Commission Recherche – Formulaire de demande
Programme de Soutien à la rédaction scientifique en anglais

Chercheur(e) demandant le soutien

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La demande concerne :

☒ Un article scientifique
☐ Un projet de recherche
☐ Autre

Détail de la demande

La demande est motivée par le besoin d'une relecture d'un article scientifique dans la spécialité du droit, et lequel sera publié dans un ouvrage collectif (en langue anglaise) recensant les actes de la rencontre scientifique européenne suivante :
2 nd European Conference
on Whistleblowing Legislation:
Europe's New Whistleblowing Laws –
Commonalities, Differences, and Expected Impact
10-11 September 2022, University of Göttingen, Germany

Il s'agit d'une adaptation et actualisation de la contribution orale (en anglais) de l'auteur lors de ce colloque européen.

Description de l'article ou du projet – *0,5 page max.*

L'objet de l'article consiste en la présentation de la législation française relative à la protection des lanceurs d'alerte et plus spécifiquement en son évolution suite à la mise en vigueur de la Directive européenne lanceurs d'alerte (2019/1937) et sa transposition par le droit national. Il s'agit d'une contribution dans un ouvrage collectif consacré à la présentation des législations européennes nationales en la matière et qui sera publié par les presses de l'Université de Göttingen (Allemagne).

L'objectif de l'article est de démontrer les améliorations apportées à la loi Sapin 2 (2016) par le nouveau cadre légal (2022) mais également les paradoxes et « points morts » de la nouvelle législation, là où la concrétisation jurisprudentielle méritera la plus grande attention de la part des praticiens et de la doctrine.

Pour les projets de recherche – argumentaire précisant la façon dont le projet répond aux objectifs du programme et à ses critères d'évaluation - *0,5 page max.*

Ce formulaire est à envoyer par courriel à aap-recherche@univ-avignon.fr , accompagné d'un court CV du demandeur, du texte à corriger (draft) et éventuellement d'un devis

Contribution potentielle du projet/de l'article à l'internationalisation de la recherche d'Avignon Université - ***0,5 page max.***

La publication est dirigée par un réseau européen de spécialistes du milieu académique en matière de protection des lanceurs d'alerte au sein duquel l'auteur occupe le rôle de la « représentation française ».

Correcteur/trice envisagé(e) – ***Optionnel***

La collègue, professeur de l'Université d'Avignon potentiellement susceptible d'effectuer le travail de relecture n'étant pas disponible pour une relecture spécialisée dans la discipline juridique, une liste d'autres collaborateurs ponctuels de l'Université a été communiqués au demandeur ; le choix a été fait pour un parmi eux, à savoir la société IBL et précisément Mme Marshall Beverley.

Avis motivé de la direction de l'unité de recherche ou de la SFR/FR concernée - ***0,5 page max.***

Ce projet de publication internationale s'inscrit pleinement dans les travaux de recherche de Christina Koumpli et dans l'axe scientifique « Sociétés numériques » du LBNC UPR3788. Le laboratoire soutient pleinement les initiatives des chercheurs et chercheuses membres qui contribuent à valoriser l'insertion dans des réseaux européens et internationaux.

Rappel des modalités

Les demandes seront traitées au fil de l'eau par la commission recherche (CR) du conseil académique d'Avignon Université. Elles devront être transmises par courrier à l'adresse aap-recherche@univ-avignon.fr au moins 15 jours avant la tenue de la CR ; elles seront traitées par la Direction d'Appui à la Recherche et à l'Innovation qui contrôlera préalablement à la CR leur recevabilité.

La contractualisation du travail réalisé par l'intervenant sera gérée par la Direction d'Appui à la Recherche et à l'Innovation. Le dépôt d'une demande de soutien est un engagement à aller au bout du processus de soumission et à rendre compte, à la CR, des résultats du projet.

Ce formulaire est à envoyer par courriel à aap-recherche@univ-avignon.fr , accompagné d'un court CV du demandeur, du texte à corriger (draft) et éventuellement d'un devis

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Le Pontet, le 23 novembre 2022

NREF : Devis N° 061401/D14
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DEVIS

VERIFICATION LINGUISTIQUE D'UN DOCUMENT TECHNIQUE EN ANGLAIS

Désignation : *2nd European Conference on Whistleblowing Legislation*
The New Whistleblowing Laws of France

Commandé(e) par : Christina KOUMPLI

Livraison : par email 14 jours après réception de la version finale du document

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- Pénalité forfaitaire de 40€ (Loi 2012-387 du 22 mars 2012, décret 2012-1115 du 2 octobre 2012)

Soumis à la CR du 1er décembre 2022

2nd European Conference on Whistleblowing Legislation Europe's New Whistleblowing Laws - Commonalities, Differences, and Expected Impact

14:30-15:30: The New Whistleblowing Laws of France

Christina Koumpli (Senior Lecturer, Avignon University)

Since the 1st of September 1, 2022, two new legislations come into force in France. The one aimed at "***improving*** the protection of whistleblowers"[1] and the other "aimed at ***strengthening the role of the Defender of Rights*** in the field of whistleblowing"[2]. These are the national instruments transposing the directive of the EU of 23 october 2019 on whistleblowers protection.

If both French laws mention terms like "improvement" and "strengthening" that is due to the fact that whistleblower protection in France exists long before the October 23, 2019 directive[3] .

The question to be answered is whether and to what extent this new legal framework really improves the protection of whistleblowers in France.

I will answer this question by addressing the various developments following the 2022 law.

My presentation will be structured around the two main stages /phases of a whistleblower's report: before and after the act, because the effective protection of the whistleblower cannot be conceived when there is an imbalance between them.

I will first outline what has changed in terms of protection in the phase BEFORE reporting (the broadening of the definition of whistleblower, the extension of protection to other persons, the simplification of reporting channels, the qualification of the whistleblower by the Defender of Rights) (I).

Then I will discuss the changes in protection once the alert has been issued. I will discuss here the main points of improvement of the protection *stricto sensu* and a reflection on the obligation of the treatment of the internal alert (II).

Nevertheless, as an introduction, it is essential to give a quick summary of the French legal framework which was in force before the recent directive of the EU, so we could measure the announced “improvement”.

THE FRENCH LEGAL FRAMEWORK BEFORE DIRECTIVE 2019/1937

[1] Act No. 2022-401 of 21 March 2022 to improve the protection of whistleblowers
[2] Organic Law No. 2022-400 of 21 March 2022 to strengthen the role of the Human Rights Defender in alert reporting
[3] EU Directive 2019/1937/EU of 23 October 2019 on the protection of persons who report violations of Union law

To sum up, the protection of whistleblowers in France is progressive and is divided into two phases.

