, administer, manage or control, under any designation, directly or indirectly, for his own or another's account, a commercial or industrial enterprise, or a commercial company. These prohibitions on activity can be given cumulatively;

Article 434-44 of the Criminal Code

Natural persons convicted of any of the offences provided for under the third paragraph of article 434-9, article 434-33 and the second paragraph of article 434-35 are also liable to the additional penalty of prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, or for offences under articles 434-9 and 434-33 to carry on a commercial or industrial profession, to direct, administer, manage or control, under any designation, directly or indirectly, for his own or another's account, a commercial or industrial enterprise, or a commercial company. This prohibitions on activity can be given cumulatively;

Article 435-14 of the Criminal Code

Natural persons convicted of any of the offences provided for under the present Chapter also incur the following additional penalties:

1° prohibition, for a maximum of five years, to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed

Article 445-3 of the Criminal Code

Natural persons found guilty of the offences set out in article 445-1 and 445-2 also incur the following additional penalties:

1º prohibition, pursuant to the conditions set out under article 131-27, either to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, or to carry on a commercial or industrial profession, to direct, administer, manage or control, under any designation, directly or indirectly, for his own or another's account, a commercial or industrial enterprise, or a commercial company. These prohibitions on activity can be given cumulatively.

France has indicated that the provisions cited previously provide for the disqualification from carrying on the professional or social activity in the course of or in connection with which the offence was committed. These provisions (with the exception of article 435-14 of which an amendment in this sense is being considered) also provide for the prohibition on exercising a commercial or industrial profession, to direct, administer, manage or control, under any designation, directly or indirectly, for his own or another's account, a commercial or industrial enterprise, or a commercial company. Therefore, the coordination of these two prohibitions allows judges to prohibit the performing of an office in an enterprise that the State wholly or partly owns.

With regard to article 435-14, there is an ongoing adjustment with a view to adding such a penalty.

With regard to paragraphs 8 and 9, France has not answered to the questions under these provisions.

With regard to paragraph 10, France has provided article 707 of the Criminal Code which sets out the guidelines for the implementation of penalties in France.

> Article 707 of the Criminal Code:
>
> "The execution of the sentences favors the integration or reintegration of convicted persons as well as the prevention of recidivism, whilst respecting the interests of society and the rights of victims. To this end, the sentences may be modified before their implementation or during the course of their implementation if the personality and the material, familial and social situation, or their development, allow. The individualization of the sentences must, whenever possible, allow the progressive return of the convicted person to freedom, and avoid release without any form of judicial support."

Over all prosecutions of offences established under the Convention, in 2009, 5632 decisions were pronounced, of which 186 cases of recidivism. If taking in account also concealment prosecutions, France has 5814 decisions and 189 recidivism cases.

(b) Observations on the implementation of the article

There is no immunity for members of the Parliament. For investigation in the Bureau of a parliamentarian, a request for authorization must be addressed to the President of the National Assembly. Therefore, only organized prosecution is designed for investigations. The President of the National Assembly, upon reception of such request during his journey, agrees on authorization during the day. Upon the beginning of investigation, there is no request for authorization.

Ministers are granted jurisdiction privilege. For offence committed in the course of their ministerial activity, they are judged by a special "Court of Justice of the Republic". The investigating judge or a parliamentarian committee can open investigations on them. Both investigations can be carried out concurrently. In practice, there are cases in which members of

the Government have already been sentenced for acts of corruption.

The reviewers expressed the concern that the application of the principle of discretionary prosecution in a context where the court depends on the executive (Ministry of Justice), may affect the effective criminalization of certain acts of corruption. Therefore, they wish to recommend an in-depth analysis of this issue be carried out in order to avoid, at least as regards acts of corruption, any risk of political interference in judicial sentences, prosecutions or cold cases.

Despite the theoretical possibility to apply complementary penalties as mentioned earlier, the reviewers' team was informed that such penalties have almost never been applied in practice. Yet, sentencing such penalties is necessary in order to stimulate public interest among political elite, and demonstrating that corruption is not allowed in politics.

During the country visit an example was mentioned where a mayor convicted for bribery in his job as a mayor just after his release from prison was reelected as a mayor in the municipality where he lived. The reviewers don't think this is a proper signal to send about the seriousness of the corruption offence. In the reviewers opinion it should be mandatory to deprive the eligibility when a person elected to a public position committed a corruption offence. The length of the non-eligibility period should depend on the gravity of the offence.

France seems to argue that the small number of recidivism cases in 2009 shows the success of national efforts in promoting reintegration into society of convicted persons. However, this statistic does not show how many recidivism cases exist with regard to corruption-related prosecutions.

Article 31 Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

(a) Summary of information relevant to reviewing the implementation of the article

France has provided explanation on the penalty of confiscation in its legal system, as well as applicable provisions.

With regard to paragraph 1, the penalty of confiscation forms under French law an additional penalty. It is applicable under two sets of assumptions:
- Specifically for offences for which the law expressly provides this penalty,
- Automatically for any offence for which the penalty exceeds one year imprisonment.

Confiscation may cover all assets, regardless of their nature, which are the direct or indirect proceeds of crime. The confiscation of the direct or indirect proceeds of the offence may apply to the property of the convicted person, but also on property he does not own, if in the hands of third parties, except for property that is subject to restitution to the victim of the offence.

Confiscation may be ordered in value when the thing confiscated has not been previously seized or cannot be produced.

The penalty of confiscation is also applicable under the same conditions to natural and legal persons.

Article 131-21 of the Criminal Code

The additional penalty of confiscation is incurred in the cases provided by law or regulation. It is also incurred automatically for felonies and misdemeanours punishable by a prison term of more than one year, excluding press offences.

Confiscation affects all the property, moveable or immovable, of whatever nature, divisible or indivisible, which was used or intended for the commission of the offence, owned by the person convicted or, with respect for the rights of a bona fide owner, which was at his disposal.

It equally applies to all the property which was the object or the direct or indirect product of the offence, with the exception of goods subject to restitution to the victim. If the product of the offence has been mixed with funds of licit origin in order to acquire one or more assets, the confiscation only applies to these assets according to the estimated value of the product.

Concerning a felony or a misdemeanor punishable by a minimum of five years imprisonment which has made a direct or indirect benefit, confiscation also applies to the property, movable or immovable, of any nature, divisible or indivisible, belonging to the convicted person when he is unable to explain the origins of this property when asked to do so.

When the law that criminalizes the felony or misdemeanor provides, confiscation can also apply to all or part of the property belonging to the convicted person, of whatever nature, movable or fixed, divisible or indivisible.

Confiscation is mandatory for the articles defined as dangerous or noxious by statute or by regulations, or whose keeping is unlawful, whether or not these articles belong to the convicted person.

The additional penalty of confiscation applies under the same conditions to all intangible rights, of whatever nature, divisible or indivisible.

Where the thing confiscated has not been seized or cannot be produced, confiscation in value is imposed. For the recovery of the sum representing the value of the thing confiscated, the provisions governing judicial enforcement of public debts apply.

The thing confiscated devolves to the State, except where a specific provision prescribes its destruction or its attribution, but remains encumbered up to its full value with any proprietary right lawfully created in favor of third parties.

Where the thing confiscated is a vehicle that has not been seized or impounded during the investigation, the offender must, on the orders of the public prosecutor, hand over the vehicle to the department or organization responsible for destroying or disposing of it.

Article 131-39 8° of the Criminal Code

Where a statute so provides against a legal person, a felony or misdemeanor may be punished by one or more of the following penalties:

(...)

8° confiscation, under the conditions and according to the terms provided by article 131-21;

(...)

The additional penalty of confiscation is also incurred automatically for felonies and misdemeanours punishable by a prison term of more than one year, excluding press offences.

Confiscation affects all the property, moveable or immovable, of whatever nature, divisible or indivisible, which was used or intended for the commission of the offence, owned by the person convicted or, with respect for the rights of a bona fide owner, which was at his disposal.

With regard to paragraph 2, France has institutions dedicated to the identification, tracing, freezing or seizure of items, things, instrumentalities or products referred to in the provision under review.

Regarding the identification and scrutiny of criminal assets, France has since 1st September 2005 been using a specialized police force of national competence, specifically dedicated to the investigation and identification of criminal assets. This service, the Platform for identifying criminal assets (PIAC) is placed within the central management of the judicial police and attached to the Central Office for Fighting Major Financial Crime (OCRGDF). This service is responsible for the identification and apprehension of financial assets and proprietary assets of offenders as well as centralizing all information relating to the detection of illegal assets anywhere in the country and abroad. Its role is limited to asset-related investigations and it is therefore intended to be jointly appraised with a traditional police service responsible for establishing the merits of the case (see the circular of the Directorate of Criminal Affairs and Pardons, 15 May 2007, attached to the checklist).

Regarding the freezing and restraint of such assets, French law was reinforced by a law enacted on 9 July 2010. The Criminal Procedure Code allows investigators under the supervision of magistrates to conduct searches aiming to find and seize property liable to confiscation. Searches can be performed for this purpose alone, and no longer just for evidentiary purposes. The law also provides specific procedures for criminal restraint whose purpose is to ensure the subsequent implementation of the additional penalty of confiscation. The seizure or freezing of assets can also apply, from the stage of police investigation onwards, to any property subject to confiscation under the provisions of article 131-21 of the Criminal Code. It can capture any type of property, movable or immovable, tangible or intangible, divisible or indivisible, with specific rules depending on the nature of these assets. The French authorities thus provide the procedural tools to meet requests for cooperation on the basis of any international convention establishing a judicial cooperation mechanism for seizure and confiscation, and not just requests made under specific conventions providing these provisions (United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 20 December 1988 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, of 8 November 1990).

> Article 54 of the Criminal Procedure Code
>
> The judicial police officer who is told of a flagrant felony immediately informs the district prosecutor, goes forthwith to the scene of the crime and records any appropriate findings.
>
> He ensures the conservation of any clues liable to disappear and of any item which may be of use for the discovery of the truth. He seizes the weapons and instruments which were used to commit the felony or which were designed or intended for its commission, as well as any item which appears to have been the direct or indirect product of this felony.
>
> He presents for recognition any articles seized to any persons who appear to have been involved in the felony, if they are present.
>
> Article 56 paragraph 1 of the Criminal Procedure Code
>
> (…)The judicial police officer may also go to any place where there is likely to be property whose confiscation is provided for under article 131-21 of the Criminal Code, to conduct a search for the seizure of such property; if the search is conducted for the sole purpose of finding and seizing property whose confiscation is provided for under the fifth and sixth paragraphs of that article, it must first be authorized by the district prosecutor.

Article 76 of the Criminal Procedure Code

Searches, house visits and seizures of evidence or property for which confiscation is provided for in Article 131-21 of the Criminal Code cannot be made without the express consent of the person at whose house the operation takes place. (...)

If the needs of the investigation of a felony or a misdemeanor punishable by imprisonment for a term equal or greater than five years require or if the finding of property whose confiscation is provided for in article 131-21 of the Criminal Code warrants, the liberty and custody judge of the main district court (TGI) may, on application of the district prosecutor, decide by a reasoned written decision, that the operations under this section shall be effected without the consent of the person in whose house they occur. (...)

Article 94 of the Criminal Procedure Code

Searches are made in all the places where items or electronic data, or property whose confiscation is provided for under article 131-21 of the Criminal Code, may be found which could be useful for the discovery of the truth.

Criminal Procedure Code

Title XXIX : Special Seizures

Article 706-141 of the Criminal Procedure Code

This title applies, in order to ensure the implementation of the additional penalty of confiscation according to the conditions laid down in Article 131-21 of the Criminal Code, to seizures made under this code when they apply to all or part of the property of a person, immovable property, movable intangible property or right or a claim as well as seizures that do not lead to the deprivation of property.

Chapter I : Common Provisions.

Article 706-142 of the Criminal Procedure Code

The district prosecutor, the investigating judge or, with their permission, the judicial police officer may request the assistance of any person qualified to perform the acts necessary for the seizure and conservation of property under this title.

Article 706-143 of the Criminal Procedure Code

Until the release of the seizure or confiscation of the seized property, the owner or, failing that, the property holder is responsible for its maintenance and conservation. He bears the cost, with the exception of fees to be borne by the state.

In case of the failure or unavailability of the owner or holder of the property, and subject to the rights of bona fide third parties, the district prosecutor or investigating judge may authorize the release to the Agency for the management and recovery of seized and confiscated assets of the seized property whose speculative sale is not envisaged so that this agency performs, within its mandate, all the legal and material acts necessary for the conservation, maintenance and valuation of this property.

Any act which results in the transformation or substantial alteration the property or reduces its value is subject to prior approval by the liberty and custody judge, on request of the district prosecutor who ordered it or authorized the seizure, or by the investigating judge if a criminal investigation was opened after the seizure.

Article 706-144

The magistrate who ordered or authorized the seizure of property or the investigating judge if a criminal investigation was opened after the seizure are competent to rule on all motions relating to the execution of the seizure, without prejudice to the provisions relating to the destruction and disposal of property seized during the inquiry or investigation under sections 41-5 and 99-2.

When the decision is not in the prosecutor's jurisdiction, his advice is sought beforehand. The petitioner and the prosecutor may, within ten days of notification of the decision, appeal the decision before the Investigating chamber. This appeal has suspending effect.

Article 706-145

No one can validly dispose of property seized during criminal proceedings except as provided in articles 41-5 and 99-2 and this chapter.

As of the date it becomes enforceable and until its release or the confiscation of the seized property, criminal seizure suspends or prevents any civil enforcement proceedings on the property subject to the criminal seizure.

For the purposes of this title, a creditor having initiated an enforcement proceeding prior to the criminal seizure is automatically considered the holder of an encumbrance on the property, effective from the date on which the enforcement procedure became enforceable.

Article 706-146

If the maintenance of the seizure of the property in its form is not required, a creditor with a writ of execution showing a debt due and payable, may be authorized, as provided in section 706-144, to initiate or resume civil enforcement proceedings against the property in accordance with the rules applicable to such procedures. However, there may then be an agreed sale of the property and the criminal seizure may be reapplied to the balance of the purchase price, after satisfying the creditors holding a security that took place prior to the date on which the criminal seizure became opposable. The balance of the proceeds of the sale is recorded. In the case of no further action, dismissal or discharge, or when the confiscation is not ordered, the product is returned to the owner of the property if so requested.

In case of resumption of civil enforcement proceedings stayed by the criminal seizure, the formalities which have been complied with, need not be repeated.

Article 706-147

The measures ordered under this title shall be applicable even when they are ordered after the date of termination of payments and notwithstanding the provisions of Article L.632-1 of the Commercial Code.

Chapter II : Seizure of Assets

Article 706-148

If the investigation concerns an offence punishable by at least five years' imprisonment, the liberty and custody judge may, as provided in the fifth and sixth paragraphs of section 131-21 of the Criminal Code and on the request of the prosecutor, authorize by reasoned order the seizure, at the expense of the Treasury, of all or part of the property, when the law that punishes the felony or misdemeanor provides for the confiscation of all or part of the property of the convicted person or when the origin of such property cannot be established. The investigating judge may, upon the request of the public prosecutor or ex officio after the advice of the prosecution, order this seizure under the same conditions.

An order made under the first paragraph shall be notified to the Prosecution, the owner of the seized property and, if known, to third parties with rights to the property, who may refer it to the investigating chamber by declaration to the Registrar of the court within ten days of notification

of the order. This appeal is not of suspending effect. The property owner and third parties may be heard by the investigating chamber. Third parties, however, cannot claim to have filed the proceedings.

Article 706-149

The rules specific to certain types of property under this title, excluding those relating to the seizure decision, apply to property included in whole or in part to the seized assets.

Chapter III : Seizure of real property.

Article 706-150

During on the spot investigation or the preliminary inquiry, the liberty and custody judge, by motion before the public prosecutor may, by reasoned order, authorize the seizure, the costs advanced by the Treasury, of buildings whose confiscation is prescribed by Article 131-21 of the Criminal Code. The pre-trial judge may, during the pre-trial investigation, order this seizure under the same conditions.

An order made under the first paragraph shall be notified to the Prosecution, the owner of the seized property and, if known, to third parties with rights to the property, who may refer it to the investigating chamber by a declaration to the Registrar of the court within ten days of notification of the order. This appeal is not of suspending effect. The property owner and third parties may be heard by the investigating chamber. Third parties, however, cannot claim to have filed the proceedings.

Article 706-151

The criminal seizure of real property is opposable by third parties after the publication of the decision ordering the seizure at the Principle Mortgage Registry or, for the departments of Bas-Rhin, Haut-Rhin and Moselle, in the Land Registry of the place of the building. The formalities of this publication are made on behalf of the prosecutor or judge, by the Agency for the management and recovery of seized and confiscated assets.

Until the release of the criminal seizure of the building or its confiscation, the seizure applies to the total value of the building, without prejudice to the privileges and mortgages recorded previously referred to in section 2378 of the Civil Code and that came into being before the date of publication of the decision of the criminal seizure of property.

The prior publication of an order to seize the building does not preclude the publication of the criminal seizure of property.

Article 706-152

The sale of the building concluded before the publication of the decision for the criminal seizure of immovable property and published after the publication in the Mortgage Registry or the Land Registry of the concerned departments is not enforceable against the state, except subsequent to the release of the seizure. However, if the maintenance of the seizure of the property in its form is not necessary and the sale is not fraudulent in relation to its conditions and the price obtained, the competent judge may decide to apply the criminal seizure to the sale price, after satisfying the creditors holding a security that took place prior to the date on which the criminal seizure became effective. In this case, the publication of the decision and the payment of the remainder of the sale price make the sale binding on the State.

Chapter IV : Seizures of certain intangible movable property or rights

Article 706-153

During on the spot investigation or the preliminary inquiry, the liberty and custody judge, by motion before the public prosecutor may, by reasoned order, authorize the seizure, the costs

advanced by the Treasury, of intangible property or rights whose confiscation is prescribed by Article 131-21 of the Criminal Code. The pre-trial judge may, during the pre-trial investigation, order this seizure under the same conditions.

An order made under the first paragraph shall be notified to the Prosecution, the owner of the seized property or right and, if known, to third parties with rights to the property or right, who may refer it to the investigating chamber by a declaration to the Registrar of the court within ten days of notification of the order. This appeal is not of suspending effect. The property or right owner and third parties may be heard by the investigating chamber. Third parties, however, cannot claim to have filed the proceedings.

Article 706-154

When the seizure involves a sum of money paid into an account with an institution authorized by law to hold accounts of deposits, it applies equally to all amounts credited to the account at the time of the seizure and up to the limit, where applicable, of the amount indicated in the attachment order.

Article 706-155

When the seizure applies to a claim for a sum of money, the debtor must immediately record the amount owed at the Deposit and Consignment Office or at the Agency for management and recovery of seized and confiscated assets when it is apprised. However, for conditional or future claims, the funds are recorded when such claims become due.

When the seizure involves a claim contained in a contract of life insurance, it causes the suspension of rights of redemption, surrender and pledge of this contract, pending the final decision on the merits. This seizure also prohibits any subsequent acceptance of the benefit of the contract pending that decision and the insurer can no longer make advances to the contractor. This seizure is notified to the subscriber and the insurer or agency with which the contract was signed.

Article 706-156

The seizure of shares, securities, financial instruments or other intangible property or rights shall be notified to the issuing person.

Where appropriate, the seizure is also notified to the broker referred to in points 2 to 7 of article L.542-1 of the Monetary and Financial Code also taking into account the registered agent listed in Article L.228-1 of the Commercial Code.

Article 706-157

Seizure of a business is enforceable against third persons after its registration, costs advanced by the Treasury, in the collateral register kept at the Registrar of the Commercial Court of the location of the business.

Chapter V : Seizure without dispossession

Article 706-158

During on the spot investigation or the preliminary inquiry, the liberty and custody judge, by motion before the public prosecutor may, by reasoned order, authorize the seizure, the costs advanced by the Treasury, of property whose confiscation is prescribed by Article 131-21 of the Criminal Code without divesting it from the owner or holder. The pre-trial judge may, during the pre-trial investigation, order this seizure under the same conditions.
An order made under the first paragraph shall be notified to the Prosecution, the owner of the seized property or right and, if known, to third parties with rights to the property or right, who may refer it to the investigating chamber by a declaration to the Registrar of the court within ten

days of notification of the order. This appeal is not of suspending effect. The property or right owner and third parties may be heard by the investigating chamber. Third parties, however, cannot claim to file the proceedings. The magistrate authorizing the seizure without divestment designates the person to whom custody of the property is entrusted who must ensure the maintenance and preservation, at the expense, if relevant, of the owner or the holder of the property who is liable pursuant to Article 706-143 of this Code.

Apart from the acts of maintenance and conservation, the guardian of the restrained property seized cannot use it unless the restraint order expressly so provides.

With regard to paragraph 3, France has described the newly established institution dedicated to the management of seized and confiscated assets, the Agency for the Management of Seized and Confiscated Assets. The Law of 9 July 2010 created it to the need to improve the management of seized and confiscated assets, especially when it comes to "complex" assets which require effective management (companies, businesses, boats, buildings, animals, etc.). The Agency is established as a public administrative institution under the joint supervision of the Minister of Justice and the Minister of Budget and is chaired by a magistrate of the judiciary. Its missions are:

• management of all property, whatever their nature, seized, confiscated or subject to a protective measure during criminal proceedings, which are entrusted to it and whose preservation or valuation requires administrative acts;

• Centralized management of all money seized in criminal proceedings;

• alienation or destruction of property with whose management it was entrusted when such action has been ordered by the courts;

• alienation of property ordered or authorized in accordance with articles 41-1 and 99-2 of the Criminal Procedure Code.

The Agency may also inform the relevant departments and victims at their request or on its own initiative, about the goods which are to be returned by court order, to ensure payment of their debts, including tax, customs, social security or compensation.

