

Financial Crime in France: Overview

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Q&A guide to financial and business crime in France.

The Q&A gives a high-level overview of matters relating to corporate fraud, bribery and corruption, insider dealing and market abuse, money laundering, terrorist financing and breaches of financial/trade sanctions, financial record keeping, due diligence, establishing corporate liability, cartels, immunity and leniency, cross-border co-operation, whistleblowing, and managing exposure to corruption and corporate crime. The Q&A provides details of the specific offences, regulatory authorities and their investigation and enforcement powers, safeguards, civil suits, reaching settlement with the authorities, and reforms, trends and developments.

Corporate Fraud

Regulatory Provisions and Authorities

1. What are the main regulatory provisions and legislation relevant to corporate fraud?

"Fraud" is not a separately defined crime under French law, and there is no exact equivalent of the "mail fraud" and "wire fraud" provisions of the US Criminal Code. Rather, fraudulent conduct can be an element of various criminal provisions of the French Criminal Code (*Code penal*) that may be relevant in a corporate context.

Offences

2. What are the specific offences relevant to corporate fraud?

Swindling (*Escroquerie*)

Elements. Swindling consists of depriving a physical person or a company of money or a thing of value, or of services, or inducing the discharge of a debt by trickery, including by use of a false name, identity or pretences (Article 313-1, Criminal Code).

Penalties. Five years' imprisonment and/or a EUR375,000 fine.

All the penalties provided for corporate fraud offences apply to natural persons. For legal entities, the maximum criminal fines are five times the amount for natural persons.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. There are no statutory defences to corporate fraud offences other than those based on the failure to establish intent or a material element of the offence. Another defence available to corporations would be to argue that the acts were not committed by an "organ or representative" capable of binding the corporation.

Breach of Trust (*Abus de Confiance*)

Elements. Breach of trust consists of the misappropriation of funds or property that were received on the understanding that they would be handled in a certain way (Article 314-1, Criminal Code).

Penalties. Three years' imprisonment and/or a EUR375,000 fine.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Swindling (Escroquerie)*.

Taking Advantage (*Abus de Faiblesse*)

Elements. Taking advantage means causing a victim to act or abstain from acting, in a way that causes them injury, by taking advantage of a state of ignorance, weakness or vulnerability, including the use of psychological pressure (Article 223-15-2, Criminal Code).

Penalties. Three years' imprisonment and/or a EUR375,000 fine.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Swindling (Escroquerie)*.

Extortion (*Extorsion*)

Elements. Extortion consists of obtaining anything of value (such as information, funds, signatures and so on) by using violence or the threat of violence (Article 312-1, Criminal Code).

Penalties. Seven years' imprisonment and/or a EUR100,000 fine.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Swindling (Escroquerie)*.

Falsification (*Faux*)

Elements. The crime of falsification involves the fraudulent alteration of the veracity of a document or other medium that creates a right or obligation (Article 441-1, Criminal Code).

Penalties. Three years' imprisonment and/or a EUR45,000 fine.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Swindling (Escroquerie)*.

Tax Fraud (*Fraude Fiscale*)

Elements. This is tax evasion where there is both:

- A material element (taking or attempting to take steps designed to minimise taxes unlawfully).
- An element of intention (knowledge that the tax is due).

(Article 1741, General Tax Code (Code Général des Impôts).)

Penalties. Five years' imprisonment and/or a EUR500,000 fine.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Swindling (Escroquerie)*.

Misuse of Corporate Funds (*Abus de Biens Sociaux*)

Elements. This applies to corporate managers who directly or indirectly use corporate property for purposes inconsistent with the interest of the company they manage (Articles L241-3 and L242-6, Commercial Code (Code de Commerce)).

Penalties. Five years' imprisonment and/or a EUR375,000 fine.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Swindling (Escroquerie)*.

Enforcement

3. Which authorities have the powers of prosecution, investigation and enforcement in cases of corporate or business fraud? What are these powers and what are the consequences of non-compliance? Which authority

makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

Public Prosecutor

Investigation and enforcement powers. Business crimes are generally investigated by the Public Prosecutor, with an Investigating Magistrate (*juge d'instruction*) being appointed in cases of complex violations. They work with police agencies (including those with special expertise). Their investigative powers in business crimes cases are the same as those available to them in cases involving most other ordinary crimes.

The scope of prosecution powers varies depending on the type of investigation, which may be:

- A flagrant offence investigation (*enquête de flagrance*) led by the Public Prosecutor, which occurs when either:
 - a crime punishable by imprisonment is in the process of being committed or has just been committed; or
 - the suspect is found in the possession of something that implicates their participation in the offence.

This investigation provides for a wide variety of temporary detention, interrogation, search and seizure powers.

- A preliminary investigation (*enquête préliminaire*) led by the Public Prosecutor, which can be used in any case regardless of the nature of the crime. Suspects must normally give their consent to searches or seizures. No coercive measures are generally allowed.
- A judicial investigation (*information judiciaire* or *instruction*) led by an Investigating Magistrate, which occurs when the Investigating Magistrate is appointed by a Public Prosecutor. The Investigating Magistrate enjoys very broad powers of arrest, interrogation of witnesses and suspects, search and seizure.

If there are one or more plausible reasons to suspect that a person has committed or attempted to commit a crime punishable by a prison sentence, the Public Prosecutor or the Investigating Magistrate can summon a suspect for questioning under a custody procedure (*garde à vue*).

Alternatively, suspects can be questioned under a non-custodial regime (*audition libre*). The suspects must give their consent and must be notified of:

- The date and nature of the offence.
- Their right to attorney representation.
- Their right to leave the interview whenever they choose.

(Article 61-1, Code of Criminal Procedure (*Code de procédure pénale*) (CCP).)

If there is no plausible reason to suspect that the suspect has committed or attempted to commit a crime, they can only be interviewed as witnesses, with no right to representation by counsel (Article 62, CCP).