- First, there was a period of progressive, scattered, sectoral protection from the 1980s to the 2000s and an emphasis after 2010.

Without claiming to be exhaustive, here a are some examples: the reporting of corruption by private sector employees on 2007, reporting of health safety issues on 2011, reporting of serious risks to public health and the environment on 2013, reporting of gender discrimination in the public and private sectors on 2013, reporting of conflicts of interest in the public service on 2016, etc.

- Act of 13 November 2007 protecting private sector employees who report acts of corruption observed in the course of their duties ;
- the law of 29 December 2011 concerning the reporting of facts relating to the safety of medicines and health products ;
- the law of 16 April 2013 concerning the reporting of facts relating to a serious risk to public health or the environment;
- the law of 6 December 2013 protecting a person, from the public or private sector, who has reported or testified to facts constituting an offence or a crime.
- Act No. 2005-843 of 26 July 2005 amended article 6 bis of the Act of 13 July 1983 on the rights and obligations of civil servants by providing for the protection of civil servants who report acts constituting discrimination on grounds of sex (L. 131-12 of the CGFP);
- the law of 29 June 2016 creating protection for public officials (as well as military personnel) reporting conflicts of interest;
- In addition to these texts, there are those protecting public employees who make reports (Decree No. 82-453 of 28 May 1982 on health and safety, this right to alert was introduced in the State civil service. It was extended to local civil servants by Decree No. 95-680 of 9 May 1995 and to hospital civil servants (by the provisions of L. 4111-1 of the Labour Code), who, in any case, have been required since 1957 to report to the public prosecutor any crime or misdemeanour discovered in the course of their duties under article 40 of the Code of Criminal Procedure.

- A period of so-called harmonized protection and formalization thanks to the intervention of Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernization of economic life4 , known as "Sapin 2 law" (hereinafter "Sapin 2 Law").

The latter is the cornerstone of the consolidation of whistleblowing protection in France as it creates the legal basis that simplifies and strengthens the protection of whistleblowers in France.

The Sapin 2 law has therefore the merit of having created a "general whistleblower status" applicable to the public and private sectors, consisting of a definition common

[4] Law n°2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life

to different sectors and a protection conditioned by two elements: one substantive and one procedural: firstly it is necessary to meet the definition and secondly to respect the channels of reporting.

i. **Definition of a** whistleblower

Was a whistleblower under section 6 of the Sapin 2 Law:

> "A person who discloses or reports, in a disinterested way and in good faith, a crime or offence, a serious and manifest violation of an international commitment regularly ratified or approved by France, of a unilateral act of an international organization taken on the basis of such a commitment, of the law or of regulations, or a threat or harm of which he or she has personal knowledge.

Could be a whistleblower according to the third paragraph of Article 8 : any public official (permanent or interne, contract staff, trainee), permanent or occasional external collaborators.

ii. **Protection *stricto sensu***

In termes of *stricto sensu* protection, whistleblower had (and still has) the following rights :)

- Any action taken against the whistleblower is null and void
- Criminal liability in case of violation of a professional secret (except medical secret, secret between client and lawyer, national defence secret)
- Guarantee of confidentiality (of identities and of information)
- Civil and criminal sanctions against the employer who acted retaliatory measures
- Protection against all retaliation forms, direct or indirect, in the context of work with shifting of the burden of proof
- Suspensive appeal following dismissal - including in the case of a short-term contract.

However, as mentioned, the Sapin 2 law put in place a procedural criterion of admissibility of the protective status, consisting of a **specific** procedure **for reporting** (internal channel, external channel, public disclosure). Failure to respect these stages deprived the whistleblower of his or her protective status, except in cases of serious and imminent danger (where public disclosure could be admitted).

For the internal channel (manager, employer, or whistleblower referent), the Sapin 2 Act provided for a specific "procedure for collecting reports from whistleblowers within legal persons under public or private law or State administrations" (open only to persons with a professional link to the entity). (article 8-III)

Moreover, the internal reporting procedure has benefited from a fairly well-developed regulatory framework:

- **Decree** No. 2017-564 of 19 April 2017[5] containing the terms and conditions for the implementation of the alert collection system in the public sector, followed by various ministerial **orders**[6] .

It is on the basis of the order of December 3, 2018 of the Ministry of Higher Education[7] that within the University of Avignon we have set up a system for collecting reports for which I am in charge as a "referee alert".

- **The circular of 19 July 2018**[8] adopted by the Ministry of Action and Public Accounts explaining its implementation in the civil service,
- Recommendations of the **French Anti-Corruption Agency** published in the Official Journal, providing details on the implementation of internal whistleblowing in large private sector companies [9]
- And the French Data Protection Authority's (**CNIL**) **guidelines** on the processing of personal data for the implementation of a professional alert system[10] .

Despite this legal panoply, an information report to the French Parliament (No. 4325) of 7 July 2021 (known as the Gauvain - Marleix report), highlighted the shortcomings of the current status of whistleblowers and the need to consolidate it.

According to the authors of this report,

> "the status of whistleblowers faces a contradiction: while the Sapin 2 law encourages whistleblowing by affirming the existence of high guarantees for whistleblowers, the protection and support for whistleblowers remain weak in practice, sometimes exposing whistleblowers to great difficulties".

Faced with this situation and on the occasion of the obligation of transposition of in March spring 2022. The provisions of two laws of 22 March 2022 consequently **rewrite the Sapin 2 law, which remains the reference text in this area**. Therefore, I will often talk about the Sapin 2 law before and after modification.

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[5] Decree No. 2017-564 of April 19, 2017 on procedures for collecting whistleblowers' reports within legal persons under public or private law or State administrations

[6]

[7] MESRI Order

[8] Circular of 19 July 2018 on the procedure for reporting alerts issued by public officials and the guarantees and protections granted to them (pdf - 635.6 KB) (below Circular of 19 July 2108)

[9] Opinion on the recommendations of the French Anti-Corruption Agency intended to help public and private law entities prevent and detect acts of corruption, influence peddling, misappropriation of public funds and favouritism, JORF n°0298 of 22 December 2017

[10] CNIL, guidelines for the processing of personal data for the implementation of a professional alert system, adopted on 18 July 2019

I. PRE-ALERT PROTECTION

I will address the changes here when it comes to answering the following questions

- Am I a whistleblower (definition),
- How to proceed to issue an alert (the question of reporting channels)
- Who can help me"? (Question related to accompaniment)

A. Broadening the definition of whistleblower

A. Changes to the definition of whistleblower

~~The importance of the definition of whistleblower lies in the fact that the Sapin 2 law, both before and after its recent amendment of 2022, conditions the status of whistleblower. The admissibility of an alert and therefore the protection of the whistleblower must first and foremost meet the definition, hence the importance of what could be a discouraging factor for the potential author of an alert.~~

In French law now

> "A whistleblower is a natural person who reports or discloses, without direct **financial consideration** and in good faith, information concerning a crime, an offence, a threat or harm to the general interest, a violation **or an attempt to conceal a violation of an international commitment** duly ratified or approved by France, of a unilateral act of an international organisation taken on the basis of such a commitment, of the law of the European Union, or of the law or regulations. **When the information was not obtained in the context of the professional activities mentioned in Article 8(I), the whistleblower must have had personal knowledge of it**."

