



## **Best practices and experience in the field of fighting corruption and money laundering**

### **The case of French Financial jurisdictions**

Although they were not created to fight corruption or fraud, but to ensure a sound management and a proper use of public funds, the accountability of public accountants and other public officials, French Financial jurisdictions are naturally in capacity to detect risks - or cases- of fraud and corruption. Recent innovations and reforms strengthen this role.

**I. By their audits and evaluations**, they help to identify risks, and may detect cases they handover to the criminal justice. They also audit the policies aiming to tackle fraud, financial crime or money laundering

**II. Through their jurisdictional activity**, they detect and punish infringement to financial rules and breaches to probity. This function is deeply reformed since 2023, enhancing the liability of public managers

**III. By an increasing involvement of the citizens**, they associate civil society to their works and receive direct alerts of whistle blowers.

**IV. Through their cooperation with others authorities involved in fighting corruption**, they contribute to efficiency of the the entire anti-corruption system.

#### **I. Audit of public bodies and assessment of public policies**

##### **I.1 The auditing function**

**The *Cour des comptes* and the 23 *Chambres régionales et territoriales des comptes (CRTC)* have a very broad area of jurisdiction and may control every entity being part of:**

- The State and the local communities and their public establishments
- The public companies and the private ones if they use mainly public money
- The social security system
- The health sector including public and private hospital sectors
- The foundations and associations that appeal to public generosity

**Through their periodic or random organic audits**, and their recommendations whose application it monitored, the financial jurisdictions help to prevent negligence or breaches to probity: about  $\frac{3}{4}$  of recommendations are fully or partially implemented. But their ability to refer cases of serious breaches to financial rules to the Litigation chamber, or criminal offences to judicial authority (cf. *infra*) is also a deterrent to misconducts.

The auditors are supported by teams highly competent in IT. A team of IT auditors specialises in auditing entities' information systems, but also algorithms or digital platforms. They are also able to characterise certain frauds by exploring financial software or collecting evidence in mailboxes, for example. A team of data scientists supports magistrates with data analysis studies using AI or more traditional quantitative methods.

**The Financial jurisdictions assess the internal audit in the French public sector**, which has been existing for a long time through dedicated services (mostly ministerial or interministerial inspections, in the case of central Government). That function was renewed and re-formalized in a 2011 decree, relying on professional standards.

As internal audit is a key part of the anti-fraud and anti-corruption mechanisms, its development is strongly supported by the Financial jurisdictions, in all public sector entities. For example, agreements have been signed between ministerial internal auditors and the *Cour des comptes* in order to facilitate programming, data exchange and follow-up of recommendations. Those agreements deal primarily with financial audits, but meetings and exchanges on a regular basis can encompass broader aspects.

**The assessment of internal audit functions is a part of an annual assessment of ministerial internal controls conducted by the *Cour des comptes*.** In order to mitigate the control risk, and on the basis of International Standards on Auditing (ISA 610 – Using the Work of Internal Auditors), the *Cour des comptes*, like any external auditor, can assess the internal audit functions regarding organization, status, level of competence, quality control process, and implementation of internal auditing standards.

**In addition, the quality of internal audit conditions the annual certification exercise of the State accounts** (and possible reservations). It's based on the ISA 315, which mentions the evaluation of internal control as one of the certification aspects, with the aim of minimizing the risk of audit.

That assessment does not occur each year for every internal auditor, but can be performed on a regular basis, especially in the ministries where internal audit functions have not been assessed at the required level in the past.

**The *Cour des comptes* also conducts a certification exercise of the major local communities and of the Social Security accounts** . This is how the *Cour des comptes* refused to certify 2022 accounts of the Family national Fund, for inadequacy in fighting fraud to benefits.

