

## FRENCH SAI ANSWER<sup>1</sup>

***WARNING : the present answer has been prepared by the French Court of Accounts and cannot be considered in any way as committing or necessarily reflecting the views of the French Government. The Court of Accounts is independent from the Government.***

***Please describe (cite and summarize) the measures/steps that your country has taken, if any, (or is planning to take, together with the related time frame) to implement the relevant provision of the Convention and to promote the implementation of resolution 8/13.***

During recent years, France has yet taken important measures to implement the relevant provision of the UNODC, most important of them between 2008 and 2016. In this context, the place and role of the French supreme audit institution and other financial jurisdictions (regional audit institutions, Budgetary and Financial Disciplinary Court) take place in a new landscape in transparency, responsibility and preventing corruption in public finances, with new laws, three new authorities, and a special plan against corruption (1).

In this landscape, the *Cour des comptes* (French SAI) and *Chambres régionales des comptes* (French RAIs), which are endowed with jurisdictional functions, keep a strong role, a wide range of abilities and a special status (2). They cooperate with Parliament (3) and with the new authorities dedicated to transparency and fight against corruption (4). They are involved in international action against corruption (5).

### **1. A deeply renewed landscape, with major landmarks, new authorities and a special plan**

#### **1.1 A constitutional revision strengthened in 2008 powers of Parliament in controlling public policies, with the support of SAI**

The article 24 of the Constitution acts: « (*Parliament controls Government action*). *It evaluates public policies*» and the article 47-2 extends the support by the *Cour des comptes* to Parliament in this evaluation (see *infra*, part 3).

#### **1.2 Other laws enhance transparency, integrity and provide tools to fight and deter corruption**

- ***The Law regarding Transparency in Public Life (October 11th, 2013)***

The law reasserts the principles of dignity, integrity and impartiality that apply to public officials (first and foremost elective executive authorities) as well as civil servants.

To prevent conflicts of interest, it creates a general obligation to report and actively avoid conflicts of interest (“*stepping back*”). Moreover, members of Government (executive branch) and elected people as MPs or mayors (local elected officials) have to fill in public declarations of assets and declarations of interests (including through extra-professional activities). So have to do the highest public officials (like the judges of the *Cour des comptes*), yet their statements are not public.

The law also a protection mechanism for “*whistleblowers*”.

- ***The Law regarding Transparency, the Fight against corruption and modernization of the Economy (December 9th, 2016)***

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<sup>1</sup> This answers relates only to 8/13 resolution. However, the part 3 evocates parliamentary powers.

It reasserts the preventive approach of corruption in public decision-making: creation of a registry of lobbyists, and strengthened rules of ethics. The law also creates a new misdemeanour, the active bribery of a foreign public agent.

- ***The Law regarding Ethics of civil servants (April 20th,2016)***

It consecrates in civil servants Statute the above principles (dignity, integrity, impartiality) and acts their duty of exemplarity. The law aims to prevent ethical risks as conflict of interests, enhances the Ethics committee<sup>2</sup>, strengthen the control of external activities of civil servants, and protects those who report conflicts of interests they discover. The law includes special provisions for financial jurisdictions (see *infra*).

### **1.3 Three new authorities are entitled to fight the corruption and/or promote integrity**

- ***The National Financial Prosecutor's Office (PNF for Parquet national financier)***

Belonging to the judicial system, the PNF started its activity in February 2014. It is dedicated to the prosecution of specific financial offences or crimes. The same year, a new Chamber of the Paris Judicial High Court (*Tribunal de Grande Instance*) was dedicated to deal with cases handed over by the PNF. The National financial Prosecutor particularly relies on the investigations carried out by a specialized financial inquiry unit, the Central office for fight against corruption and tax and financial crime (OCLCIFF), created by a decree in 2013.

See the missions of the PNF here : [Missions | Tribunal de Paris \(justice.fr\)](https://www.justice.fr/missions-tribunal-de-paris) and the decree creating OCLCIFF here : <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028115234/>

- ***The High Authority for Transparency in Public Life (HATVP for Haute autorité pour la transparence de la vie publique)***

Chaired by Mr Didier Migaud (former Firrst president of the *Cour des Comptes*), it promotes and supervises the probity and exemplarity of public officials. The HATVP checks the declarations of assets and interests of more than 14,000 elected people and high-level public officers. In addition, it checks that newly appointed members of Government have complied with their fiscal duties.