This definition is very similar to the previous one resulting from the Sapin 2 law, but the law of 21 March 2022 has made a number of changes to improve the protection of whistleblowers.

a) Changes *rationae personae* :

- The “desinterested” report

According to Article 6 of the Sapin 2 law amended in 2022, the report must no longer be made "disinterestedly and in good faith" (de manière disinterested et de bonne foi), but "without direct financial consideration and in good faith". While the condition of good faith is maintained[11] , the evaluation report of the Sapin 2 law explained that the

[11] The judge has had an extensive appreciation of the criterion of good faith. In a decision of July 8, 2020, the Court of Cassation considered that bad faith "can only result from the employee's knowledge of the falsity of the facts he denounces and not from the mere fact that the denounced facts are not established" (Casse. Soc. July 8, 2020, n° 18-13593.). The trial judge assesses the contours of good faith on a case-by-case basis: the Amiens Court of Appeal thus considered that good faith requires that the report be made with "honesty and loyalty, [...] without any malice" (Amiens Court of Appeal, 5th industrial tribunal chamber, January 9, 2020, No. 18-00584.), Information report, p. 140

term was confusing as it could exclude the reporting person from legitimate protection because, for example, of a dispute with the employer for another reason or when the consequences the report could indirectly benefit him or her (for example by reporting the illegal act of a competitor)[12] .

The choice was made to replace this criterion with the criterion of the absence of " **direct financial consideration** ", in order to offset the disadvantages of the previous terminology, without, however, opening the way to the possibility of a financial compensation"[13].

While this clarification must be welcomed, it should be noted that "**good faith**" also remains a confusing criterion and has not been clarified by the recent law despite the suggestion of the evaluation report on this point[14] . It should be noted that till now French judges assess "good faith" on a case-by-case basis, which may discourage potential whistleblowers.

A personal suggestion of how good faith could be interpreted, could come out from the new article 10-1 of the Sapin 2 law on the exception from liability of whistleblowers according to which a reporting person is exempt from lability

> "where he/she had reasonable grounds for believing, when he/she did so, that the reporting or public disclosure of all such information was necessary to safeguard the interests involved".

I must nevertheless mention that the Supreme Court (Court of Cassation), in a decision of 8 July 2020, adopted an extensive definition of good faith; indeed, it considered that bad faith

> is the case of the employee's "knowledge of the falsity of the facts that he reports and not of the mere fact that the facts reportes are not established" (Casse. Soc. 8 July 2020, n° 18-13593.).

b) What impovements in the Rationae materiae definition (which acts can be reported?)

The material scope of alerts that may fall within the scope of the Sapin 2 Act has been amended:

- Information about a violation…

The previous formulation of the material scope of an alert concerned facts constituting

> "crime or offences, serious and manifest violation of an international commitment duly ratified or approved by France, of a unilateral act of an international organisation taken on the basis of such a commitment, of the law or of regulations, or a serious threat or harm to the general interest, of which he or she has personal knowledge. Facts, information or documents, whatever their

[12] AN Report n°4325, p. 142
[13] Rabimbeau.
[14]

form or medium, covered by national defence secrecy, medical secrecy or the secrecy of relations between a lawyer and his client" were excluded from the whistleblowing regime of the Sapin 2 law.

The problem with this definition was that the reporting person was obliged to give a legal description of the facts prior to the alert, a requirement that is not easy for a non-lawyer.

The EU directive has made it possible to reduce this requirement. The French legislator therefore provided in 2022 that the alert may relate to "***information*** concerning a crime, an offence, a threat or harm to the general interest". (art. 6-I).

It is therefore no longer a question of "violations" but of "information concerning violations of the law" that the whistleblower can report, which lightens the burden of legal qualification.

Nevertheless, as the doctrine explains[15] , while the legislator's intention is to improve the status of whistleblowing, the result risks being counterproductive insofar as the scope of application of the amended Sapin 2 law is much wider than that of the directive (which is no less wide!).

In its opinion, the Council of State had suggested confining the reference to the notion of "information on violations" to the scope of the European directive (CE, opinion, 4 Nov. 2021, No. 404001 on a bill to improve the protection of whistleblowers, pt. 10) but it was not heard on this point.

Time will tell whether this openness increases or decreases the number of reports, as well as whether it increases the risk of missteps for the whistleblower.

- Other change: deleting the "serious and manifest" requirement

While the "serious and manifest nature" of the violation, could be a benchmark for the reporting person, Directive 2019/1937/EU did not provide for such a delimitation; as a result, the Sapin 2 law in its 2016 version could be seen as weakening the protection. With the aim of harmonisation, and the desire to encourage whistleblowing, the French legislator of 2022 removed the "serious and manifest" character.

The Council of State was not followed here either. In its opinion, it stressed that without a delimitation of the scope of application of the report (at least at the level of the scope of application of the Directive), the balance of the mechanism was jeopardized by the legislator of 2022[16] . The extension is therefore now valid for the entire field covered by the national provisions. Here again, **the future will show whether such extensions do not neutralize the mechanism by creating more legal uncertainty than legal protection.**

[15] V. Olivier Leclerc 2022
[16] CE, opinion, n° 404001, préc

- Introduction of "attempt to conceal a breach of an international obligation

The legislator of 2022 introduced into the material scope of the alert "the attempt to conceal a violation of an international commitment".

Thus, the list of legal texts whose violation - or attempted concealment of violation - may justify an alert has been extended. It includes European Union law, international commitments duly ratified or approved by France, unilateral acts of an international organisation taken on the basis of such a commitment, laws and regulations.

- The delimitation of the requirement of "personal knowledge" of the facts

This change in the source of the information constituting an alert is, in my opinion, substantial.