**The *Cour des comptes* conducts an ongoing audit for some major and sensitive projects.** Recently, the *Cour des comptes* started monitoring, with regular public reports, two most important projects with a special sensitivity and/or risk - because of emergency, exceptional financial and legal procedures, or because of exceptional resources and expenditures. The aim is to guarantee to citizens and donors a sound and transparent governance and to avoid any deviation in the use of funds.

**First example, the reconstruction of the cathedral Notre-Dame de Paris:** just after the great fire of Notre-Dame de Paris, which destroyed in 2019 a big part of the monument and threatened its survival, a wave of solidarity made it possible to raise the funds necessary for its preservation and restoration through a national contribution. As such, cash donations totalled €841.5 million at the end of 2021, plus donations in kind and in the form of skills sponsorship worth at least €5 million. These helps to reduce the financial cost of the works and cover part of the missions on public information and promoting heritage professions.

A specific public agency was created by law and, since January 1st 2020, has been in charge of the works, the aim being to reopen in 2024, which is a challenge.

Due to the circumstances - highly emblematic character of the monument, emergency of rebuilding, high level of donations – with its tax impact- and State financing, a special entity created, the *Cour des comptes* decided, on its own initiative, to control closely collection, management and use of funds, and to publish regular reports until the end of reconstructions.

In accordance with the commitments made by the *Cour des comptes* when it published its first report in September 2020, a new audit was conducted in 2022 at the end of the conservation works – as the restoration work got under way – on the conditions under which it was carried out and its financing. The Cour has made seven audit recommendations, aimed at ensuring the restoration of the entire cathedral and preparing for its reopening, drawing on the lessons of the past, both in terms of safety and the quality of visitors’ reception. It noted that the Public Agency was well adapted to the mission, with a sound governance, and that the procedures for tracking of donors’ funds and transparency in their use were complied.

**Second example, 2024 Olympic and Paralympic Games.** For this exceptional event, the Parliament entrusted, by a special law, the *Cour des comptes* with an ongoing and warning monitoring of the different public and private entities using public funds to organise Olympic Games, mainly the Olympic and Paralympic Games organizing committee (COJOP) which plans, organize and finance Olympic Games, and the Olympic Delivery Authority (SOLIDEO) mandated to deliver buildings and infrastructures. An Interministerial Delegate to Olympic and Paralympic Games (DIJOP) coordinates State departments involved. The monitoring started in 2019.

In 2021, a *référé*<sup>1</sup> was sent to the Prime Minister, alerting him about financial and budgetary management, and especially the inadequate coordination between COJOP and SOLIDEO, and the risk about respect of financial and budgetary frame. In January 2023, a new report pointed increasing costs, risks in the agenda of delivering, and in ensuring security and transports, the increasing costs. But it also noted governance progress and a special scheme for preventing ethical risks and conflicts of interests laying on a very active Ethical Committee and on proceedings inspired by the 2016 Law for transparency and fight against corruption. However, the *Cour des comptes* recommended to strengthen the internal control service and reinforce implementation of preventive proceedings in the context of increasing risks due to the a very tense calendar closer to the Games.

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<sup>1</sup> Communication sent by the First President of the French *Cour des comptes* to the Prime minister alerting him of the major observations of the Cour following an audit and requiring an answer-published with the *référé*.

Another report linked to the Olympic games -and the corruption risks- on the fight against doping in sport linked to OG was issued in 2021. It recommended to strengthen it with a special emphasis on high-level athletes.

**The audits of financial jurisdictions may also be specifically performed to prevent or detect fraud and breaches to probity.** In particular, they audit the tools for internal control and prevention of fraud and other serious infringements. A “**fraud detection and prevention guide**” is, for this purpose, available to the audit teams since 2022.

### **Fraud detection and prevention guide**

This guide first sets out the **legal framework applicable** to fraud and corruption.

**It outlines the facilitating factors of fraud**, whether they are general conditions and individual factors (Cressey triangle), or organisation and governance factors.

**It helps auditors to identify key risks** in the three areas of governance and organisation, human resources and public procurement. For the latter, the risks to be identified can affect sensitive sectors (construction, intellectual services, IT, communication...) or the organisation of purchasing procedures.

