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France Narrowly Avoids Abolition of its Version of a Deferred Prosecution Agreement

By Frederick T. Davis[1]

In 2016 France adopted a law known universally as the Loi Sapin 2 as part of a thorough revamping of its national prosecutorial functions and in particular its ability to address transnational crime such as corruption and money laundering. Earlier in the decade, many of Europe's (and France's) corporate icons such as industrial giant Alstom and petroleum giant Total had entered into humiliating guilty pleas or deferred prosecution agreements with the US Department of Justice where they paid huge fines for activity with few links to the United States, while French prosecutors did virtually nothing – and did not participate in the payouts. Resisting some populist pressure to retaliate by targeting American companies, legislators in France focused on amending their criminal procedures to address the growing phenomenon of transnational corporate crime as well as the sometimes brutal efficacity of American prosecutors. The first step was the creation in 2014 of the office of the National Financial Prosecutor focused on economic crimes, a unit that soon developed into a coherent and effective worldwide player. The Loi Sapin 2 made a number of changes, including increases in the penalties applicable to corporate crime (which had been almost laughably small), tweaks to the territorial reach of France's economic criminal provisions, and the creation of the Anticorruption Agency of France (AFA), a non-prosecutorial unit that has proven to be surprisingly effective at establishing – and then enforcing – guidelines for compliance. Perhaps the most interesting feature of the Loi Sapin 2 was its adoption of a variant of the American corporate Deferred Prosecution Agreement (DPA) called the CJIP, which stands in French for a "judicial convention in the public interest."

The CJIP procedure was unmistakably modeled in part on the American version of the DPA. Its basic structure is the same: through a CJIP, a company can resolve potential criminal charges against it by making agreed-upon payments in lieu of a fine and agree to changes in its operations and in some cases to permit oversight through a monitor, in return for which it will avoid a corporate criminal conviction. There are actually two somewhat different forms of the CJIP. In situations where an Investigating Magistrate is already conducting an investigation (known in France as an "*instruction*"), that official supervises the structure of an agreement. Initially, the first CJIPs were of this sort simply because there were several "*instructions"* in the pipeline. But increasingly CJIPs have been reached without any participation by an Investigating Magistrate, under a provision that allows certain prosecutors, as part of what is known as an "*enquête préliminaire,*" to reach an agreement without any "*instruction*" taking place at all – a much more efficient and prompt process that gives the prosecutor markedly greater independence and power. In a key difference from the American model (but in common with DPA-equivalents in England/Wales, Singapore, and a few other countries) a CJIP agreement must be reviewed and approved by a judge before it goes into effect.

The CJIP procedure seems to have been successful, certainly insofar as revealed by statistics. As of this date, almost 30 CJIPs have gone into effect, which is more than twice as many as the number in England/Wales even though the British version went into effect earlier. More fundamentally, the procedure has greatly strengthened the hand of the National Financial Prosecutor, who has been freed from the constraint of having to work with investigating magistrates in "*instructions*" that tended to go on for years and years since the understaffed magistrates

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inevitable bottlenecked the process. The National Financial Prosecutor has emphasized to the French business community the office's ability to reach efficient and relatively speedy outcomes and has had some success in creating a compliance atmosphere where major corporations can reach out to the office. This success is surprising (and impressive) simply because negotiated outcomes, as well as corporate criminal prosecutions, have not generally been part of the French criminal landscape and traditions.

All along, there remained a relatively small but persistent populist view that the CJIPs were a corporate giveaway that allows big companies to buy their way out of criminal responsibility. In addition, there has been concern that victims of corporate crime – who under French criminal procedures have much greater rights than their American counterparts, including in many cases a right to be an actual party to a criminal proceeding and be compensated through it – were insufficiently addressed. In 2023, a group of victims attacked the CJIP procedure in the European Court of Human Rights, which rejected their request to abolish or limit CJIPs noting that the complainants had not exercised all their procedural rights in the case at hand.

In late 2025, political discontent with CJIPs flared when the courts approved agreements with two large banks that were viewed as especially favorable to the corporations. In April 2026, a group led by a flamboyant socialist named François Ruffin proposed legislation – which Ruffin had been discussing as early as 2018 – to eliminate CJIPs, and to the surprise of many this act was adopted by the Assemblée Nationale by a narrow margin in a session with sparse attendance. This led to a strong reaction from mainstream businesses, civil society, and many in the legal community, including the French chapter of Transparency International, which defended the CJIP as an important tool in the fight against business corruption. As a result, the French Senate made clear that it would not adopt the position of its fellow legislative branch, and on April 28 a joint commission between the two houses restored the CJIP.

For the moment the French CJIP, and the power it gives to French prosecutors to engage with corporations to promote compliance and encourage self-reporting of crime, is safe.

This is important because French and other European prosecutors are increasingly effective in this area, and are manifestly coordinating to deal with what they perceive to be a downturn in true transnational law enforcement by the US Department of Justice. In 2025, for example, the French National Financial Prosecutor signed a cooperation/coordination agreement with the British Serious Fraud Office and the Swiss Attorney General to align their anti-corruption efforts. Eliminating the CJIP would have been a significant blow to these efforts.