

Prime Minister

Paris, 22 November 2022

No. 6379

to

Ministers,
Minister Delegates,
Ministers of State,

Re. Mechanism for the return of illicit assets¹

The term “illicit assets” commonly refers to wealth acquired illegally by foreign political personalities or their families or friends, following corruption, misappropriation of funds or other economic offences.

Where illicit assets are located in France, the foreign State in which the initial offences were committed traditionally has two options to claim for their return.

Firstly, during criminal proceedings undertaken by the courts of the foreign State, the latter may request return of illicit assets located in French territory by means of a request for legal assistance for the purposes of implementation of a confiscation decision. The provisions of Article 713-40 of the Code of Criminal Procedure state that, unless otherwise stipulated by a treaty, the sums of money recovered and the proceeds of the sale of confiscated assets are attributed to the French State, except where they have a value of more than €10,000, in which case they are divided equally between the French State and the requesting State.

Secondly, in judicial proceedings before a French court, the foreign State may, in order to establish ownership rights to the seized assets or claim compensation for its damages:

- File a complaint as a civil party before French criminal courts if the matter has given rise to the opening of an independent investigation in France (including for laundering of corruption or assimilated predicate offences),
- Or open civil proceedings distinct from the criminal proceedings.

The implementation of these procedures does however depend on the steps taken by the foreign State concerned.

In the absence of proceedings initiated by the latter or by identified victims, funds that have been definitively confiscated by the French courts are automatically transferred to the general budget of the French State, in accordance with Article 131-21(10), of the Penal Code.

To bolster existing provisions, Programming Act 2021-1031 of 4 August 2021 on inclusive development and the fight against global inequalities established an innovative mechanism aimed at returning these funds to the populations they were taken from, via cooperation and development actions. Article XI of article 2 of the Act provides that:

“In the framework of the French policy for inclusive development and the fight against global inequalities, and subject to Article 706-164 of the Code of Criminal Procedure, the proceeds of the sale of assets confiscated from persons with a definitive conviction for laundering, profiting from

¹ This circular does not reproduce the best practices, processes and procedures relating to the implementation of cooperation and development activities (use existing political and institutional frameworks, comply with the development strategies of recipient countries, etc.) or the implementation of projects (including monitoring and evaluation), which are considered to be a given. The aim of this circular is not to create parallel processes and procedures alongside those already in place: wherever possible, the mechanism should build on what exists already.

money laundering, or laundering or profiting from one of the offences under Articles 314-1, 432-11 to 432-16, 433-1, 433-2, 433-4, 434-9, 434-9-1, 435-1 to 435-4 and 435-7 to 435-10 of the Penal Code, are returned, except for legal costs, at the most local level possible to the population of the foreign State concerned, where the court ruling concerned has established that the initial offence was committed by a person holding public authority of a foreign State, holding a public elected mandate in a foreign State or discharging a public service role in a foreign State, in the course of his or her duties.

For this purpose, the proceeds mentioned in the first subparagraph of this XI give rise to the opening of budget appropriations within programme 370 included in the “Official development assistance” mission, under the responsibility of the Ministry of Foreign Affairs, and finances cooperation and development actions in the countries concerned at the most local level possible to the population, in compliance with the principles of transparency and accountability and while ensuring civil society organizations are involved. The Ministry of Foreign Affairs defines, on a case by case basis, the terms of return of these proceeds so as to guarantee that they contribute to improving the living conditions of populations.”

The annexed report (Comprehensive partnership framework, “II. Priorities of the policy for inclusive development and the fight against global inequalities” - “B. Sectoral priorities” - “6. Promoting democratic, economic and financial governance”) provides that:

“[...] France returns, in cooperation with the foreign States concerned and at the most local level possible to the population, the proceeds of the sale of illicit assets, in accordance with the mechanism set down in Article 1 of this Programming Act and with SDG 16 of the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda. In accordance with the principles of transparency and accountability, recalled during the 2017 Global Forum on Asset Recovery, France ensures Parliament, citizens and civil society organizations are informed and involves the latter organizations in monitoring of the mechanism set out in the same Article 1. Cooperation and development actions financed in the countries concerned using budget appropriations opened to match proceeds from the sale of illicit assets are not included in the accounts of France’s official development assistance.”