If the Investigating Magistrate finds that there is serious and corroborated evidence of a crime, the suspect will be summoned to appear before an Investigating Magistrate for a "first interview" (*interrogatoire de première comparution*), before being formally put under investigation (*mis en examen* status).

Public Prosecutors and Investigating Magistrates can conduct dawn raids on premises and seize documents. These powers differ depending on the type of investigation (see above).

Public Prosecutors and the Investigating Magistrates have broad powers to obtain evidence, including evidence held by third parties, including:

- Interviewing targeted person or third-parties.
- Conducting dawn raids.
- Obtaining wiretaps and data held by telecommunication operators.

They also have power to obtain evidence abroad. The Ministry of Justice has an Office for International Co-operation on Criminal Matters (*Bureau de l'Entraide Pénale Internationale*), which facilitates such co-operation, often under mutual legal assistance treaties or memoranda of understanding. The European Investigation Order (*Décision d'Enquête Européenne*) enables judicial authorities in one EU member state to request that evidence be gathered and transferred from another EU member state.

A suspect can be arrested and held for a period of 24 hours (subject to renewal periods) for questioning if there are one or more plausible reasons to suspect that they have committed or attempted to commit a crime or offence punishable by a prison sentence (*garde à vue* mentioned above).

A suspect under formal investigation by an Investigating Magistrate (*mis en examen*) for an infraction that carries a prison sentence may also be placed "under judicial control" (*contrôle judiciaire*). One measure that may be ordered as part of that control is the provision of a bond as a security. Providing a bond is only one of several measures, including measures that restrict liberty, to which an individual under judicial control may be ordered to comply.

An individual under formal investigation for an offence that carries a minimum prison sentence of three years or more can be taken into pre-trial custody (*détention provisoire*) for a four-month period (subject to several renewal periods). A judge (*juge des libertés et de la détention*) decides whether pre-trial custody is necessary.

Power to charge. If no Investigating Magistrate is appointed, the Public Prosecutor has the authority to charge the offence and to turn the case over to the first instance criminal court for trial (*citation directe*).

In complex cases, the Public Prosecutor may request the presiding judge of the local court to appoint an Investigating Magistrate. The Public Prosecutor determines the scope of the Investigating Magistrate's treatment of the case. In some circumstances, victims can apply to an Investigating Magistrate for a criminal investigation and may participate in it as civil parties (*parties civiles*). In certain circumstances, a non-governmental organisation with a pre-existing demonstrable interest in the subject matter may also be considered a civil party to a criminal investigation.

If the Investigating Magistrate decides there are important and consistent indications of culpability of a particular legal person (including a company or other entity), that person or entity is put under formal investigation (*mise en examen*). At that point, the party has a right to:

- Access the file compiled by the Investigating Magistrate.

- Make formal requests to the Investigating Magistrate.
- File submissions.

At the end of the investigation, the Investigating Magistrate has discretion to either drop some or all of the charges or to turn the case over for trial.

Safeguards

4. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

Abuse of Investigatory Powers

The conduct of criminal investigations is subject to the:

- European Convention on Human Rights (ECHR).
- French Constitution.
- CCP.

If the case was led by a Public Prosecutor, the conduct of the investigation is discussed during the trial. If an Investigating Magistrate was appointed to lead the proceeding, the conduct of the investigation may be reviewable before the trial by the Investigating Chamber (that is, a dedicated chamber of the Court of Appeals).

"Professional secrecy" (*secret professionnel*) is the French near equivalent of attorney-client privilege, and protects all communications between lawyers and their clients from being disclosed. A lawyer cannot violate professional secrecy, even with the client's permission. If a lawyer violates this privilege, they can be subject to criminal and professional sanctions. Professional secrecy therefore provides significant protection to individuals under investigation.

Under Article 11 of the CCP, the investigation phase by the Public Prosecutor or Investigating Magistrate must be secret. Only formal participants in the investigation (magistrates, clerks, police officers, experts) are bound by that secrecy, but the accused, the victim and journalists are not. Lawyers are not bound by Article 11, but by Article 2 *bis* of the National Code of Ethics (*Règlement Intérieur National*), which provides for a similar secrecy obligation. Copies of documents from the file cannot be automatically shared by lawyers with their clients, and they can only do so under specific conditions set out under Article 114 of the CCP. A violation of the secrecy obligation can be criminally penalised by a one-year prison sentence and a EUR15,000 fine (Article 226-13, Criminal Code).

Appeals

The suspect can appeal the first instance criminal court decision to the Court of Appeals. Appeal against the ruling of the Court of Appeals to the Court of Cassation is possible, but the Court of Cassation will only address matters of law, and not of fact.

Civil Suits and Settlement

5. Can private parties bring civil suits for cases of corporate or business fraud?

Civil parties can participate as parties in a criminal trial (and appeal) and be awarded damages by the same court that decides on the issue of criminal responsibility. In the absence of such a proceeding, victims can commence a separate civil suit. Their damages are generally limited to actual losses and to lost opportunities (*perte de chance*). The court may also impose general damages not linked to a specific loss, called "moral damages" (*préjudice moral*), to compensate the victim for mental anguish or distress. Punitive damages do not exist under French law, but this question is currently under discussion since the notion of "civil penalty" was introduced in the reform bill on civil liability presented by the French Ministry of Justice in March 2017.

In some limited circumstances, a "foundation" or other group can be established to seek compensation for its participants, generally in the context of consumer injuries.

On 17 March 2014, French law introduced opt-in class action proceedings, which are available for individual consumers. Consumers can only bring a class action suit through a consumer association registered under French law, and can only seek remedies for the material loss that they have suffered (damages for physical or moral loss can only be recovered through individual lawsuits). Before 2016, this proceeding applied to consumer and competition law violations only. It has recently been extended to:

- Discrimination cases.
- Damage to the environment.
- Breaches of the data protection law.