The provisions relating to that agency came into force on 1st January 2011.

Article 706-159 of the Criminal Procedure Code

The Agency for the management and recovery of seized and confiscated assets is a public state body of administrative nature under the joint supervision of the Minister of Justice and the Minister for the Budget.

Article 706-160 of the Criminal Procedure Code

The agency is responsible for ensuring, on the whole territory and in the interests of justice:
1. The management of all property, whatever its nature, seized, confiscated or subject to a protective measure during criminal proceedings, which is entrusted to it and whose preservation or valuation requires administrative acts;

2. The centralized management of all money seized in criminal proceedings;

3. The alienation or destruction of property with whose management it was entrusted under 1. and which is ordered, without prejudice to the allocation of such property as provided by Article L.2222-9 of the General Code of ownership of public entities;

4. The alienation of property ordered or authorized in accordance with Articles 41-5 and 99-2 of this Code.

The agency may, under the same conditions, ensure the management of seized property, proceed with the alienation or destruction of seized or confiscated property and proceed with the distribution of the proceeds of the sale in execution of any request for assistance or cooperation from a foreign judicial authority.

All its powers are exercised for seized or confiscated property, including those not covered under title XXIX.

The decision to transfer the property subject to criminal seizure to the Agency for the management and recovery of seized and confiscated assets shall be notified or published in accordance with the rules for seizure itself.

In exercising its powers, the agency may seek the assistance and any useful information from any person or entity, public or private, without professional secrecy being enforceable, subject to the provisions of article 66-5 of Law No.71-1130 of 31 December 1971 reforming certain judicial and legal professions.

Article 706-161 of the Criminal Procedure Code

The agency provides the criminal courts who request it with guidance as well as legal and practical assistance useful to the achievement of contemplated seizures and confiscations or in the management of seized and confiscated property.

It can run any campaign or training to publicize its work and promote good practice in seizure and confiscation.

The agency oversees the collected funds receiving revenue from the confiscation of movable or immovable property of persons convicted of offences relating to drug trafficking. It can inform the relevant departments and victims at their request or of its own initiative, about the property which are returned by court order, to ensure payment of their debts, including tax, customs, social security or compensation.

The agency implements personal data processing which centralizes the seizure and confiscation decisions of which it is appraised regardless of the nature of the goods as well as all relevant information relating to the subject property, its location and owners or holders.

The agency published an annual activity report, including a statistical review, and any discussion and proposal to improve the law and practice on seizure and confiscation.

With regard to paragraph 4, French law provides for the seizure and confiscation of any property constituting the direct or indirect proceeds of the offence. Assets acquired wholly or partly by means of the proceeds of the offence, or resulting from the transformation or conversion of these proceeds, are themselves an indirect product of the offence under French law and can therefore be made subject to measures of seizure and confiscation.

In addition, the conversion of the direct or indirect proceeds of the offence is likely to constitute the offence of money laundering or concealment, each liable to a term of imprisonment of five years, thereby allowing the application as of right of the additional penalty of confiscation under article 131-21 of the Criminal Code and the prior seizure of this property.

With regard to paragraph 5, French law provides that if the proceeds of crime have been intermingled with funds from lawful sources for the acquisition of one or more assets,

confiscation may only apply to those assets up to the estimated value of these proceeds.

> Article 131-21, para. 3 of the Criminal Code:
>
> (Confiscation) equally applies to all the property which was the object or the direct or indirect product of the offence, with the exception of goods subject to restitution to the victim. If the product of the offence has been mixed with funds of licit origin in order to acquire one or more assets, the confiscation only applies to these assets according to the estimated value of the product.

With regard to paragraph 6, French law allows the seizure and confiscation of the indirect proceeds of crime. Where funds of legal origin have been mixed with the proceeds of the offence, confiscation is only possible for the due proportion of the value of these proceeds. In relation to income derived from the direct or indirect proceeds of the offence, confiscation is also possible, in proportion to the value of the proceeds of crime in comparison to the funds of legal origin (article 131-21 of the Criminal Code, cited previously).

With regard to paragraph 7, France has provided relevant provisions as well as explanation on its system. French law gives the prosecutor or investigating judge, as well as judicial police officers acting on the authority of these magistrates, the power to require any person, institution, public or private organization or any public administration to disclose documents relevant to the investigation. The bank, financial or business documents held by banking enterprises or institutions can be obtained in this way.

The law expressly provides that professional secrecy cannot enforced against the judiciary in this context, without good reason. Banking secrecy is regarded in France as professional secrecy, and is therefore subject to this rule. Failure to respond to a requisition order is a criminal offence.

Moreover, there has been in France since 1983 a national register of bank accounts (FICOBA), managed by the Budget Minister, which lists all the accounts opened in France by individuals and corporations, from the compulsory tax returns incumbent on organizations that manage accounts (banking and financial establishments, postal cheque centres, brokerage firms ...). This file may be examined by investigators in the procedures assigned to them.

> Article 60-1 of the Criminal Procedure Code
>
> A district prosecutor or judicial police officer may, by any means, order any person, establishment or organization, whether public or private, or any public administration likely to possess any documents relevant to the inquiry in progress, including those produced from a registered computer or data processing system, to provide them with these documents, including in digital form. Without legitimate grounds, the duty of professional secrecy may not be given as a reason for non-compliance. Where such orders relate to the persons mentioned in articles 56-1 to 56-3, the transfer of these documents may only take place with their consent.
>
> With the exception of the persons mentioned in articles 56-1 to 56-3, the failure to respond to such an order as quickly as possible is punished by a fine of €3,570.

On the penalty of exclusion, evidence obtained in violation of Article 2 of the Law of 29 July 1881 on freedom of the press cannot be kept on file.

Article 77-1-1 of the Criminal Procedure Code

The district prosecutor or on his authorization a judicial police officer, may, by any means, order any person, establishment or organization, whether public or private, or any public services liable to possess any documents relevant to the inquiry in progress, including those produced from a registered computer or data processing system, to provide them with these documents, including in digital form. Without legitimate grounds, the duty of professional secrecy cannot be given as a reason for non-compliance with this order. Where these orders relate to the persons mentioned in articles 56-1 to 56-3, the transfer of these documents may only take place with their consent.

Where there is no response to these orders, the provisions of the second paragraph of article 60-1 are applicable.

The last paragraph of article 60-1 also applies.

Article 99-3 of the Criminal Procedure Code

The district prosecutor or on his authorization a judicial police officer, may, by any means, order any person, establishment or organization, whether public or private, or any public services liable to possess any documents relevant to the inquiry in progress, including those produced from a registered computer or data processing system, to provide them with these documents, including in digital form. Without legitimate grounds, the duty of professional secrecy cannot be given as a reason for non-compliance with this order. Where these orders relate to the persons mentioned in articles 56-1 to 56-3, the transfer of these documents may only take place with their consent. Where there is no response to these orders, the provisions of the second paragraph of article 60-1 are applicable.

The last paragraph of article 60-1 also applies.

With regard to paragraph 8, the French law allows the ordering of the confiscation of property belonging to a convicted person without the need to prove a direct link with the commission of the offence, when he is unable to account for its origin. The date of acquisition of the property concerned relative to the date of commission of the offence is in this regard irrelevant, and confiscation may apply to property acquired beforehand.

For offences punishable by at least five years in prison and which have resulted in a direct or indirect benefit, confiscation can equally apply to movable or immovable property, of whatever nature, divided or undivided, which belongs the to the convicted person, who when asked to account for the property whose confiscation is being considered, is unable to justify its origin.

Article 131-21 of the Criminal Code- para.5

Concerning a felony or a misdemeanor punishable by a minimum of five years imprisonment which has made a direct or indirect benefit, confiscation also applies to the property, movable or immovable, of any nature, divisible or indivisible, belonging to the convicted person when he is unable to explain the origins of this property when asked to do so.

Article 131-39 8° of the Criminal Code

Where a statute so provides against a legal person, a felony or misdemeanor may be punished by one or more of the following penalties:

(...)

8° confiscation, under the conditions and according to the terms provided by article 131-21;

(...)

The additional penalty of confiscation is also incurred automatically for felonies and misdemeanours punishable by a prison term of more than one year, excluding press offences.

With regard to paragraph 9, France has provided article 131-21 of the Criminal Code to illustrate the implementation of the provision under review.

The confiscation of property used to commit the crime or that was intended to commit it only applies to the property owned by the convicted person or freely available to him. But the law expressly provides that it is so pronounced subject to the rights of a bona fide owner.

Property that is the direct or indirect proceeds of the offence may be subject to a confiscation measure, even if the offender is neither the owner nor the keeper. Assuming that the confiscated property was funded in part by a third party with funds from lawful sources, the confiscation only applies up to the estimated value of the proceeds of crime and the rights of others will be so preserved.

With regard to paragraph 10, France has not answered to the questions under this provision.

(b) Observations on the implementation of the article

An interesting aspect regarding the functioning of the Agency for the Management of Seized and Confiscated Assets is its self-finance. Indeed it is foreseen that its budget partly derives from the sell of confiscated property.

Another characteristics that must be emphasized is the possibility for the Agency to alienate frozen properties (before sentence) relating to risk for their depreciation.

With regard to international cooperation, the Agency is competent in assisting national courts in the seizure or confiscation process at the request of foreign State.

Although the Agency entered into function only in 2010, and the assessment of its operation has not yet been carried out, its establishment represents a key step in the efforts accomplished by France to confiscate property that results from act of corruption. State Parties who plan to modify their legislation in order to ensure or enhance coherent and efficient management of frozen or confiscated assets in their country should be informed about the modus operandi of the Agency, as well as about innovative measures adopted by the Agency.

Article 32 Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or

intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to paragraph 1, France has indicated that it adopted the provisions cited previously, which aim to avoid pressure on witnesses and threats, including experts (articles 434-15 and 434-8 of the Criminal Procedure Code).

Article 434-8 of the Criminal Procedure Code

Any threat or intimidation committed against a judge, juror or any other person sitting in a court, an arbitrator, an interpreter, expert or counsel for a party to influence his behaviour in the performance of his duties is punishable by three years imprisonment and a 45,000 euro fine.

Article 434-15 of the Criminal Procedure Code

The use of promises, offers, presents, pressures, threats, acts of violence, manoeuvres or tricks in the course of proceedings or in respect of a claim or defence in court to persuade another to make or deliver a statement, declaration or false affidavit, or to abstain from making a statement, declaration or affidavit, is punished by three years' imprisonment and a fine of €45,000, even where the subornation of perjury was ineffective.

Article 435-12 of the Criminal Procedure Code

The use of promises, offers, presents, pressures, threats, acts of violence, manoeuvres or tricks in the course of proceedings or in respect of a claim or defence in a foreign state or before an international court to persuade another to make, or abstain from making, a statement, declaration, or false testimony is punished by three years' imprisonment and a fine of €45,000, even where the subornation of perjury was ineffective

Article 435-13 of the Criminal Procedure Code

The use of threats, violence or the commission of any other intimidating act to obtain from a judge or prosecutor, a juror, any person serving in a judicial body or participating in the public administration of justice or an agent in the services for the detection and suppression of crime, in a foreign state or at an international court, the performance or the abstention from performance

of any act of his office or mission or facilitated by his office or mission is punished by ten years imprisonment and a 150,000 euro fine.

Moreover, there is a title in the Criminal Procedure Code devoted to the protection of witnesses (articles 706-57 and following).

With regard to subparagraph 2 (a), France has provided articles 706-57, 706-58, 706-59, and 706-60 of the Criminal Procedure Code.

Article 706-57 of the Criminal Procedure Code

Persons against whom there is no plausible reason to suspect that they have committed or have attempted to commit an offence and who are in a position to bring useful pieces of evidence to the proceedings can, with the permission of the district prosecutor or the investigating judge, declare their registered address to be that of the police station or gendarmerie. If the person has been summoned because of his profession, his registered address may be his professional address.

The personal addresses of such persons are then recorded in a classified, initialled register, which is opened for this purpose.

Article 706-58 of the Criminal Procedure Code

In proceedings brought in respect of a felony or a misdemeanour punished by at least three years' imprisonment, where the hearing of a person described in article 706-57 is liable to put his life or health or that of his family members or his close relatives in serious danger, the liberty and custody judge seized of the case, in a reasoned application by the district prosecutor or the investigating judge, may authorise, in a reasoned decision, that this person's statements will be recorded without his identity appearing in the case file for the proceedings. This decision may not be appealed against, subject to the provisions of the second paragraph of article 706-60. The liberty and custody judge may himself decide to carry out the witness's hearing. The liberty and custody judge's decision, which makes no mention of the person's identity, is attached to the official record of the witness's hearing, from which the person's signature is also omitted. The person's identity and address are written in another official record signed by him, which is put in a case file separate from the case file of the proceedings, and which also holds the application provided for in the previous paragraph. The identity and address of the person are written in a classified, initialed register, which is opened for this purpose in the district court.

Article 706-59 of the Criminal Procedure Code

Under no circumstance will the identity or the address of a witness who has benefited from the provisions of articles 706-57 or 706-58 be revealed, other than in the case provided for in the last paragraph of article 706-60.

The disclosure of the identity or the address of a witness who has benefited from the provisions of articles706-57 or 706-58 is punished by five years' imprisonment and a fine of €75,000.

Article 706-60 of the Criminal Procedure Code

The provisions of article 706-58 are not applicable if, when the circumstances in which the offence was committed or the witness's personality are taken into account, knowledge of the person's identity is essential to the case for the defence.

Within ten days of being informed of the content of a hearing carried out under the conditions provided for in article 706-58, the person under judicial examination may challenge, before the president of the investigating chamber, the recourse to the proceedings provided for in this

article. After considering the evidence of the proceedings and that included in the case file mentioned in the second paragraph of article 706-58, the president of the investigating chamber rules, in a reasoned decision that is not open to appeal. If he finds the challenge justified, he orders the nullification of the hearing. He may also rule that the witness's identity be disclosed; on the condition that the witness expressly makes it known that he agrees to waive his anonymity.

With regard to subparagraph 2 (b), France has provided articles 706-61 and 706-71 of the Criminal Procedure Code relating respectively to the remote hearing of a testimony and use of telecommunications facilities during the proceedings.

Article 706-61 of the Criminal Procedure Code

A person who has been placed under judicial examination or sent for trial may ask to be confronted with a witness heard in accordance with the provisions of article 706-58, through the agency of a technical device allowing the witness to be heard remotely. He may also get his advocate to interrogate this witness in the same way. The witness's voice is then rendered unidentifiable using the appropriate technical processes.

If the court orders an additional investigation in order to hear a witness, the latter is heard either by an investigating judge nominated to carry out this additional investigation or, if one of the members of the court has been nominated to carry out this hearing, by using the technical device provided for in the previous paragraph.

Article 706-71 of the Criminal Procedure Code

Where the needs of the inquiry or investigation justify it, the hearing or the interrogation of a person, and also any confrontation between one or more persons, may be carried out in one or more different parts of the French national territory which are linked by means of telecommunications which guarantee the confidentiality of the transmission. Under the same conditions, applications for the purposes of extending a period of detention may be made using audiovisual equipment. In each of these places, an official record is drawn up of the processes which have been carried out there. These processes may be the subject of video or audio recording. The provisions of the third to eighth paragraphs of article 706-52 are then applicable.

The provisions of the previous paragraph providing for the use of audiovisual telecommunication are applicable before a trial court for the hearing of witnesses, civil parties and experts.

These provisions are also applicable to the hearing or interrogation of a person detained by an investigating judge, an adversarial hearing prior to the remand in custody of a person detained for another reason, to an adversarial hearing held to extend a pre-trial detention period, to the examination by the investigating chamber or trial court of applications for release, or the interrogation of the defendant by the president of the court of assizes under article 272, to the appearance of a person at a hearing during which a decision or ruling, whose deliberations have begun, is to be given or during which it rules solely on his civil interests, questioning by the prosecutor or the Attorney General of a person arrested under a summons, arrest warrant or a European arrest warrant or interrogation of the accused before the police court or the neighbourhood court if he is detained for another reason.

They are also applicable to the commission for the compensation of victims of crime, before the first President of the Court of Appeal ruling on requests for compensation for pre-trial detention, before the National Commission for compensation for detention, before the commission and the

reviewing court and before the Commission for the review of convictions.

For the application of the provisions of the three previous paragraphs, if the person is assisted by an advocate, the latter may place himself with the magistrate, the competent court or with the commission concerned. In the first case, he must be able to speak with the latter, in a confidential setting, by using the audiovisual telecommunication. In the second case, a copy of the whole file must be put at his disposal in the place of detention, unless a copy of this file has already been provided to the advocate.

Where necessary, because an interpreter is unable to travel, the help of an interpreter during a hearing, interrogation or confrontation may also be provided through agency of telecommunication.

A Decree of the State Council specifies, so far as necessary, the manner of application of the present article.

With regard to paragraph 3, France has indicated that no agreement or similar arrangement has been concluded.

With regard to paragraph 4, France has indicated that article 706-57 of the Criminal Procedure Code, cited previously, seeks to protect "persons who are likely to provide evidence relevant to the proceedings" without further precision. Therefore, this definition may well apply to a victim of the offence when he is "witness", or when he is considered likely to provide evidence.

With regard to paragraph 5, France has described the measures that allow views and concerns of victims to be presented.

In the first place, the victim has the possibility of bringing a civil action at all stages of the proceedings. He then becomes a party to the proceedings or trial and enjoys the rights flowing from that quality. Thus, as a party to the investigation, the civil party is entitled, like the accused, to a free copy of the official record stating the infringement, written statements of witnesses and expert reports. He may also take or copy at his expense, all documents of the proceedings. He can also make applications or make requests for annulment.

At trial, he may in particular, call witnesses at the hearing and he can put his case and assert his right to compensation. Moreover, Decree No. 2007-1605 of 13 November 2007 instituted a judge delegated for victims (JUDEVI) by inserting a title XIV into the third part of the Criminal Procedure Code (articles D.47-6-1 ff). Intervening only at the request of a victim of crime, the JUDEVI ensures the consideration of the victim's rights in the implementation and enforcement phases of the decision against the perpetrator.

While these are fixed among alternative measures to prosecution by the district prosecutor (compensation for injury, criminal mediation, criminal compensation, referral to a health, social or professional organization ...) or a conviction by a court, a victim who encounter difficulties with the implementation of the obligations imposed on the convicted person in respect to him (his compensation or other obligations such as a ban on contact, for example) may apply to the judge for victims at his main district court (TGI). JUDEVI's role is assured by the chairman of the commission for the compensation of victims (CIVI).

Title XIV: The judge delegated for victims, president of the commission for the compensation of victims of crime

Section D47-6-1 Criminal Procedure Code:

the judge delegated for victims ensures, in respect of the balance of rights of the parties, the taking into account of the rights recognized by law for victims.

To this end, he exercises the judicial functions and, without prejudice to the role of the victim's acting or future lawyer, the judicial administrative and administrative functions under this title.

Chapter I: Jurisdictional attributes of the judge delegated for victims

Section D47-6-2

The chairman of the commission to compensate victims of crime is the judge delegated for victims.

If the commission has several units, each is presided over by a judge delegated for victims.

Section D47-6-3

The judge delegated for victims may be appointed by the President of the District Court under the provisions of Article R. 311-23 of the Code of Judicial Organization, to preside over the hearings of the criminal court after ruling on the solely civil interests, under the fourth paragraph of Article 464 of this Code.

Chapter III: Administrative attributes of the judge delegated for victims

Section D47-6-12

The judge delegated for victims verifies the conditions under which the civil parties are informed of their rights after the hearing in accordance with the provisions of article D. 48-3.

Section D47-6-13

As part of the exercise of his functions, the judge delegated for victims participates, under the authority of the President of the Main District Court and in connection with the district prosecutor, in the development and implementation of coordinated measures to help victims within the jurisdiction of the Main District Court.

Section D47-6-14

The judge delegated for victims prepares an annual report on the performance of his duties and presents them orally at the general assembly of judges and prosecutors.

The President of the Main District Court and the district prosecutor shall send this report to the first President and the Attorney General, who pass on a synthesis of these reports on their responsibilities to the Justice Ministry.

(b) Observations on the implementation of the article

France claimed that there are no specific provisions for the protection of relatives of a witness or other persons close to him. Where relatives of a witness are in danger, they may denounce the fact to enable starting new investigation.

It is not possible to provide a witness with a new identity in France.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

France has provided explanation of the measures on protection of reporting persons.

The law of 13 November 2007 introduced into the Labour Code a provision to create effective legal protection against any form of disciplinary action for the benefit of the employee who in good faith, testifies or relates, to his employer or the judicial or administrative authorities about acts of corruption of which he was aware in the exercise of his functions. Officials in turn are protected by the Civil Service Code.

Article L1161-1 of the Labour Code

No person shall be excluded from a recruitment procedure or access to an internship or a training period in a company, no employee may be sanctioned, made redundant or subjected to discrimination, direct or indirect, particularly in terms of pay, training, reassignment, assignment, qualification, classification, professional promotion, transfer or renewal of contract for having reported or testified about, in good faith, either to his employer, or the judicial or administrative authorities acts of corruption he was aware of in the exercise of his functions.

Any breach of employment contract that would result from this, any provision or act contrary is null and void.

In case of dispute on the application of the first two paragraphs, from when the concerned employee or applicant for a job, training or internship in a company establishes the facts from which it is assumed that he reported or gave evidence of corruption, it shall be for the defending party, in view of these elements, to prove that its decision is justified by objective factors unrelated to the statements or testimony of the employee. The judge forms his opinion after ordering, if necessary, any investigations he deems necessary.

(b) Observations on the implementation of the article

For the time being, in France, whistleblowers may lodge a complain with the prosecution authority. Nevertheless, French legal system does not foresee mechanisms that guide and advise ordinary citizens who simply have concerns about whether acts of corruption were committed or not.