For each of these areas or risks, **it sets out methods of investigation appropriate** to the detection of offences, based on both practical experience and academic work, allowing to detect anomalies in relation to expected decisions, actions or behaviours.

The guide outlines the control approach involving **an in-depth audit of internal control**, based on the IIA standards, several of which concern the challenge of combating fraud (competence, professional awareness of internal auditors, objectives of the CI mission, reporting to the Directorate-General, risk management) complemented by the ISA standards.

It verifies that there is **a rigorous governance process for the fight** against fraud, periodic fraud risk assessment, preventive control and fraud detection procedures, corrective measures and fraud risk management.

The guide then focuses on **external audit**, in particular of financial jurisdictions, **which apply standards established by INTOSAI** (ISSAI standards: **ISSAI 124049** on “the auditor’s obligations in relation to fraud in an audit of financial statements” **ISSAI 553051** relating to “the adaptation of audit procedures to take account of the risk of fraud and corruption, **ISSAI 5700** for the audit of the prevention of corruption). (*Note that INTOSAI has just issued guidelines for ‘auditing the prevention of corruption in public procurement’ (i.e. a pre-massive one)*).

The guide then describes precisely **the auditor’s approach to fraud, focusing on the methods of investigation and identification**, but also on the recommendations to be drawn up for the audited entity to strengthen its prevention capacities.

This approach also covers the three **phases of fraud detection** (pre-investigation, detection, formalisation of the report) and investigation methods interrogations (including their legal framework). Finally, it deals with **the process of transmission to the criminal justice system**.

**The guide includes a complete procedure to refer the cases of criminal offence to the judicial authority:** in case of suspicion of a criminal offence (fraud or corruption) the auditor prepares to prepare a file allowing the General Prosecutor near the *Cour des comptes* (or the financial prosecutor for the *CRTC*) to refer the matter to the Public Prosecutor, in particular the *Parquet National Financier*.

**This guide is intended to support the auditors of the *Cour des comptes* and *CRTC* so that they can implement one of the four strategic objectives set out in the 2022-2024 three-year programme** for the financial jurisdictions: "controlling the risks of breaches of regularity and probity".

Against a backdrop of increasing sensitivity to fraud and corruption in public and private, national and international entities, **the financial jurisdictions must be able to go beyond their jurisdictional powers of judgment and any reports made to the competent authorities (criminal court, litigation chamber, etc.).**

However, the increasing complexity of organizations and procedures, as well as the massification and digitization of the processing carried out, make it more difficult for financial court auditors to detect fraud, unless there is a whistleblower or a fortunate coincidence.

**It is therefore desirable that most of the audit assignments carried out by the Cour and the *CRTC* should make it possible to:**

- assess the risk of fraud in the processes and organizations audited;
- better detect possible fraudulent practices;
- assess the ability of organizations (government departments, regional and local authorities, national and local public bodies, public companies, etc.) to prevent fraud within their organization.

**This is an important issue because,** according to the international organization Association of Certified Fraud Examiners (ACFE), **every year a company loses the equivalent of 5 to 7% of its annual income to fraud<sup>1</sup> and public bodies cannot be considered to be immune to these predations.** Most fraudulent practices are probably discreet and undetected. The situation resulting from the COVID-19 crisis further increases the risk of fraud, in particular because of the disorganization of decision-making circuits, the reduction or even suspension of internal controls and the increase in financial flows, encouraged by the relaxation of the rules governing many procedures (public procurement, award of building permits, etc.).

**It should be noted that fraud is distinct from error.** International Standard on Auditing (ISA) 240, The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements, which deals with the subject, defines error as "an unintentional misstatement of the financial statements, including an omission of an amount or disclosure". **In contrast, according to NEP 240, which defines the characteristics of fraud, it is "distinguished from error by its intentional nature"**. It is therefore an irregularity or an illegal act carried out in order to deliberately deceive others in order to obtain an illegitimate benefit by circumventing established organizational rules.