6. Can individuals and/or legal entities reach a civil settlement with the appropriate authority in cases of corporate or business fraud?

A pre-trial guilty plea procedure (*comparution sur reconnaissance préalable de culpabilité*) exists for most ordinary crimes, including business crimes. The procedure can be initiated by the Public Prosecutor, on its own initiative or at the request of the suspect or, under certain conditions, by an Investigating Magistrate. In this procedure, the suspect agrees to plead guilty to a particular charge in return for a more lenient sentence. The Public Prosecutor can propose a prison sentence not exceeding one year and a fine not exceeding the maximum amount faced before the criminal court. If the suspect accepts the agreement, the agreement still needs to be approved by the court. If the suspect refuses the agreement, the case will be tried in the normal way.

A deferred prosecution agreement (*convention judiciaire d'intérêt public*) procedure (DPA) also exists for corporate criminal liability for corruption, influence peddling, tax fraud and laundering of proceeds of tax fraud. This permits a Public Prosecutor to propose an agreement whereby a corporation, without admission of guilt, agrees to pay a fine of up to 30% of its annual turnover, and may agree to certain other obligations such as an enhanced compliance programme and supervision by a monitor.

See also [Question 35](#).

Bribery and Corruption

Regulatory Provisions and Authorities

7. What are the main regulatory provisions and legislation relevant to bribery and corruption?

Passive corruption and active corruption are unlawful under French law. Passive corruption occurs when a domestic or foreign public official or private actor unlawfully solicits a bribe, either directly or indirectly. Active corruption occurs when another person, either directly or indirectly, unlawfully induces, or attempts to induce, a domestic or foreign public official or private actor to accept a bribe (Articles 433-1, 433-2, and 433-3, Criminal Code). Attempted corruption does not constitute a specific offence. However, corruption exists as soon as a bribe is proposed or solicited, regardless of its acceptance by the counterparty.

In response to criticism regarding the lack of foreign bribery convictions in France, Law 2016-1691 of 9 December 2016 on transparency, anti-corruption and economic modernisation (Sapin II Law) was adopted. Under the Sapin II Law, companies operating in France with more than 500 employees and with annual turnover of more than EUR100 million must implement compliance programmes to detect corruption. The law also created a new Anti-Corruption Agency (*Agence française anticorruption*) to supervise the implementation of corporate compliance programmes. The Anti-Corruption Agency can impose regulatory sanctions of up to EUR200,000 against directors and EUR1 million against companies for failing to have appropriate compliance measures. In December 2020, the Anti-Corruption Agency issued non-binding guidelines with regards to the implementation of compliance programmes to detect corruption.

See also [Question 31](#).

8. What international anti-corruption conventions apply in your jurisdiction?

France is a party to two international anti-corruption conventions:

- OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions 1997.

- UN Convention Against Corruption 2003 (Corruption Convention), ratified in France in 2005.

France is also a party to the:

- Council of Europe Civil Law Convention on Corruption 1999, ratified in France in 2008.
- Council of Europe Criminal Law Convention on Corruption 1999, ratified in France in 2008.

France is a party to the Convention on the fight against corruption involving officials of the European Communities or officials of member states of the EU, which entered into force on 28 September 2005.

France has also adopted Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

Offences

9. What are the specific bribery and corruption offences in your jurisdiction?

Foreign Public Officials

Elements. Passive and active corruption of foreign public officials are criminal offences. Passive corruption occurs when a foreign public official unlawfully solicits or accepts a bribe, either directly or indirectly. Active corruption occurs when another person, either directly or indirectly, unlawfully induces, or attempts to induce, a foreign public official to accept a bribe. A foreign public official is defined as an officer or employee of a foreign government or international organisation.

Penalties. For individuals, bribery is punishable by up to ten years' imprisonment and a fine of up to EUR1 million, or up to twice the amount gained in the commission of the offence.

For companies, the fine is up to EUR5 million or up to ten times the amount gained. A corporate entity convicted of corruption by a final judgment is excluded from public procurement for a period of five years.

Right to bail. See *Question 3, Public Prosecutor*.

Right to bail. See *Question 3*.

Defences. Bribery and corruption offences have no safe harbours or exemptions. A defence can be raised based on the absence of intent or failure to establish the material elements of a corruption offence. Another defence available to corporations would be to argue that the acts were not committed by an "organ or representative" capable of binding the corporation.

Domestic Public Officials

Elements. Passive and active corruptions of domestic officials are criminal offences. Passive corruption occurs when a domestic official unlawfully solicits or accepts a bribe, either directly or indirectly. Active corruption occurs when another person, either directly or indirectly, unlawfully induces, or attempts to induce, a domestic official to accept a bribe.

Penalties. See above, *Foreign Public Officials*.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Foreign Public Officials*.

Private Commercial Bribery

Elements. It is a criminal offence to commit bribery (whether active or passive) of a private person to induce them to abuse a contractual relationship or relationship of trust.

Penalties. For individuals, private commercial bribery is punishable by up to five years' imprisonment and a fine of up to EUR500,000, or up to twice the amount gained in the commission of the offence.

For companies, the fine is up to EUR2.5 million or up to ten times the amount gained. A corporate entity convicted of corruption by a final judgment is excluded from public procurement for a period of five years.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Foreign Public Officials*.

10. Can associated persons (such as spouses) and agents be liable for these offences and in what circumstances?

Associated persons and agents are not liable for corruption. However, French law does recognise the principle of "aiding and abetting" (*complicité*), which applies to persons who:

- Knowingly facilitate, help or assist the preparation of a criminal offence.
- Provoke an offence (through a gift, promise, threat, order, or abuse of authority or power).
- Give an instruction to commit an offence.

(Articles 121-6 and 121-7, Criminal Code.)

This legal concept applies to corruption.