Consequently, the reviewers recommended that relevant authorities study the possibility for all citizens to refer to the SCPC in order to obtain guidance on how to concretely proceed when they know about a conduct that might be related to corruption. Based on its expertise in

corruption matters, the SCPC could be in a position to guide citizens. In view of acquiring such competence, it would be necessary to modify the law that established SCPC and foresee an important increase in its staff.

Article 34 Consequences of acts of corruption

> *With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

(a) Summary of information relevant to reviewing the implementation of the article

France has provided various provisions.

- Article 432-17 of the Criminal Code provides as additional penalties various professional disqualifications applicable notably to natural-person public officials who have rendered themselves guilty of acts of passive corruption or influence pedaling (art. 432-11 of the Criminal Code).
- Article 433-22 provides the same additional penalties for individuals who have rendered themselves guilty of active corruption and influence peddling regarding a public official or active or passive influence peddling committed between individuals (art.433 - 1 and 433-2 of the Criminal Code).
- For the same facts, article 433-25 of the Criminal Code provides for legal persons various interdictions on activity as well as the exclusion from public tenders permanently or temporarily for a period of 5 years maximum.
- Article 434-39 of the Criminal Code provides the same additional penalties for persons convicted of active or passive corruption or influence trading regarding the staff of the national judiciary.
- For the same facts, article 434-47 of the Criminal Code provides for legal persons, various interdictions on activity, and the exclusion from public tenders definitively or provisionally for a period of 5 years maximum.
- Articles 435-14 and 435-15 of the Criminal Code also provide for penalties of prohibition for individuals and legal persons, and prohibition from public tenders only for legal persons found guilty of international corruption or influence peddling.

These same penalties are also provided for private corruption in articles 445-3 and 445-4 of the Criminal Code.

(b) Observations on the implementation of the article

Judicial representatives claimed that despite the existence of the aforementioned text, it is very difficult to investigate on corruption offence committed by legal persons. This explains why examples of cases are missing.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

France has described the relevant measures and examples of cases.

A person claiming to be a victim of corruption has two ways to obtain compensation for his loss:
- Even in the presence of criminal proceedings, he may bring a civil action in the civil courts (Article 4 of the Criminal Procedure Code). He will then have to act on the basis of the contractual provisions if they exist or article 1147 of the Civil Code if he was bound to the perpetrator of the corruption by a contract or on the basis of articles 1382 and 1383 of the Civil Code in the absence of a contract. For compensation on the last basis, the victim must prove negligence, injury and a causal link between the two.
- More frequently, he may form a civil party within criminal proceedings relating to the acts of corruption. For that it is immaterial whether the victim was at the origins of the proceedings by filing a complaint. In accordance with article 2 of the Criminal Procedure Code, to obtain compensation the victim must have suffered harm as a result of the offence and that harm is real, personal and direct.

This civil action may be brought at the same time as the prosecution and before the same court (article 4 of the Criminal Procedure Code). Thus, the Court of Cassation has expressly recognized that it was admissible for an enterprise to form the civil party when its bids were rejected because of the corruption of a public official by one of its competitors (Crim., 16 November 2005). Similarly, the Court of Cassation has recognized that a third party, outside the corruption agreement, can invoke the material and moral damage caused to him by the consequences of this criminal contract. Thus a public office of the social housing department has been declared admissible to bring a civil action, during a prosecution for violation of Article L.423-11 of the Code of Construction and Housing (text identical to article 432-11 of the Criminal Code) because of the damage to its reputation which had been caused by the actions of its director and secretary thereof (Cass. Crim., 21 May 1997).

Article 1147 of the Civil Code

A debtor shall be ordered, if there is occasion, to pay damages and interest either by reason of the non-performance of the obligation, or by reason of delay in performing it, whenever he does not prove that the non-performance comes from an external cause which may not be ascribed to him, and there is no bad faith on his part.

Article 1382 of the Civil Code

Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.

Article 1383 of the Civil Code

Everyone is liable for the damage he causes not only by his intentional act, but also by his negligent conduct or by his imprudence.

Article 2 of the Criminal Procedure Code

Civil action aimed at the reparation of the damage suffered because of a felony, a misdemeanor or a petty offence is open to all those who have personally suffered damage directly caused by the offence.

The waiver of a civil action will not interrupt or suspend the exercise of the public prosecution, subject to the cases set out under the third paragraph of article 6.

Article 3 of the Criminal Procedure Code

The civil action may be exercised at the same time as the public prosecution and before the same court.

It is admissible for any cause of damage, whether material, bodily or moral, which ensue from the actions prosecuted.

Article 4 of the Criminal Procedure Code

The civil action aimed at the reparation of the damage caused by an offence under article 2 may also be exercised before a civil court separately from the public prosecution.

However, the judgment in any action exercised before the civil court is suspended until a final decision is made on the public prosecution where such a prosecution has been initiated.

Initiation of the prosecution does not suspend the trial of other actions, of whatever kind, brought before the civil court even if the decision to take criminal action is likely to exercise, directly or indirectly, influence on the resolution of the civil trial.

Article 4-1 of the Criminal Procedure Code

The absence of a non-intentional criminal liability within the meaning of Article 121-3 of the Criminal Code does not bar the exercise of an action before the civil courts with a view to obtaining compensation for damage pursuant to article 1383 of the Civil Code where the existence of civil liability under that article is established, or under that of article L.452-1 of the Code of Social Security where the existence of a strict liability under this article is established.

Article 5 of the Criminal Procedure Code

The party who has brought his action before the competent civil court may not bring it before the court for felonies. It may only be otherwise where the case was filed with the criminal court by the public prosecutor before a judgment on the merits was made by the civil court.

(b) Observations on the implementation of the article

The reviewers took note of the decision of the Court of Cassation (9 November 2010) according to which a non-governmental organization active in the area of corruption prevention was authorized to bring a civil action in criminal proceedings regarding corruption offence. Therefore, the reviewers believe that such a decision could be a good practice for other States parties to the Convention which plan to increase the role and participation of civil society in their domestic legal processes.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

France has described the bodies responsible for detection and combating of corruption. Relevant texts are included in annex.

Regarding detection of corruption, one can cite the following bodies:

(1) TRACFIN: an anti-money laundering unit whose existence is provided for in Article 561-23 of the Monetary and Financial Code. This service comes in the wake of a report made by the professionals involved in the mechanism of the fight against money laundering and the financing of terrorism. Its action comes ahead of the judicial phase. TRACFIN receives from the professions defined in Article L561-2 of the Monetary and Financial Code information indicating unusual financial transactions. These reports are analyzed, subjected, where appropriate, to further investigations and may lead TRACFIN to send a briefing note to the district prosecutor with territorial jurisdiction or to certain specialized services.

The prosecution service works closely with TRACFIN, which analyses received financial data and transmits them to the judicial authorities. The prosecution service can obtain, under certain conditions, information included in TRACFIN-managed databases

(2) SCPC (Central Service for the Prevention of Corruption): SCPC is an agency specialized in the detection of corruption and presents itself as an intelligence, audit and expert structure serving administrative and judicial authorities that can seek its advice or request assistance. Article 1 of the law of 29 January 1993 states that the SCPC is responsible for centralizing the information necessary to detect acts of active or passive corruption, and similar offences ... This task of detection is also pursued in the annual summary report published on the activities of different types and indicators of risk or on methodologies proposed with regard to, for example, public procurement, corruption among accountancy professionals, the digital economy etc. Moreover, the SCPC regularly carries out, at the request of companies or government authorities, missions in developing tools for the early warning and detection of fraud and related offences.

While SCPC's budget is established by the Ministry of Justice, its principal independence safeguard consists of the nomination of its chairperson by presidential decree for a four-year

term.

SCPC has only six staff members: one Chief of Service, one General Secretary, two Counselors, one Representative and one Assistant. Key public officials are nominated by presidential decree for a four-year term renewable in order to ensure the independence of Service.

Individuals cannot lodge a complain with SCPC. In practice, if a citizen contacts the SCPC by telephone or email, SCPC will respond that he/she is not allowed to do so with the SCPC, and then mention other institutions that are likely approachable under the laws. Hence, the SCPC frequently passes on information to prosecutors.

The SCPC cooperates with TRACFIN, General Inspection for Finance, Prosecutors, National and Regional Audit Offices, National Procurement Commission. It is also a partner with various ministries, in particular, Ministry of Justice, Ministry of the Interior and Ministry of National Education.

The SCPC also publishes awareness-raising booklets for enterprises. It can propose an improvement of legal texts as in its 2007 Annual Report on Tax Heaven.

(3). Though "financial jurisdictions" do not play direct institutional role in preventing and combating corruption, their contributions to these purposes are crucial.

3.1.) The Cour des Comptes (National Audit Office) is entrusted with controlling the executive through following missions:

- Controlling public management: the Cour des comptes scrutinizes management quality and regularity of all branches of administration as well as national public or semi-public organizations. When carrying out this function, the Office, if it comes across irregularities, can transmit the file to the prosecutor. In some cases, it is possible to intervene as in a case of criminal offence because the prescription is three years. If this is not the case, sometimes it is possible to intervene as the prescription of financial misdemeanors is five years.

- Jurisdictional activity: The Cour des comptes can establish/observe the responsibility of public accountant at the end of an accounting procedure. Hence, the Cour des comptes acts as the judge of appeal for decisions pronounced by regional Cours des comptes.

- Certification of accounts: the objective of this mission is to ensure certification of state's accounts regularity.

- Other missions entrusted to the Cour des comptes include controlling the execution of financial laws and regulations, evaluating public policies and informing citizens through the publication of an annual report and many thematic reports.

Among independence safeguards of the Cour des comptes, one can cite the irremovability of its prosecutors and their irrevocability. In particular, the first president and the general

prosecutor of the Cour des comptes are nominated for life.

At the administrative level, the total budget of the Cour des comptes is voted by the Parliament. Unlike in the past, the Cour's budget is no longer submitted to the Ministry of Finance for approval; this constitutes a further subsequent criterion of the independence safeguard especially regarding certification of state's accounts.

The Audit Office only carries out a posteriori controlling. Activities under control must be included in the program that is done per decree. The Office then notifies the organization which must respond to its request for reproducing documents or accessing files. If the organization refuses, it commits an obstruction offence. Therefore, it is liable to pay fines.

Any documents transmitted to judiciary authorities must be reported to the Ministry of Justice. The Office can review some exercises later on should investigations conclude that there were no irregularity.

Nevertheless, when it mentions something in its report or decisions, it is useful for the future. The Audit Office can only pronounce fines that are maximal ten times the processing. The Audit Office cannot pronounce penalties.

3.2.) Regional and Territorial Cours des comptes accomplish three missions:

- Scrutinize accounts of public accountants based in territorial collectivities and their public institutions.

- Examine the management of those collectivities and organizations that depend thereon, or that receive public finance.

- Control budget of territorial collectivities and their public institutions.

(3.3.) The Cour de discipline budgétaire et financière (Budget and Finance Court): Although linked to the Cour des comptes, the Cour de discipline budgétaire et financière is different from the latter. It is competent in fighting against infringements in matters of public finance. Fines are applicable penalties and they can lead to arrests which be subject of appeal to the Conseil d'Etat.

(4) Auditors: they are responsible for certifying company accounts as accurate, sincere and true. They have an obligation to denounce to the district prosecutor all criminal acts of which they have knowledge in the course of their work, notably with regard to national or international corruption.

With regard to combating corruption one can cite the following bodies:

(1) Specialized Investigation Services: In terms of financial crime, the police rely on a system of specialized service, with approximately 1,000 specialists. It has at the national level the OCRGDF (Central Office for Fighting Major Financial Crime) to which is

attached to the PIAC (Platform for the Identification of Criminal Assets), and the DNIF (National Financial Investigations Unit). The DNIF deals with investigations concerning infringements of the law of specific businesses, particularly in the following areas: violations of the laws of companies, bankruptcy and related offences (abuse of company property, forgery of business documents); breaches of the Public Procurement Code; regulated professions; tax evasion; offences relating to the stock market; public corruption; influence peddling; illegal taking of interest; favoritism and cartels; breaches of the rules on political financing.

(2) Following GRECO's recommendations, the Brigade centrale de lutte contre la corruption (Central Anti-Corruption Task Force) was set up within DNIF in 2003. This is a inter-ministerial organization dedicated specifically to fighting this form of crime which has 12 officers, policemen and gendarmes. In addition to carrying out particularly complex investigations in that area, the Brigade centralizes information relating to operational modes, methods and specific procedures used to commit infringements of corruption.

The Brigade employs the same methods that the police normally applied for investigations on other infringements. However, it must work in a dynamic spirit which is different from that of the colleagues responsible for other forms of offences: instead of observing the committed infringements and then investigating on the perpetrators, the taskforce is most often obliged to know the perpetrators and demonstrate the committed infringement. In other words, investigations in terms of corruption sometimes turn out to be difficult due to the "occult" nature of this type of offence.

Thanks to the electronic system called FICOBA (National Record of Bank Accounts and the like), the Brigade is able to investigate on every kind of accounts (bank, postal etc.) hold by someone or a company that is based in France. Furthermore, the Brigade relies on data analysis done by TRACFIN.

(3) Besides these two specialized central services, also exist the financial unit of the prefecture of Paris the financial sections of regional and local police and gendarmerie. In total, the gendarmerie has 400 specialists trained in economic and financial matters and is now accentuating its efforts on the training of investigators in the detection of unaccountable assets.

(4). Special courts: There is no parallel structure alongside the judicial authorities dedicated to the fight against corruption. However there are specialist courts for economic and financial crime which group together prosecutors and judges (pre-trial and trial judges). There are three levels of competence in economic and financial matters:

- The non-specialist Main District Courts (TGI) to hear cases which are not highly or very

highly complex.

- Regional Specialist Courts (JRS) of which there are 35. These are courts at the regional level that can be appraised of highly complex cases (D.47-2 of the Criminal Procedure Code); generally it consists of the TGI sitting as the Court of Appeal. The JRS is responsible for a number of crimes referred to in Article 704 of the CPC including the corruption of domestic public officials.

- The JIRS (Inter-Regional Specialist Courts), of which there are 8, for highly complex cases (art. D47-3 of the Criminal Procedure Code); the law of 9 March 2004 defines highly complex as comprising many perpetrators, accomplices or victims, and the extent of the geographical scope to which the affairs extended. The JIRS are responsible for offences that are exhaustively listed in Article 704 paragraphs 2 to16 of the Criminal Procedure Code. JIRS like JRS are not responsible for cases related to corruption and influence peddling. They enjoy concurrent jurisdiction with courts of law spread over the entire national territory (the terms of which have been clarified by circulars to harmonize practices). This means that the territorially competent criminal courts are not obliged to relinquish in favor of these courts but may appraise them when they consider that most appropriate (having regard to the criteria of complexity of the case in question)

Moreover, article 706-1 of the Criminal Procedure Code gives the Paris TGI (prosecutor, judge and criminal tribunal) concurrent jurisdiction with other courts for the crimes in economic and financial matters referred to in Articles 435 -1 to 435-10 of the Criminal Code, namely: international corruption and influence peddling (for foreign public officials, officials of public international organizations, foreign judicial personnel, court personnel of public international organizations).

These specialist courts, judges (and, moreover, even prosecutors) have at their disposal "specialized assistants", who are agents of the revenue, customs, Financial Markets Authority (AMF), or even from people in the private sector (certified public accountants, banking, audit) who work full time in the jurisdiction where they are attached and thus provide valuable technical assistance to judges (article 706 Criminal Procedure Code).

(5). The Ecole nationale de la magistrature (National School for the Judiciary) is organizing a specialized training program available to magistrates or investigators (training common to several countries, technical approach to international procedural tools, language classes, discovery of international bodies such as the European Anti-Fraud Office (OLAF) and Eurojust, for example).

(b) Observations on the implementation of the article

Generally, during the country visit, French representatives mentioned the close relationship between bodies responsible for corruption infringement and organized crime. As a party to the United Nations Convention against Transnational Organized Crime, France could contribute to a legal response that takes these double issues into account.

With a view to strengthening the prevention and detection corruption, there is need to

emphasize the draft law relating to professional ethics and prevention of conflict of interests. This draft law, which will be examined by the Parliament during its fall session, aims at establishing an obligation for all members of Government, ministerial advisors and other categories of public servants to make a declaration of interests. All declarations shall be centralized within the Haute autorité de la vie publique (High Authority of Public Sector) which would receive complaints made by any person with regards to suspect situations and declarations of interests of the concerned public officials.

The SCPC is a service dedicated to corruption prevention. It cannot receive complains from individuals. Therefore, the reviewers recommended that France study the possibility to put in place an anti-corruption service (whether already existing or new) in order to guide all individuals and legal persons towards services which are likely to receive them, inform them on eventual consequences of acts of corruption and on steps to follow in order to report corruption.

The reviewers further recommended that France safeguard the independency of prosecutors vis-à-vis the Ministry of Justice. For the time being, prosecution is attached to the executive: prosecutors are placed under the Ministry of Justice and, in terms of promotion, are graded by their superiors. The reviewers were informed about a proposal aiming at establishing a National Public Prosecutor that would be independent and give instructions to prosecutors in all matters.

For the time being, national public servants, if they observe irregularities, must report to prosecutors. This process could damage the career of someone who is only fulfilling his duty. The reviewers therefore recommended that national public servants anonymously should have the possibility to get guidance on how to concretely proceed when they know about a conduct that might be related to corruption as well as they should have the possibility to anonymously report suspicions of corruption to the SCPC.

The reviewers also noted that the Brigade centrale has only 13 staff members although they have to deal with several greatly important cases and also other cases. They recommended that the staff members of the Brigade be increased so that the Brigade could carry out their mandate.

Article 37 Cooperation with law enforcement authorities

> *1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*
>
> *2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention*
>
> *3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to paragraphs 1 to 3, France has provided article 132-78 para. 2 of the Criminal Code to illustrate the implementation of the provision under review.

Article 132-78 of the Criminal Code

Where the law so provides, a person who has attempted to commit a felony or a misdemeanor is exempted from penalty if, having alerted the legal or administrative authorities he has enabled the offence to be prevented and, where relevant, to identify the other perpetrators or accomplices.

Where the law so provides, the length of the custodial sentence incurred by a person who has committed a felony or a misdemeanor, is reduced if, by alerting the legal or administrative authorities, the convicted person has enabled the offence to be ended, damage resulting from the offence to be prevented, or the perpetrators or accomplices to be identified.

The provisions of the previous paragraph are also applicable where the person has either made it possible to prevent the commission of a related offence of the same type as the felony or misdemeanor for which he has been prosecuted, or to end the commission of the same offence, or to prevent it causing damage, or to enable its perpetrators or accomplices to be identified.

No conviction may be returned solely on the basis of statements made by persons who have been the subject of the provisions of the present article.

No statistical record permits knowledge of the number of cases where the mechanisms provided by this provision.

With regard to paragraph 4, France has provided article 706-63-1 of the Criminal Procedure Code to illustrate its implementation of the provision under review.

Title XXI A : The protection of persons benefiting from exemptions of penalty or reduced sentences for having prevented the commission of offences, for stopping or limiting the damage caused by an offence, or identifying the perpetrators or accomplices of offences.

Article 706-63-1

The persons mentioned in article 132-78 of the Criminal Code may be subject, where necessary, to protective measures designed to ensure their safety. They may also benefit from the measures designed to ensure their rehabilitation.

Where necessary, these persons may be authorized, by means of a reasoned decision delivered by the president of the Main District Court, to use an assumed identity.

Divulging the assumed identity of these persons is punished by five years' imprisonment and by a fine of €75,000. Where this disclosure has led, directly or indirectly, to violence or assault and

battery against these persons or their spouses, children and direct ascendants, the penalties are increased to seven years' imprisonment and a fine of €100,000. The penalties are increased to ten years' imprisonment and a fine of €150,000, where this revelation has directly or indirectly caused the death of these persons or their spouses, children and direct ascendants.

The measures to secure their protection or rehabilitation are determined, on the orders of the district prosecutor, by a national commission whose composition and working methods are determined by a Decree of the State Council. This commission determines the obligations the person must fulfill and ensures the implementation of the protective measures and rehabilitative measures, which it may alter or put an end to at any time. In urgent cases, the competent agencies take the necessary measures and immediately inform the national commission of these.

The provisions of the present article are also applicable to the family members and close relations of those persons mentioned in article 132-78 of the Criminal Code.

With regard to paragraph 5, France has indicated that no such accord or agreement of this type has been concluded.

(b) Observations on the implementation of the article

The law allows penalty exemption for a person who has attempted to commit a felony or a misdemeanor, if the said person cooperated effectively with the competent authorities. For the same reason, an author of felonies or misdemeanors are only granted the reduction of this custodial sentence and not an exemption.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

France has provided article 40 para. 2 of the Criminal Procedure Code which obliges public officials to report facts they were aware of in the exercise of their duties.

Article 40 of the Criminal Procedure Code

The district prosecutor receives complaints and denunciations and decides how to deal with

them, in accordance with the provisions of article 40-1.

Every constituted authority, every public officer or civil servant who, in the performance of his duties, has gained knowledge of the existence of a felony or of a misdemeanour is obliged to notify forthwith the district prosecutor of the offence and to transmit to this prosecutor any relevant information, official reports or documents.

Public officials like all other persons are subject to the provisions of the Criminal Procedure Code and must give the information and submit the documents requested of them by the courts or investigators working under their control. As provided in articles 60-1, 77-1-1 and 99-3 of the Criminal Procedure Code, quoted in full to the question concerning article 40, refusal to meet these requirements is to be punished by a fine of 3,750 euros.