**It is therefore necessary for organizations to have effective fraud prevention, detection and response mechanisms in place in order to best protect an organization's interests and reputation, and it is up to the auditor to pass judgement on these mechanisms.** However, although prevention and detection are linked in this approach, they are not the same thing. Prevention refers to the policies, procedures, communication and training used

to prevent fraud from occurring; detection refers to the activities used to quickly determine whether fraud is occurring or has occurred.

During an audit, the detection of fraud is made difficult by the strategies, generally hidden, implemented by the perpetrators, who resort to complex legal and financial arrangements often involving bodies outside the scope of control of the financial jurisdictions.

In addition, **the investigative resources of financial magistrates are more limited than those of the judicial police**, in a context where the offence is not easy to characterize. As a result, the investigative work should more usefully focus on the issue of prevention through the existence of a set of systems appropriate to the organization.

Finally, while both forms are equally damaging, **a distinction must be made between internal fraud, characterized by "the use of one's profession for personal enrichment through the deliberate misuse of the organization's resources or assets", and external fraud carried out by third parties outside the organization.**

**To enhance the ability of its own auditors and of public managers, to detect and prevent fraud and corruption**, the Court established a partnership with **the Conservatoire National des Arts et Métiers** (National Conservatory of Arts and Crafts-*CNAM*) to create a University Specialty Certificate intending for public and private auditors, accounting professionals and managers, and consisting in 45 hours courses and a certificate thesis. It includes as well an understanding of financial crime network as knowledge of operational tools for detection, or for protection against fraud and criminal threat in financial area. The Court role in this certificate (four magistrates teaching along with private auditors and investigative authorities officials) allows to share investigative methods and also a common culture of risk.

## **I.2. Assessment of public anti-fraud or anti-corruption frameworks**

The *Cour des comptes* evaluates public systems or policies to control adequacy of the financial, human and legal resources devoted to these policies and their effectiveness in achieving intended outcomes.

For a few years, the *Cour des comptes* issued reports about policies and frameworks aiming to fight fraud and corruption. For example, the following public schemes were audited

- The fight against fraud to mandatory contributions (taxes and social contributions)
- The fight against fraud to social benefits
- The fight against financial crime
- The fight against counterfeiting.
- The Customs department action against frauds and traffics
- The fight against money washing

By disclosing the insufficient resources allocated to certain authorities or investigation services, the deficit of coordination between departments, and sometimes inadequate legal tools, and issuing recommendations, the *Cour des comptes* raises the alarm and warns the Government, the Parliament and the citizens and helps to enhance the frameworks of these policies.

## II. Jurisdictional activity: the direct sanction of breaches to financial rules

Jurisdictional activity is very important for preventing, even detecting corruption. Because of this historical function, magistrates are independent, sworn, and endowed with large investigative powers (no responding is punished by criminal code, almost no secrecy can be opposed), procedure is contradictory and ruling is collective- which benefits also to audit activity.

**It enables to sanction breaches of rules by issuing enforceable judgements** following a contradictory procedure. Compliance audits and accounts controls end up in reports possibly pointing out suspected legal irregularities. In such case, a different magistrate conducts new investigations. The result is written down in a final report accompanied by appropriate evidence. This report will be submitted to a judgement issued by a separate, collegial body, the Litigation chamber. Members are the higher magistrates of *Cour* and *Chambres régionales des comptes*. This process is close to judicial process.

**The French *Cour des comptes* has its own General Prosecutor** (Financial Prosecutor for Regional Courts). The General Prosecutor indicts the liability of accountable parties and recommends sanction. He starts prosecution if financial irregularities are suspected – through an audit report, a citizen reporting or a press article. He may also handover the case when criminal follow-ups are considered (see *infra*).

