

INTERNATIONAL ASSET RECOVERY: FRANCE – AN OVERVIEW

KEY FINDINGS

Adequacy of Legal Framework

Several laws were passed in recent years which strongly strengthened the French legal framework for asset recovery (including extended powers of confiscation, timely restraining of suspicious assets...). However, there are still a number of inadequacies including the absence of a proper civil framework together with the fact that no confiscation can be ordered outside criminal conviction, the complexity of provisions dealing with international cooperation and the lack of rules providing for the disposal of confiscated to the benefit of victims.

- French law provides for direct measures for asset recovery. In line with UNCAC Article 53, foreign states are entitled to stand before French jurisdictions and claim the repatriation of assets that are located there to their national treasuries (as well as the award of damages). However, most often foreign states are not aware of the existence of proceeds of corruption in France nor of legal proceedings involving said property taking place there. Furthermore, **civil litigation is not adapted to the recovery of proceeds of corruption in France** (i.e. collection of evidence, restraining measures concerning the assets, international cooperation...) that's why asset recovery cases brought there are mainly based on criminal remedies - foreign states being able to prompt and/or to join criminal proceedings as “civil parties” and to claim damages through a specific action called “constitution de partie civile”.
- **In France, no confiscation can be ordered without declaration of guilt by a court** – which may pose a problem when confronted with cases involving immune, dead or fugitive people. However, French courts have recognized and enforced foreign non-conviction based confiscation orders.
- **French provisions dealing with international cooperation are numerous, scattered in different sections of the Criminal Code of Procedure and not easily accessible to foreign enforcement authorities** (not even to French lawyers).
- French law provides for sharing rules concerning the assets that were confiscated in France at the request of a foreign state (which apply where UNCAC restitution provisions do not). **There is however no rule providing for the use of confiscated assets to the benefit of the victims.**

Adequacy of Institutions and Political Will

While there has been a welcome shift in French criminal policy around 2010/2012 (with the creation of the National Financial Prosecution office and the adoption of several laws and regulations aimed at enhancing the independence of public prosecutors), France, however, still lacks a transparent and comprehensive policy to combat international corruption and recover the proceeds – a policy that would insist on the significance of asset recovery as an integral part of broader anti-corruption efforts, and assign the relevant authorities (in particular the new National Financial Prosecution and investigative agencies) with the appropriate resources to trace, seize and confiscate stolen assets and effectively support them in granting the widest range of international assistance.

- In fact, **French authorities still lack the necessary resources to investigate the increasing number of cases properly and to reply promptly to requests for mutual legal assistance. Moreover, very little is made in terms of informal/technical assistance.** In France, there is **no system in place for the collection of comprehensive & reliable data on international asset recovery** (including the volume of frozen/confiscated assets) nor, *a fortiori*, any transparency concerning said data.

Transparency and Participation

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- In France, there is **no public/official information about international asset recovery**. Court decisions are available on the website [Legifrance](https://www.legifrance.gouv.fr/) or upon request to the relevant court clerk; the Public prosecution office may however oppose to grant a copy of a decision until the final court decision is rendered.
- Since Law of December 6, 2013, **French anti-corruption associations are allowed to bring prosecutions in corruption-related matters** which enabled the recent instigation of several cross-borders cases.

Enforcement Experience

- While there is now a comprehensive set of rules aimed at fighting cross-border corruption as well as stronger determination on the part of enforcement authorities, those changes are nevertheless too recent to really straighten up France's performance. In fact, **enforcement results (i.e. number of convictions, volume of assets confiscated...) remain dramatically poor and no asset recovery case has been resolved in the last 5 years.**
- **France has almost no experience in repatriation/compensation.** In fact, **the only instance (of compensation) that we are aware of is the Thales/ Taiwan Case** (see Case box).

Case of Thalès/Taiwan

In 1991, France and Taiwan, China, signed a contract to supply six Lafayette Class frigates for a total of \$2.5 billion. Shortly thereafter, the authorities in Taiwan, China accused the French state-owned Elf Aquitaine of having paid bribes through the French firm Thomson CSF (now Thales Group) to persuade the authorities to approve the deal and launched an investigation. The case was eventually heard by the International Chamber of Commerce's International Court of Arbitration. The court found that Thales Group had violated the anticorruption terms of the contract and was therefore liable to repay all bribes, plus associated interest and legal fees. Thales appealed, and the decision was upheld by the Paris Court of Appeal on June 9th, 2011, ordering Thales Group to pay compensation to Taiwan, China, in the amount of euros 630 million (\$913 million).

RECOMMENDATIONS

Legal Framework

- Enhance the **civil framework for asset recovery**
- Introduce **non-conviction based confiscation tools**
- Develop a legal framework in order to **use confiscated assets to the benefit of victim populations**

Institutions and Political Will

- Adopt a **transparent and comprehensive policy to combat international corruption and recover the proceeds**
- Increase the **resources of the National Financial Prosecution office as well as investigative agencies**
- Collect in a centralized and comprehensive manner **data about frozen/seized & confiscated assets**
- Facilitate direct measures for asset recovery through **proactive sharing information**
- Strengthen **capacity building in developing countries**

Transparency and Participation

- Establish a **website providing easy access to information for other states about asset recovery processes in France** including relevant statutory provisions, and practical asset recovery case examples
- Publish **information about international asset recovery cases** (including the publication of *all* court decisions) **as well as comprehensive and reliable data on the volume of assets frozen/seized and confiscated, reparations or restitution ordered, and assets returned.**