Enforcement

11. Which authorities have the powers of prosecution, investigation and enforcement in cases of bribery and corruption? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

Public Prosecutor

The Public Prosecutor is generally responsible for initiating prosecutions and investigating bribery and corruption. An Investigating Magistrate is usually appointed in complex cases (see [Question 3](#)).

The Public Prosecutor does not have a monopoly on initiating prosecutions for acts of corruption committed abroad by foreign public officials. Associations fighting corruption can file a complaint with an Investigating Magistrate to trigger such a prosecution.

French courts can exercise extra-territorial jurisdiction over offences committed outside French territory by or against French nationals, including corporations (Article 113-6 and 113-7, Criminal Code). The Sapin II Law has extended this extra-territorial reach to acts of corruption. French law now applies to acts of corruption committed abroad if the perpetrator is:

- A French national.
- A French resident.
- An individual conducting, in whole or in part, business in France (regardless of the nationality of the victim).

International investigations are often especially long, particularly since most of them are conducted by Investigating Magistrates who are highly professional but understaffed. Compared with the active prosecution of internal corruption cases, instances of the French courts' prosecution of foreign corruption cases have so far been limited (see [Question 7](#)).

Safeguards

12. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

See [Question 4](#).

Tax Treatment

13. Are there any circumstances under which payments such as bribes, ransoms or other payments arising from blackmail or extortion are tax-deductible as a business expense?

Bribes, ransoms or payments arising from blackmail and extortion are not tax-deductible in France.

Civil Suits and Settlement

14. Can private parties bring civil suits for cases of bribery and corruption?

See [Question 5](#).

15. Can individuals and/or legal entities reach a civil settlement with the appropriate authority in cases of bribery and corruption?

Individuals and legal entities can reach pre-trial guilty pleas. Legal entities can also reach a DPA with the appropriate authority (see [Question 6](#)).

Insider Dealing and Market Abuse

Regulatory Provisions and Authorities

16. What are the main regulatory provisions and legislation relevant to insider dealing and market abuse?

Market abuses are governed by the Market Abuse Regulation (596/2014). Criminal market abuses are also governed by Articles L465-1 to L465-3-6 of the Monetary and Financial Code (*Code monétaire et financier*).

Offences

17. What are the specific offences that can be used to prosecute insider dealing and market abuse?

Market Abuse (Insider Trading and Market Manipulation)

Elements. Insider trading is committed when a party deals (or recommends that another person deals) in securities on the basis of "inside information" (that is, information that is not publicly known and that would affect the price of the securities if it were made public).

Market manipulation applies to any person who:

- Enters into a transaction that gives false or misleading signals to the market or secures the price of a financial instrument at an abnormal or artificial level.
- Enters into a transaction that affects the price of a financial instrument by means of employing a fictitious device or any other form of deception or contrivance.
- Disseminates information that gives false or misleading signals to the market or is likely to secure the price of a financial instrument at an abnormal or artificial level, if the person who disseminated the information knew, or ought to have known, that the information was false or misleading.

Penalties. Any person convicted of market abuse can be sentenced by a criminal court to up to five years' imprisonment (for individuals) and a EUR100 million fine, or ten times the amount of the profit realised (Article L465-1, Monetary and Financial Code).

A corporation may be subject to a fine of up to either:

- EUR500 million.
- Ten times the amount of the profit realised.
- 15% of its annual consolidated turnover.

(Article L465-3-5, Monetary and Financial Code.)

Right to bail. See *Question 3, Public Prosecutor*.

Defences. Article 9 of the Market Abuse Regulation provides a list of legitimate uses of inside information. Article 13 provides a list of accepted market practices that do not constitute market manipulations.

Enforcement

18. Which authorities have the powers of prosecution, investigation and enforcement in cases of insider dealing and market abuse? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

Financial market abuse suspects can be subject to only one of either:

- Administrative prosecution by the AMF.
- Criminal prosecution by the Public Prosecutor/Investigating Magistrate.

Financial Markets Authority (*Autorité des marchés financiers*) (AMF)

Investigation and enforcement powers. In administrative proceedings, the AMF can, without prior judicial authorisation:

- Request delivery of any documents on a voluntary basis.
- Access business premises to obtain documents and correspondence (including e-mail correspondence).
- Make copies of the materials obtained (including copies of the audio portions of documents).
- Summon individuals to attend interviews.

The AMF can require the appearance of any person who could provide information. The AMF has no power of arrest.

Power to charge. In administrative proceedings, the board of the AMF acts as the prosecuting authority. The board makes the decision to charge after it has reviewed the investigation report and the suspect's submissions. The case is heard before the AMF Enforcement Committee.

National Financial Prosecutor's Office (*Parquet National Financier*) (NFPO)/Public Prosecutor

Investigation and enforcement powers. The NFPO is the national prosecutorial office for financial matters, and has exclusive jurisdiction over the criminal investigation of market abuses. However, an Investigating Magistrate may also be involved in the investigation in complex cases.

For details of criminal investigations and prosecution powers, see [Question 3](#).

Power to charge. In criminal prosecutions the decision to charge is made by the Public Prosecutor or the Investigating Magistrate (see [Question 3](#)).

Civil Suits and Settlement

19. Can private parties bring civil suits for cases of insider dealing and market abuse?

In criminal prosecutions, parties that have suffered damage can seek to participate as civil parties before the criminal court (see [Question 5](#)). Alternatively, they can seek compensation before the civil courts.

In administrative proceedings, parties that have suffered damage can only seek compensation before the civil courts (and not before the AMF Enforcement Committee).

20. Can individuals and/or legal entities reach a civil settlement with the appropriate authority in cases of insider dealing and market abuse?

In criminal prosecutions, individuals and legal entities suspected of market abuse can make pre-trial guilty pleas but cannot reach DPAs (see [Question 6](#)).