I. Eligibility for the returns mechanism

Paragraph XI of the Act of 4 August 2021 provides for the application of a returns mechanism in cases of laundering, profiting from offences and laundering of profits from offences, where committed in France by a person holding public authority of a foreign State, holding a public elected mandate in a foreign State or discharging a public service role in a foreign State, in the course of his or her duties, as well as the members of his or her family or entourage, or any intermediary.

The court decision must establish that the illegal actions, initially committed in the foreign State by the person holding public authority, and before the commission of money laundering or profiting from the offence, have been determined under penal law to constitute:

- Embezzlement (Article 314-1 French Penal Code);
- Passive corruption and trading in influence committed by persons exercising a public service role at national level, unlawful taking of interests, favouritism or misappropriation of public funds, including by negligence (Articles 432-11 to 432-16 French Criminal Code);
- Active and passive trading in influence committed by individuals (Articles 433-1 and 433-2 French Penal Code)
- Misappropriation of goods from a public deposit (Article 433-4 French Penal Code);
- Corruption and trading in influence by or with regard to national judicial personnel (Articles 434-9 and 434-9-1 French Penal Code);

- Passive and active corruption and trading in influence with regard to foreign public officials (Articles 435-1 to 435-4 French Penal Code)
- Corruption and trading in influence with regard to foreign or international judicial personnel (Articles 435-7 to 435-10 French Penal Code);

The following eligibility conditions for the return of illicit assets mechanism are therefore strictly limited by law. As such, the conviction giving rise to the confiscation of the illicit assets must:

- Be final (not eligible to appeal);
- Concern at least one of the above-listed offences;
- Concern a predicate offence initially committed by a person holding public authority of a foreign State, holding a public elected mandate in a foreign State or discharging a public service role in a foreign State, in the course of his or her duties (while this capacity need not necessarily appear in the charges stated that led to the proceedings; it must merely be established by the ruling);
- Explicitly refer to laundering of or profiting from the predicate offence in France.

Parliament sought to encompass situations as broad as possible, with the rather wide-ranging wording of “proceeds of the sale of assets confiscated from persons with a definitive conviction”. The “assets”, initially seized and then “confiscated” and then “sold”, corresponds to almost all the criminal assets potentially apprehended by the judicial authorities, including corporeal movables, real estate, credit on life insurance contracts, securities portfolios and assimilated, and savings products. The legal wording excludes only credit balances on bank accounts (current accounts, deposit accounts and assimilated) that are not “confiscated” financial products when they have been seized.

Moreover, this mechanism is implemented subject to the application of that provided for by Article 706-164 French Code of Criminal Procedure, which enables civil parties to obtain settlement of their compensation through attachment of definitively confiscated sums of which the Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC) is the depositary.²

In cooperation with the States concerned, the funds returned should contribute to improving quality of life for the population. This return should be implemented in compliance with the principles of transparency and accountability, in particular to avoid the funds in question being used in corruption circuits.

The return of funds will be implemented through cooperation and development actions, but these will not be registered as official development assistance in the declarations made by France to the Organisation for Economic Co-operation and Development (OECD). The mechanism will apply in accordance with the process illustrated below.

² The mechanism described in this circular applies therefore only to sums that are not to be used to compensate one or more civil parties.

Transparency and accountability	Definitive confiscation	
	Sale of assets	
	Payment into the budget of the French State	
	Allocation of appropriations in the budget programme	
	Seeking of an agreement with the State concerned	
	Signing of an agreement	Failure of attempts to reach an agreement
	Allocation of funds	
	Selection of an implementation partner	
	Implementation	
	Monitoring	
	Evaluation	

II. Cooperation with the State of origin of the funds

In accordance with the Act of 4 August 2021 and applicable international texts, the implementation of the returns mechanism is carried out in cooperation between France and the State of origin of the funds. In line with this general principle of cooperation and international assistance, the 2003 United Nations Convention against Corruption (or “Mérida Convention”) provides for several means of returning the proceeds of corruption which the States Parties may or must use.