(b) Observations on the implementation of the article

France indicated that it does not collect statistics of reports on corruption made by public officials to the police. Generally, article 40 of the Criminal Procedure Code requires public officials to notify the district prosecutor about the existence of a felony or misdemeanour. A public official, if sanctioned by his superiors or discriminated because of irregularities denounced, can contest before a court. The jurisprudence has developed the principle of protection against sanctions wrongly inflicted upon a public official.

If a public official refrains from acting as a reporting person, disciplinary measures may be taken against him/her.

France clarified that within each branch of administration, a direction of legal affairs has been established in order to provide public officials with legal advices. Furthermore, the officials may refer to the Cour des comptes, or its regional offices, for additional information.

The reviewers noted that national authorities closely work together. They were specifically informed that prosecutors and the police cooperate in crucial matters. The reviewers concluded that this cooperation is a good practice to be underlined. The reviewers also observed a close cooperation between the SCPC, TRACFIN and authorities responsible for legal proceedings and estimated that this synergy is a key ingredient for the efficient fight against corruption.

Article 39 Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

France has provided the articles L.561-1 and following of the Monetary and Financial Code on the duty to report to the district prosecutor and to report suspicions to TRACFIN.

Article L561-1 of the Monetary and Financial Code

Persons other than those referred to in article L. 562-1 who, in the course of their business, execute, supervise or recommend transactions giving rise to capital movements, are required to declare to the Public Prosecutor any transactions they have knowledge of which involve sums which they know to be the proceeds of an offence referred to in article L. 561-15.

When they have made such a declaration in good faith, such persons benefit from the provisions of article L. 561-22.

The provisions of article L. 574-1 apply to them when they concern letting the owner of these sums or the initiator of these transactions know of the existence of this declaration or give information on the consequences reserved for him.

The Public Prosecutor informs the department referred to in article L. 561-23, which provides it with all the relevant information.

Article L561-2 of the Monetary and Financial Code

The obligations under the provisions of sections 2 to 7 of the present chapter apply to:

1. Organizations, institutions and departments governed by the provisions of title I of the present book;

1A. The payment establishments regulated under chapter II of title II of the present book;

2. The enterprises referred to in article L.310-1 of the Insurance Code, and insurance and reinsurance brokers except for those who act under the complete liability of the insurance enterprise;

3. The institutions or unions regulated by title III of book IX of the Social Security Code or coming under II of article L. 727-2 of the Rural Code;

4. Mutual insurance companies and unions realizing operations referred to under I.1. of article L 111-1 of the Code of Mutual insurance companies and Unions who manage payments of mutual insurance companies and contracts for the first ones

5. Bank of France, Emission Institute of Overseas departments referred to in article 711-2 of this Code and the Overseas Emission Institute referred to in article 712-4 of the same Code;

6. Investment Companies other than asset management companies, persons referred to in article 440-2, market companies referred to in article 421-2, central securities depositary and managers of delivery and payment systems of financial institutions, financial investment councilors and authorized intermediaries referred to in article 211-4, asset management companies acting for investment services referred to in article 321-1, as well as asset management companies and management companies acting for commercial shares and collective investment organizations that they manage or no.

7. Manual changers

8. Persons exercising activities referred to under 1, 2, 4, 5 and 8 of article I of law number 70-9 of 2 January 1970 regulating conditions for activities pertaining to certain transactions like real estate and good will except exchange, (non)seasonal rent or subletting, whether furnished or not.

9. Legal representatives or directors responsible for games or gamble operations authorized on the basis of article 5 of the law of 2 January 1891 aiming at regulating horseracing, of article 1 of the law of 15 June 1907 relating to casinos, article 47 of the law of 30 June 1923 fixing the general budget of 1923, of article 9 of the law 18 December 1931, of article 136 of the law of 31 may 1933 fixing the 1933 general budget as well as of article 42 of the 1985 Financial Law (no 84-1208 of 29 December 1984) :

9A. Legal representatives and directors responsible for games and gambles operations authorized on the basis of article 21 of the law number 2010-476 of 12 may 2010 relating to opened competition and regulation of online money games and games of chance.

10. Persons usually engaged in trading or selling of precious stones, precious materials, antiquary or work of arts;

11. Companies which benefit from tax exemption as referred to in II of Article L 511-7 and companies referred to in I of Article L 521-3

12. Certified public accountants and employees authorized to work as certified public accountant in application of Article 83 ter and 84 quarter of the order no 45-2138 of 19 September 1945 setting up the order of certified public accountants and regulating titles and professions of certified public accountants as well as auditors.

13.Lawyers to State Counsel and the Court of Cassation, Lawyers, attorneys to the Appeal Court, solicitors, bailiffs, judiciary administrators, proxies, auctioneers under acting conditions referred to in article L 561-3;

14. Companies providing services in public auctions furniture

15. Persons carrying out offshore activities as referred to in articles L 123-11-2 and the following of the Commercial Code;

16. Sports agents

With regard to paragraph 2, France has indicated that its legislator has introduced in the Labour Code a provision to protect the employee who in good faith denounces acts of corruption he was aware of in the exercise of his duties. In providing protection this provision aims to encourage the disclosure of such practices.

Moreover, in France, any person who wishes to complain or report acts that appear to him to be criminal, may do so at the gendarmerie or the police station nearest his home or directly to the prosecutor, without needing to meet any particular formalities.

(b) Observations on the implementation of the article

Article L. 561-1 contains a list of persons under obligation to report to a public prosecutor, and article L.561-2 contains a list of 16 categories of private sector persons who have obligation to fight money-laundering and terrorist financing. TRACFIN is tasked to collect, analyze, enhance and make use of any information necessary to establish the origin or destination of funds or the nature of transactions.

TRACFIN was set up in 1990 (Ordinance No. 2009-14 of 30 January 2009 on preventing the use of financial system for the purpose of money-laundering and terrorist financing; Ordinance No. 2009-866 of 15 July 2009 on conditions guiding payment services and creating payment

institutions). Recently, Ordinance No. 2009- 104 of 30 January 2009 and Law No. 2011-331 of 28 March 2011 have modified the management and organization of TRACFIN.

Since 2006, TRACFIN has become a nationally competent service. It is located within the Ministry of Finance and Budget and comprises 80 persons of which 45 are responsible for in-depth investigations.

TRACFIN gathers suspicious transaction reports, analyzes and develops them, forwards financial investigations to specific relevant counterparts like competent administrative services and foreign FIUs. When TRACFIN believes that there is a sufficient charge, it transmits the case to the prosecutor. TRACFIN receives neither declarations from particulars nor anonymous declarations.

TRACFIN has access to State's databases managed by the police, the customs, and FICOBA. It cooperates with judicial authorities through information exchange regarding inquiries or investigations.

In 2010, TRACFIN received 20288 suspicious declarations of which 711 were provided by foreign FIUs. The general trend is that these declarations are exponentially increasing year after year. TRACFIN spontaneously transmitted information about 482 cases. 4040 cases were transmitted to the court.

With regard to corruption offence, there were 10 cases in 2004 and 40 in 2010. With regard to embezzlement of public fund, there were 120 cases in 2010. There were19 cases relating to breach of probity were transmitted to the court in 2010 of which 3 cases were related to corruption of foreign public official.

TRACFIN is composed of two departments respectively entrusted with information investigation and analysis. All descriptions are registered in a system within 2 days and saved for 10 years. For the time being, 35 % of those descriptions are computerized.

TRACFIN has approximately 100 partnerships with foreign FIUs, including one FIU platform at the level of the European Union.

Article 40 Bank secrecy

> *Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

(a) Summary of information relevant to reviewing the implementation of the article

France has indicated that banking secrecy is not enforceable against the judiciary as part of ongoing proceedings, and provided article 60-1 on the spot investigation, article 77-1 in the

preliminary investigation and article 99-3 on pre-trial investigation.

> Article 60-1 of the Criminal Procedure Code
>
> A district prosecutor or judicial police officer may, by any means, order any person, establishment or organization, whether public or private, or any public administration likely to possess any documents relevant to the inquiry in progress, including those produced from a registered computer or data processing system, to provide them with these documents, including in digital form. Without legitimate grounds, the duty of professional secrecy may not be given as a reason for non-compliance. Where such orders relate to the persons mentioned in articles 56-1 to 56-3, the transfer of these documents may only take place with their consent.
>
> With the exception of the persons mentioned in articles 56-1 to 56-3, the failure to respond to such an order as quickly as possible is punished by a fine of €3,570.
>
> On the penalty of exclusion, evidence obtained in violation of Article 2 of the Law of 29 July 1881 on freedom of the press cannot be kept on file.
>
> Article 77-1-1 of the Criminal Procedure Code
>
> The district prosecutor or on his authorization a judicial police officer, may, by any means, order any person, establishment or organization, whether public or private, or any public services liable to possess any documents relevant to the inquiry in progress, including those produced from a registered computer or data processing system, to provide them with these documents, including in digital form. Without legitimate grounds, the duty of professional secrecy cannot be given as a reason for non-compliance with this order. Where these orders relate to the persons mentioned in articles 56-1 to 56-3, the transfer of these documents may only take place with their consent.
>
> Where there is no response to these orders, the provisions of the second paragraph of article 60-1 are applicable.
>
> The last paragraph of article 60-1 also applies.
>
> Article 99-3 of the Criminal Procedure Code
>
> The district prosecutor or on his authorization a judicial police officer, may, by any means, order any person, establishment or organization, whether public or private, or any public services liable to possess any documents relevant to the inquiry in progress, including those produced from a registered computer or data processing system, to provide them with these documents, including in digital form. Without legitimate grounds, the duty of professional secrecy cannot be given as a reason for non-compliance with this order. Where these orders relate to the persons mentioned in articles 56-1 to 56-3, the transfer of these documents may only take place with their consent.
>
> Where there is no response to these orders, the provisions of the second paragraph of article 60-1 are applicable.
>
> The last paragraph of article 60-1 also applies.

Furthermore, to facilitate the work of investigative services, a national register of bank accounts and similar (FICOBA) was created. This is maintained by the General Directorate of Public Finance, to identify accounts of all kinds (banking, postal, savings ...) and to provide authorized persons (included among them the judiciary and judicial police officers) with information on accounts held by a person or company.

FICOBA contains information from tax returns incumbent on organizations that manage accounts (banks and financial establishment, postal cheque centres, brokerage firms ...).
Records of the opening, closing or modifying of accounts include the following information:

- Name and address of the institution managing the account,
- Number, nature, type and characteristic of the account,
- Date and nature of the reported transaction (opening, closing, modifying),
- Surname, first name, date and place of birth and address of the holder of the account, plus the SIRET number for self-employed individuals,
- For legal persons, are recorded: name, legal form, registered number delivered by economic authorities and address.

The legal basis of this register are:

• the first paragraph of article 1649 A of the General Tax Code creating the tax obligation to report to the General Tax Directorate (DGI) the opening and closing of accounts of any kind,
• Order of 14 June 1982 as amended, codified in part in Appendix IV of the General Tax Code (Articles 164FB and following),
• Order of 13 December 2007 laying down the conditions for extending FICOBA,
• Order of 17 February 2009 laying down the conditions for extending FICOBA

> Article 164FB of Annex 4 of the General Tax Code
>
> Declaring the opening, closing or modifying of accounts of any nature is incumbent on the institutions, individuals or entities that manage these accounts.
>
> Article 164FC of Annex 4 of the General Tax Code
>
> The opening, closing or modifying of accounts referred to in section 164FB is to be recorded in the month following the openings, modifications and closings of accounts with the central competent data services.
>
> These declarations are subject to data processing called the national register of bank and similar accounts that lists, on magnetic media, the existence of accounts and informs the services authorized to view this file of the list of those owned by one or more persons or entities.
>
> Information may only be disclosed to persons or agencies enjoying legal authority and within the limits set by law.

(b) Observations on the implementation of the article

During the country mission, France ensured the reviewers that bank secrecy does not constitute an obstacle to investigations and prosecutions.

Article 41 Criminal record

> *Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such*

information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

France has indicated that there is a network of judicial records based on the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. The network has been effective since 2006 between France, Germany, Belgium and Spain. Between 2006 and 2010 the following countries became parties to the Convention: Italy, Slovakia, Bulgaria, Czech Republic, Poland, Luxembourg, and the United Kingdom. The network is expected to be effective in April 2012 between all 27 member States of the Convention.

In 2009, the European Commission proposed to Member States of the European Union to put in place the network already operating since 2006. This proposal was the subject of two texts – Framework Decision 2009/315/JAI Council of 26.02.2009 concerning the organization and content of exchanges of information extracted from judicial records between the member states; and Council Framework Decision 2009/316/JAI of 06.04.2009 on the establishment of ECRIS (European Criminal Records Information System) under article 11 of the Framework Decision of 26 February 2009. These two framework decisions are not yet transposed into French law.

The network of judicial records allows an exchange of both convictions and extracts (bulletins) in an almost fully automated and secure fashion, with automatic translation using a table of offences and penalties that defines a unique code for all states for each family of offence and punishment.

Title IV – Judicial Records

Article 13

A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.

In any case other than that provided for in paragraph 1 of this article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

Title VII - Exchange of information on convictions

Article 22

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

(b) Observations on the implementation of the article

The reviewers were satisfied with the answer provided.

Article 42 Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to paragraph 1, France has provided article 113-2 of the Criminal Code to illustrate its implementation of the provision under review.

Article 113-2 of the Criminal Code

French Criminal law is applicable to all offences committed within the territory of the French Republic.

An offence is deemed to have been committed within the territory of the French Republic where one of its constituent elements was committed within that territory

Article 113-3 of the Criminal Code

French Criminal law is applicable to offences committed on board ships flying the French flag, or committed against such ships, wherever they may be. It is the only applicable law in relation

to offences committed on board ships of the national navy, or against such ships, wherever they may be.

Article 113-4 of the Criminal Code

French Criminal law is applicable to offences committed on board aircraft registered in France, or committed against such aircraft, wherever they may be. It is the only applicable law in relation to offences committed on board French military aircraft, or against such aircraft, wherever they may be.

With regard to paragraph 2, in French law, if the offence is committed on French territory against a French national article 113-2 of the Criminal Code (cited above) confers jurisdiction to the French courts. If the offence is committed abroad, article 113-7 of the Criminal Code applies.

Article 113-7 of the Criminal Code

French Criminal law is applicable to any felony, as well as to any misdemeanor punished by imprisonment, committed by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place.

France has provided article 113-6 of the Criminal Procedure Code (regarding French national) and article113-8-1 of the same code (regarding foreigners that France has refused to extradite).

Article 113-6 of the Code of the Criminal Procedure

French criminal law is applicable to any felony committed by a French national outside the territory of the French Republic.

It is applicable to misdemeanours committed by French nationals outside the territory of the French Republic if the conduct is punishable under the legislation of the country in which it was committed.

It is applicable to infringements of the provisions of Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonization of certain provisions of the social legislation in the areas of road transport, committed in another member state European Union and recognized in France, subject to the provisions of section 692 of the Criminal Procedure Code or the justification of an administrative penalty which has been executed or can no longer be implemented.

The present article applies even if the offender has acquired French nationality after the commission of the offence of which he is accused.

Article 113-8-1 of the Code of the Criminal Procedure

Without prejudice to the application of articles 113-6 to 113-8, French Criminal law is also applicable to any felony or misdemeanor subject to a penalty of at least five years' imprisonment committed outside the territory of the French Republic by an alien whose extradition to the requesting State has been refused by the French authorities either because the offence for which the extradition has been requested is subject to a penalty or to a safety measure that is contrary to French public policy, or because the person in question has been tried in the aforesaid State by a court which does not respect the basic procedural guarantees and the rights of the defence, or because the matter in question shows the characteristics of a political offence.

Prosecution for the offences set out in the first paragraph may only be initiated at the request of

the public prosecutor. It must be preceded by an official accusation, transmitted by the Minister of Justice, from the authorities in the country where the offence has been committed and which has requested the extradition.

France has provided examples of cases to illustrate its implementation of the provision under review.

The Court of Cassation has had occasion to assert the jurisdiction of the French court against accomplices when the principal act is committed in France. It has also affirmed that a crime committed in French territory gives French courts' jurisdiction in respect of accomplices, even if they are foreign nationals and the acts of complicity were accomplished abroad (Crim., 13 March 1981).The same solution was found for the co-principals (Crim., 8 June 1912).

However, the Court of Cassation has developed another line of reasoning according to which, acts committed abroad, which form an indivisible whole with the acts charged in France to the same authors, may be under the jurisdiction of the French court legally seized of the acts committed in France (Crim. 23 April 1981).

If the offence, or its core components, is committed on French territory, the French courts have jurisdiction under article 113-2 of the Criminal Code.

If the offence is committed abroad, if the victim of the offence is a legal person in French public law, article 113-7 of the Criminal Code, already cited, may be applicable

Concerning paragraph 3, as a general rule, France does not extradite its nationals. It can still extradite them, but only for criminal prosecutions, subject to reciprocity under the simplified extradition procedure between the Member States of the European Union. In effect, France has made a declaration under article 7, paragraph 2, of the extradition treaty of 1996 (which gives States parties the power to declare that they will not extradite their nationals or only permit it under certain conditions) indicating that it will refuse to extradite its nationals with a view to the implementation of a custodial sentence imposed by a court of the Requesting State. At the same time, it has declared that it will allow their extradition "for purposes of criminal proceedings in [the requesting Member State], subject to reciprocity, and provided, upon the sentencing to a custodial sentence of the person sought, that the concerned person is, unless he indicates otherwise, transferred to the territory of the French Republic, to serve his sentence there".

In the framework of the European arrest warrant, the nationality of the person named in the warrant no longer forms a reason to refuse the surrender of the person. However, member states may introduce into their domestic legislation a provision that when the rendition is for: 1) the execution of a sentence, it may be served in the country of origin of the person concerned, 2) criminal prosecution, the person concerned may be temporarily transferred to the requesting State and returned to serve his sentence in his home country. France has thus introduced a provision (Article 695-24 of the Criminal Procedure Code), which allows it to refuse to execute a European arrest warrant when the person sought for the enforcement of a sentence or measure that deprives liberty is of French nationality and the competent authorities are committed to his

prosecution.

If the person is not extradited, the public prosecutor systematically checks whether the constituent elements of the offence are met and if this is the case and the legal requirements are met, it initiates a prosecution against the perpetrator, on the basis of article 113-6 of the Criminal Code which recognizes that the French courts have jurisdiction to try offences committed by French nationals abroad.

With regard to paragraph 4, France has provided article 113-8-1 of the Criminal Code to illustrate its implementation of the provision under review.

> Article 113-8-1 of the Criminal Code
>
> Without prejudice to the application of articles 113-6 to 113-8, French Criminal law is also applicable to any felony or misdemeanor subject to a penalty of at least five years' imprisonment committed outside the territory of the French Republic by an alien whose extradition to the requesting State has been refused by the French authorities either because the offence for which the extradition has been requested is subject to a penalty or to a safety measure that is contrary to French public policy, or because the person in question has been tried in the aforesaid State by a court which does not respect the basic procedural guarantees and the rights of the defence, or because the matter in question shows the characteristics of a political offence.
>
> Prosecution for the offences set out in the first paragraph may only be initiated at the request of the public prosecutor. It must be preceded by an official accusation, transmitted by the Minister of Justice, from the authorities in the country where the offence has been committed and which has requested the extradition.

With regard to paragraph 5, France is a member of Eurojust, a network reserved for members of the European Union and which facilitates this type of dialogue.

> Criminal Procedure Code
>
> Section 3: The Eurojust Unit
>
> Article 695-4:
>
> In accordance with the Council decision of 28 February 2002 establishing Eurojust in order to reinforce the fight against serious crime, the organization Eurojust, as the instrument of the European Union endowed with legal personality acting either collectively or through the intermediary of a national representative, is responsible for promoting and improving coordination and cooperation between the competent authorities of the member states of the European Union in all inquiries and prosecutions which come under its jurisdiction.
>
> Article 695-5**:**
>
> The Eurojust Unit, acting through the intermediary of its national representatives or collectively may:
>
> 1° inform the prosecutor general of any offences of which it has knowledge, and request him to carry out an inquiry or initiate a prosecution;
>
> 2° ask the prosecutor general to report offences, or to have them reported, to the competent authorities of another member state of the European Union;

3° ask the prosecutor general to oversee the creation of a joint investigation team;

4° ask the prosecutor general or the investigating judge to send it any information resulting from judicial proceedings which are necessary for the fulfillment of its tasks.

Article 695-6:

Where the prosecutor general or the investigating judge seized does not execute a request from the Eurojust Unit, he informs them as quickly as possible of the decision taken and his reasons.

However, the giving of reasons is not required for the requests mentioned in 1°, 2° and 4° of article 695-5 where this might threaten national security or compromise the smooth progress of an investigation underway or the safety of a person.

Article 695-7:

Where a request for judicial assistance needs the intervention of the Eurojust organization in order to secure a coordinated approach, Eurojust may transmit its assistance to the requested authorities through the intermediary of the national representative concerned.

Section 4 : National Eurojust Representatives

Article 695-8

The national representative is a judge or prosecutor detached from the hierarchical structure who is put at the disposal of the Eurojust organization for a period of three years by a decree from the Minister of Justice.

The Minister of Justice may give him instructions under the conditions set out in article 30.

Article 695-9

In the context of his mission, a national representative has access to information in the national criminal records and the judicial police files.

He may also request the competent judicial authorities to send him any information resulting from judicial proceedings which is necessary for him to carry out his mission. The judicial authority approached may, however, refuse to disclosure this information if this is liable to threaten the public order or the fundamental interests of the nation. It may also postpone communicating this information for reasons relating to the smooth progress of an ongoing investigation or the safety of persons.

The national representative is informed by the prosecutor general of any cases liable to come under the remit of Eurojust and which concern at least two other member states of the European Union.

He is also competent to receive and send to the prosecutor general any information relating to inquiries by the European Antifraud Office.