Because of their organization and structure as courts and their proximity with judicial/criminal public prosecutors, French financial jurisdictions communicate easily with the authorities in charge of preventing or sanctioning fraud in public finance.

**The French system relies on a strict separation of managers** (authorize, ordain, liquidate) **and accountants** (management/handling of funds) who are civil servants exclusively entitled to hold public accounts, pay expenses, collect revenues and manage cash.

Formerly the accountants were held personally and financially responsible for mishandling of funds or lack of control and were ordered to repair the complete financial damage (prejudice) caused to public funds, in a form of civil liability. Several hundred cases were judged every year. Toward managers, the *Cour des comptes* and regional chambers have no jurisdictional competency, unless in case of *management de facto* of public funds (when a manager breaches the separation managers/accountants by interfering in the accountant competency). In other cases, non-accountant managers could be sanctioned, with a fine, by a special jurisdiction: the Court of Budgetary and Financial Discipline (CDBF) but very few cases - about 10 a year- were judged.

This system laying almost exclusively on personal and financial liability of accountants was unbalanced and inadequate to the budgetary and financial management, which needs liability of non -accountant managers.

**As a result, the judicial function is deeply reformed since 2023:** with a new regime unified for every public official, the jurisdictional mission and abilities of the financial jurisdictions are the same for accountants and managers falling under the *Chambre du contentieux*

(Litigation chamber) a unique chamber of the Cour des Comptes, composed by magistrates from the *Cour* and from the *CRTC*. The *CDBF* disappears, the *Cour des comptes* getting enlarged competencies toward managers and, on the other hand, individual financial responsibility of the accountant being abolished: the sanction will be a fine for the accountant as for the manager.

**The new system, largely inspired by the CDBF, is close to the penal system.** Incriminations cover the entire scope of serious breaches of the rules (including the rules of public procurement), and includes infringements of probity (undue advantages conferred on others or oneself), or other serious misconducts potentially leading to fraud or corruption (but without going as far as proven criminal offences): in these cases, the Litigation chamber inflicts fines (up to six months pay).

**Concerning the litigants, the rule is enforceability of every officer in every body the Cour des comptes or a Chambre éregionale may audit.** But there are exceptions: the ministries are not enforceable, *unless they commit a management de facto* (in other cases, they are subject to the Cour de Justice de la République); and the local elected officials with executive mandate are not enforceable, *unless they commit a management de facto, or a breach to the rule in a function that is distinct from their mandate.*

**The authorities enabled to refer a case to the Cour des comptes are enlarged** and even private actors may refer cases, for example the creditors or the statutory auditors. However, the General Prosecutor's Office still plays the first part in the procedure (initial requests; dismissal or referral to the court after investigation)

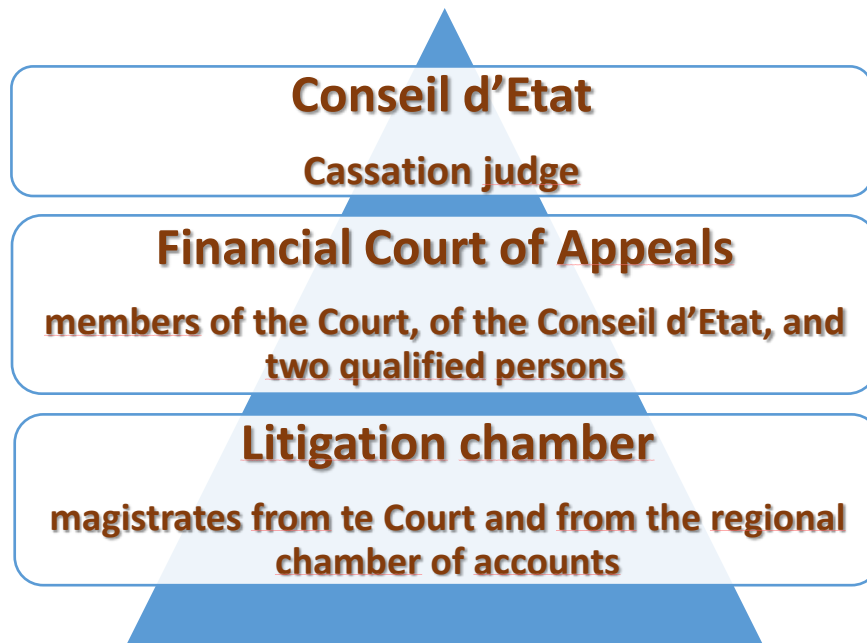
**The infringements are inspired by the previous system (Cour des comptes and CDBF) but only serious breaches are punished.**