- i. By principle, the Ministry for Europe and Foreign Affairs seeks a written agreement with the State of origin of the funds on the allocation of the returned sums, in accordance with best practices for transparency and traceability of the use of the funds.
- ii. If, despite the best endeavours of the parties, such a written agreement cannot be concluded in reasonable time, the Ministry seeks a non-objection opinion on the allocation of the sums.
- iii. Should it prove impossible to reach such an agreement or to obtain such a non-objection opinion within a maximum of two years, and after notification of the State of origin of the funds, the funding can be used for cooperation and development actions directly benefiting the populations concerned, particularly via actions where civil society organizations in the country concerned are counterparties, in accordance with best practices for transparency and traceability of the use of the funds.

If the State of origin no longer has official contact with France (diplomatic relations suspended or broken off), the funding can be used for cooperation and development actions directly benefiting the populations concerned, particularly via actions where civil society organizations in the country concerned are counterparties, in accordance with best practices for transparency and traceability of the use of the funds.

In all cases, the appropriations under budget programme 370 are not subject to budget regulation. In particular, no reservation or cancellation will be applied to appropriations under this programme. Commitment authorizations and unconsumed appropriations will be fully rolled over to the next year.

Under the above procedure, France may explore the possibilities offered by the Mérida Convention, including Article 62, 2. c).

III. Cooperation with other States concerned

Insofar as possible, and where the context allows, the examination of returns cases will be carried out in concert with the other States that plan to return funds linked to illicit assets to the same State of origin.

IV. Budget procedure

The proceeds of the sale of confiscated assets will continue to be transferred to the general budget of the State. The reception of these proceeds will give rise to the opening, in the next Finance Act, of budget

authorizations on programme 370 for an equal amount, minus legal costs and expenditure directly linked to the sale.

Authorizations and appropriations under budget programme 370 are not subject to budget regulation. In particular, authorizations and appropriations under programme 370 will be exempted from reservation. Authorizations and appropriations under programme 370 cannot be amended by transfer or advance as provided for under Articles 12 and 13 respectively of Organic Act 2001-692 of 1 August 2001 on Finance Acts.

The authorizations available under programme 370 at the end of the year will be fully rolled over to the same programme the next year, by joint order of the Minister responsible for Finance and the Minister responsible for Foreign Affairs, increasing by the same amount the appropriations for the next year. The appropriations available under programme 370 at the end of the year will be fully rolled over to the same programme the next year, by joint order of the Minister responsible for Finance and the Minister responsible for Foreign Affairs, if the amount of the available appropriations is lower than the overall limit defined in paragraph II, subparagraph 2, of Organic Act 2001-692 of 1 August 2001 on Finance Acts. If the amount of the available appropriations is above this overall limit, the Finance Bill of the next year shall contain a provision to increase this limit in order to ensure the appropriations available at the end of the year are fully rolled over.

V. Allocation of funds

Based on the context, local consultations can take place when identifying cooperation and development actions, on an inclusive and transparent basis. Such a consultation may seek to inform the identification of needs carried out by the competent French Embassy and, if applicable, the State of origin of the funds.

This consultation should comply, where possible, with best practices in the area³ and the necessary precautions should be taken for potential beneficiaries in situations where returns may lead to local prosecution.

VI. Selection of implementing organizations

Implementing organizations for cooperation and development actions should be selected on the basis of the following:

1. Competence in the sectors identified for fund allocation;
2. Working experience in the country concerned;
3. Guarantees in terms of management of all types of risks and management of financial circuits.

If the steering committee defined in part VIII decides to allocate funds, or part of the funds, directly to projects led by civil society, selection shall be carried out through a call for projects, taking into account best practices.

The procedures of the selected implementing organizations should enable receipt and handling of reports of irregularities in management of funds, including reports from third parties.

VII. Transfer of funds from the dedicated budget programme

Traceability of funds must be ensured:

- a) Sums should be identified as “returned assets” at every stage in the returns process, until final allocation;
- b) Sums should be distinguished in accounting from other revenues of all organizations receiving them, including the State of origin of the funds.

³ See in particular: European Commission, *Better regulation: guidelines and toolbox* (Chapter 7, Tools 53 to 56).

No transfer of funds may take place until the concrete terms of their allocation have been determined clearly and finally.

VIII. Monitoring

The monitoring of the implementation of cooperation and development actions shall be carried out by:

- A strategic steering committee, meeting at least once annually.
- It shall be made up of:
 - Representatives of France;
 - Representatives of the State of origin of the funds.