France has indicated that with other States parties to the Convention, there is no specific text that includes the provision under review, but these dialogues are carried out informally.

With regard to paragraph 6, France has indicated that it has implemented the provision under review, without providing further information.

(b) Observations on the implementation of the article

According to the information received, a French citizen convicted of infringement abroad (without part of the infringement being committed in France) can only be prosecuted on the

basis of either complain by the victim or its legal successors or official denunciation by the authority of the country where the offence was committed.

However, for offences committed abroad by their citizens, States parties to the Convention are supposed to establish their competence independently in any condition. For this reason, it is recommended that France should remove from the law the conditions for complains and denunciation prerequisite as mentioned above.

CHAPTER IV – INTERNATIONAL COOPERATION

Article 44 Extradition - Paragraph 1

This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the aforementioned provision.

French domestic law regarding extradition is included in articles 696 to 696-7 of the Criminal Procedure Code, as follows:

Article 696

In the absence an international convention stipulating otherwise, the conditions, procedure and effects of extradition are determined by the provisions of the present chapter. These provisions also apply to points which have not have been regulated by international conventions.

Article 696-1

No surrender to a foreign government may be made of any person who is not the object of a prosecution or a conviction for an offence provided for by the present section.

Article 696-2

The French government may hand over any person who does not have French nationality and who is the subject of a prosecution initiated in the name of the requesting state or of a conviction imposed by its courts, to foreign governments, at their request, where this person is found on French national territory. However, extradition is only granted if the offence for which the application has been made was committed:

either on the territory of the requesting state by a national of this state or by a foreigner;

or outside the territory of the requesting state by a national from that state;

or outside the territory of the requesting state by a foreigner, where the offence features among those for which French law authorizes prosecution in France, even if they are committed by a foreigner abroad.

Article 696-3

The offences which may result in extradition, whether this is the application for or the granting of extradition, are the following:

1° all offences punished as felonies by the law of the requesting state;

2° offences punished as misdemeanours by the law of the requesting state, where the maximum prison sentence incurred, under that law, is two years or more, or, in the case of a convicted person, where the sentence imposed by the court of the requesting state is at least two months imprisonment.

In no case is extradition granted by the French government if the offence does not incur a punishment for felony or misdemeanor under French law.

Facts constituting attempt or complicity are subject to the above rules, on condition that they are punishable under laws of both the requesting and the requested state.

If the application concerns a number of offences committed by the requested person and these have not yet been tried, extradition is only granted if the maximum sentence incurred under the law of the requesting state, for all of the offences together, is not less than two years' imprisonment.

Article 696-4

Extradition is not granted:

1° where the requested person is of French nationality, as determined at the date of the offence for which the extradition is requested;

2° where the felony or misdemeanor has a political flavor, or where the circumstances reveal that the extradition is requested for political reasons;

3° where the felonies or misdemeanours were committed on French national territory;

4° where the felonies and misdemeanours, while they were committed outside French national territory, were prosecuted and finally disposed of in France;

5° where, under the law of the requesting state or French law, the limitation period for the prosecution has expired prior to the request for extradition, or the limitation period for the penalty has expired prior to the requested person's arrest, and in general whenever the right to prosecute in the requesting state is extinguished;

6° where the offence for which the extradition has been requested is punished by the law of the requesting state which imposes a penalty or a safety measure contrary to French public policy;

7° where the requested person would be tried in the requesting state by a court which does not provide fundamental procedural guarantees and protection for the rights of the defence;

8° where the felony or misdemeanor constitutes a military offence under Book III of the Military Justice Code.

Article 696-5

If, for one single offence, extradition is requested concurrently by several states, preference is given to the application by the state against whose interests the offence was directed, or on whose the territory it was committed.

If the concurrent applications concern different offences, in order to determine priority account is taken of all the circumstances and, in particular, the relative seriousness the offences and the place of their commission, as well as the respective dates of the applications and any undertaking which the requesting state may have made to re-extradite the person concerned.

Article 696-6

Subject to the exceptions provided for by article 696-34, extradition is only granted on condition that the extradited person will neither be prosecuted nor convicted for an offence other than the one for which the extradition was requested, this being committed prior to the surrender.

Article 696-7

(Inserted by Law no. 2004-204 of 9 March 2004 art. 17 I Official Journal of 10 March 2004)

Where a requested person is being prosecuted or has been convicted in France, and the French government is requested to extradite him for another offence, surrender is only carried out after the prosecution is over and, in the case of a conviction, after the sentence has been executed.

However, this provision does not prevent the requested person from being temporarily sent to appear before the courts of the requesting state, on the express condition that he will be sent back as soon as the foreign courts have ruled.

The provisions of the present article also apply where the requested person is subject to judicial restraint under the provisions of Title VI of Book V of this Code.

The effectiveness of the measures adopted to comply with this provision was assessed and deemed positive.

(b) Observations on the implementation of the article

France stated that the Bureau of National Criminal Cooperation is endowed with all the possible tools to measure the efficiency of those provisions and a list of regional partners in Courts of Appeal is regularly used for that purpose.

Article 44 Extradition - Paragraph 2

Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Due to its juridical system's specificities, France declares not being in a position to grant extradition for conducts that are not punishable under domestic law. However, all Convention-based offences are punishable according to domestic law.

(b) Observations on the implementation of the article

Given that all conducts provided for in the Convention are punishable by French law, the provision under review is of limited applicability in the case of France.

Article 44 Extradition - Paragraph 3

If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the provision under review.

France does not make any distinction, regarding extradition, between offences covered by the UNCAC and other offences.

In addition, the identification of the offences established in the requesting State which may give rise to extradition is carried out on the basis of the analogy between the facts criminalized in the requesting State and in France. It is not necessary that those facts receive an identical legal denomination under French law.

Article 696-3

Facts that can lead to extradition, be it requested or granted, are as follows:

1. All facts sentenced with criminal punishments by the law of the requesting state

2. Facts sentenced with penalties by the law of the requesting state when the maximum prison sentence applicable according to that law is 2 years or more, or, if it concerns a convicted person, when the sentence pronounced by the jurisdiction of the requesting state is not less than 2 years' imprisonment.

On no account is extradition granted by the French Government if the fact is not punishable by French law with prison sentence or penalties.

Facts that constitute an attempt or complicity fall under previous rules, provided that they are punishable according to the laws of the requesting and requested states.

Where the subject of the request concerns a number of misdemeanors committed by the requested person and these have not yet been trialed, extradition is only granted if the maximum sentence incurred under the law of the requesting state, for all of the offences together, is not less than 2 years' imprisonments.

(b) Observations on the implementation of the article

France considered that extradition is possible for all felonies when the penalty is not less than two months' imprisonments in terms of sentence execution or not less than one year in terms of prosecution.

In the framework of the 1957 Council of Europe Convention on extradition, ratified by France, these thresholds are respectively one year in terms of prosecution and four months in terms of sentence execution (article 2). In case of sentence execution, these thresholds are cumulative. It is worth noticing that it is possible to request extradition for an offence which does not by itself fulfill these criteria if, cumulated with other offence, does fulfill those criteria.

Article 44 Extradition- Paragraph 4

Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties

undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

The assessor does not have at his disposal information regarding his country's compliance with the provision under review. He is of the view that all serious crimes addressed in the Palermo Convention are considered as extraditable offences in bilateral treaties ratified by France, but a survey of these treaties should be conducted to answer with certitude.

None of the conducts set forth in the Convention can be regarded as an offence of political nature.

(b) Observations on the implementation of the article

France is bound by 44 bilateral extradition treaties which do not specify the types of extraditable offences. The only condition is that extradition is sought for a felony or misdemeanor.

Paragraph 4 of the Convention states that the offences in question shall be *deemed to be included* as extraditable offences in any extradition treaty existing between States Parties. According to the French legal system, this does not mean that, even though infringements are not explicitly mentioned in those treaties, they will be considered included

Article 44 Extradition - Paragraph 5

If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

France considers Convention as a legal basis when it receives an extradition request from another State party with which France has no extradition treaty. Moreover, France also mentioned that it has effective tools within the framework of the European Union, as well as an important number of bilateral extradition treaties. This results in an important flow with regard to extradition.

(b) Observations on the implementation of the article

The reviewers were satisfied with the answer provided.

Article 44 Extradition - Paragraph 6

A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

France does not make extradition conditional on the existence of a treaty. Therefore, the provision under review is not applicable.

(b) Observations on the implementation of the article

The reviewers observed with satisfaction that France does not make extradition conditional on a treaty and that it concluded 44 additional bilateral treaties to facilitate extradition.

Article 44 Extradition - Paragraph 7

States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the aforementioned provision and refers to articles 696 to 696-7 of the Criminal Procedure Code.

Article 696-6

Subject to exceptions referred to under article 696-34, extradition is granted if and only if the extruded person shall neither be prosecuted nor sentenced for an infringement other than the one that gave rise to extradition or preceded the adjournment.

Article 696-7

If the person requested was prosecuted or has been sentenced in France, or his extradition is requested by the French Government due to a different infringement, adjournment is possible only at the end of the prosecution and, in case of sentence, after serving a sentence.

However, this provision does not preclude that the requested person shall be temporarily sent for prosecution before the court of the requesting State, under the purposed condition that he shall be sent back when the foreign court would pronounce the sentence.

Falls under the provision of the present article the case where a requested person is bound to legal constraints pursuant to the provisions of title VI of book V of the present code.

(b) Observations on the implementation of the article

The reviewers are satisfied with the answer provided.

Article 44 Extradition - Paragraph 8

Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

France reported its compliance with this provision and mentioned articles 696 to 696-7 of the Criminal Procedure Code.

Article 696-6

Subject to exceptions referred to article 696-34, extradition is granted if and only if the extruded person shall neither be prosecuted nor sentenced for an infringement other than the one that gave rise to extradition or preceded the adjournment.

Article 696-7

If the person requested was prosecuted or has been sentenced in France, or his extradition is requested by the French Government due to a different infringement, adjournment is possible only at the end of the prosecution and, in case of sentence, after serving a sentence.

However, this provision does not preclude that the requested person shall be temporarily sent for prosecution before the court of the requesting State, under the purposed condition that he will be sent back when the foreign court would pronounce the sentence.

Falls under the provisions of the present article the case where a requested person is bound to legal constraints pursuant to the provisions of title VI of book V of the present code.

(b) Observations on the implementation of the article

In 2009, France sent 73 requests for extradition and received 105. European arrest warrant requests were not included in these statistics. France indicated that none of those requests for extradition were based on the Convention.

Article 44 Extradition - Paragraph 9

States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the above-mentioned provision.

As a member of the European Union, France, France uses a simplified extradition procedure when extradition is requested by another member of the EU: the European arrest warrant, as defined by articles 696-25 to 696-33 of the Criminal Procedure Code. This simplified extradition procedure also applies with Switzerland (although not a EU member).

TRANSLATE INTO ENGLISH :

La convention du 10 mars 1995 institue une procédure d'extradition rapide et simplifiée pour le cas où la personne réclamée consent à son extradition : lorsqu'une personne arrêtée au vu d'une demande d'arrestation provisoire déclare consentir à sa remise, l'Etat requérant est dispensé de la communication d'une requête formelle d'extradition. La décision de la chambre de l'instruction accordant la remise vaut titre d'extradition : il n'existe pas de phase administrative.
La convention du 27 septembre 1996 abaisse quant à elle les quanta de peine pouvant justifier une extradition (par rapport à la Convention européenne du 13 décembre 1957), et prévoit que la prescription de la peine dans l'Etat requis ne constitue plus un motif de refus de l'extradition, sauf si la demande d'extradition est motivée par des faits relevant de la compétence dudit Etat selon sa propre loi pénale. Elle prévoit également le principe de l'extradition des nationaux, mais la France a fait sur ce point et comme la convention le prévoit, une réserve selon laquelle elle n'extraderait pas ses nationaux aux fins l'exécution de peine prononcée par l'Etat requérant. La France autorise en revanche l'extradition de ses ressortissants aux fins de poursuites pénales dans l'Etat requérant, sous réserve de réciprocité et à la condition, en cas de condamnation de la personne réclamée à une peine privative de liberté, que l'intéressé soit, à moins qu'il ne s'y oppose, transféré sur le territoire de la République française, pour y exécuter sa peine
Ces dispositions n'ont vocation à s'appliquer que pour le cas où la procédure de mandat d'arrêt européen n'est pas applicable.

The Convention of 10 March 1995 establishes a procedure for rapid and simplified extradition if the person sought consents to extradition: when a person arrested on the basis of a request for provisional arrest consents to surrender, the requesting State is exempt from the requirement to submit a formal extradition request. The decision of the extradition judge granting the return of the person is enough: there is no administrative phase.

Compared to the European Convention of 13 December 1957, the Convention of 27

September 1996 lowers the quantum of penalties that can give rise to extradition, and provides that the statute of limitation in the requested State is no longer a reason for refusal of extradition unless the extradition request is based upon facts within the jurisdiction of that State under its own criminal law. It also provides for the principle of extradition of nationals, however on this point , as the convention itself permits, France has made a reservation whereby it would not extradite its nationals for the execution of the sentence imposed by the requesting State. France allows, however, the extradition of its nationals for the purpose of prosecution, subject to reciprocity and provided, upon conviction of the person sought to a custodial sentence, that the person be transferred to the territory of the French Republic to serve the sentence, unless he or she is opposed to the transfer.

These provisions are intended to apply only to cases where the procedure of the European arrest warrant is not applicable

CRIMINAL PROCEDURE CODE

Article 696-25

Except in cases where the provisions of the present title relating to the European Arrest Warrant apply if an application for temporary custody for the purpose of extradition is made by a state that is party to the convention of 10 March 1995 relating to a simplified extradition procedure between the member states of the European Union, this is carried out in accordance with the provisions of articles 696-10 and 696-11.

However, as an exception to the provisions of the second paragraph of article 696-10, the time limit for the appearance of the requested person is fixed at three days. In addition, this person is informed that he may consent to his extradition in accordance with the simplified proceedings provided for by the present section.

Article 696-26

Within three days from the incarceration of the requested person, the prosecutor general informs the

person, in a language he understands, of the documents on the basis of which the arrest has been made. He advises him that he may consent to his extradition before the investigating chamber in accordance with the simplified procedure. He also informs him that he may also waive the speciality rule. A note of this information is made in the official record, under penalty of nullity of the proceedings.

The person concerned has the right to be assisted by an advocate under the conditions laid down by the second and third paragraphs of article 696-12.

Article 696-27

Where the requested person declares to the prosecutor general that he consents to his extradition, he appears before the investigating chamber within five working days of the date he was brought before the prosecutor general.

Where the requested person declares to the aforementioned judge that he does not consent to his

extradition, the procedure is followed as set out in articles 696-15 onwards where an extradition application has reached the French authorities.

Article 696-28

Where the requested person appears before the investigating chamber in accordance with the

first paragraph of article 696-27, the president of the chamber confirms his identity and receives his statements, which are noted in the official record.

The president then asks the requested person, after informing him of the legal consequences of his consent, if he still intends to consent to his extradition.

Where the requested person declares that he no longer consents to his extradition, the provisions of the second paragraph of article 696-27 are applicable.

Where the requested person maintains his consent to the extradition, the investigating chamber also asks him if he intends to waive the speciality rule, after informing him of the consequences of such a waiver.

The consent of a requested person to being extradited and, if applicable, his waiver of the speciality rule are noted in the official record drafted at this hearing. The requested person appends his signature to this. The hearing is in public, unless this would interfere with the orderly conduct of the proceedings, the interests of a third party or human dignity. Where this is so, the investigating chamber, at the request of the public prosecutor, the requested person or of its own motion, rules by means of a decree delivered in chambers. The public prosecutor and the requested person are heard, the latter assisted by his advocate, if he has one, and, if necessary in the presence of an interpreter.

Article 696-29

If the investigating chamber notes that the legal conditions for extradition have been fulfilled, it delivers a ruling in which it formally acknowledges the formal consent of the requested person to being extradited and, if applicable, his waiver of the speciality rule, and grants the extradition.

The investigating chamber rules within seven days of the date of the requested person's appearance before the chamber.

Article 696-30

If within the time limit provided the requested person lodges a cassation application against the investigating chamber ruling granting his extradition, within fifteen days of the lodging of the appeal the president of the criminal chamber of the Court of Cassation, or the assistant judge delegated by him, delivers a ruling in which it notes that the requested person has thereby withdrawn his consent to the extradition and, if applicable, that he has waived his right to the speciality rule. This ruling is unappealable.

If the requested person is the subject of an extradition application, the process outlined in articles 696-15 onwards is then followed.

Article 696-31

Where the investigating chamber's ruling grants the extradition of the requested person, and this is a final judgment, the prosecutor general informs the Minister of Justice of this, who in turn informs the competent authorities of the requesting state of the judgment that has been delivered.

The Minister of Justice takes all necessary measures to ensure that the person concerned is surrendered to

the authorities of the requesting state within no more than twenty days of their being informed of the extradition judgment.

If the extradited person cannot be handed over within this twenty-day time limit because of force majeure,

the Minister of Justice immediately informs the competent authorities of the requesting state of this, and agrees a new surrender date with them. The extradited person is then surrendered no more than twenty days after the new agreed date.

The extradited person is released if, at the end of this twenty-day time limit, the extradited person remains on French national territory.

The provisions of the previous paragraph do not apply to cases of force majeure or if the extradited person

is being prosecuted in France or has already been sentenced to serve a sentence in France for an offence other than that for which the extradition application was generated.

Article 696-32

Release may be requested from the investigating chamber at any time under the forms provided for by articles 148-6 and 148-7. The provisions of articles 696-19 and 696-20 are then applicable.

Article 696-33

The provisions of articles 696-26 to 696-32 are applicable if the person for whom temporary custody has

been requested is the subject of an extradition request and his consent to extradition is given more than ten days after his arrest and no later than the day of his first appearance before the investigating chamber, seized under the conditions set out in section 2 of the present chapter, or if the person whose extradition is requested consents to be extradited at the latest at the time of this first appearance before the investigating chamber, seized under the same conditions.

(b) Observations on the implementation of the article

France indicated that its answer concerns the provisions regarding simplified extradition procedure, and not extradition regarding the European Arrest Warrant that is regulated by articles 695 and the following.

There are no specific provisions regarding extradition with non-European countries. Extradition occurs as it follows: the Investigating Chamber of the Appeal Court, after examination that all conditions are fulfilled, makes its decision (legal phase). The case is brought before the Government who is bound by a negative decision of the Investigating Chamber. If the government decides for extradition, it issues an extradition decree. This decree is subject to appeal before the Conseil d'Etat who then verifies if the infringement committed is a political infringement or not, therefore, can ban the extradition decree on this basis. The average time for this procedure is 1 year.

Regarding extradition requested by a Member State of the European Union, the average time for this procedure is two months.

Article 44 Extradition - Paragraph 10

Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision and provides the text of relevant articles.

Article 696-8

Subject to the provisions of paragraph four, any application for extradition is sent to the French government through diplomatic channels and accompanied either by a decision recording a conviction (even by default) or by an act of criminal procedure unconditionally ordering or having the effect or unconditionally ordering the requested person to appear before the criminal court, or an arrest warrant or any other act having the same force and issued by the judicial authorities, provided that such acts contain a precise description of the offence for which they have been issued and the date of this offence.

The originals or certified copies of the documents mentioned above must be produced.

At the same time, the applicant government must provide a copy of the legal texts applicable to the subject-matter of the accusation. It may also attach a summary of the facts alleged.

Where it is made by a member state of the European Union, the application for extradition is directly sent by the competent authorities of that state to the Minister of Justice, who proceeds in accordance with article 696-9.

Article 696-9

An application for extradition is, after the documents have been checked, sent with the case file by the

Minister for Foreign Affairs to the Minister of Justice who, after ensuring the legality of the application, sends it to the territorially competent prosecutor general. The latter sends it to the territorially competent district prosecutor to be executed.

Article 696-10

Any person apprehended following an extradition application must be transferred to the territorially

competent district prosecutor within twenty-four hours. During this period, he enjoys all the rights guaranteed by articles 63-1 to 63-5.

After confirming the identity of the person, the judge informs him in a language he understands that he is the subject of an extradition application, and that he will appear before the territorially competent prosecutor general within seven days of his appearance before the district prosecutor.

The district prosecutor also informs him that he may be assisted by an advocate of his choice, or, failing this,

by an advocate appointed ex officio by the bâtonnier of the bar. The advocate is immediately informed, using any available means. The person is also advised that he may have an interview with the designated advocate immediately.

A note of this notification is made in the official record, under penalty of nullity. The record is immediately sent to the prosecutor general.

The district prosecutor orders the incarceration of the requested person, unless he feels that his appearance at all the stages of the proceedings is sufficiently guaranteed

Article 696-11

Where his incarceration has been ordered, the requested person is transferred, if necessary, and entered on the extradition prison register at the remand prison for the appeal court in whose jurisdiction he has been apprehended.

This transfer must take place within a period of four days from the persons appearance before the district prosecutor.

Article 696-12

The documents produced to support an extradition application are sent by the district prosecutor to the prosecutor general. Within the seven-day time period mentioned in the second paragraph of article 696-10, the prosecutor general notifies the requested person, in a language he understands, of the ground on which the arrest has been made, and informs him of his right to consent to or to oppose his extradition, and the legal consequences of consenting to extradition.

Where the requested person has already requested the assistance of an advocate, and the latter has duly been summoned, the prosecutor general receives the statements of the person and his counsel, of which an official record is drafted.

If not, the judge reminds the requested person of his right to choose an advocate or to request that one be appointed for him ex officio. The chosen advocate, or where one has been appointed ex officio, the bâtonnier of the bar, is immediately informed of this choice by any available means. The advocate may immediately consult the case file and freely communicate with the requested person. The prosecutor general receives the statements of the person concerned and of counsel, of which an official record is drafted.