Since 2020 the Ethic committee is handled by HATVP who thus controls side activities of civil servants and « *revolving-doors* » situations.

It maintains the National registry of lobbying activities.

See the missions of the HATVP here : [High Authority Home Page Haute Autorité pour la transparence de la vie publique \(hatvp.fr\)](https://www.hatvp.fr/)

- ***The French anticorruption Agency (AFA for Agence française anticorruption)***

Chaired by a judicial magistrate, the French AFA audits public bodies as a preventive mechanism, or in the event of denunciation.

It monitors the compliance of big companies (at least 500 employees and €100 million turnover) with mandatory corruption prevention and detection measures: anti-corruption code of conduct, internal alert system to collect reports of violations (whistleblowing), risks mapping of corruption, disciplinary regime, internal control. Regarding public service itself, it audits the existence and effectiveness of their prevention and detection mechanisms.

It provides information, advice, guidelines and training to public institutions and private companies, even the smaller ones if they ask for, to tackle corruption and fraud.

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<sup>2</sup> This Committee has been included since 2020 in the The High Authority for Transparency in Public Life (HATVP).

See the missions of the AFA here: [Missions | Agence française anticorruption \(agence-francaise-anticorruption.gouv.fr\)](https://www.agence-francaise-anticorruption.gouv.fr)

#### **1.4 A multi-year plan to fight against corruption**

Launched in January 2020, it aims to:

- improve the knowledge and the detecting of corruption,
- educate and sensitize civil servants,
- strengthen tools of prevention and repression,
- improve international cooperation.

A special emphasis will concern Rugby worldcup (2026) and Olympic games (2024). Civil society and stakeholders will be involved in assessing the results.

See the French plan 2020-2022: <https://www.agence-francaise-anticorruption.gouv.fr/fr/lancement-plan-pluriannuel-national-lutte-contre-corruption>

## **2. French financial jurisdictions are key players due to their abilities and their special status**

The French *Cour des comptes* is very ancient and gained a long time legitimacy and independence towards both legislative and executive authorities. Created later, the Financial and Budgetary Discipline Court (1948) and the Regional and Territorial Chambers of Accounts (1983) have progressively taken their own role in the fight against corruption. The capacity of the financial jurisdictions relies on three main features:

- the jurisdictional activities which allow wide investigating and sanctioning powers, with complete independence, the magistrates being irremovable;
- a jurisdictional organisation, with their own public prosecutors, which enables to build more easily a strong and effective relationship with judicial courts;
- a wide range of competences and methods giving a strong basis to prevent or tackle corruption.

### **2.1 A special status and a jurisdictional system enabling the sanction of breaches of rules**

Members of financial jurisdictions are magistrates. They are under oath and irremovable.

The Law regarding to Ethics of civil servants includes important specific provisions for the financial jurisdictions. Their very stringent code of conduct has now a statutory force, and the law provides membership and missions of their own Committee of ethics.

Every magistrate has to draw up a statement of interests. They have to step-back in certain affairs to avoid being suspected of partisanship or conflicts of interest.

See our professional standards and code of ethics here: [Standards & ethics | Cour des comptes \(ccomptes.fr\)](https://www.ccomptes.fr)

The French financial jurisdictions issue enforceable judgements following a contradictory procedure, and have full mandate to sanction accounting disorders; some of which can be fraudulent or ushering to corruption.

The French system relies on a strict separation of managers and accountants (management/handling of funds). Public accountants are civil servants exclusively entitled to hold public accounts, pay expenses, collect revenues and manage cash. Their annual accounts are exhaustively audited every four / five years by the French Court or regional Chambers. They are held financially responsible for mishandling of funds or lack of control thereof: they can be ordered to repair the financial damage (*préjudice*) caused to public funds, in a form of civil liability decided upon by financial jurisdictions in their judgments. Public accountants are thus deterred to be corrupted, negligent or accommodating with managers.