In administrative proceedings, the board of the AMF may offer the defendant the option to enter into a settlement proceeding (*composition administrative*), whereby the defendant must undertake to pay the French Treasury a sum of up to the maximum pecuniary sanction applicable before the AMF Enforcement Committee. The settlement agreement does not require the defendant to admit the alleged facts and does not amount to a conviction.

Safeguards

21. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

Abuse of Investigatory Powers

For criminal investigations, see [Question 4](#).

Communications between attorneys and their clients are covered by professional secrecy (the French near equivalent of attorney-client privilege). Such communications cannot be seized by the AMF, and a lawyer cannot waive this privilege. The AMF can only obtain information covered by professional secrecy if the client independently decides to provide the privileged communication without the intervention of their lawyer.

Appeal Process

In administrative proceedings, the conduct of the AMF investigations is first reviewed by the AMF Enforcement Committee.

If the decision is challenged, it is then reviewed by the Paris Court of Appeal and the Court of Cassation, or by the *Conseil d'Etat* (for AMF-supervised defendants).

Money Laundering, Terrorist Financing and Financial/trade Sanctions

Regulatory Provisions and Authorities

22. What is the main legislation and regulatory provisions relevant to money laundering, terrorist financing, and breach of financial/trade sanctions?

Money Laundering

Money laundering and terrorist financing actions are unlawful in France. To reduce the risk of money laundering and terrorist financing activities, mandatory reporting requirements apply to many financial sector professionals.

Terrorist Financing

See above, [Money Laundering](#).

Financial/Trade Sanctions

The French Ministry of Foreign Affairs is responsible for French foreign policy, including financial and trade sanctions. The French Ministry of Economics and Finance implements these sanctions. Trade and financial sanctions may be put into place in accordance with UN Security Council Resolutions, which are implemented by EU Regulations. EU Regulations are directly applicable in France.

Offences

23. What are the specific offences that can be used to prosecute money laundering, terrorist financing, and breach of financial/trade sanctions?

Money Laundering

Elements. The material elements of the offence of money laundering are:

- Facilitating by any means the false justification of the origin of the property or income of a perpetrator of a high crime (*crime*) or ordinary crime (*délit*) that brings the perpetrator a direct or indirect benefit.
- Assisting with investing, concealing or converting the direct or indirect products of a high crime or ordinary crime.

(Article 324-1, Criminal Code.)

Penalties. An individual convicted of money laundering is punishable by five years' imprisonment and a fine of EUR375,000 or half the amount of assets laundered.

A legal entity convicted of money laundering is punishable by a fine of EUR1,875,000 or 2.5 times the amount of assets laundered. Legal entities convicted of money laundering by a final judgment are also automatically excluded from public procurement for a period of five years.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. There are no statutory defences to money laundering or terrorist financing other than those based on the failure to establish intent or a material element of the offence.

Where professionals are fulfilling their obligations to report suspicious activities to the anti-money laundering unit of the Ministry of Finance (*Traitement du renseignement et action contre les circuits financiers clandestins*) (TRACFIN), they cannot be prosecuted for:

- Improper disclosure (Article 226-10, Criminal Code).
- Violation of professional privilege or confidentiality rules (Article 226-13 and Article 226-14, Criminal Code).

(Article L561-22, Monetary and Financial Code.)

Terrorist Financing

Elements. Financing a terrorist enterprise by supplying, bringing together or directing funds, value or goods, or by giving counsel to that end, with the intention or understanding that these will be used (in full or in part) to commit one or more acts of terrorism under the Criminal Code, is punishable independently of the occurrence of an actual terrorist act (Article 421-2-2, Criminal Code).

Penalties. Natural persons face a maximum sanction of ten years' imprisonment and a fine of EUR225,000. Legal entities face a maximum fine of EUR1,125,000. Legal entities convicted of terrorist financing by a final judgment are also automatically excluded from public procurement for a period of five years.

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Money Laundering*.

Financial/trade Sanctions

Elements. Violation or attempted violation of the legislation and regulations relating to foreign financial relations constitutes an offence (Article 459(1), Customs Code (Code des Douanes)). The following actions are also offences:

- Violation or attempted violation of the restrictive measures on economic relations set out by EU Regulations or by international treaties and agreements approved and ratified by France (Article 459(1) *bis*, Customs Code).
- Incitement by writing, propaganda or publicity to commit one of the offences set out by the Customs Code, whether or not it resulted in the infraction being committed (Article 459(3), Customs Code).

It is an offence for the following parties to fail to comply with their respective obligations or to create an obstacle to their implementation:

- The leaders or employees of a financial organisation.
- The organisations and institutions referred to in Article L562-4 of the Monetary and Financial Code (which includes an extensive list of professionals and entities, such as legal professionals and certain investment companies).
- People who are the object of an asset freeze or other restriction made under Chapter II of the section of the Monetary and Financial Code in relation to money laundering and financing acts of terrorism (Article L574-3, Monetary and Financial Code).

Penalties. Customs Code offences are punishable by:

- Up to five years' imprisonment.
- Confiscation of infringing goods or assets.
- Confiscation of means of transport used for the fraud.
- Confiscation of goods or assets that are the direct or indirect product of the offence.
- A fine of at least the amount at issue and up to double the proceeds of the offence or attempted offence.

(Article 459(1) and 459(1) *bis*, Customs Code.)

Any person who incites one of the offences under Article 459-1 of the Customs Code by means of writing, propaganda, or publicity can be subject to up to five years' imprisonment and a fine ranging from EUR450 to EUR225,000 (Article 459(3), Customs Code).

Right to bail. See *Question 3, Public Prosecutor*.

Defences. See above, *Money Laundering*.