- The most common infringement, breach of a requirement or a financial rule, remains with new criteria: a certain gravity and a significant financial harm. The former « aggravated offence », a breach of a rule giving an undue benefit to somebody is extended: benefit can be to oneself, « directly or indirectly ».
- Other infringement are :
  - Mismanagement with a prejudice;
  - Non-enforcement of court decision;
  - Irregular commitment of credits (no clearance);
  - Irregular commitment of credits (no visa);
  - No accounts production;  
Management de facto;

**The penalties are monetary: the fine is indexed on remuneration and amount proportionate to the seriousness of offence. The maximum fine is six months' pay, but for only formal infringement maximum fine, it's one month'pay**

**The reform creates a new architecture with three levels, the procedure now providing for a possibility of appeal.** A financial Court of appeals, composed with magistrates from the *Cour des comptes* and from the *Conseil d'Etat* is created. The cassation judge is still the *Conseil d'Etat*.





### **A broader range of responses to misconducts and breaches to probity**

The ability to sanction breaches that are not cases of proven corruption, but show a serious negligence or a lack of probity, is a very mighty deterrent for public managers, and a relevant alternative to the "all-penal".

Of course, in case of suspected bribery, illegal taking of interest, favouritism or embezzlement, which are offences under the Penal code, the General Prosecutor has to refer the case to a Public prosecutor – the National financial Prosecutor for the more important or complex cases. As a public official, The General Prosecutor is indeed required to denounce to the Public prosecutor a criminal offence which he has knowledge.

Sometimes the two types of offences (under Financial Jurisdictions Code and under Penal Code) may be suspected. A sound cooperation allows to conduct investigations in the both sides

Several infringements are very close or almost similar. For example, the “management de facto” (JF Code) is very close to “interference in public accounting functions” (Penal Code). Or the fact, for a public agent “to have in ignorance of one’s obligations, provided someone with an undue advantage” (FJ Code) is very close to “favouritism” (Penal Code)..

The Constitutional Council has admitted, in some cases, double prosecutions (*Cour des comptes* and Criminal court) for these very close infringements, but more often a choice has to be done to avoid a risk of mistrial in connection to the rule “Non bis in idem” which means that a person cannot be judged or punished twice for the same facts.

The important point is that no serious breaches to fair management or handling public funds may go unpunished.

### III. The increasing involvement of citizens

According to article 15 of the Declaration of Human and Citizen's Rights: "**Society has the right of requesting account from any public agent of its administration**".

The Financial jurisdictions have thus always play a major role to inform the citizens about the proper use of public money, as a corollary of accountability: Annual Public Report, published since 1832 and summarizing the financial jurisdiction's work -the most attractive and the most widely commented by national and regional press, as many of other reports, public hearings by the Parliament ( 49 hearings in 2022) , a website receiving many visits, a visitors' record during the European Heritage Days, occasion to answer questions that over the years have been more technical on the role of the Cour.

In addition, and as part of a series of internal reforms of the financial courts enshrined in an overall "JF 2025" approach, the *Cour des comptes*, which is engaged in the Open government partnership, has implemented three innovations promoting the association of citizens.

**1. All the reports of the Cour and CRTC are now available on the Cour website**, except in case of secrets protected by law and according to the rules for audits requested by Parliament or the Government.