Towards managers, French Court of Accounts and Regional chambers have no jurisdictional competency, unless in a case: management de facto of public funds or "*gestion de fait*" (handling a slush fund), when a manager breaches the separation between public managers and accountants by interfering in the accountant competency. In this very case, financial jurisdiction can hold the manager financially responsible just as if he were a public accountant and can inflict fines upon him.

However, managers can be sanctioned by a special jurisdiction associated to the Court of Accounts: the Court of Budgetary and Financial Discipline (CDBF for *Cour de discipline budgétaire et financière*)<sup>3</sup>. It was established near the French Court of Accounts (1948) to supplement the sanctioning system of managerial misconduct. Being a mix between the Court of Accounts and the Council of State, the CDBF is very close to the former: same President, same Prosecutor General, same headquarters and its secretary general and 50% of its judging members and of its rapporteurs belong to financial jurisdictions. Moreover, CDBF can sanction, with a fine, violations to any rule of management of public revenues and expenditures. When such a violation seems also constitutes a criminal offence, it can be handed over to the jurisdiction of criminal courts.

Some breaches of compliance sanctioned by the CDBF are close to cases of corruption: favoritism in public procurement, undue benefits, unauthorized expenses, irregular subsidy or financial arrangements. Both CDBF and criminal courts can deal with the same case but cannot impose two sanctions for the same violation: CDBF is particularly fit when the facts do not fall within the scope of a criminal offence. If it does, the rule *non bis in idem* forbids CDBF and criminal courts to sanction by fines the same facts with a close qualification.

## **2.2 A jurisdictional organisation that makes easy the relations with judicial authorities**

The French *Cour des comptes* has its own Prosecutor General who is heading a network of Financial Prosecutor in each Regional and Territorial Chambers of Accounts and who is also Prosecutor general of the CDBF. In the national Court, he is leading a team of magistrates (advocates General, Substitutes General) who assist in prosecuting functions and analysing the legal aspects of cases.

The Prosecution Office enjoys the exclusivity to start jurisdictional procedures before the Court, the CRTCs and the CDBF. At the end of the process, it gives a prior advice before the judges take their final decision.

These types of mission and organisation are very close to what prevails in the judicial system, where criminal courts have their own prosecutor system likewise.

Hence, it is easy for financial jurisdictions and judicial courts to build bridges through their mirroring prosecution organisation.

The financial Prosecution Offices of the Court and CRTCs have regular and well-organized contacts with the judicial authority and anti-corruption authorities, when criminal follow-ups are considered.

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<sup>3</sup> CDBF is yet incompetent to sanction ministers and top local elected executives (mayors, presidents of elected councils)<sup>3</sup>.

## **2.3 A wide range of abilities and methods providing a solid basis to prevent corruption and promote good administration**

### **2.3.1 Financial jurisdictions have competencies wherever public funds are handled, with significant powers of investigations**

- A wide scope of controlled entities, exceeding public sphere:

Financial jurisdictions can audit every public authorities belonging to the State or to local governments<sup>4</sup>, their public agencies (“*établissements publics*”), and the public-owned companies. They also control private bodies: social security entities, and private entities calling for public charity, benefiting from grants opening tax reductions for donors or working in the health and social sector.

- Significant powers of investigation:

Unlike private auditors, financial magistrates have an exhaustive access “*on records and on the spot*” to information, even confidential data - with very few exceptions. They may question banks, tax administration, and access to criminal files, through their Prosecutor General’s office. Moreover, they have to audit every entity using public money, even without any suspicion of mismanagement or fraud. This has a deterrent effect, as people know that their organisation, office and activities, therefore their own management, will be audited.

### **2.3.2 A wide range of methods and missions**

Financial jurisdictions audit the management of public funds and accounts, which may lead to screen the liability of the people responsible for it. Through the audit of financial statements, they are able to detect gross misrepresentations of the situation of public wealth and resources (unfair view of accounts, breach to sincerity).