Enforcement

24. Which authorities have the powers of prosecution, investigation and enforcement in cases of money laundering, terrorist financing, and breach of financial/trade sanctions? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

Ministry of Finance Anti-money Laundering Unit (*Traitement du Renseignement et Action Contre les Circuits Financiers Clandestins*) (TRACFIN)

Investigation and enforcement powers. TRACFIN is the anti-money laundering unit of the Ministry of Finance. It receives and analyses information about suspicious activity relating to money laundering or terrorist financing.

TRACFIN can request from regulated professionals and entities all exhibits and documents that were retained in relation to a high-risk operation.

TRACFIN can also receive and solicit information necessary to achieving its mission from all levels of the French administration and from its foreign counterparts.

Power to charge. The TRACFIN cannot bring criminal charges. However, it can refer matters to the Public Prosecutor if the known facts may constitute a criminal offence that is punishable by more than one year's imprisonment, or there is evidence of the offence of financing terrorism (Article L561-30-1, Monetary and Financial Code). The Public Prosecutor may then decide to open a criminal investigation and, in complex cases, to appoint an Investigating Magistrate (see *Question 3*).

Prudential Supervision and Resolution Authority (*Autorité de Contrôle Prudentiel et de Resolution*) (ACPR)

Investigation and enforcement powers. The ACPR is the regulator for the banking and insurance sectors in France. The ACPR and AMF are among the bodies responsible for monitoring compliance with anti-money laundering/crime and terrorist funding obligations, including obligations to make declarations to TRACFIN. If a professional or organisation does not comply with anti-money laundering/crime and terrorist funding obligations or exhibits a grave lack of vigilance, a disciplinary procedure can be undertaken, and the Public Prosecutor notified.

In administrative proceedings by the ACPR there is no power of arrest. For arrest in criminal prosecutions, see *Question 3*.

The ACPR monitors compliance with the anti-money laundering/crime and terrorist funding obligations of banks and insurance companies by reviewing responses to questionnaires as well as through on-site controls. The ACPR's Enforcement Committee can take administrative enforcement measures and impose penalties, including disciplinary and pecuniary sanctions.

Power to charge. For criminal prosecutions, the decision to charge is made by the Public Prosecutor or the Investigating Magistrate (see [Question 3](#)). In administrative proceedings by the ACPR, the decision to charge is made by the authorities' respective boards.

AMF

Investigation and enforcement powers. For administrative proceedings by the AMF, see [Question 18](#) (similar powers apply in the case of an ACPR investigation).

The AMF monitors compliance with the anti-money laundering/terrorist financing obligations of asset management companies, central depositories, clearing houses and financial investment advisors. The AMF can conduct on-site controls. The AMF Enforcement Committee can take administrative enforcement measures and impose disciplinary and pecuniary sanctions.

In administrative proceedings by the AMF there is no power of arrest. For arrest in criminal prosecutions, see [Question 3](#).

Power to charge. For criminal prosecutions, the decision to charge is made by the Public Prosecutor or the Investigating Magistrate (see [Question 3](#)). In administrative proceedings by the AMF, the decision to charge is made by the authorities' respective boards.

Public Prosecutor

If a criminal investigation is initiated, the Public Prosecutor and Investigating Magistrates have broad powers (see [Question 3](#)).

Other

Depending on the status of the individuals or organisations, other authorities are also responsible for monitoring compliance with their anti-money laundering and anti-terrorist financing obligations. For instance, bar association boards are responsible for monitoring lawyers.

Civil Suits and Settlement

25. Can private parties bring civil suits for cases of money laundering, terrorist financing, and breach of financial/trade sanctions?

See [Question 5](#).

26. Can individuals and/or legal entities reach a civil settlement with the appropriate authority in cases of money laundering, terrorist financing, or breach of financial/trade sanctions?

Under certain circumstances, individuals and legal entities can reach pre-trial guilty pleas (see [Question 6](#)). For the specific offence of "laundering the proceeds of tax fraud", legal entities can also reach a DPA with the appropriate authority.

Safeguards

27. Are there any measures in place to safeguard parties subject to a regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

Abuse of Investigatory Powers

See [Question 4, Abuse of Investigatory Powers](#).

Appeal Process

For administrative proceedings (by the AMF or ACPR), the conduct of the AMF investigations is first reviewed by the AMF/ACPR Enforcement Committee. If the AMF decision is challenged, it is then reviewed by the Paris Court of Appeal and the Court of Cassation, or by the *Conseil d'Etat* (for AMF-regulated defendants). If the ACPR decision is challenged, it is then reviewed by the *Conseil d'Etat*.

Financial Record Keeping

28. What are the general requirements for financial record keeping and disclosure?

Commercial entities must:

- Keep accounting records of all transactions.
- Carry out (at least annually) an inventory of the existence and value of their assets.

- Maintain annual financial statements (including a balance sheet with an annex, a profit and loss statement and an inventory).

Accounting records must be kept as a:

- *Livre-journal* (recording transactions in chronological order).
- *Grand livre* (a ledger recording transactions, broken down according to the applicable accounting items).
- Inventory book.

The *livre-journal* and the inventory book must be filed with, and certified by, the clerk of the commercial court, or in a specific approved electronic fashion.

Accounting records must be retained along with all supporting documentation (invoices and contracts) for ten years. Annual financial statements must be submitted to, and approved by, the shareholders, and must then be filed with the office of the clerk of the commercial court. Accounting records are available to the public.

29. What are the penalties for failure to keep or disclose accurate financial records?

If accounting records have not been properly kept, record holders cannot use them as evidence in their defence. A criminal fine of EUR9,000 can be imposed on company managers for failure to keep accurate financial records.

If the annual financial statements do not provide an accurate reflection of the company, the company's managers can be subject to imprisonment of up to five years and/or a criminal fine of up to EUR375,000. The relevant statutory auditor can also be prosecuted for aiding and abetting.

In addition, company managers and statutory auditors who knowingly did not report a violation are liable for any arising damages. Shareholders who knowingly benefitted from undue dividends must return them.