**2. A citizens' consultation platform is created**, accessible directly or via the website of the *Cour des comptes*, aims to implement and report on public consultations on the Cour's work programme; it is open to everybody and makes it possible to gather opinions but also proposals for control. In the spring 2022 consultation (43000 visits, 9,000 registrations) the answers focused largely on the economy and public finances as well as environmental issues. The regularity of the public purchase (advisory cabinets, software purchases) is the subject of numerous comments and proposals, but also tax or social fraud. These topics are included in some of the controls decided upon following this consultation. The first reports issued from this public consultation has been published in July 2023. One focuses on the State's use of the intellectual benefits of consulting firms, criticized because its cost and its lack of transparency, the other focuses on public fundings to hunting societies, which are considered as a mighty lobby. The platform will also be sustainable, allowing in the future to feed the *Cour des comptes* and the CRTC's control program: the next consultation will take place in September 2023.

**3. A reporting platform allows confidential reports to persons who are aware of irregularities** or situations detrimental to the finances of public bodies of a certain gravity (as users, agents, providers, public service collaborators, NGOs, etc.). It's accessible via the website of the Cour des comptes, and managed by the General Prosecutor's office,

From 6 September 2022 to 31 April 2023, i.e. in less than eight months, 899 alerts were made (compared to a hundred per year before the platform). 9 % directly concern breaches of the rules of public procurement, public procurement being also affected by several other categories (misuse of public funds: 18 %; conditions of acquisition or disposal of public

property 4 %, conflict of interest 12 %, other 26 %). Given the discrepancy between receipt and processing, out of 740 “processed” reports, 44 % are transmitted to a Chamber of the *Cour des comptes* or a *CRTC* (for three quarters) and will therefore be properly investigated.

#### **IV. Cooperation with other authorities involved in the fight against corruption**

If they contribute to prevent corruption, Financial jurisdictions are not expressly mandated to fight corruption, the main role being played by criminal justice. However, and especially since 2013, several laws created new authorities and new administrative or police services to enhance the fight against fraud and corruption, and to promote public integrity. The new authorities are

**The “*Haute Autorité pour la transparence de la vie publique*”** (High authority for Transparency in Public Life – HATVP) created in 2013, which controls declarations of interests and patrimony of public officials, and their shifting between public and private sectors (“revolving doors”). It also manages the public register of lobbyists.

**The *Agence Française Anticorruption* (AFA)** created in 2016, which advises and controls the way public entities and big private companies prevent and fight corruption. It also prepares the government multi-year anti-corruption plan

At the same time, the ***Parquet National Financier*** (National Financial Prosecutor’s Office - *PNF*) was established to strengthen the capacity of criminal justice to fight corruption and financial crime.

**The *Cour des comptes* cooperates with these new authorities and with the PNF.** The exchanges are organized under the aegis of its General Prosecutor: frequent meetings to share information, ongoing dialogue, and specific referrals on cases. In fact, a permanent channel is open with the Republic prosecutors near judicial authority, especially the *PNF*, and also with the *AFA* and the *HATVP*.

It is worth noting that magistrates from the *Cour des comptes* are seconded to *AFA* and *HATVP* to be part of their management team and other ones are members of their deliberative instances. A judicial magistrate is otherwise seconded to the General Prosecutor’s office near the *Cour des comptes*.

As quoted supra, the *Cour des comptes* and the *CRTC* refer cases to judicial authority when a crime is suspected. For twenty years, 35 to 93 cases are referred every year by the General prosecutor or a financial prosecutor to the *PNF* or a Republic prosecutor. The most frequent cases are favouritism, followed by illegal capture of interests and embezzlement. They concern first local communities and second public establishments.

**The main challenge of the cooperation between the authorities** involved in the fight against corruption appears to be the right level of coordination in between actors involved so as to ensure there are no grey zones where nobody intervenes or, on the contrary, overlapping competences.