Article 696-13

Where the requested person has declared to the prosecutor general that he consents to his extradition, the investigating chamber is immediately seized of the case. The requested person appears before it within five working days from the date of his presentation before the prosecutor general.

At the appearance of the requested person, the investigating chamber confirms his identity and receives his statements. This is recorded in the official record.

The hearing is public, unless this would interfere with the orderly conduct of the proceedings taking place, the interests of a third party or human dignity. If this is so, the investigating chamber, at the request of the public prosecutor, the requested person or of its own motion, rules by means of a decree delivered in chambers. The public prosecutor and the requested person are heard, the latter assisted by his advocate, if applicable, and, where necessary in the presence of an interpreter.

Article 696-14

Where, at his appearance, the requested person declares his consent to be extradited and the legal conditions for extradition are fulfilled, the investigating chamber, after informing the person of the legal consequences of his consent, formally acknowledges this within seven days from the date of his appearance, unless additional information has been ordered.

The investigating chambers ruling is not open to appeal or other challenge.

Article 696-15

Where the requested person has declared to the prosecutor general that he does not consent to his extradition, the investigating chamber is immediately seised of the proceedings. The requested person appears before the chamber within a period of ten working days from the time of his appearance before the prosecutor general.

The provisions of the second, third and fourth paragraphs of article 696-13 are applicable.

If, at his appearance, the requested person declares that he does not consent to being extradited, the investigating chamber delivers a reasoned opinion on the extradition application. Unless additional information has been ordered, it delivers its opinion within one month from the requested persons appearance before it. This opinion is unfavorable if the court feels that the legal conditions have not been fulfilled or if there is an obvious error.

A cassation application against the opinion of the investigating chamber may be based only on errors of form which have the effect of depriving the opinion of the essential conditions for his legal existence.

Article 696-16

The investigating chamber may, in an unappealable decision, authorize the requesting state to participate in the hearing at which the extradition application is being examined, through the intermediary of a person approved by the aforesaid state for this purpose. Where the requesting state is authorized to intervene, it does not thereby become party to the proceedings.

Article 696-17

If a reasoned opinion of the investigating chamber rejects the extradition application and this opinion is final, extradition cannot be granted.

The requested person is then automatically released, unless he is detained for another reason.

Article 696-18

In cases other than those provided for by article 696-17, extradition is authorized by a decree from the Prime Minister taken on the advice of the Minister of Justice. If, within one month of the notification of this decree to the requesting state the requested person has not been received by the agents of this state then, except in cases of force majeure, he is released and may no longer be requested in connection with the same matter.

An appeal lodged on the grounds of abuse of authority in relation to the decree mentioned in the previous paragraph must under penalty of foreclosure be lodged within one month. Making a request for administrative clemency against this decree does not stop the time running in respect of legal remedies.

Article 696-19

Release may be requested of the investigating chamber at any time according to the forms provided for by articles 148-6 and 148-7.

The advocate of the person concerned is summoned, by recorded delivery letter with request for acknowledgement of receipt, at least forty-eight hours before the date of the hearing. The investigating chamber rules as soon as possible and no later than twenty days from receiving the application, having heard the public prosecutor as well as the requested person or his advocate, and by making a ruling as provided for by article 199. If the release application is lodged by the requested person within forty-eight hours of his incarceration in the extradition prison, the time limit allowed for the investigating chamber to rule is reduced to fifteen days. When it orders the release of a requested person the investigating chamber may also, as a security measure, oblige the person concerned to submit to one or more of the requirements listed in article 138 Prior to his release, the requested person must register his address with the investigating chamber or the prison governor. He is informed that must indicate any change of declared address to the investigating chamber in a recorded delivery letter with request for acknowledgement of receipt. He is also informed that any summons or notification made to his last declared address is considered to have been made to him in person. A note of this information, as well as the declaration of address, is made either in the official record or in a

document which is immediately sent, either in its original form or as a certified copy, by the prison governor to the investigating chamber.

Article 696-20

The revocation of judicial supervision or its modification may be ordered at any time by the investigating chamber under the conditions provided for by article 199, either of its own motion, or on the submission of the prosecutor general, or, after hearing the opinion of the prosecutor general, at the request of the requested person.

The investigating chamber rules within twenty days of being seized.

Article 696-21

If the requested person intentionally evades the obligations of judicial supervision of it, having benefited

from release without judicial supervision it seems that he clearly intends to evade the extradition request, the investigating chamber may, on the request of the public prosecutor, issue a warrant for his arrest. The provisions of article 74-2 are then applicable, the attributes of the district prosecutor and the liberty and custody judge set out in that article being respectively given to the prosecutor general and the president of the investigating chamber or a counselor designated by him.

Where the person concerned has been apprehended, the case must be examined at the first public hearing and no later than ten days from his being placed in custody.

The investigating chamber confirms if necessary the withdrawal of the judicial supervision measures or the withdrawal of release of the person concerned.

The public prosecutor and the requested person are heard, the latter assisted, if applicable, by his advocate, and, if necessary, in the presence of an interpreter.

The expiry of the time limit mentioned in the second paragraph entails the automatic release of the person concerned.

Article 696-22

If the requested person is at liberty when the governments decision authorizing the extradition becomes unappealable, the prosecutor general may order the search for and the arrest of the person concerned, and his placement on the extradition prison register. Where the person concerned has been apprehended, the prosecutor general immediately gives notice of his arrest to the Minister of Justice.

The surrender of the requested person to the requesting state takes places within seven days of the date of his arrest, failing which he is automatically released.

Article 696-23

In urgent cases and at the direct request of the competent authorities of the requesting state, the

territorially competent district prosecutor may order the temporary arrest of a requested person for the purposes of extradition by the said state, and his placement on the extradition prison register.

The request for temporary custody, sent by any means giving rise to a written record, notes the existence of one of the documents mentioned in article 696-8 and records the intention of the requesting state to send an extradition application. It includes a brief summary of the matters of which the requested person is accused and, in addition, states his identity and nationality, the offence for which the extradition will be requested, the date and place it was committed, and, as applicable, the penalty incurred or the penalty imposed, and, if appropriate, that part of the

sentence left to serve, and, where applicable, the nature and the date of any steps that have stopped the prescription period from running. A copy of this application is sent by the requesting state to the Minister for Foreign Affairs.

The district prosecutor immediately informs the Minister of Justice and the prosecutor general of this arrest.

Article 696-24

A person taken into custody under the provisions of article 696-23 is released if, within thirty days of his arrest, where this was done at the request of the competent authorities of the issuing state, the French government has not received any of the documents mentioned in article 696-8.

If the aforementioned documents later reach the French government, the proceedings are restarted, in accordance with articles 696-9 onwards.

(b) Observations on the implementation of the article

The reviewers were satisfied with the answers provided.

Article 44 Extradition - Paragraph 11

A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the aforementioned provision. If the presumed offender is a French citizen, the jurisdiction of the French law and of the French courts is granted.

Article 113-6

French criminal law is applicable to any felony committed by a French national outside the territory of the French Republic.

It is applicable to misdemeanors committed by French nationals outside the territory of the French Republic if the conduct is punishable under the legislation of the country in which it was committed.

It is applicable to infringements referred to under rule (CE) no 561/2006 of the European Parliament and the Council of 15 march 2006 relating to harmonization of certain provisions of the social legislation in the areas of road transportation, committed in an other Member State of the European Union and recorded in France, subject to provisions of article 692 of the Criminal Procedure Code or to justification of an administrative penalty that has been executed or can no

longer be executed.

The present article applies even if the offender has acquired French nationality after the commission of the offence of which he is accused.

Article 113-7

French Criminal law is applicable to any felony, as well as to any misdemeanor punished by imprisonment, committed by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place.

Article 113-8

In the cases set out under articles 113-6 and 113-7, the prosecution of misdemeanors may only be instigated at the behest of the public prosecutor. It must be preceded by a complaint made by the victim or his successor, or by an official accusation made by the authority of the country where the offence was committed.

Article 113-8-1

Without prejudice to the application of articles 113-6 to 113-8, French Criminal law is also applicable to any felony or misdemeanor subject to a penalty of at least five years imprisonment committed outside the territory of the French Republic by an alien whose extradition to the requesting State has been refused by the French authorities either because the offence for which the extradition has been requested is subject to a penalty or to a safety measure that is contrary to French public policy, or because the person in question has been tried in the aforesaid State by a court which does not respect the basic procedural guarantees and the rights of the defense, or because the matter in question shows the characteristics of a political offence.

Prosecution for the offences set out in the first paragraph may only be initiated at the request of the public prosecutor. It must be preceded by an official accusation, transmitted by the Minister of Justice, from the authorities in the country where the offence has been committed and which has requested the extradition.

Article 113-9

In the cases set out under articles 113-6 and 113-7 no prosecution may be initiated against a person who establishes that he was subject to a final decision abroad for the same offence and, in the event of conviction, that the sentence has been served or extinguished by limitation.

Article 113-10

French criminal law applies to felonies and misdemeanors defined as violations of the fundamental interests of the nation and punishable under title I of Book IV, to forgery and counterfeiting of State seals, of coins serving as legal tender, banknotes or public papers punishable under Articles 442-1, 442-2, 442-15, 443-1 and 444-1, and to any felony or misdemeanor against French diplomatic or consular agents or premises committed outside the territory of the French Republic.

Article 113-11

Subject to the provisions of article 113-9, French Criminal law is applicable to felonies and misdemeanors committed on board or against aircraft not registered in France:

committed on board or against aircraft not registered in France:

1° where the perpetrator or victim is a French national;

2° where the aircraft lands in France after the commission of the felony or misdemeanor;

3° where the aircraft was leased without crew to a natural or legal person whose main place of

business, or failing this, whose permanent residence is on French territory.

In the case provided for in 1° above, the nationality of the perpetrator or victim of the offence is determined in accordance with article 113-6, last paragraph, and article 113-7.

Article 113-12

French Criminal law is applicable to offences committed beyond territorial waters, when international conventions and the law provide for this.

The present article is applicable in the overseas territories, New Caledonia and the territorial collectivity of Mayotte.

(b) Observations on the implementation of the article

It appears from the answer that the possibility of prosecuting a French national who committed abroad an offence depend on the request by the prosecutor being preceded by the victim's complaint or and official accusation by the authority of the country where the offence was committed. In addition, in case of misdemeanours (as opposed to felonies), the conduct must be punishable under the legislation of the country in which it was committed.

France considered that the above mentioned conditions do not constitute impediments to the correct implementation of the provision under review, according to which States parties are required to "submit the case without undue delay to their competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same way as in the case of any other offence of a grave nature under the domestic law of that State party". Thus, the case is submitted to the relevant district prosecutor who decides about what to do in terms of proceedings.

Article 44 Extradition - Paragraph 12

Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

As a general rule, France cannot extradite in this case, even temporarily. Nevertheless, if a bilateral agreement between France and the requested State party so permits, then temporary extradition as provided for in the Convention could be possible.

(b) Observations on the implementation of the article

The reviewers observed that although temporary extradition is not contemplated in the laws, France can still apply it if there is a bilateral agreement that foresees such possibility.

Article 44 Extradition - Paragraph 13

> *If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

(a) Summary of information relevant to reviewing the implementation of the article

French legal system does not foresee the possibility to execute a sentencing pronounced by a foreign court. If a person, no matter s/he is it a French national or not, is in French territory after a sentence was pronounced in a foreign State, French prosecutors cannot execute that sentence. The only possibility would be to make the person face a trial totally new in France for the same facts, with the same evidence and witnesses, which may be waste of resources and delay the execution of the sentence. Furthermore will any delay makes it more difficult to prove the guilt because it will be more and more difficult for the witnesses to remember the exact details.

(b) Observations on the implementation of the article

The reviewers recommended that relevant authorities study the possibility to apply legal decisions taken in a foreign State when France rejects an extradition warrant requested in the purpose of executing a sentencing.

Article 44 Extradition - Paragraph 14

> *Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

(a) Summary of information relevant to reviewing the implementation of the article

France reported its compliance with the provision under review.

Fair treatment is granted by the Criminal Procedure Code and also by the European Convention on Human Rights, of which provisions directly apply in domestic law, and have a prevailing authority on domestic law (judges shall apply the European Convention in any case, even if it conflicts with domestic law).

(b) Observations on the implementation of the article

In France there have been numerous court decisions that are related to the notion of fair treatment in general. However, there is no case that is related to extradition specifically.

Article 44 Extradition - Paragraph 15

> *Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

(a) Summary of information relevant to reviewing the implementation of the article

France reported that it was in compliance with this provision on the basis of the aforementioned legislation, and in particular article 696-4 of the Criminal Procedure Code.

The provisions of the European Convention on Human Rights apply to the extradition procedure, during which the concerned person may present to the court any defence arguments related to the cause of the extradition request, or to the expected treatment in the requesting State.

(b) Observations on the implementation of the article

The non-discrimination principle applies to French legal order. Furthermore, the Conseil d'Etat does not, in its jurisprudence, allow extradition of: political refugees, foreigners for political motivation, foreigners from a requesting State having a legal system which does not respect fundamental rights and liberties, foreigners from a requesting State that can sentence to death and that has not offered safeguards.

Article 44 Extradition - Paragraph 16

> *States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision.

There is no exception in the French legal system regarding fiscal matters. Therefore, no text allows a request for extradition to be refused because it would involve fiscal matters.

(b) Observations on the implementation of the article

The reviewers observed that France does not refuse a request for extradition with the sole motivation that infringement also involves fiscal issues.

Article 44 Extradition - Paragraph 17

> *Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision.

The consultations with the requesting State party take place through diplomatic channels. Their results may be presented to the Court by the General Prosecutor during the hearing, but the Court itself is not supposed to contact the requesting State.

(b) Observations on the implementation of the article

France ensured the experts that it consults with the requesting State before refusing an extradition request.

Article 44 Extradition - Paragraph 18

> *States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision.

Several bilateral treaties concluded with several countries which may request an extradition. Outside of the EU and of Council of Europe members, we can mention, among other countries : Algeria, Australia, Bahamas, Benin, Brazil, Burkina Faso, Cameroon, Canada, Central African Republic, China (treaty not into force yet), Colombia, Congo, Cote d'Ivoire, Cuba, Djibouti, Dominican Republic, Egypt, United Arab Emirates, Ecuador, Unites States, Gabon, India, Iran, Israel, Liberia, Madagascar, Mali, Morocco, Mauritania, Mexico, Monaco, Niger, New Zealand, Paraguay, Peru, Republic of Korea, San Marin, Senegal, Chad, Togo, Tunisia, Uruguay.

(b) Observations on the implementation of the article

France has been negotiating extradition agreements with the following states: Thailande, Saint Lucie, Jordan, Peru et Algeria. France also intents to conclude agreement with Saint Martin and Brazil

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the above-mentioned provision.

Regarding the applicable agreements in this matter, France mentions the Convention of 1983 on the transfer of sentenced persons, concluded in the framework of the council of Europe. This convention is open for signature of non-member states of the Council of Europe. Therefore, France may transfer a sentenced person to the following states : Australia, Bahamas, Bolivia, Canada, Chile, Korea, Costa Rica, Ecuador, Honduras, Israel, Japan, Mauritius, Mexico, Panama, Philippines, Tonga, Trinidad and Tobago, United States of America and Venezuela

(b) Observations on the implementation of the article

Experts were satisfied with the answer provided.

Article 46 Mutual legal assistance - Paragraph 1

States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision and refers to the following answers.

(b) Observations on the implementation of the article

Experts observed that French law foresees much broader mutual legal assistance framework, including in emergency case. Bilateral agreements can stretch far beyond what is foreseen in the Criminal Procedure Code in terms of ensuring mutual legal assistance as wide as possible.

Article 46 Mutual legal assistance - Paragraph 2

Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the aforementioned provision.

According to article 55 of the Constitution, regularly ratified treaties have a legal value which is superior to domestic legislation. This means that the provisions of the Convention shall be directly taken into account by the French courts.

The general domestic provisions relating to mutual legal assistance are included in articles 694 to 694-4 of the Criminal Procedure Code.

Article 694

In the absence of any international conventions stipulating otherwise:

1° Requests for mutual assistance coming from French judicial authorities and addressed to foreign judicial authorities are sent through the intermediary of the Minister of Justice. The enforcement documents are sent to the authorities of the requesting State through the same channels.

2° Requests for judicial assistance coming from foreign judicial authorities are sent through diplomatic channels. The enforcement documents are sent to the authorities of the requesting State through the same channels.

In urgent cases, requests for mutual assistance sought by the French or foreign authorities may be directly sent to the authorities of the State who are competent to enforce them. The transmission of the enforcement documents to the authorities of the requested State is carried out in the same way and under the same conditions. However, unless there is an international convention stipulating otherwise, requests for judicial assistance coming from foreign judicial authorities and addressed to the French judicial authorities must be the subject of an opinion sent through diplomatic channels by the foreign government concerned.

Article 694-1

In urgent cases, requests for judicial assistance coming from foreign judicial authorities are sent, according

to the distinctions set out in article 694-2, to the district prosecutor or the investigating judge of the territorially competent district court. They may also be sent to these judges through the intermediary of the prosecutor general.

If the district prosecutor receives a request for judicial assistance directly from a foreign authority which may only be executed by the investigating judge, he sends it to the latter to be carried out, or seises the prosecutor general in the case provided for by article 694-4.

Before executing a request for judicial assistance of which he has directly be seized, the investigating judge immediately sends this to the district prosecutor for his opinion.

Article 694-2

Requests for judicial assistance coming from foreign judicial authorities are executed by the district prosecutor or by judicial police officers or agents nominated for this purpose by this prosecutor.

They are executed by the investigating judge or judicial police officers acting in the context of a rogatory letter where they require particular procedural acts which may not be ordered or executed in the course of a preparatory investigation.

Article 694-3

Requests for judicial assistance coming from foreign judicial authorities are executed according to the procedural rules provided for by the present Code.

However, if the request for judicial assistance specifies this, it is executed in accordance with the procedural rules indicated by the competent authorities of the requesting State, on the condition, under penalty of nullity, that these rules do not reduce the rights of the parties or the procedural guarantees provided for by the present Code. Where the request for judicial assistance may not be executed in accordance with the stipulations of the requesting State, the competent French authorities immediately inform the authorities of the requesting State and indicate under which conditions the request may be executed. The competent French authorities and those of the requesting State may agree on the outcome of this request later on, where appropriate by subjecting it to the aforesaid conditions.

The irregularity of the sending of the request for judicial assistance may not constitute grounds for nullity of the acts executed in enforcing this request.

Article 694-4

If the enforcement of a request for judicial assistance coming from a foreign judicial authority is liable to threaten public order or the fundamental interests of the nation, the district prosecutor seized of this request in accordance with the third paragraph of article 694-1 sends this to the prosecutor general who decides, if appropriate, to seise the Minister of Justice and gives, where applicable, notice of this reference to the investigating judge.

If he is seized, the Minister of Justice informs the authority which made the request, if appropriate, that no action, total or partial, may be taken in relation to the request. This information is communicated to the judicial authority concerned and blocks the enforcement of the request for judicial assistance or the return of the enforcement documents.

In 2009, France received 865 mutual legal assistance requests, and submitted 662 requests to other countries. In terms of corruption, more specifically, France has received 29 requests between 2009 and 2010. Some among them were executed while others are still pending. The Bureau for legal cooperation of the Ministry of Justice does not mention any specific problem relating to the treatment of those requests.

France has not assessed the effectiveness of the measures adopted to comply with this provision and does not need any assistance in conducting such an assessment.

(b) Observations on the implementation of the article

Requests received or formulated were sought for classical investigations: hearings, searches and seizures.

Mutual legal assistance requests in terms of corruption received by France from 2009 to 2010 are 29. The majority of them are related to searches. France executed all those requests.

France indicated that mutual legal assistance is possible in terms of offences committed by legal persons.

Article 46 Mutual legal assistance - Paragraph 3

Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;
(b) Effecting service of judicial documents;
(c) Executing searches and seizures, and freezing;
(d) Examining objects and sites;
(e) Providing information, evidentiary items and expert evaluations;
(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
(h) Facilitating the voluntary appearance of persons in the requesting State Party;
(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;
(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;
(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision.

There are no limitations or restrictions in the French domestic law as regards the mutual legal assistance measures that can be requested. Taking evidence, or statements from persons, is a very common mutual legal assistance purpose. As long as the requested measure is not prohibited by a domestic law, and belongs to the powers and capacities of police officers, prosecutors, and judges in a domestic framework, this measure can be implemented for mutual legal assistance purposes.

As stated before, mutual legal assistance requests sent to France may have any purpose, as long as the requested acts can be made by the French authorities (this means the Judiciary, with assistance from the police if needed), according to our domestic law (Criminal Procedure Code).

All acts that the French police officers, Prosecutors, and Judges would be entitled to do in a domestic framework, can be requested and effectively proceeded in the framework of a mutual legal assistance request.

With regard to subparagraph 3(f), since banking secrecy is not an obstacle for the French Judiciary acting in a domestic framework, it is not an obstacle for the execution of MLA requests either.

With regard to subparagraph 3 (g), Law No. 2010-768 of 9 July 2010 aiming at facilitating seizure and confiscation in criminal matters has very significantly enhanced the power of judicial authorities, as regards freezing, seizure and confiscation of criminal assets. This law contains many provisions related to MLA in this regard.

With regard to subparagraph 3 (h), a person may be informed, on the basis of a mutual legal assistance request, that his/her voluntary appearance in the requesting State Party is desirable.

With regard to subparagraph 3 (j), law No. 2010-768 of 9 July 2010 aiming at facilitating seizure and confiscation in criminal matters has very significantly enhanced the power of judicial authorities, as regards freezing, seizure and confiscation of criminal assets. This law contains many provisions related to mutual legal assistance in this regard.