Through their other audits, (“*organic audits*” for compliance or performance, i.e. whole audit of an entity, its management and its operations) they have the ability to audit:

- the proper functioning of governance bodies (boards, advisory bodies),
- the sound use of human resources, which helps prevent nepotism and cronyism, and the conflicts of interests.

See the French Court’s values and missions here : [Cour des comptes | Cour des comptes \(ccomptes.fr\)](https://www.ccomptes.fr)

### **2.3.3 Recommendations are usually implemented by the audited entities**

The reports issued by the financial jurisdictions includes recommendations with a time frame to implement them.

Due to the division of powers, the recommendations are not compulsory. However, the Court of Accounts issues regularly, as part of its annual public report, a follow up of these recommendations two or three years after they have been provided through all its public reports or the reports issued by CRTCs (which are all public).

This follow-up shows that about three quarters of the recommendations are implemented, totally or in part, by the auditees.

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<sup>4</sup> Yet they don’t directly control ministers, mayors and their cabinets.

For instance, in 2019, 473 among 626 (75.6%) recommendations provided by the *Cour des comptes* three years earlier were implemented, completely (196), or in part (175+102):

Cotation	2017 Suivi des recommandations formulées en 2014		2018 Suivi des recommandations formulées en 2015		2019 Suivi des recommandations formulées en 2016	
	Nombre	%	Nombre	%	Nombre	%
Totalement mise en œuvre	180	32,1 %	193	34,9 %	196	31,3 %
Mise en œuvre en cours	134	23,9 %	139	25,1 %	175	28,0 %
Mise en œuvre incomplète	102	18,2 %	99	17,9 %	102	16,3 %
Non mise en œuvre	88	15,7 %	72	13,0 %	81	12,9 %
Devenue sans objet	17	3,0 %	15	2,4 %	32	5,1 %
Refus de mise en œuvre	40	7,1 %	37	6,7 %	40	6,4 %
<b>Total</b>	<b>561</b>	<b>100 %</b>	<b>553</b>	<b>100 %</b>	<b>626</b>	<b>100 %</b>

Source : *Cour des comptes*

Regarding the CRTCs, in 2019, 74.9 % among the recommendations provided in 2016 were implemented completely or in part :

Cotation	Nombre de recommandations suivies		En % du nombre de recommandations	
	2016-2017	2017-2018	2016-2017	2017-2018
<i>Totalement mise en œuvre</i>	802	969	41,1 %	44,4 %
<i>Mise en œuvre en cours</i>	611	567	31,3 %	26 %
<i>Mise en œuvre incomplète</i>	126	99	6,5 %	4,5 %
<i>Non mise en œuvre</i>	331	402	17 %	18,4 %
<i>Devenue sans objet*</i>	45	58	2,3 %	2,7 %
<i>Refus de mise en œuvre</i>	36	87	1,8 %	4 %
<b>Total</b>	<b>1951</b>	<b>2 182</b>	<b>100 %</b>	<b>100 %</b>

Source : *Cour des comptes*

### **2.3.4 In their work schedules, financial jurisdictions emphasize the risks of breaches of integrity or frauds**

- The compliance with the international standards

As an institutional member of the International Organisation of Supreme Audit Institutions (INTOSAI), the French Court of Accounts performs its duties according to the rules and guidelines defined by the International Standards of Supreme Audit Institutions (ISSAI).

In accordance with the professional standards of the financial jurisdictions, the Court of Accounts applies the provisions of International Standards on Auditing (ISA) and International Standard on

Quality Control 1 (ISQC 1) to the extent that they are compatible with the particular nature of its certification engagement and the provisions of the Financial jurisdictions Code. Procedures implemented by the certification team are informed by norms ISA 240 and ISA 315 for the fraud risk assessment.

When certifying Government accounts, the Court takes fraud risk into account through each “*sub-cycle*”. For example, for liquidity, its due diligences assesses the processes to prevent payment fraud.

As stated in ISA 240, knowledge of the entity, its operating environment and internal controls informs the existence of one or multiple payment fraud risks. Therefore, audit focuses primarily on reviewing the operating environment and the internal controls.