The Sapin 2 law initially limited the scope of application to information of which the whistleblower had "personal knowledge". Following the Directive, the new legislation limited this condition. It is only required if the information reported was obtained outside the professional context. As a result, can now one be a whistleblower in France when person reporting information that has come to his attention through a colleague.

Only the future will tell how this legal framework manages to preserve the balance so that such extensions do not neutralize the protection, nor expose the whistleblower to the risk of malicious accusation.

- A new limit to the protective regime: the secrecy of deliberations

Alongside defence secrecy, medical secrecy and lawyer-client secrecy, Article 6-II of the Sapin 2 law excluded from the whistleblower regime information, facts or documents covered by the secrecy of judicial deliberations, only (!), the secrecy of the investigation or judicial inquiry.

B. Extension of protection to new persons

a. FACILITATORS, colleagues and relatives

One of the major advances of the law of 21 March 2022 is the extension of the protection of whistleblowers to natural or legal persons linked to the whistleblower who could suffer retaliation like the whistleblower [17].

Three types of persons are now beneficiaries of the **protection provided for in Articles 10-1 and 12 of the Sapin 2 Act,** i.e:

- reversal of the burden of proof,
- exemption from (civil) liability for reporting or disclosure,
- exemption from civil or criminal liability for obtaining and storing the information,
- possibility of requesting an advance on costs,
- access to the procedure of summary proceedings,

[17] Claire Hédon in .... Semaine sociale Lamy, p. 8

- topping up the personal training account.

By virtue of article 6-1 of the new Sapin 2 law, these categories are:

- facilitators, defined as any natural or legal person under private with "not for profit purpose" who assists a whistleblower in making a report or disclosure;
- natural persons in contact with a whistleblower who are at risk of retaliation in the context of their professional activities by their employer, their client or the recipient of their services (**colleagues or relatives**);
- **legal entities controlled by the whistleblower**, for which he or she works or with which he or she is in contact in a professional context

In the event of retaliation against people supporting the whistleblower, the Human Rights Defender, after an impartial and contradictory investigation, will mobilise all its powers to restore the rights of these natural and legal persons.

b. Extension of the list of those who can use the internal alert channel

Article 8 of the Sapin 2 law, amended following the transposition of the Directive, provides a significant extension of the persons who can use the internal whistleblowing channel.

This procedure is now open not only to staff members and external and occasional collaborators, but also to

- persons whose employment relationship has ended, where the information was obtained in the course of that relationship,
- and to persons who have applied for employment with the entity concerned, where the information was obtained as part of that application;
- To shareholders, partners and holders of voting rights in the general assembly of the organization;
- To the members of the governing body of the entity;
- To the co-contractors of the entity concerned, their subcontractors or, in the case of legal persons, to the members of the administrative, management or supervisory bodies of such co-contractors and subcontractors and to the members of their staff.

c. Anonymous whistleblower

For the first time, and certainly thanks to the EU Directive of 23 October 2019, the anonymous whistleblower is protected in the same way as a whistleblower whose name will be known by the recipient of the reporting. This is provided for under the new Article 7-1 last paragraph of the Sapin 2 law (with certain logical clarifications due to the fact that communication with this person is impossible).

> "Where an alert or public disclosure has been made anonymously, the whistleblower whose identity is subsequently revealed shall enjoy the same protection. The provisions of I and II of the same Article 8, which require feedback to the author of an internal or external alert, are not applicable in the

case of an anonymous alert. Article 8(III)(1) shall not apply to anonymous external alerts.

C. Simplification of reporting channels

Another crucial change in the new legal framework is the simplification of reporting channels.

As I said in the introduction, the rule introduced by the Sapin 2 law was that of reporting by stages (except in cases of serious and imminent danger justifying direct public disclosure):

- internal alert (the alert was first brought to the attention of the employer's direct or indirect superior or a person designated by the latter),
- in case of inaction by the internal recipient, the whistleblower could turn to external authorities (judicial authority, administrative authorities or professional orders)
- if there is no reaction for three months, and only as a last resort, the whistleblower could disclose to the press when the competent external authorities have not reacted.

This step-by-step reporting procedure is, moreover, part of the logic of proportionality controlled by the ECtHR (see, in particular, ECHR 21 July 2011, No. 28274/08 , Heinisch v. Germany, § 65[18]).

Moreover, as mentioned above, compliance with these steps was a condition for the admissibility of the reporting and a condition to be exempt from criminal liability (Article 122-9 of the Penal Code[19]); in addition, the non-respect of the reporting channels has been retained by the courts as a proof of the bad faith of the whistleblower[20] .

However, as we all know, this obligation to report internally is suspected to be one of the main causes of ineffectiveness of the protection, as it exposes the potential whistleblower to retaliation[21] especially when managers are involved in the illegal acts.

Following the provisions of the EU Directive 2019/1937/EU (art. 10) the evolution of French legislation on this point has become inevitable.

[18] Résumé https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-447%22]}
[19] Article 122-9 CP before the law of 2022 "Is not criminally liable the person who violates a secret protected by law, provided that such disclosure is necessary and proportionate to the safeguarding of the interests involved, that it occurs in compliance with the reporting procedures defined by law and that the person meets the criteria for the definition of whistleblower provided for in Article 6 of Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life."
[20] To be found
[21] See also evaluation report AN

(For some[22]) Some affirmed that such an evolution was a matter of bringing the law into line with the case law of the Court of Cassation of 2016 which had already admitted

> *"... that the fact that an employee brings to the attention of the public prosecutor facts concerning the company which he or she considers abnormal, whether or not they are likely to be classified as criminal, does not in itself constitute misconduct*"[23] .

The law of 2022 now provides that

"Any whistleblower, as defined in Article 6(I), may also report, either after having sent an internal report under the conditions provided for in Article 6(I), or directly ..." to

a. certain authorities designated by a decree of the Council of State[24] still awaited, or
b. the Defender of Rights, who will direct the complainant to the authority or authorities best placed to deal with it,
c. or to the judicial authority
d. or to an institution, body or agency of the European Union competent to collect information on violations falling within the scope of the Directive of 23 October. (art. 8-II Sapin 2 Law).

However, under Article 8-III, the protection of the whistleblower in the event of public disclosure is still under condition:

Public disclosure can only be made

- either following an external or internal report
- or by the existence of a serious and imminent danger that needs to be proven
- or because reporting to the external authorities would entail a risk of retaliation or would not allow the illegal facts of the disclosure to be effectively stopped.

Thus, the conditioning of whistleblower protection by internal reporting now seems to be over, which may seem very positive in terms of freedom of expression.