With regard to subparagraph 3 (k), law No. 2010-768 of 9 July 2010 aiming at facilitating seizure and confiscation in criminal matters has very significantly enhanced the power of judicial authorities, as regards freezing, seizure and confiscation of criminal assets. This law contains many provisions related to mutual legal assistance in this regard.

(b) Observations on the implementation of the article

Representatives of specialized jurisdictions indicated that bank secrecy cannot constitute an obstacle to request for legal investigation in France. It was particularly emphasized that the Prosecutor's Office collaborates closely with TRACFIN that analyzes financial data received and submit them to judiciary authorities for their work. The prosecutor's office can search on TRACFIN's database.

France did not have statistical information on assets confiscated in 2010 and their value (bank accounts, real estate, vehicles, boats, shares, etc.).

Article 46 Mutual legal assistance - Paragraph 4

> *Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the above-mentioned provision. This is mainly done through INTERPOL, and, as regards European Union members, EUROPOL and EUROJUST.

EUROJUST is referred to in articles 695-4 to 695-7 of the Criminal Procedure Code, as follows:

> Article 695-4
>
> In accordance with the Council decision of 28 February 2002 establishing Eurojust in order to reinforce the fight against serious crime, the organization Eurojust, as the instrument of the European Union endowed with legal personality acting either collectively or through the intermediary of a national representative, is responsible for promoting and improving coordination and cooperation between the competent authorities of the member states of the European Union in all inquiries and prosecutions which come under its jurisdiction.
>
> Article 695-5
>
> The Eurojust Unit, acting through the intermediary of its national representatives or collectively may:
>
> 1° inform the prosecutor general of any offences of which it has knowledge, and request him to carry out an inquiry or initiate a prosecution;
>
> 2° ask the prosecutor general to report offences, or to have them reported, to the competent authorities of another member state of the European Union;
>
> 3° ask the prosecutor general to oversee the creation of a joint investigation team;
>
> 4° ask the prosecutor general or the investigating judge to send it any information resulting from judicial proceedings which are necessary for the fulfillment of its tasks.
>
> Article 695-6
>
> Where the prosecutor general or the investigating judge seized does not execute a request from the Eurojust Unit, he informs them as quickly as possible of the decision taken and his reasons.
>
> However, the giving of reasons is not required for the requests mentioned in 1°, 2° and 4° of article 695-5 where this might threaten national security or compromise the smooth progress of an investigation underway or the safety of a person.
>
> Article 695-7
>
> Where a request for judicial assistance needs the intervention of the Eurojust organization in order to secure a coordinated approach, Eurojust may transmit its assistance to the requested authorities through the intermediary of the national representative concerned.

(b) Observations on the implementation of the article

France did not have statistical data on recent cases, whether judicial or not, in which it has received, without prior request, information concerning criminal cases.

Article 46 Mutual legal assistance - Paragraph 5

The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision.

Inquiries and criminal proceedings in France are supposed to be kept confidential, without prejudice to the rights of defenders (see for instance art 11 of the Criminal Procedure Code).

Article 11

Except where the law provides otherwise and subject to the defendants' rights, the inquiry and investigation proceedings are secret.

Any person contributing to such proceedings is subjected to professional secrecy under the conditions and subject to the penalties set out by articles 226-13 and 226-14 of the Criminal Code.

However, in order to prevent the dissemination of incomplete or inaccurate information, or to quell a disturbance to the public peace, the district prosecutor may, on his own motion or at the request of the investigating court or parties, publicize objective matters related to the procedure that convey no judgment as to whether or the charges brought against the defendants are well founded.

Article 11-1

With the authorization of the district prosecutor or the investigating judge, as appropriate, elements of the judicial proceedings taking place may be communicated to any authorities or organizations designated to this end by a ruling from the Minister of Justice made after consultation with the minister or ministers concerned, in order for them to carry out research or scientific or technical inquiries, notably with the aim of reducing accidents, or of facilitating the compensation of victims or making good their losses. The agents of these authorities or organizations are then bound by professional secrecy in relation to this information, subject to the conditions and penalties set out in articles 226-13 and 226-14 of the Criminal Code.

(b) Observations on the implementation of the article

The answer does not appear to focus on the question of whether France, before disclosing confidential information transmitted by a foreign State, for purposes of defense, consults with the foreign State.

Article 46 Mutual legal assistance - Paragraph 6

> *The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.*

(a) Summary of information relevant to reviewing the implementation of the article

France declares that it does not have any information as regards this matter. The assessor does not think that the provision under review requires any implementation measure.

(b) Observations on the implementation of the article

The reviewers observed that France could apply provisions contained in international, regional and bilateral conventions relating to mutual legal assistance. Moreover, provisions of the United Nations Convention against Corruption relating to mutual legal assistance can be directly applied in France.

Article 46 Mutual legal assistance - Paragraph 7

> *Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.*

(a) Summary of information relevant to reviewing the implementation of the article

France answered this question by declaring that it was bound by many mutual legal assistance treaties. For that matter, it attached examples of bilateral protocols that were signed with Belgium, Bulgaria, Spain, Netherlands, Romania, Slovenia and the EU.

(b) Observations on the implementation of the article

Experts observed that France apply the mutual legal assistance conventions when they exist.

Article 46 Mutual legal assistance - Paragraph 8

States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision.

As indicated previously, bank secrecy cannot be opposed to the Judiciary, and is not an obstacle to the execution of any mutual legal assistance request.

(b) Observations on the implementation of the article

France indicated that rules and questions relating to bank secrecy cannot constitute an obstacle to the execution of a mutual legal assistance request. Moreover, provisions of the United Nations Convention against Corruption relating to mutual legal assistance can be directly applied in France.

Article 46 Mutual legal assistance - Paragraph 9

(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

.(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision.

As dual criminality is not a requirement for executing a mutual legal assistance request (see above mentioned art. 694 to 694-4 of the Criminal Procedure Code).

France indicates interview as a type of non-coercive action taken when rendering assistance in the absence of dual criminality.

(b) Observations on the implementation of the article

France indicated that it does not make a distinction between coercive and non-coercive measures when it receives or introduces mutual legal assistance requests. Hence, dual criminality is not a mandatory element for the execution of mutual legal assistance requests by France.

Article 46 Mutual legal assistance - Paragraph 10

A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision. It refers, in particular, to article 11 of the European Convention of 20 April 1959 on mutual legal assistance in criminal matters, that specifies that the consent of the concerned person is mandatory.

(b) Observations on the implementation of the article

France indicated that, outside the mentioned legal framework, particularly vis-à-vis non European States, it foresees the possibility of transferring or receiving persons for the purposes mentioned above on the basis of a convention or in application of the principle of reciprocity.

Article 46 Mutual legal assistance - Paragraph 11

For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision by referring to the aforementioned European Convention.

(b) Observations on the implementation of the article

Regarding mutual legal assistance with States which are not Parties to the said European convention, France can apply provisions under review directly.

Article 46 Mutual legal assistance - Paragraph 12

> *. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

(a) Summary of information relevant to reviewing the implementation of the article

France refers to the aforementioned text without giving examples of the effectiveness of the domestic measures adopted to comply with the provision under review.

(b) Observations on the implementation of the article

Concerning mutual legal assistance with States which are not parties to the said European convention, France can apply the provision under review directly.

Article 46 Mutual legal assistance - Paragraph 13

> *13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent*

circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

In France, the Direction of Criminal Affairs and Grace (Direction des affaires criminelles et des Grâces) based in Paris is the central authority. It is placed under the Ministry of Justice.

France assures having notified the Secretary-General of the United Nations as regards its central authority.

France allows that requests for mutual legal assistance and any related communications be transmitted to the central authorities designated by States parties. It indicates as well that it requires that such requests and related communications be addressed to it through diplomatic channels, and, in urgent circumstances, through the International Criminal Police Organization.

(b) Observations on the implementation of the article

France indicated that the Office for International Mutual Legal Assistance of the Direction of Criminal Affairs and Graces is responsible for the application of international mutual legal assistance in criminal matters between France and other countries. This information was notified to the Secretary-General of the United Nations.

Article 46 Mutual legal assistance - Paragraph 14

Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision. It assures having notified the Secretary-General of the United Nations of the language or languages acceptable for a mutual legal assistance request on 27th October 2009.

(b) Observations on the implementation of the article

Experts were satisfied that France complies with its notification obligation.

Article 46 Mutual legal assistance - Paragraph 15

A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision.

(b) Observations on the implementation of the article

Experts noted that France can apply directly the provisions under review.

Article 46 Mutual legal assistance - Paragraph 16

The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

France considers that if a requested State party needs additional information, it may request this information before executing a mutual legal assistance. The difficulty appears when this requested State does not require - or does not receive - an information without which the mutual legal assistance can not be provided, for domestic law reasons.

(b) Observations on the implementation of the article

Experts are satisfied with the answer provided.

Article 46 Mutual legal assistance - Paragraph 17

A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision by referring to the aforementioned article 694-3 of the Criminal Procedure Code.

Article 694-3 of the Criminal Procedure Code

MLA requests coming from judicial authorities of foreign countries are executed according to the rules of procedure foreseen by the present code.

However, where MLA request so mentions it, the request is executed according to rules of procedure indicated by competent authorities of the requesting State, provided that, subject to nullity, those rules do not reduce the rights of parties or procedural guarantees foreseen in the present code. Where MLA request cannot be executed according to the needs of the requesting State, relevant authorities in France inform authorities of the requesting State in due course and indicate under which conditions the request could be executed. Relevant authorities in French and those in the requesting State can later agree on the outcome of the request, by bounding it to the respect of the said conditions if necessary.

The irregular transmission of MLA request cannot lead to nullity for acts accomplished during the execution of this request.

(b) Observations on the implementation of the article

Experts are satisfied with the answer provided.

Article 46 Mutual legal assistance - Paragraph 18

Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

France assures that it permits hearings of witnesses or experts to take place by video conference as described above. For that matter, France provided the text of article 706-71 of the Criminal Procedure Code:

Article 706-71

Where the needs of the inquiry or investigation justify it, the hearing or the interrogation of a person, and also any confrontation between one or more persons, may be carried out in one or more different parts of the French national territory which are linked by means of telecommunication which guarantee the confidentiality of the transmission. Under the same conditions, applications for the purposes of extending a period of detention may be made using audiovisual equipment. In each of these places, an official record is drawn up of the processes which have been carried out there. These processes may be the subject of video or audio recording. The provisions of the fourth to ninth paragraphs of article 706-52 are then applicable.

The provisions of the previous paragraph providing for the use of audiovisual telecommunication are applicable before a trial court for the hearing of witnesses, civil parties and experts.

These provisions are also applicable to the hearing or interrogation of a person detained by an investigating judge, an adversarial hearing prior to the remand in custody of a person detained for another reason, to an adversarial hearing held to extend a pre-trial detention period, to the examination by the investigating chamber or trial court of applications for release, or the interrogation of the defendant before the police court or before the neighbourhood court if this person is detained for another reason.

For the application of the provisions of the two previous paragraphs, if the person is assisted by an advocate, the latter may place himself either with the competent court or with the person concerned. In the first case, he must be able to speak with the latter, in a confidential setting, by using the audiovisual telecommunication. In the second case, a copy of the whole file must be put at his disposal in the place of detention.

Where necessary because an interpreter is unable to travel, the help of an interpreter during a hearing, interrogation or confrontation may also be provided through agency of telecommunication.

A Decree of the Conseil d'Etat specifies, so far as necessary, the manner of application of the present article.

NOTE: Act no. 2005-47, article 11: These provisions come into force on the first day of the third month following their publication. Nevertheless, any cases of which the police court or the neighbourhood court were lawfully seized at that date remain within the jurisdiction of those courts.

Article 694-5

The provisions of article 706-71 are applicable for the simultaneous enforcement, on French national territory and on foreign territory, of requests for judicial assistance coming from foreign judicial authorities or acts of judicial assistance executed at the request of the French judicial authorities.

Any interrogations, hearings or confrontations executed abroad at the request of the French judicial authorities are executed in accordance with the provisions of the present Code, unless an international convention prevents this.

An interrogation or confrontation of a person being prosecuted may only be executed with his consent. The provisions of articles 434-13 and 434-15-1 of the Criminal Code are applicable to witnesses heard on French national territory at the request of the foreign judicial authorities of the State requesting this, under the conditions provided for by the present article.

(b) Observations on the implementation of the article

Experts are satisfied with the answer provided.

Article 46 Mutual legal assistance - Paragraph 19

> *The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision and quotes the 1959 Convention on Mutual Legal Assistance, but has provided no example of the successful implementation..

(b) Observations on the implementation of the article

It was observed that with regards to mutual legal assistance with States which are not parties to the cited 1959 European Convention on Mutual Legal Assistance, France can apply directly the provision under review.

Article 46 Mutual legal assistance - Paragraph 20

> *The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

(a) Summary of information relevant to reviewing the implementation of the article

France is not sure whether a domestic legislation should be necessary to implement this provision. In principle, the content of all enquiries and criminal proceedings is kept secret, under the conditions provided by art.11 of the Criminal Procedure Code.

(b) Observations on the implementation of the article

Experts are satisfied with the answer provided.

Article 46 Mutual legal assistance - Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with the provisions under review on the basis of articles 694-3 and 694-4 of the Criminal Procedure Code

Article 694-3 of the Criminal Procedure Code

MLA requests coming from judicial authorities of foreign countries are executed according to the rules of procedure foreseen by the present code.

However, where MLA request so mentions it, the request is executed according to rules of procedure indicated by competent authorities of the requesting State, provided that, subject to nullity, those rules do not reduce the rights of parties or procedural guarantees foreseen in the present code. Where MLA request cannot be executed according to the needs of the requesting State, relevant authorities in France inform authorities of the requesting State in due course and indicate under which conditions the request could be executed. Relevant authorities in French and those in the requesting State can later agree on the outcome of the request, by bounding it to the respect of the said conditions if necessary.

The irregular transmission of MLA request cannot lead to nullity for acts accomplished during the execution of this request.

Article 694-4

Where the execution of a MLA request coming from judicial authorities of a foreign State is likely to infringe public order or essential interests of the nation, the Prosecutor notified for this request pursuant to subparagraph 3 of article 694-1 transmit it to the Public Prosecutor who decides, wherever possible, to seize the Ministry of Justice and to make, if necessary, notification of this transmission to the investigating judge.

If notified, the Ministry of Justice informs the requesting authority, if necessary, that it cannot, totally or partially, follow up on the request. This information is notified to the concerned judicial authority and constitute an obstacle to the execution of the MLA request or the return of execution's materials.

(b) Observations on the implementation of the article

The aforementioned texts seem to cover the provisions under review.

Article 46 Mutual legal assistance - Paragraph 22

States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision based on the fact that no text establishes an exception as regards fiscal matters. Therefore, mutual legal assistance rules apply for fiscal matters.

(b) Observations on the implementation of the article

Experts observed that France does not refuse mutual legal assistance requests on the ground that the offence includes fiscal issues as well.

Article 46 Mutual legal assistance - Paragraph 23

Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision on the basis of article 694-3 of the Criminal Procedure Code.

Article 694-3 of the Criminal Procedure Code

MLA requests coming from judicial authorities of foreign countries are executed according to the rules of procedure foreseen by the present code.

However, where MLA request so mentions it, the request is executed according to rules of procedure indicated by competent authorities of the requesting State, provided that, subject to nullity, those rules do not reduce the rights of parties or procedural guarantees foreseen in the present code. Where MLA request cannot be executed according to the needs of the requesting State, relevant authorities in France inform authorities of the requesting State in due course and indicate under which conditions the request could be executed. Relevant authorities in French and those in the requesting State can later agree on the outcome of the request, by bounding it to the respect of the said conditions if necessary.

The irregular transmission of MLA request cannot lead to nullity for acts accomplished during the execution of this request.

(b) Observations on the implementation of the article

Experts was ensured that in practice, France informs the requesting State about reasons for eventual mutual legal assistance refusal as well as conditions under which the request could be executed.

Article 46 Mutual legal assistance - Paragraph 24

The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

For France, no domestic legislation is needed to implement the provision under review, which related to international courtesy.

(b) Observations on the implementation of the article

Experts were satisfied with the answer provided. They further observed that the provision under review can be applied directly in France.

Article 46 Mutual legal assistance - Paragraph 25

Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

France considers that its compliance with this provision is not a result of the domestic legislation, but practice.

(b) Observations on the implementation of the article

Experts were satisfied with the answer provided. They further observed that the provision under review can be applied directly in France.

Article 46 Mutual legal assistance - Paragraph 26

Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to

such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision on the basis of articles 694-3 and 694-4 of the Criminal Procedure Code.

(b) Observations on the implementation of the article

When the Office responsible for mutual legal assistance receives a request which has not been written in the prescribed form or does not contain elements required in French law, it contacts embassies of requesting States in order to clarify conditions under which the request could be executed. According to the Office of mutual legal assistance, this is the normal process through which France manages mutual legal assistance requests. Experts considered that this is a good practice that France can share with other States parties to the Convention.

Article 46 Mutual legal assistance - Paragraph 27

Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review is applicable in the domestic law. Moreover, it was implemented because immunity required is respected. For example, it is not possible to communicate any information on the abstention obligation (not prosecute, detain, punish, etc… the concerned persons).

Such immunity is also required by the Convention on Mutual Legal Assistance in Criminal Matters of the Council of Europe of 1959. Article 12 of this convention provides that:

"A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other

restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.
A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.
The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned."

Finally, this provision is reproduced in bilateral conventions on mutual legal assistance in criminal matters that France concluded with other states.

(b) Observations on the implementation of the article

Experts were satisfied with the answer provided.

Article 46 Mutual legal assistance - Paragraph 28

The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision and quotes the 1959 Convention on Mutual Legal Assistance.

(b) Observations on the implementation of the article

France indicated that, outside the legal framework of the 1959 Convention, it does not have other provisions which regulate the issue under review.

Article 46 Mutual legal assistance - Paragraph 29

The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

France declares not having available information at its disposal. However, he considers that, generally, France should not have difficulty providing copied of publicly available documents. France considers that no legislation is required to enable a government to provide government records, document or information that are no public, as long as this is not prohibited by law, in particular art 694-4 of the Civil Procedure Code.

(b) Observations on the implementation of the article

France ensured the reviewers that the provision under review is executed in practice, based on conventional provisions according to which States shall afford one another the widest measures of mutual legal assistance.

Article 46 Mutual legal assistance - Paragraph 30

States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

France declares having given effect to this provision and mentions several agreements on mutual legal assistance. In particular, within the EU, the main instrument is the Convention of 29 May 2000. Outside of the EU and of the Council of Europe, France has mutual legal assistance bilateral conventions with, *inter alia* : South Africa, Algeria, Argentina, Australia, Benin, Brazil, Burkina Faso, Cameroon, Canada, Central African Republic, China, Colombia, Congo, South Korea, Cote dIvoire, Cuba, Djibouti, Dominican Republic, Egypt, United Arab Emirates, Ecuador, United States of America, Gabon, Hong Kong, India, Israel, Laos, Madagascar, Mali, Morocco, Mauritania, Mexico, Monaco, Niger, Paraguay, Saint Marin, Senegal, Chad, Thailand, Togo, Tunisia, and Uruguay.

(b) Observations on the implementation of the article

Experts observed that France has concluded an important number of bilateral conventions with other States of other continents.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

France declares being in compliance with this provision and refers to the 1959 and 2000 Conventions on Mutual Legal Assistance.

(b) Observations on the implementation of the article

Experts noted that France can transfer criminal proceedings for the purposes of a good legal procedure when many jurisdictions are involved.

Article 48 Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

France declares having adopted and implemented the aforementioned measures by referring to the texts mentioned above (Criminal Procedure Code).

France has not assessed the effectiveness of the measures adopted to establish or enhance channels of communication with other States parties' law enforcement authorities, agencies and services.

France stated that it has entered into bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States parties.

(b) Observations on the implementation of the article

France could not provide examples of the successful implementation of the measures taken to comply with this provision. However, it attached cases of bilateral agreements concluded, for example, with the European Union foreseeing a direct cooperation with law enforcement authorities.

The reviewers observed that TRACFIN cooperates with its partners of the European Union and other continents. The Brigade centrale de lutte contre la corruption stated that it cooperates with foreign partners.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or

arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

France states that it has concluded agreements on joint investigations.

In particular, Law of 9 March 2004 introduced into articles 695-2 and 695-3 of the Criminal Procedure Code, an innovative procedural tool, that of the joint investigation team. These provisions are the transpositions into domestic law of:

- Article 13 of the European Convention of 29 May 2000 on Mutual Assistance in Criminal Matters
- Framework Decision of 13 June 2002 of the Council of the European Union on joint investigation teams

Similarly, under section 695-10 of the Criminal Procedure Code, joint investigative teams can also be implemented with countries outside the EU but on the condition that they be parties to every agreement involving similar provisions to those of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union.

As examples of the successful implementation of domestic measures adopted to comply with the provision under review, France mentions a total of 29 joint investigation teams, one of which is a joint Franco-Belgian team regarding a corruption case.

Article 695-2 of the Criminal Procedure Code

Where there is need to carry out, in the context of a French prosecution, either complex inquiries involving the mobilisation of extensive resources and which concern other member states or where several member states are carrying out inquiries into offences which call for coordinated and concerted action between the member states concerned, with the prior agreement of the Minister of Justice and the consent of the member state or states concerned, the competent judicial authority may create a joint investigation team.

Foreign agents seconded by another member state to a joint investigation team may, within the limits of the powers conferred on them by their role, and under the supervision of the competent judicial authorities, have as their mission, as appropriate, over the whole of the national territory:

1° the establishment of any felonies, misdemeanours or petty offences, and to record these in an official record, if necessary in the forms provided for by the law of their state;

2° the reception of the official reports of any statements made to them by any person liable to provide information on the facts in question, if necessary in the forms provided for by the law of their state;

3° the secondment of French judicial police officers in the exercise of their duties;

4° the carrying out of any surveillance and, if they are authorised for this purpose, infiltration, under the conditions provided for by articles 706-81 onwards, and which is necessary for the

application of articles 694-7 and 694-8.