In France, the historical split between the authorising officer and the accounting officer, based on the notion of segregating duties, is one of the main principles of internal control and enables internal fraud prevention, whether intentional or by mistake.

Developing internal control and internal audit functions and procedures throughout the State’s entities allows to mitigate this risk. Cross-functional assessments of their effectiveness are conducted through Intermediate Engagement and Departmental Internal Control Evaluation Notes.

- The French SAI assesses the fight against fraud

In the recent years, and in accordance with its supreme level role the French Court of Accounts assessed several of the multiple systems through which the government fight against fraud and financial crime, and issued reports on their efficiency:

- fight against social taxes fraud,

<https://www.ccomptes.fr/sites/default/files/2018-01/09-lutte-contre-fraude-aux-cotisations-sociales-Tome-2.pdf>

- fight against social benefits fraud,

[https://www.ccomptes.fr/system/files/2020-09/20200908-rapport-Lutte-contre-fraudes-prestations-sociales\\_0.pdf](https://www.ccomptes.fr/system/files/2020-09/20200908-rapport-Lutte-contre-fraudes-prestations-sociales_0.pdf)

- fight against compulsory contributions fraud,

<https://www.ccomptes.fr/system/files/2019-12/20191202-rapport-fraude-aux-prelevements-obligatoires.pdf>

- fight against financial crime,

<https://www.ccomptes.fr/fr/publications/les-moyens-consacres-la-lutte-contre-la-delinquance-economique-et-financiere>

Beyond the specific aspects of each policy, these reports highlighted the following deficiencies and recommendations:

- many legal tools were created, but human and material resources lack,
- tax systems are complex and changeable, which causes mistake and allows fraud,
- the interdepartmental coordination must be improved,
- tax fraud should be tackled at an international level.

### **3. The French Court of Accounts assists Parliament in its controls of Government’s action**

According to Constitution, the Court of Accounts contributes to monitor annually the implementation of the State budget and the Social security finance Act, and helps Parliament to evaluate public policies. The Court of Accounts helps to ensure that public accounts are regular and reliable. Relationships between Court and Parliament have increased since 2008.

### **3.1 A support to parliamentary proceedings on the Finance Acts**

Every year, the Court of accounts issues six compulsory reports (Certification of State accounts, Certification of Social security accounts, implementation of the State budget, implementation of the Social security finance Act, Local governments public finances, Situation and prospects for public finances). In addition, since 2019, it issues two more yearly reports on the situation of Social security finances and on the situation of local finances. These reports support, all year long, parliamentary proceedings on the public finance Acts.

### **3.2 A support to parliamentary assessment of public policies**

The Court of accounts provides Parliament with every published report – and, on request, every unpublished report: 400 reports were available to Parliament in 2019. Hearings of magistrates are usual (85 in 2018, 75 in 2019). And its magistrates may take part to the work of the « *Comité d'évaluation et de contrôle des politiques publiques* » of National Assembly.

The Parliament may also order (with 1st president consent, according to independence of the French Court) special reports on public policies (15 such reports were issued in 2019 in various areas<sup>5</sup>).

## **4. The French SAI builds cooperation with relevant judicial and anti-corruption authorities**

The new landscape is more complete – and more complex - than it used to be when financial and judicial jurisdictions were the two only groups of authorities entitled to fight and prevent corruption, as can be seen in this figure:

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<sup>5</sup> For examples: Support of abroad military operations (OPEX); Tax shelter policy in housing; Counteracting obesity; Public utilities in rural areas...