It shall be chaired, in turn, by a representative of the French Government and a representative of the State of origin of the funds. The steering committee shall examine and approve the envisaged cooperation and development actions.

- A technical monitoring committee, meeting at least once quarterly. It shall be made up of:
 - Representatives of France;
 - Representatives of the State of origin of the funds;
 - Representatives of the implementing organization, if applicable;
 - One or more representatives of the local population in the country of origin, based on criteria of representativeness, independence and probity and on the sectors of activity of the cooperation and development actions, as well as the context and by invitation by the representatives of France or the State of origin of the funds, with great care to prevent conflicts of interest.

It monitors the implementation of the cooperation and development actions chosen by the steering committee.

IX. Evaluation

The financed actions should be evaluated wherever possible.

X. Audit

In line with France's anti-corruption strategy for its cooperation action, the country will promote local high supervisory institutions for public finances and support the role of local supreme audit institutions (SAIs) in independent and rigorous audits and supervision of the regularity of the use of the funds, and even their performance, be that in their ordinary supervisory activity or in *ad hoc* audits.

The body selected for the audit should be independent. In the case of an audit not carried out by the local SAI, the body must be chosen through a transparent call for applications and selection procedure: the call for applications, including selection criteria need to be made public, as does the name of the chosen body.

XI. Transparency and accountability

Any written agreement signed with the State of origin shall be published on the website of the Ministry for Europe and Foreign Affairs.⁴ Any agreements with organizations entrusted with implementing projects shall also be published there.

Independently of signed agreements, the amount and purpose of the action and the implementing organization at the least shall be published online.

⁴ In this case, the paper version of the agreement should be sent to the Treaties Unit of the Public Access Department (Archives Directorate) for publication via CADIC. Access to a digital version of the agreement may also be possible via <https://www.diplomatie.gouv.fr/>.

Audit and evaluation reports shall also be published online within two months of the date of submission of the final audit or evaluation report.

Ideally, information concerning the financed actions, audit and evaluation reports and any other information concerning returns should be accessible in one place (website of the Ministry for Europe and Foreign Affairs at least, and perhaps the website of the French Embassy in the State of origin of the funds).

This information should be published at the latest two months after validation.

The information published by the Ministry for Europe and Foreign Affairs will be provided in French and in the official languages of the States of origin of the funds.

The information disseminated by the countries of destination and origin and by intermediaries in the returns process shall clearly mention the “returned assets” nature of the funds.

Depending on the context, part of the returned sums may be used to enable local populations to develop their own tools for supervising and monitoring funds, and to draw their attention to the management of returned assets and/or to train local organizations and citizen in supervision and monitoring.

Depending on the local context, one or more representatives of the local population may be invited to take part in the meetings of steering committees and technical monitoring committees. The selection of local population representatives should ensure there is nothing that might lead to perceived conflicts of interest. In this case, France, the State of origin of the funds or the implementing organization should inform the local population of this possibility and provide the information required for them to make an informed decision on involvement in the committees.

The French Parliament shall be informed in accordance with applicable procedures of the use made of the sums paid to the dedicated budget programme for “Return of illicit assets”. Currently, the mechanisms for accountability to Parliament are as follows:

- Annual performance plans and annual performance reports;
- Cross-cutting policy document;
- Annual development policy report introduced by the Act of 4 August 2021;
- Parliamentary questions.

All information published should enable civil society in France, internationally and in the State concerned to take part in monitoring the mechanism’s implementation.

XII. Tax matters

The amounts transferred are inclusive of all duties and taxes.

[Signature]

Elisabeth Borne

Annex 1: Indicative template for an agreement between France and the State of origin of funds

Agreement between
the Government of the French Republic
and
the Government of XXXXXXXXXXXX
on the return of assets definitively confiscated by French courts

The Government of the French Republic and the Government of ... (hereinafter referred to as the “Parties”) agree as follows:

ARTICLE 1: Purpose and amount

The purpose of this Agreement is to define the principles and terms of transfer of definitively confiscated assets or the proceeds of their sale to XXXXXXXXXXXX, in accordance with Article 2, paragraph XI of Act 2021-1031 of 4 August 2021.

The amount of the transferred assets totals XXXXXX EUR.

ARTICLE 2: Allocation of funds

The funds shall be allocated as follows:

- *[sector 1]*: XXXXXX million EUR;
- *[sector 2]*: XXXXXX million EUR.