Foreign officers attached to a joint investigation team may carry out these missions subject to the consent of the member state which has implemented their secondment.

These officers may only carry out the operations for which they have been designated. None of the powers which are the preserve of the French judicial police officer who is in charge of the team may be delegated to them.

The original copy of the official records which they prepare, and which must be drafted or translated into French, is attached to the case file.

Article 695-3 of the Criminal Procedure Code:

In the context of a joint investigation team, French judicial police officers and agents attached to a joint investigation team may carry out operations ordered by the head of the team, over the whole of the territory of the State in which they are operating, within the limit of the powers conferred on them by the present Code.

Their tasks are defined by the authorities of the Member State competent to direct the joint investigation team in the territory where the team is working.

They may receive statements and record offences in the forms provided for by the present Code, subject to the consent of the State in whose territory they are operating.

Article 695-10 of the Criminal Procedure Code:

The provisions of sections 1 and 2 of Chapter II are applicable to requests for judicial assistance between France and other states which are parties to any Conventions which include stipulations similar to those of the Convention of 29 May 2000 relating to judicial assistance in criminal matters between the member states of the European Union.

France has not assessed the effectiveness of the measures adopted to comply with this provision and does not need any assistance in conducting such an assessment.

(b) Observations on the implementation of the article

Experts observed that France has established 29 mutual investigation teams. According to them, this seems to be a successful cooperation and a good practice.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and

shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to paragraph (1), France declares having adopted and implemented the aforementioned measures.

To comply with the requirements of this provision, Law of 13 November 2007 introduced article 706-1-3 into the Criminal Procedure Code which authorizes the use of some special techniques for the inquiry, prosecution, investigation and trial of offences under articles 432-11, 433-1, 433-2, 434-9, 434-9-1, 435-1 to 435-4 and 435-7 to 435-10 which are all offences of corruption and influence peddling by or towards public officials.

These techniques are:

- Surveillance (article 706-80): allows the installation of devices for the surveillance of people and goods throughout the national territory; placing tags in vehicles, to enable the surveillance of the movement of certain objects or allow the surveillance of people.
- Infiltration (articles 706-81 to 706-87): Allows the investigator to undertake surveillance of suspected individuals by passing himself off with these people as a co-perpetrator, accomplice or receiver, under an assumed identity.
-The investigator may within this framework have possession of the substances, goods or products from or used to commit crimes.
- The interception of conversations made by telecommunications means (article 706-95) allows investigators to conduct phone tapping in the investigation phase, at the request of the prosecutor and on the liberty and custody judge's decision. (For common law crimes, taps are only possible only within pre-trial investigations).
- Recordings of audio and images from certain places or vehicles (sections 706-96 to 706-102); investigators can capture and record all places or vehicles whether publicly or privately, either in words or pictures (by means of a microphone or a camera in the apartment, office or car of a suspect). To enable this listening or observation, the investigator may be allowed to enter the premises without the consent of the occupier and outside legal hours.

In parallel, article 706-74 of the Criminal Procedure Code (attached to article 706-80) provides the ability to use surveillance for money laundering offences by organized gangs and receiving as an organized gang for all crimes and offences other than those relating to organized crime. These provisions are applicable to all offences under this Convention.

Article 706-1-3:

Article 706-80 to 706-87, 706-95 to 706-103, 706-105 and 706-106 apply to the inquiry, prosecution, investigation and trial of misdemeanours under articles 313-2 (last paragraph), 432-11, 433-1, 433-2, 434-9, 434-9-1, 435-1 to 435-4 and 435-7 to 435-10 of the Criminal Code.

Article 706-73:

The procedure applicable to the inquiry, prosecution, investigation and trial of the following felonies and misdemeanours is as provided for by the present Code, subject to the provisions of the present title:

1° murder committed by an organised gang under 8° of article 221-4 of the Criminal Code;

2° torture and acts of barbarity committed by an organised gang contrary to article 222-4 of the Criminal Code;

3° felonies and misdemeanours relating to drug trafficking contrary to articles 222-34 to 222-40 of the Criminal Code;

4° felonies and misdemeanours relating to kidnapping and false imprisonment committed by an organised gang contrary to article 224-5-2 of the Criminal Code;

5° felonies and aggravated misdemeanours relating to human trafficking contrary to articles 225-4-2 to 225-4-7 of the Criminal Code;

6° felonies and aggravated misdemeanours relating to procuring contrary to articles 225-7 to 225-12 of the Criminal Code;

7° theft committed by an organised gang contrary to article 311-9 of the Criminal Code;

8° aggravated felonies of extortion contrary to articles 312-6 and 312-7 of the Criminal Code;

8°A (repealed)

9° the felony of destroying, defacing or damaging property committed by an organised gang, contrary to article 322-8 of the Criminal Code;

10° felonies relating to counterfeiting contrary to articles 442-1 and 442-2 of the Criminal Code;

11° felonies and misdemeanours which constitute acts of terrorism contrary to articles 421-1 to 421-6 of the Criminal Code;

12° misdemeanours relating to weapons and explosives committed by an organised gang contrary to articles L.2339-2, L.2339-8, L.2339-10, L.2341-4, L.2353-4 and L.2353-5 of the Defence Code

13° misdemeanours in relation to the illegal entry, movement and residence of a foreigner in France committed by an organised gang, contrary to the fourth paragraph of I of article 21 of Decree nº 45-2658 of 2 November 1945 relating to the conditions of entry and residence for foreigners in France;

14° money laundering misdemeanours contrary to articles 324-1 and 324-2 of the Criminal Code, or receiving stolen property contrary to articles 321-1 and 321-2 of the same Code, of the products, income and items resulting from the offences mentioned in 1° to 13°;

15° criminal association misdemeanours contrary to article 450-1 of the Criminal Code, where their aim is the preparation of one of the offences mentioned in 1° to 14°;

16° misdemeanours of not accounting for income proportionate to lifestyle contrary to article 321-6-1 of the Criminal Code, when in relation to one of the offences mentioned in 1° to 15°.

For the offences mentioned in 3°, 6° and 11°, the provisions of the present title as well as those of titles XV, XVI and XVII are applicable, unless otherwise indicated.

Article 706-74:

Where the law so provides, the provisions of the present title are also applicable:

1° to felonies and misdemeanours committed by organised gangs, other than those which come under article 706-73;

2° to misdemeanours of participation in a criminal association under the second paragraph of article 450-1 of the Criminal Code, other than those which come under 15° of article 706-73 of the present Code.

Article 706-80:

Judicial police officers, and under their authority, judicial police agents, after having informed the district prosecutor of this and unless he opposes this, may extend to the whole of the national territory the surveillance of persons against whom a plausible reason or reasons exist to suspect that they have committed any of the felonies or misdemeanours that fall within the scope of articles 706-73 or 706-74, or the surveillance of the conveyance or transport of objects, goods or products arising from the commission of any of these offences or used to commit them.

Advance notice of any extension of jurisdiction provided by the previous paragraph must be given to the district prosecutor of the district Main District Court in whose jurisdiction the surveillance operations are liable to begin, or, where applicable, the district prosecutor seized in accordance with the provisions of article 706-76.

Article 706-81:

Where the needs of the inquiry or investigation into any of the felonies or misdemeanours falling within the scope of article 706-73 justify this, the district prosecutor or, after hearing his opinion, the investigating judge seized of the case, may authorise an infiltration operation to be carried out, under their respective supervision, in accordance with the conditions provided for by the present section.

Infiltration is when a specially authorised judicial police officer or agent, in accordance with the conditions determined by decree and acting under the authority of a judicial police officer appointed to oversee the operation, carries out surveillance on those persons suspected to have carried out a felony or a misdemeanour by passing himself off to these persons as one of their fellow perpetrators, accomplices or receivers of stolen goods.

To this end, a judicial police officer or agent is authorised to use an assumed identity and to commit, where necessary, the actions mentioned in article 706-82. Under penalty of nullity, these acts may not constitute an incitement to commit any offences.

A report of the infiltration operation is drafted by the judicial police officer who coordinated the operation, and contains only those elements strictly necessary for the noting of any offences, without endangering the safety of the infiltrator agent or of those persons recruited in accordance with article 706-82.

Article 706-82:

Without incurring criminal liability for their actions, judicial police officers or agents authorised to carry out an infiltration operation may, in all parts of the French national territory:

1° acquire, possess, transport, dispense or deliver any substances, goods, products, documents or information resulting from the commission of any offences or used for the commission of these offences;

2° use or make available to those persons carrying out these offences legal or financial help, and

also means of transport, storage, lodging, safe-keeping and telecommunications. The exemption from liability provided for by the first paragraph also applies, in respect of acts committed with the sole aim of infiltration, to those persons recruited by officers or agents of the judicial police in order to enable this operation to be carried out.

Article 706-83:

Under penalty of nullity, the authorisation given in accordance with article 706-81 is issued in writing and must be specially reasoned.

It details the offence or offences which justify the choice of these proceedings and the identity of the judicial police officer under whose authority the operation will be carried out. This authorisation determines the length of the infiltration operation, which may not exceed four months. The operation may be renewed under the same conditions of form and duration. The judge who authorised this operation may, at any time, order its suspension before the expiry of the fixed time limit.

The authorisation is attached to the case file after the infiltration operation has been completed.

Article 706-84:

The true identity of judicial police officers or agents who have carried out infiltration operations under an assumed identity must not appear at any stage in the proceedings. Divulging the identity of these judicial police officers or agents is punished by five years' imprisonment and by a fine of €75,000.

Where such a revelation has led to violence or assault and battery against these persons or their spouses, children or direct ascendants, the penalties are increased to seven years' imprisonment and a fine of €100,000.

Where such a revelation has caused the death of these persons or their spouses, children or direct ascendants, the penalties are increased to ten years' imprisonment and a fine of €150,000, without prejudice, where appropriate, to the application of the provisions of Chapter 1 of Title II of Book II of the Criminal Code.

Article 706-85:

Where a decision is made to suspend the operation, or the period determined by the ruling which authorised the infiltration expires and is not renewed, the undercover agent may carry out the activities mentioned in article 706-82, without being criminally responsible, for only for such a period as is strictly necessary for him to put an end to his surveillance under conditions ensuring his safety, which may not exceed four months. The judge or prosecutor who gave the authorisation provided for by article 706-81 is informed of this as quickly as possible. If, at the end of the four month period, the infiltrator undercover agent cannot end his operation in conditions that ensure his safety, the judge or prosecutor authorises a four month extension to this period.

Article 706-86:

The judicial police officer under whose authority the infiltration operation is carried out may solely be heard in relation to this operation only in the capacity of a witness. However, if it emerges from the report mentioned in the third paragraph of article 706-81 that the person placed under judicial investigation or appearing before a trial court has been implicated due to reports made by an agent who personally carried out infiltration operations, this person may request to be confronted with the agent under the conditions provided for by article 706-61. The questions asked of the undercover agent at this confrontation may not be designed to reveal, whether directly or indirectly, his true identity.

Article 706-87:

No conviction may be returned solely on the basis of statements made by judicial police officers or agents who have carried out an infiltration operation.

The provisions of the present article are, however, not applicable where the judicial police officers or agents testify under their true identity.

Article 706-95:

If the needs of a flagrancy inquiry or a preliminary inquiry into one of the offences within the scope of article 706-73 justify this, the liberty and custody judge of the district court may, at the request of the district prosecutor, authorise the interception, recording or transcription of correspondence by telecommunication, under the provisions of paragraph two of article 100, article 100-1 and articles 100-3 to 100-7, for a maximum period of fifteen days, renewable once under the same conditions of form and duration. These operations are carried out under the supervision of the liberty and custody judge.

For the application of the provisions of articles 100-3 to 100-5, the powers conferred on the investigating judge or the judicial police officer nominated by him are exercised by the district prosecutor or the judicial police officer appointed by him.

The liberty and custody judge who has authorised this interception is immediately informed by the district prosecutor of any actions carried out in accordance with the preceding paragraph.

Article 706-96:

If the needs of an investigation into any of the felonies or misdemeanours falling within article 706-73 justify this, the investigating judge, by means of a reasoned decision made after hearing the opinion of the district prosecutor, may authorise the judicial police officers or agents acting under a rogatory commission to install any technical device designed to capture, preserve, transmit or record words spoken by any person or persons in a private or confidential context, in private or public places or vehicles, or the images of any person or persons in a private place, without the consent of the persons concerned. These procedures are carried out under the authority and supervision of the investigating judge.

In order to install the technical device mentioned in the first paragraph, the investigating judge may authorise entry into a vehicle or a private place, even outside the times provided for by article 59, without the knowledge or the consent of the owner or possessor of the vehicle or the occupant of the places concerned, or of any person with rights over them. If an inhabited dwelling is involved and the operation must be carried out outside the times provided for by article 59, this authorisation is given by the liberty and custody judge seized to this end by the investigating judge. These procedures, which may serve no other purpose than the installation of the technical device, are carried out under the authority and the supervision of the investigating judge. The provisions of the present paragraph are also applicable to operations to remove any technical device so placed.

The implementation of the technical device mentioned in the first paragraph may not involve any place mentioned in articles 56-1, 56-2 and 56-3, nor may this be carried out in any vehicle, office or domicile of the persons outlined in article 100-7.

Where the procedures provided for by the present article reveal other offences than those mentioned in the ruling by the investigating judge, this does not constitute grounds for nullity in proceedings for related offences

Article 706-97:

Decisions taken in accordance with article 706-96 must contain all the elements needed to allow the identification of the vehicles or public or private places targeted, the offence which has caused these measures to be taken, and also the duration of these measures.

Article 706-98:

The decisions taken last for a maximum period of four months. They may be renewed only under the same conditions of form and duration.

Article 706-99:

The investigating judge or judicial police officer nominated by him may call upon any qualified official belonging to any department, unit or organisation placed under the authority or the control of the Minister of the Interior, a list of which is determined by decree, to carry out the installation of the technical devices mentioned in article 706-96.

The judicial police officers or agents or other qualified officials mentioned in the first paragraph of the present article and responsible for carrying out the procedures mentioned in article 706-96 are authorised to possess the equipment mentioned in the provisions of article 226-3 of the Criminal Code.

Article 706-100:

The investigating judge or judicial police officer appointed by him draws up an official report of each of the procedures installing these technical devices, and of the procedures for sound or audiovisual capturing, preserving or recording. This official record details the date and the time when these operations started and when they finished.

The recordings are placed under official seals.

Article 706-101:

The investigating judge or judicial police officer appointed by him describes or transcribes any images or the conversations recorded which are useful for the establishment of the truth, in an official record which is attached to the case file.

Conversations in foreign languages are transcribed into French with the assistance of an interpreter recruited for this purpose.

Article 706-102:

On the expiry of the prosecution limitation period the sound or audiovisual recordings are destroyed, on the request of the district prosecutor or the prosecutor general.

With regard to paragraph (2), France declares being in compliance with this provision.

The provision under review has been implemented through the following texts:

- Article 40 of the Convention Implementing the Schengen Agreement of 14 June 1985 between the governments of the states of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed 19 June 1990, relating to cross-border observations.

- Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, at Articles 12 (surveillance of deliveries), 13 (Joint Investigation Teams), 14 (covert investigations) and 15 (telephone interception).

France has not assessed the effectiveness of the measures adopted to comply with this provision and does not need any assistance in conducting such an assessment.

With regard to paragraph (3), France declares being in compliance with this provision by referring to the articles quoted in paragraph 4 of article 50.

With regard to paragraph (4), France declares being in compliance with this provision in the case of undercover operations in accordance with articles 706-81 to 706-87 of the Criminal Procedure Code.

> Article 694-6 of the Criminal Procedure Code:
>
> Where the surveillance provided for by article 706-80 must be executed in a foreign State, it is authorized by the district prosecutor in charge of the inquiry, under the conditions provided for by international conventions.
>
> The official reports of the enforcement of the surveillance operations or reports pertaining to this and also the authorization for carrying out the enforcement of this on foreign territory are attached to the case file.
>
> Article 694-7 of the Criminal Procedure Code:
>
> With the prior consent of the Minister for Justice seized of a request for judicial assistance to this end, foreign police officers may carry out infiltration operations in accordance with the provisions of articles 706-81 to 706-87 on French national territory, under the supervision of French judicial police officers. The consent of the Minister for Justice may be subject to conditions. The operation must next be authorized by the district prosecutor of the district court of Paris or the investigating judge of the same jurisdiction, under the conditions provided for by article 706-81.
>
> The Minister for Justice may only give his consent if the foreign officers belong to a specialist division in their country and carry out police missions similar to those executed by the specially trained French national agents mentioned in article 706-81.
>
> Article 694-8 of the Criminal Procedure Code:
>
> With the consent of the foreign judicial authorities, the foreign police officers mentioned in the second paragraph of article 694-7 may also, under the conditions provided for by articles 706-81 to 706-87 and under the supervision of French judicial police officers, participate in any infiltration operations carried out in French national territory in the context of a national legal proceedings.
>
> Article 694-9 of the Criminal Procedure Code:
>
> Where, in accordance with the stipulations provided for by international convention, the district prosecutor or the investigating judge inform the foreign judicial authorities of information resulting from criminal proceedings in progress, he may impose such conditions on its use as he sees fit.

France has not assessed the effectiveness of the measures adopted to comply with this provision and does not need any assistance in conducting such an assessment.

(b) Observations on the implementation of the article

Special investigative techniques described above have been accepted (introduced?) in France since 2004. With regard to corruption cases, these special investigative techniques

were accepted (introduced?) since 13 November 2007, date that the scope of such techniques was extended to corruption cases. These techniques apply in legal proceedings.

There is no statistical data that may illustrate the assessment of the use of such techniques. However, we can affirm that such techniques are used under the strict supervision of the judges of the Prosecutor's Office and other judges (of the Conseil supérieur de la Magistrature), who assess the proportionality between the offence committed and the needs of the investigation, and examine the respect of conditions foreseen by the legal texts regulating the use of such techniques.

For example, the power of surveillance, foreseen by article 706-80 of the Criminal Procedure Code, allows judicial officers, and under their authority, judicial police agents, may extend to the whole of the national territory the surveillance of persons against whom a plausible reason or reasons exist to suspect that the persons have committed any of the felonies or misdemeanours that fall under the scope of article 706-63 and 706-64 of the Criminal Procedure Code, but also the scope of corruption offences as foreseen by article 706-1-13 of the Criminal Procedure Code, or the surveillance of the transport of objects, goods or products arising from the commission of such offences, without having the authorization of the District Prosecutor.

Such measure is acceptable because it does not restrict freedom of individuals.

However, the application of a surveillance operation requires that the district prosecutor is informed prior to the operation. The district prosecutor can oppose to the need of such a measure.

As the question only consists in assembling information about agreements on the use of special investigative techniques that France has, please note that before the transposition of article 13 of Convention of 29 May 2000 and Framework Decision of 13 June 2002 pertaining to joint investigation teams into domestic law by Law of 9 March 2004 introducing articles 695-2 and 695-3 of the Criminal Procedure Code, France and Spain established in July 2003 a working group dedicated to draft a standard protocol for the creation of joint investigation teams.

Similar protocols of standard agreements have been validated since that time:

- 6 November 2003: with Spain
- 12 October 2006: with Germany
- 23 February 2007: with Slovenia
- 19 June 2007: with Romania
- 5 February 2008: with the Netherlands
- 28 May 2008: with Belgium
- 16 June 2008: with Bulgaria

France also established a relationship with competent authorities of Portugal, Poland, the United Kingdom, Czech Republic, Sweden, Hungary, Malta, and Cyprus for the same purpose.

The first joint investigation agreement was signed on 15 September 2004 with Spain. The first tripartite joint investigation agreement) was signed on 23 March 2010 with Spain and Sweden.

Statistical data by country and by area :

States	CRIM ORG or ECO-FI	Terrorism	Total
Germany	1	1	**2**
Belgium	9	3	**12**
Bulgaria	1	0	**1**
Spain	7,5	7	**14,5**
Netherlands	1	0	**1**
Romania	2	0	**2**
Sweden	0,5	0	**0,5**
United Kingdom	1	0	**1**
Total	**23**	**11**	**34**

Statistical data by year :

Year	Number of Joint Investigation Team (JIT) concluded
2004	1
2005	3
2006	6
2007	3
2008	6
2009	5
2010	7
2011*	3
Total	34

Statistical data of Joint Investigation Teams (ECEs) in the area of organized crime or the economic and financial areas, and terrorism, according to the category of offences or the kinds of terrorist organizations concerned:

Category of offence	Number of Joint Investigation Teams concerned
DrugTrafficking	12
Gang robbery	5
Trafficking in women	2
Laundering	1
Fraud/Piracy	1
Corruption	1
Fiscal fraud	1
TOTAL	23

Terrorism	Nombre of JIT
	11

France stated that it is possible to execute cross-boarder surveillance as well as infiltration of foreign agents in France, no matter if the proceedings was initiated abroad or in France. However, one should remember that France does not admit the principle of a controlled cross-border delivery that allows the interrogation of individuals who detain prohibited goods or products, their conditional release, and their surveillance in order to identify the final recipient of the delivery. France accepts the controlled cross-border delivery of prohibited goods that are seized in transit without interrogation of individuals. The typical example of such procedure is the seizure of prohibited goods transported by a freight wagon. It is thus possible to make a partial or total substitution of such goods, depending on the legislation of the country of destination, which may want to control the reality of the prohibited characteristics of such goods.

Experts consider that joint investigation teams established by France is a good practice to be shared with other States arties to the Convention.