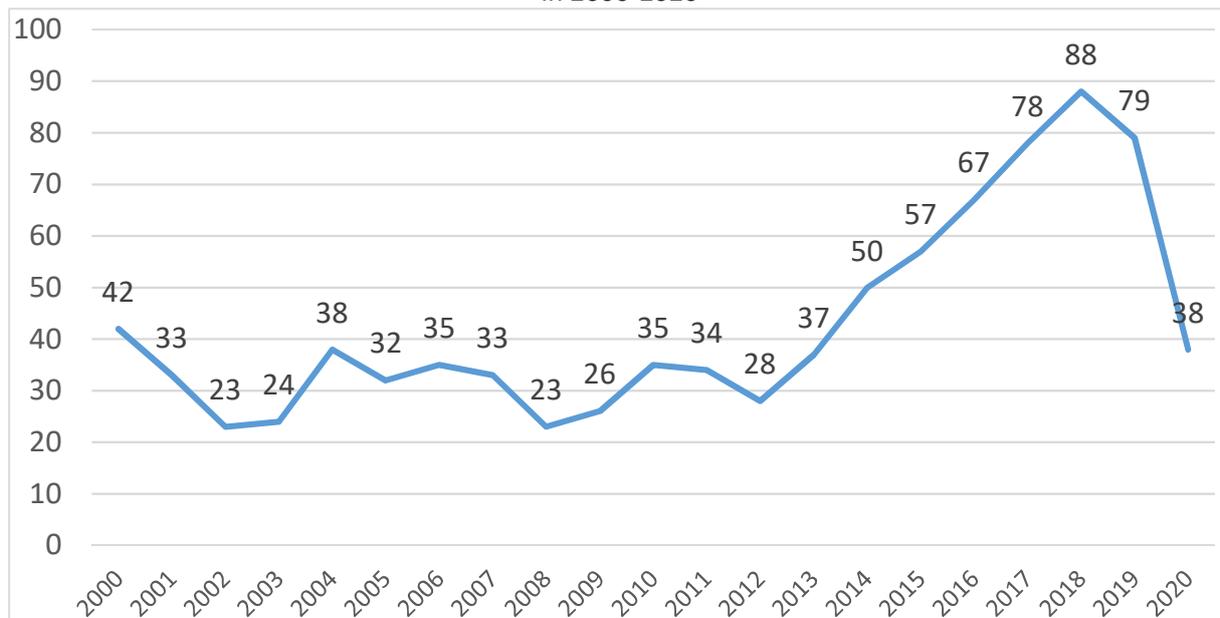


## THE COURT OF ACCOUNTS IS ONE OF THE NUMEROUS ACTORS IN THE FIGHT AGAINST CORRUPTION



The repression of financial crimes remains primarily the responsibility of the judicial system: the Prosecutor General near the French Court of Accounts and the financial prosecutors near the CRTCs still have to exchange information with criminal prosecutors and handover cases<sup>6</sup>. A judicial magistrate is always seconded to the Court's Prosecutor General's Office. These relations are enhanced since the PNF was created.

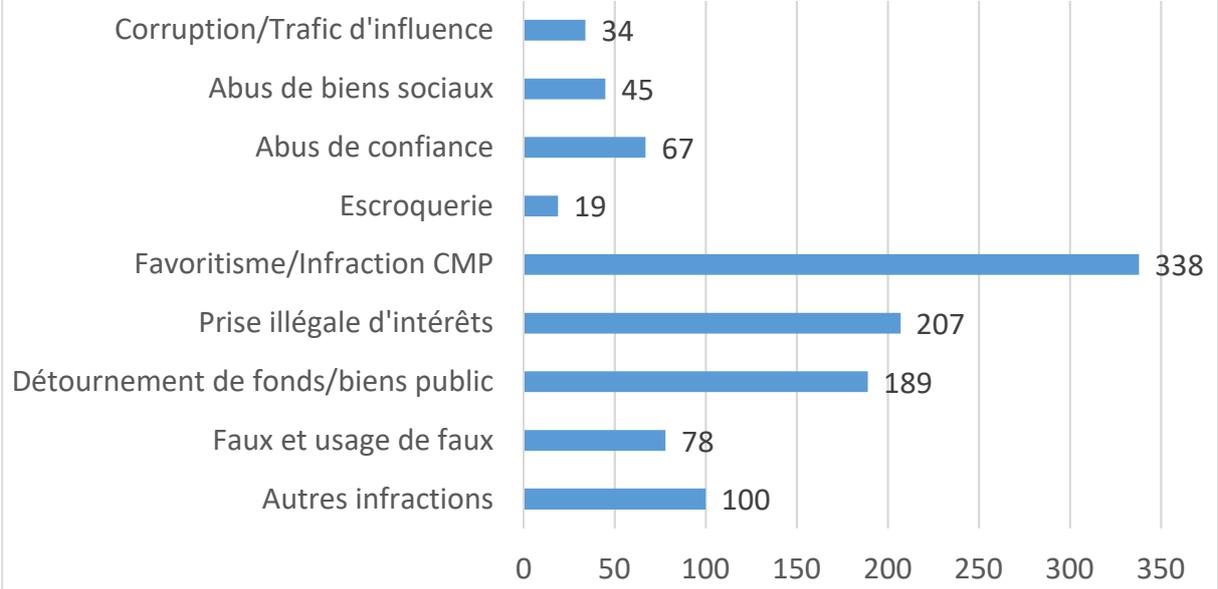
Number of cases transmitted by financial jurisdictions to judicial jurisdictions in 2000-2020