In addition, depending on the context, XXXXXX million EUR shall be used to enable local populations to develop their own tools for supervising and monitoring funds, and to draw their attention to the management of returned assets and/or to train local organizations and citizens in supervision and monitoring.

The funds shall finance investment and operating expenditure as well as studies, audits and evaluations, training and technical support, *inter alia*.

ARTICLE 3: Commitments of the Parties

The Parties agree that the transferred assets will not be released or made available to:

- a. Any person whose assets have been confiscated as understood in Act 2021-1031 of 4 August 2021 (confiscation from public persons or their families or close entourage of funds, following acts of corruption, misappropriation of funds or other economic offences initially committed in the country of origin) or
- b. the heirs, associates or dependents of the above-mentioned persons.

ARTICLE 4: Monitoring

The monitoring of the implementation of the cooperation and development actions shall be carried out by a technical monitoring committee, meeting at least once quarterly. This committee shall include representatives of:

- The French Republic;
- The *[beneficiary State of the returned funds]*
- The implementing organization;
- The local population.

Each of the Parties and the implementing organizations and the local population shall appoint their respective representatives to the committee.

The Parties may oppose the appointment of the representative chosen by the local population if that choice could lead to perceived conflicts of interest. In this case, the local population may nominate another representative.

The committee shall be chaired by one of the representatives appointed by [*beneficiary State of the returned funds*].

The implementing organizations of the cooperation and development actions shall prepare annual reports for each project, including a report on the use of the financial resources and a report detailing the activities undertaken and describing the progress made in relation to the project's goals, including challenges and constraints.

Once these reports have been examined and approved, they will be published by the Parties. ARTICLE 5: Selection of cooperation and development actions

Each of the entities sitting on the steering committee may identify actions.

The examination of these actions shall be carried out jointly by the two Parties.

The steering committee shall approve the envisaged cooperation and development actions.

No transfer of funds may take place until the concrete terms of their allocation have been determined clearly and finally.

ARTICLE 6: Transparency and accountability

[*beneficiary State of the returned funds*] (...) shall make public the selected cooperation and development actions for the use of transferred assets: at least the amount and purpose of the action and the implementing organization.

This agreement may be made public by the Parties in accordance with the conditions of their national legislation. Agreements with organizations entrusted with implementing projects shall also be published.

Lastly, sums shall be identified as "returned assets" at every stage, until final allocation. They shall be distinguished in accounting from other revenues of all organizations receiving them. The information disseminated by the Parties shall clearly mention the "returned assets" nature of the funds.

ARTICLE 7: Tax matters

The financed expenditures shall be inclusive of all duties and taxes, in accordance with local tax regulations.

ARTICLE 8: Evaluations and audits

Cooperation and development actions shall be subject to:

- External technical and financial audit;
- Mid-term and final evaluations.

[*Local supreme audit institution*] may also, at its own initiative or that of a Party, proceed with or commission an external audit. In this case, the [*Local supreme audit institution*] shall propose the preventive and remedial actions required for the proper implementation of projects for adoption by the beneficiary entities. Audit reports and recommendations shall be published on the website of [*Local supreme audit institution*].

The body selected for the audit should be independent. In the case of an audit not carried out by [*Local supreme audit institution*], the body must be chosen through a transparent call for applications and selection procedure: the call for applications, including selection criteria must be made public, as must the name of the chosen body.

Audit and evaluation reports shall be published online within two months of the date of submission of the final audit or evaluation report.

ARTICLE 9: Final Provisions

This Agreement shall take effect on the date of receipt of the last written notification by which the Parties shall inform one another of the completion of the procedures required for the entry into force of the Agreement.

This Agreement may be amended at any time, in writing, by mutual agreement between the Parties. Any amendment shall take effect on the date of receipt of the last written notification by which the Parties shall inform one another of the completion of the procedures required for the entry into force of the Amendment.

Any dispute between the Parties concerning the interpretation or implementation of this Agreement shall be settled by consultations between the two via diplomatic channels.

The Annexes form an integral part of this Agreement.

Done at ..., on DD Month YYYY

in duplicate, in French and XXX, both texts being equally authentic.

For the Government of the French Republic

For the Government of ...

The Minister for Europe and Foreign Affairs

...