However, two remarks are important hre:

[22] Pascale Lagesse, in "Transposition de la Directive européenne sur les lanceurs d'alerte : quels changements ?", Semaine sociale Lamy 10 January 2022 n°1982, p. 7

[23] Court of Cassation, Civil, Social Division, 30 June 2016, 15-10.557, Published in the Bulletin

[24] In its initial version submitted on 21 July 2021, the bill to improve the protection of whistleblowers did not specify the identity of the authorities concerned. This laconism was criticised by the Council of State in its opinion on the proposal. It pointed out that "by imposing the obligation to set up a channel for collecting and processing external alerts and by referring to a decree in the Council of State the task of determining the list of authorities subject to these obligations, without in any way framing this referral, the draft law fails to recognise the extent of the legislator's competence" (Opinion No. 404001, pt. 20). Without requiring the legislator to draw up a list of all the authorities concerned, the Conseil d'Etat nevertheless stressed the importance of specifying, at the very least, the legal categories to which they belong. This is why the law of 21 March 2022 is finally a little more loquacious, specifying that the authorities concerned will be chosen from among the administrative authorities, independent public authorities, independent administrative authorities, professional orders and legal persons entrusted with a public service mission (Art. 3).

Firstly, it is a question of making the order of reporting channels more flexible and in no way there is question of eliminating the hierarchy. We can therefore speak about simplified hierarchy.

Secondly (and above all), the neutralization of the first channel must be put into perspective. While there is no longer any doubt about the absence of an obligation to go through the internal channel, the existence of the internal channel is still present, and in a particular prolix style and encouraging words ; this shows that the effort to balance freedom of expression and other interests in question (e.g. the reputation of the State administration, business secrecy, the reputation of companies) has not been set aside.

Indeed, a reading of recital 33[25] of the Directive suggests the usefulness of the internal route.

> "Empirical studies show that the majority of whistleblowers tend to report internally, within the organisation in which they work. Internal whistleblowing is also the best way to ensure that information reaches those who can contribute to the rapid and effective resolution of risks to the public interest. At the same time, the whistleblower should be able to choose the most appropriate channel for reporting according to the particular circumstances of the case" (recital 33).

Moreover, on the basis of this reading and that of the case law of the ECHR[26] , we can imagine that sometimes the damage to the reputation of the company or public body resulting from reporting by the external channel or public disclosure could be qualified as disproportionate to the interests defended by the alert. Such reasoning could thus indirectly justify reporting by the means of the internal channel.

In accordance to recital 47 of the Directive, Sapin 2 law recommends the use of the internal channel,

> "In particular, “where reporting persons believe that the breach can be effectively addressed within the relevant organisation, and that there is no risk of retaliation”. (art. 8-I- A)

Consequently, one may wonder whether this recommendation could not weaken the whistleblowers position, since from now on the accused employer will be able to argue that it would have been possible to effectively address the breache if the whistleblower had kept him informed, especially since a procedure for handling reports exists.

D. Qualification by the Human Rights Defender in an advisory capacity

Another considerable change thanks to the law of 21 March 2022 in the pre-reporting phase is the strengthening of the role of the French Human Rights Defender in the

[25] "Empirical studies show that the majority of whistleblowers tend to report internally, within the organisation in which they work. Internal whistleblowing is also the best way to ensure that information reaches those who can contribute to the rapid and effective resolution of risks to the public interest. At the same time, the whistleblower should be able to choose the most appropriate channel for reporting according to the particular circumstances of the case" (recital 33).
[26] ECHR (see in particular, ECHR 21 July 2011, No. 28274/08 , *Heinisch v. Germany*, § 65[26]).

protection of whistleblowers. In my opinion, this is one of the most important changes operated.

It has to be remembered

The legislator of the Sapin 2 law had granted, by virtue of the organic law n°2016-1690[27] to the Defender of Rights (the only independent administrative authority with constitutional status in France) the **mission of orientation and protection of whistleblowers** (mission which was added to his other missions: the defense of the rights of users of public services, the defense and promotion of children's rights, the fight against discrimination and the promotion of equality, the respect of the deontology of security professionals).

This has been a very positive development in 2016; the DDD has put in place real guidance and protection work (which I have seen in the interviews within the Institution that I have conducted during my previous research; unfortunately I do not have time to go into detail).

But he faced the following considerable problems:

- neither the 2016 legislator nor the 2017 implementing decree made it **clear whether the HRD was one of the external authorities** (of the external channel) to which the whistleblower could legitimately turn for lack of diligent reaction following the internal alert.
- The DDD was **unable to follow up on the report due to the lack** of a legal obligation with regard to recipients of a report.
- **Above all, the Human Right's Defender the legal framework put the DDD in the paradoxical situation of not being able to grant the status of whistleblower but being obliged, as the institution in charge of orientation, to qualify the reporting person in order to be able to advise him or her.**

What answers does the new legal framework for whistleblower protection provide?

The organic law of March 21, 2022 :

- To the question of whether the HRD is part of the External Channel authorities the law answers as follows:
    - it is clearly stated that any whistleblower, meeting the new definition resulting from the Act of 21 March 2022, may send a report to the Human Rights Defender.

[27] Note that on the occasion of the adoption of this law the French constitutional judge[27] had abrogated **the** financial **support** and compensation for whistleblowers that had initially been provided for by the organic legislator, for lack of competence. (Constitutional Council, decision no. 2016-740 DC of 8 December 2016, cons. 5 "... the organic legislator could not, without disregarding the limits of the competence conferred on the Defender of Rights by the Constitution, provide that this authority could award financial aid or financial relief to the persons concerned.")This repeal had met with the satisfaction of the Defender of Rights, who saw in the granting of this competence a "denaturation" of his constitutional vocation; Jacques Toubon, "Independent reading of a legislative innovation. La création du dispositif de protection des lanceurs d'alerte", in M. Disant and D. Pollet-Panoussis, *Les lanceurs d'alerte. What legal protection? Quelles limites?",* LGDJ, 2017, pp. 404 -409 As for the doctrine, it saw a weakening of the intervention of the Defender of Rights in the protection of whistleblowers;

- If the alert sent to him falls within his competence (for example, alerts relating to discrimination or child abuse, which are areas in which he has his own competences), the Human Rights Defender collects and processes it, according to an independent and autonomous procedure, and provides feedback to its author. A decree in the Council of State will specify the deadlines and the guarantees of confidentiality applicable to this procedure.
- On the other hand, if the alert falls within the competence of another authority mentioned in 1° of II of Article 8 of the newly amended Sapin 2 Act - i.e. one of the competent authorities that the decree in the Council of State will determine -, the Human Rights Defender orientates the reporting person to this authority.
- The last hypothesis concerns the case where the alert does not fall within the competence of any of the external authorities which will be designated or where the matter concerns the competences of several of them; in this case, the Defender of rights directs the whistleblower to the authority, administration or body best able to deal with it (art. 35-1 of the Organic Law of 29 March 2022 on the Defender of rights).