30. Are the financial record keeping rules used to prosecute financial and business crimes?

Financial records and documentation reported to TRACFIN can be referred to the Public Prosecutor if the records appear to show criminal activity.

Improperly-kept financial records may result in a finding that false information has been provided that may distort the price of listed securities, leading to fines from the AMF.

If the accounting records have not been properly kept, or if there are strong reasons to conclude that the financial records are wrong, the tax authorities can disregard the records and reassess the taxable basis.

Due Diligence

31. What are the general due diligence requirements and procedures in relation to corruption, fraud or money laundering when contracting with external parties?

General due diligence procedures consist of:

- Identification of clients.
- Analysis of the reasons for a transfer of money.
- Maintaining good knowledge of the business and market.

Market practice is to conduct due diligence in accordance with French law, including laws that protect individuals' right to data privacy. Due diligence standards often require companies to retain information that may be considered to be "personal data" under the law. The person involved must then consent to the processing of the personal data.

There is no official public list of businesses subject to criminal or administrative decisions for corruption, fraud or money laundering. Due diligence with respect to such matters is therefore generally limited to:

- Questioning the organisation's management.
- Obtaining copies of communications to and from TRACFIN.
- Reports on any internal investigations or reviews of these issues, practices or procedures.
- Researching any court decisions and past investigations.

Certain financial and advisory businesses are subject to particular organisational rules, including the appointment of an anti-money laundering officer and certain anti-corruption internal procedures (Article L561-32 and following, Monetary and Financial Code). Due diligence may involve an interview with the appointed money laundering officer and the obtaining of copies of any internal rules, reports on investigations and tests.

Since 2017, medium and large companies and certain public entities must have compliance programmes that meet certain specifications, including the adoption of:

- A code of conduct on corruption and influence peddling.
- An internal whistleblowing system.
- A risk-mapping programme.

- Due diligence processes for clients, first-tier providers and intermediaries.
- Accounting controls.
- Training programmes for managers and employees most exposed to corruption and influence-peddling risks.
- Disciplinary sanctions against employees in cases of breach of the code of conduct.
- An internal control and evaluation mechanism.

(Article 17, Sapin II Law.)

Corporate Liability

32. Under what circumstances can a corporate body itself be subject to criminal liability?

Corporations (or other legal entities other than the French state) can be held criminally responsible under Article 121-2 of the Criminal Code. Such entities may be found guilty of acts committed on their behalf (or for their benefit) by responsible individuals, described in the Code as "organs" or "representatives" of the corporation.

An "organ" is generally some person or group exercising powers inherent to their position or deriving from a corporation's bye-laws or internal governance. A "representative" is generally someone to whom the corporation has delegated certain responsibilities. Court decisions continue to explore who may qualify as an "organ" or "representative".

The establishment of corporate criminal responsibility does not exclude the possibility of individual responsibility for the same act. A managing director (*chef d'entreprise*) can be criminally responsible for acts committed within a corporation subject to their supervision, unless there is a specific delegation of authority to someone else in relation to that activity.

33. Are there any ongoing requirements for corporate bodies found to be liable?

See [Question 32](#).

Cartels

34. Are cartels prohibited in your jurisdiction? How are cartel offences defined? Under what circumstances can a corporate body be subject to criminal liability for cartel offences?

Cartels are prohibited by French law. Under Article L420-1 of the Commercial Code, co-ordinated actions, whether they are express or tacit, or coalitions, even when made by a direct or indirect intermediary that is located outside of France, are prohibited when they tend to do any of the following:

- Limit access to the market or to the free access to competition by other enterprises.
- Create an obstacle to the establishment of prices by favouring artificial increases or decreases in prices.
- Limit or control production, outlets, investments or technical progress.
- Allocate markets or sources of supply.

Cartels are usually prosecuted and sanctioned as an administrative violation by the French Competition Authority (*Autorité de la Concurrence*).

If the Competition Authority applies financial sanctions, these must be proportionate. The maximum sanction for an enterprise is 10% of its global profits before the application of any adjustment for tax. The calculation of an enterprise's profit for the purpose of applying the sanction is based on the highest profit that was realised in any fiscal year following the fiscal year that preceded the fiscal year in which the practices were put into place (Article L464-2, Commercial Code). Final decisions of the Competition Authority can be subject to appeal before the Paris Court of Appeal.

It is also a crime for any individual (but not a corporate entity) to fraudulently participate personally and significantly in the conception, organisation, or implementation of a cartel. The Public Prosecutor or a civil party can initiate the prosecution of an individual for this offence. The Public Prosecutor's powers of investigation described in [Question 3](#) also apply to investigations of cartels. If an individual is convicted, the criminal sanction can include:

- A fine of EUR75,000.
- Up to four years of imprisonment.
- Complementary sanctions such as full or partial publication of the court decision at the cost of a convicted individual.

(Article L420-6, Commercial Code.)

Immunity and Leniency

35. In what circumstances it possible to obtain immunity/leniency for co-operation with the authorities?

Generally, no formal immunity or leniency is granted to corporations or individuals for co-operation. However, since 2013, perpetrators or accomplices to an offence of bribery or influence peddling of public officials or judicial staff will have their sanctions reduced by half if, by informing the administrative or judicial authorities, they enable the authorities to put a stop to the offence or to identify other perpetrators or accomplices. With regards to cartels, the first company to alert the authorities can avoid prosecution (Article L464-2, Commercial Code).

In a memorandum (*circulaire*) to Public Prosecutors dated 31 January 2018, the French Ministry of Justice recommends that Public Prosecutors consider self-reporting and/or co-operation when deciding whether to offer a DPA, and when negotiating the amount of the fine.

See also [Question 6](#).