<sup>6</sup> See the missions of the General Prosecutor here : [General Prosecutor | Cour des comptes \(ccomptes.fr\)](#).

Three quarters were handed over by regional chambers. More than 50% are breaches of law on public procurement, followed by illegal appropriation of interests, breaches of trust, misuse of corporate assets and embezzlements.

Nature of cases transmitted by financial jurisdictions to judicial jurisdictions 2000-2019



Regarding communications to the *Parquet National financier*, they cover the most complex cases:

Cases transferred to PNF 2015-2018

	Cour des comptes	CRTC
<i>forgery and uttering</i>	2	1
<i>embezzlement</i>	1	7
<i>unlawful taking of interests</i>	2	5
<i>breaches of law on public procurement</i>	8	10
<i>Swindle</i>	-	-
<i>reaches of trust</i>	-	1
<i>misuse of corporate assets</i>	2	2
<i>bribery</i>	2	2
<i>other</i>	3	3

The CDBF acts in full cooperation with the judicial system, and holds on its procedures when the case is also discussed through a criminal procedure. The CDBF and the judicial courts apply the “*Non bis in idem*” principle regarding their respective sanctions.

Beyond this cooperation with the judicial authority, which has increased in recent years, the French Court of Accounts leads henceforth convergent shared action with other authorities for the prevention of corruption and fraud, and share with them information about possible violations of public financial law.

For instance, with the AFA, the French Court of Accounts receives all AFA reports and sends its relevant audit findings to AFA. They coordinate with each other through regular meetings. A magistrate of the Court is seconded to AFA.

The Prosecutor General's Office is always the Court's interlocutor of AFA, and has issued instructions to organise procedures and identify and disseminate good practices in the relations of SAI with AFA.

## **5. The action of the French SAI at international level**

Since 2019, the French *Cour des comptes* is member of the Working Group on the Fight Against Corruption and Money Laundering (WGFACML).

It takes part to the anti-corruption forum of Organisation for Economic Co-operation and Development (OECD), attends to the works of United Nations Office on Drugs and Crime (UNODC).

As a member of Contact committee of the SAI of EU, the Court participates to its Working group on preventing and combatting irregularities and fraud

Its Prosecutor General takes part to the programs Hercules and Catone with European Anti-Fraud Office (OLAF for *Office européen de lutte anti fraude*) . These programs aims to fight the embezzlement of European benefits, and, by extending, fraud and corruption in the EU.

## **6. French Court actions in relation with the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption**

Concerning measures taken to involve the Supreme Audit Institutions and the internal audit units in the country reviews under the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, in particular in relation to the review of the implementation of chapter II, on preventive measures, including in the country visits, where applicable, the Court participated in the preparation of the evaluation of the compliance of French law with the United Nations Convention against Corruption. The assessment focused in May 2018 on the chapters of the convention dedicated to the prevention of corruption and the recovery of assets.

The French Court, in conjunction with several French departments, coordinated an initial self-assessment exercise to identify the commitments made in domestic law. The evaluators (from Zambia and Liechtenstein) provided comments on the degree of transparency of our budgetary procedures and asked additional questions to which the French Court responded in July 2020 through the French Ministry of Europe and Foreign Affairs.