Thus, the HRD is always a **pivotal authority** rather **than one of the authorities of the external channel. It is then maintained in its "orientation" role.**

Article 8 -II.-" Any whistleblower, as defined in Article 6 I, may also send an external alert, either after having sent an internal alert under the conditions provided for in I of this article, or directly: (...) 2° To the Human Rights Defender, who shall direct the whistleblower to the authority or authorities best placed to deal with it;"

- It is now expressly recognised as having **an informational and advice role** (in my view there is nothing new, but consolidates the practice that the DDD has developed since 2016 in dealing with alerts); it is indeed guidance.
- Moreover, HRD will no longer only have to "watch over" the rights and freedoms of whistleblowers, but he **will have to "defend" them** (amendments introduced in the 5th of article 4 of the organic law n° 2011-333 of 29 March 2011). In reality, this is not a step forward but a consolidation of a practice already existed thank to the competence of the HRD to investigate in the framework of discriminations.

- Another innovation that could have a concrete positive impact on better support for whistleblowers: the Organic Law of 21 March 2022 creates a **"deputy in charge of support for whistleblowers"** placed under the Human Rights Defender. This point responds to the problem of human resources that the Human Rights Defender has lacked since the organic law assigned him his new mission.

- Last but not least, the most essential advance that the new legal framework brings, in my opinion, is that concerning the qualification/a sort of "certification" of the whistleblower by the DDD. As I mentioned, one of the greatest insecurities of the previous legal framework was the self-qualification that it imposed on the whistleblower. In 2017, the Guide published by the HRD on its very first page was

writing " **No authority will issue you the — status of whistleblower**.."[28] ; This is no longer valid and thankfully so! From now on, the person can ask the Human Rights Defender for an opinion on his "**whistleblower status**". It is a formalization of the recognition of the status of whistleblower, a sort of "**certification**"[29] before the judicial and administrative authorities. Of course, the opinion of the Human Rights Defender will not be binding on the judge, but it will be one of the elements that he will take into account in his decision[30] .

- In addition, the organic legislator has provided that the DDD may also issue an opinion in which it assesses whether the person issuing an alert has complied with the conditions for benefiting from the protection provided by another specific mechanism (art. 35-1 organic law of 21 March 2022).

However, it is worth emphasizing the problematic point of the improvement: it is its deadline. The HRD has to give its opinion within six months, which is quite a long time when the public interest is potentially endangered.

II. POST-REPORT PROTECTION

I am moving now on the progresses in terms of protection *stricto sensu* once the report has been issued.

What about protection once the report has been issued?

I will answer these questions in two parts

- Firstly, the legal protection ***once the retaliation*** **action has been** taken
- Secondly, the obligation for entities to ***treat*** reports internally has been recognized by law and no longer by decree.

A. Improvement in protection *stricto sensu*

It is certain that the Sapin 2 law had already since 2016 established a fairly complete protective legal framework.

Three elements are entirely new as a result of the transposition of the Directive, but I will also mention improvements to the previous framework :

a) Legal remedies to cover the financial impact of reporting

[28] DDD Guide 2017 p. 7
[29] Information Report No. 4325 of 7 July 2021
[30] V. Council of State opinion of 4 November 2021

While US whistleblower compensation has been an option censured by the French constitutional judge since the adoption of the Sapin 2 law in 2016, the question of the financial risk these individuals face remained entirely open.

The improvement brought about by the new legal framework is measured firstly in terms of costs related to legal proceedings and secondly in terms of compensation for immediate loss of income.

- The first problem of assistance for criminal legal proceeding has been resolved by the article 10-1-III-A al. 2 of the Sapin 2 law. It is thus provided for that

  " the claimant may ask the court to award him, at the expense of the other party, an advance on costs of the proceedings in accordance with the respective economic situation of the parties and the foreseeable cost of the proceedings or, where his financial situation has seriously deteriorated as a result of the report or public disclosure, an advance to cover his subsistence. The judge shall give a decision within a short period of time. (Article 10-1-III-A al.2 law of 9 December 2016)". (Article 10-1-III-A al.2 law of 9 December 2016).

In order to benefit from the advance on legal costs, there must be recourse against retaliation and the whistleblower must present factual evidence that he or she has reported or disclosed information under the substantive and procedural conditions discussed above.

- Secondly, Article 14-1 of the Sapin 2 Act provides for the possibility of granting **temporary financial assistance** to the whistleblower when his or her financial situation has seriously deteriorated as a result of the report.

The authorities competent to decide on this temporary financial measure are those that the decree in the Council of State will determine (these are the authorities of the external channel other than the Defender of Rights and the judicial authority).

b) Psychological support

Thanks to the Directive, and in the same logic of assistance, the new Sapin 2 law provides in Article 14-1 that the authorities competent to receive reportingsw (specified by the future decree) may also decide to grant psychological support to the whistleblower.

> "To ensure that psychological support measures are put in place for persons who have issued an alert under the conditions laid down in Articles 6 and 8 and to grant them temporary financial assistance if they consider that their financial situation has seriously deteriorated because of the alert.

c) The personal training account

Another clear improvement in the whistleblowers protection is the fact that the Sapin 2 Act now contains a new provision in the second paragraph of Article 12, according to which the Labour Court, in an application for interim relief following a breach of contract, may oblige the employer to fund the whistleblower's personal training account up to the maximum amount, in addition to any other employer sanction.

d) Apart from these three key measures, the 2022 law makes certain other changes to the Sapin 2 law that are intended to improve it.

- Thus, it explicitly provides for the **whistleblower's non-liability** for damages caused by the reporting

"If they had reasonable grounds for believing, when they made the report, that the reporting or public disclosure of the full information was necessary to safeguard the interests involved

- Secondly, the article of the Penal Code relating to the **lack of criminal liability for the disclosure of secret information** has been amended so as to make the lack of criminal liability dependent on the new simplified reporting channels.

Article 122-9 of the Criminal Code now provides that

" A person who violates a secret protected by law shall not be criminally liable if such disclosure is necessary and proportionate to the protection of the interests involved, if it is made in compliance with the conditions for reporting defined by law and if the person meets the criteria for the definition of whistleblower.
Criminal disqualification now applies to facilitators and to the list of persons outside professional relations who can make an internal alert.