Cross-border Co-operation

36. What international agreements and legal instruments are available for local authorities?

Obtaining Evidence

France is a signatory to a number of international agreements providing for co-operation in criminal matters. These include:

- HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention), which may apply to non-criminal investigations.
- Bi-lateral extradition agreements with its trading partners.
- European conventions relating to extradition from France to other countries in Europe.
- More specialised agreements such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997, which requires co-operation among its signatories.
- Numerous bi-lateral mutual legal assistance treaties and memoranda of understanding with most of its trading partners.

France has designated a special office of the Ministry of Justice to handle requests made under these treaties. The Ministry of Justice, the AMF and other organisations also have practical relationships with their non-French counterparts (such as the US Securities and Exchange Commission). The US currently posts a federal prosecutor and several agents of the Federal Bureau of Investigation at its Embassy in Paris. Their work includes co-ordinating cross-border co-operation with their French counterparts, with whom they generally have a good relationship.

In May 2017, the European Investigation Order (*Décision d'Enquête Européenne*) entered into force (Articles 694-15 to 694-49, Code of Criminal Procedure). This new tool created by the Investigation Order Directive (41/2014/EU) aims to simplify and speed up cross-border criminal investigations in the EU. It enables judicial authorities in one EU member state to request that evidence be gathered and transferred from another EU member state. This new instrument replaces the existing fragmented legal framework for obtaining evidence within the EU.

Seizing Assets

If no international convention provides otherwise, assets, including funds gained from criminal activity, can be seized by the police under a court order. At the request of the Public Prosecutor, the French authorities may obtain a court order permitting them to seize assets found in France that have been found by a decision of a foreign court to be gained from illegal activity elsewhere, if such activity would be criminal if committed in France.

Sharing Information

As there are no traditions or criminal procedures that encourage "self-reporting", prosecutors and regulatory authorities are unlikely to be made aware of possible criminal activity through voluntary disclosure by a company that discovers the existence of past incidents. However, whistleblowers may reveal possible criminal activity to French authorities (in addition to the authorities' own investigations).

If the activity in question relates to possible economic crimes committed by domestic companies or citizens, the French authorities are unlikely to share information with prosecutors or regulators in other jurisdictions. However, they may share information relating to non-French companies or citizens with the relevant jurisdictions that can investigate them. However, French law also includes a "Blocking Statute" that criminalises the transfer of certain kinds of information to foreign authorities, unless done through an international convention (see [Question 38](#)). This provision may complicate self-reporting to, and co-operation with, non-French investigative authorities.

37. In what circumstances will domestic criminal courts assert extra-territorial jurisdiction?

The territorial application of French criminal provisions is governed by Articles 113-6 to 113-12 of the Criminal Code. French criminal law applies to offences where either:

- One material element took place on French soil.
- The perpetrator is a French national or corporation.
- The victim is French.

In the specific context of acts of corruption, French law applies to acts committed abroad if the perpetrator is:

- A French national.
- A French resident.
- An individual conducting, in whole or in part, business in France (regardless of the nationality of the victim).

The criminal procedures applicable to prosecutions based on acts committed outside of France may be different from the procedures that apply to domestic crimes.

38. Does your jurisdiction have any statutes aimed at blocking the assertion of foreign jurisdictions within your territory? Are there statutes aimed at blocking the assertion of foreign jurisdictions within their territory?

France has adopted legislation commonly known as the "Blocking Statute" (*loi de blocage*), which makes it a criminal offence for any person to provide information of scientific or commercial value to a foreign investigator or court for use in a non-French judicial or administrative procedure, other than through the exercise of an international agreement (Law no. 68-678 of 26 July 1968, as amended in 1980).

The French Data Protection Authority (*Commission Nationale de l'Informatique et des Libertés*) (CNIL) has rules that prohibit the transfer of certain kinds of data outside of France.

Whistleblowing

39. Are whistleblowers given statutory protection?

In March 2022, France enacted a new law implementing the Whistleblower Protection Directive ((EU) 2019/1937). The law improves the whistleblower protections already in place since 2016 and goes beyond the minimum requirements of the Directive. The new law will apply from September 2022.

Whistleblowers are now defined as:

"a natural person who reports or discloses, without direct financial compensation and in good faith, information concerning a crime, an offence, a threat or harm to the general interest, a violation or an attempt to conceal a violation of an international commitment duly ratified or approved by France, of a unilateral act of an international organization taken on the basis of such a commitment, or of the laws and regulations of the European Union. When the information was not obtained in the context of professional activities [...], the whistleblower must have had personal knowledge of it."

Whistleblowers will now be able to report various crimes, threats or violations directly to French authorities without having to report internally first. A person who legally qualifies as a whistleblower and who complies with the procedure for reporting cannot be held criminally or civilly liable for disclosing confidential information, provided their actions were necessary and proportionate. Whistleblowers cannot be discriminated against, nor have their employment terminated on the grounds of this disclosure. There is no provision under French law for the payment of a "bounty" to a whistleblower.

Managing Exposure to Corruption/corporate Crime

40. What are the main steps foreign and local companies are taking to manage their exposure to corruption/corporate crime?

Under the Sapin II Law, companies operating in France that have more than 500 employees and an annual turnover of more than EUR100 million must implement compliance programmes to detect corruption. An increasing number of large French companies have therefore established compliance functions to cope with this new requirement. The Anti-Corruption Agency (*Agence française anticorruption*) controls the implementation of compliance programmes within companies and its Enforcement Commission can impose sanctions of up to EUR200,000 against directors and EUR1 million against companies.

Reform, Trends, and Developments

41. Are there any impending developments or proposals for reform?

In April 2021, the French government introduced a bill addressing various criminal proceedings topics, including the duration of prosecutor-led criminal investigations and the scope of attorney-client privilege. The bill should be adopted by the end of 2021.

In July 2021, French MPs published 50 recommendations for strengthening the French anti-corruption legal framework. In October 2021, a French MP introduced a bill that covers some of these recommendations. It remains to be seen, however, if and how these recommendations will be voted on and implemented.

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