Criminal liability now applies to facilitators as well as to the list of persons outside professional relations who can use the internal channel to report.

- Article 10-1-II defines in detail what constitutes **retaliation** and **even attempt at retaliation**, while keeping this list open (by the use of the word "in particular"), it includes the following 15 examples:

"1° Suspension, lay-off, dismissal or equivalent measures ;

2° Demotion or refusal of promotion;

3° Transfer of duties, change of place of work, reduction of salary, change of working hours;

4° Suspension of training;

5° Performance evaluation or negative work certificate;

6° Disciplinary measures imposed or administered, reprimand or other sanction, including a financial penalty;

7° Coercion, intimidation, harassment or ostracism;

8° Discrimination, disadvantageous or unfair treatment;

9° Failure to convert a fixed-term or temporary contract of employment into a permanent contract, where the worker had a legitimate expectation of being offered a permanent job;

10° Non-renewal or early termination of a fixed-term or temporary contract of employment;

11° Damage, including damage to the person's reputation, in particular on an online public communication service, or financial loss, including loss of business and loss of income;

12° Blacklisting on the basis of a formal or informal sectoral or industry-wide agreement, which may imply that the person will not be able to find employment in the sector or industry in the future;

13° Early termination or cancellation of a contract for goods or services;

14° Cancellation of a licence or permit;

15° Improper referral to psychiatric or medical treatment.

- A **reputational sanction is also** added against the body that has obstructed or attempted to obstruct the report (art. 13-1), consisting of an additional penalty of posting or disseminating the decision.

- It is also interesting to note that the legislator has taken care to provide in Article 12-1 **for the nullity of any waiver or other de jure or de facto limitation of the protection enjoyed by the whistleblower ; This** automatically renders null and void any contractual clause in this regard between the employer and the employees or agents at the time of recruitment or establishment of the contractual relationship.

- The rest is maintained (reversal of the burden of proof in Article 10-1-II, high criminal penalties for obstructing an alert, protection of the confidentiality of persons and information accompanied by high penalties - protection of personal data).

B. Internal processing of alerts: now a legal obligation?

I will conclude with a few thoughts on the **treatment of** internal reporting.
While the reputation that followed the transposition of the EU directive is that of the disappearance of the obligation to go through the internal channel, it should be noted that the French legislator has devoted several lines to it. What was previously specified in 4 lines by the former article 8 of the Sapin 2 law, is now the subject of almost 3 pages.

In a few words its content :

- As mentioned above, the law now opens the possibility of internal referral not only to persons who have a professional relationship with the entity, but also to persons who do not have a professional relationship with the entity (persons

whose employment relationship has ended, where the information was obtained in the course of that relationship, and persons who have applied for employment with the entity, where the information was obtained in the course of that application, but also the shareholders, partners and holders of voting rights in the general meeting of the entity, the members of the administrative, management or supervisory body, as well as the co-contractors of the entity concerned, their subcontractors or, when they are legal entities, the members of the administrative, management or supervisory body of these co-contractors and subcontractors, as well as the members of their staff (the 4° of Article 8. I. A of Law n° 2016-1691 of 9 Dec. 2016).

- The law maintains the obligation to establish an internal alert system for the same large organizations as before (public and private law entities with more than 50 employees or municipalities with more than 10,000 inhabitants), for all State administrations, and adds the entities covered by Union law (specified by the 2019 Directive).

- However, the law specifies for the first time the possibility of pooling the system. Thus, small and medium-sized enterprises with fewer than 250 employees "*may pool their procedures for collecting and processing alerts*". Furthermore, "*Municipalities and their public establishments that are members of a management centre for the local civil service may entrust the latter with the collection and processing of internal alerts*". (art. 8-I-B). In addition, pooling is also provided for "*several or all of the companies in a group, in accordance with the procedures laid down by decree.*" (art. 8 -I- C)

- Finally, it is now specified that the internal procedure for collecting alerts must be established "after consultation with the social dialogue bodies" and under the conditions laid down by a decree of the Council of State, This decree will also be responsible for defining the guarantees of independence and impartiality of this procedure and the time limits for the return of information to the author of the alert, as well as the procedures for closing alerts and collecting and storing data, and the conditions under which the collection of alerts may be entrusted to a third party. This decree, which will no doubt replace the one of 19 April 2017, is therefore eagerly awaited.

A few remarks are essential here, in my opinion:

- Internal whistleblowing becomes a subsidiary channel for whistleblowers after the transposition of the directive, but its implementation by public and private entities now becomes a priority.
  From now on, the procedure for collecting and processing whistleblowers' reports must also be put in place by small and medium-sized companies employing less than 250 employees and may pool/share the system. Furthermore, "*Municipalities and their public establishments that are members of a management centre for the local civil service may entrust the management centre with the collection and treatment of internal alerts*". (art.

8-I-B). In addition, pooling/sharing is also provided for "*several or all of the companies in a group, in accordance with the procedures laid down by decree*." (art. 8 -I- C); these technical novelties are important and the decree is really expected.

- The prolix character of the 2022 legislator gives the impression that "the decree has entered the law" and that the regulatory obligation has now become a legal obligation; this is symbolically strong even if legally the effectiveness would have been better ensured by a sanction against entities that do not comply within a certain period. This sanction, which was lacking in the previous regime and was underlined by the Defender of Rights and the evaluation report, has not been added.
- Finally, the law has allowed a word to creep into the name of the internal reporting system. From now on, the internal procedure is not only a procedure for "collecting" but also for "treatment of" alerts. This could seem almost like a pleonasm, given that in France such an action was implied by the fact that "In the absence of diligence on the part of the first channel, the whistleblower could refer it to the judicial authority.
  Especially the procedure and technical provisions about the treatment of the report received through the internal channel was detailed by the 2017 decree mentioned above. But we could admit that the "treatment" now becomes a legal obligation and no longer regulatory which also goes in the direction of improvement.
  .

As a result of all this, what answer can be given to the initial question :
is there a real strengthening of whistleblowers protection in France after transposition of EU Directive ?

The answer is globally positive.
some of the improvements are, in my opinion, more substantial than others

(e.g. the extension of protection to new persons like facilitators, family members or persons after the end of their contract; the consultative qualification/certification of the whistleblower by the Human Rights Defender whish is , in my opinion, the most important of all But it is certain that the addition of the possibility of financial assistance to the whistleblower as well as the extension of the protection stricto sensu to facilitators are new measures with a strong impact on the effectiveness of the protection.

while others were simply welcome and go in the direction of the symbolic strengthening of the protection of the whistleblower (e.g. "reporting without financial consideration" in place of disinterested manner, the competence to defense the whistleblower rights attributed to the Human Rights Defender which was already done in practice).

However, for a number of amendments only the judicial interpretation and the reports of the HRD as well as the one of the competent authorities which will be designated be

decree, can determine whether amendments are positive or negative. I will count here for example the question of good faith, the excessive extension of the scope of application by the fact of having removed some condition of the definition of WB :

Ex. the personal knowledge of the facts in the professional environment, the deletion of the condition of the serious and obvious character of the violation and especially, the paradox to have simplified the hierarchy of the reporting channels on one side and to encourage the use of the internal channel by a real effort of precision on the other.

Knowing that the protection of whistleblowers is only a means of protecting the public interest, it is important to ensure that the proceduralization of protection does not annihilate the essence of this protection, which is, after all, the freedom of expression, a fundamental freedom.

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Activité d'enseignement

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CM **Droit des données administratives et de l'e-administration**, Master Gouvernance des Données « Gouvernance des Données »
CM **Droit de l'information numérique**, Université d'Avignon, M1 « Droit & Numérique »
CM, **RGPD**, Université d'Avignon, Master Droit de l'Intelligence Artificielle et Ingénierie du Logiciel
CM, **Protection des données sensibles**, Master Politiques Sociales
Séminaire, **Transfert des données hors UE**, Master 2 Droit & Numérique

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2) **Droit Constitutionnel**, Licence 1, 48 heures, 2 groupes semestriels, équipe Pr. C. Guérin-Bargues
3) **Droit Administratif**, Licence 2, 72 heures, 4 groupes semestriels, équipe M. S. Velley

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2) **Droit des Libertés Fondamentales**, Licence 3, 54 heures, 3 groupes semestriels, équipe du Pr. E. Picard

Travaux scientifiques – Communications – Publications

Ouvrages

- ***Les données personnelles sensibles : contribution à l'évolution du droit fondamental à la protection des données à caractère personnel. Etude comparée : Union Européenne, Allemagne, France, Grèce, Royaume-Uni***, Thèse de doctorat, Prix René Cassin 2020, Prix de l'IRJS 2020, ed. Pedone, Paris, parution 2023
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- (porteur du projet) CoMeDDE : ***Compliance – Measuring Defaults in the Digiral Era*** (Compliance : Mesurer ses défauts à l'Ere Digitale), financé par la Fédération de Recherche AGORANTIC (FR3621) et la Commission Recherche d'Avignon Université 2021-2022

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    - Rapport national sur le cadre légal de l'ouverture des données de la commande publique, juillet 2019, 50 p.
    - Rapport national d'étude de cas et de mise en œuvre des cadres légaux : protection des lanceurs d'alerte et open data de la commande publique, juin-décembre 2019, 102 p.
    - Entretiens réalisés : Rapporteur au Parlement Européen sur la Directive 2019/1937 ; Défenseur des droits ; Mairie de Paris ; Conseil Régional de Bretagne, Maison des Lanceurs d'alerte, Préfecture de Région Bretagne.
    - Contribution à l'étude comparative du cadre légal de protection des lanceurs d'alerte : Union européenne, Autriche, Estonie, France, Irlande, Italie, Roumanie, Slovénie, 32 p.
    - Contribution à l'étude comparative du cadre légal de l'open data/open data de la commande publique : Autriche, Estonie, France, Irlande, Italie, Roumanie, Slovénie, 23 p.
    - Contribution à la définition des modèles d'évaluation de l'impact des législations relatives à la protection des lanceurs d'alerte et de l'open data/open data de la commande publique.
    - Contribution aux modèles d'évaluation de la mise en place des législations relatives à la protection des lanceurs d'alerte et de l'open data/open data de la commande publique.

Mission d'expertise

- « **Etude de l'adéquation de la législation monégasque à la Directive 95/46/CE** », Proposition d'avis, **mission d'expertise** dans le cadre du contrat doctoral au sein du Service des Affaires Internationales de la Direction des Affaires Juridiques de la **Commission Nationale de**

l'Informatique et des Libertés, sous l'autorité de Mme Florence Raynal, directrice du service et de M. Edouard Geffray, Secrétaire Général de la CNIL, 69p. (*en anglais*)

Articles – Contributions à ouvrages

- **« Protection des données à caractère personnel »**, , contribution à l'ouvrage M. Caron, R. Maurel (dir.), *Penser la transition numérique. Vers un monde digital durable*, Observatoire de l'Ethique publique, parution 2023
- « **Autodétermination informationnelle, droit à la vie privée, *right to privacy* : quel noyau pour la protection des données personnelles ? L'apport du droit comparé : Union européenne, Allemagne, France, Royaume-Uni** », in P. Türk (dir.), Actes du colloque international *Droit et libertés numériques, Nouvelle génération des droits fondamentaux* ? , Université de Nice, 7- 8 octobre 2021, parution 2023
- **« L'émergence d'un espace privé immatériel et de ses oxymores »,** in *Archives de politique criminelle*, n°43, La sphère privée, 2021/1 (n° 43), pages 57 à 70.
- « **L'adéquation de l'ordre juridique britannique au RGPD suite au Brexit** », in V. Barbé, C. Koumpli (dir.), Le *Brexit et droits et libertés*, publication des actes du colloque organisé par l'Université Polytechnique Haut-de-France et l'Université d'Avignon, Ed. Bruylant, 2022.
- **« L'éthique : dernier rempart au traitement des données personnelles sensibles en temps de crise »,** publication des actes du colloque « L'éthique à l'épreuve de la crise », Vanessa Barbé (dir.), avec le financement de l'Observatoire de l'Ethique Publique, éd. Mare & Martin, 2021.
- « **Le droit à l'oubli : un droit nouveau ? Fondements et perspectives** suite **au projet de règlement relatif à la protection des données personnelles** », *in* C. Alcantara (dir.), *E- réputation, Regards croisés*

sur une notion émergente, Actes du colloque international « E-réputation et traces numériques », Université Toulouse 1 Capitole, 21 et 22 mars 2013, Gualino, Lextenso éditions, 2015, pp. 93-103.

Communications – Manifestations scientifiques

- « ***The New Whistleblowing Laws of France*** », Europe's New Whistleblowing Laws – Commonalities, Differences, and Expected Impact, 2nd European Conference, on Whistleblowing Legislation, 10-11 September 2022, University of Göttingen, Germany

- Présentation des résultats du programme européen de recherche financé par la Commission européenne ***Whistleblowing open data impact. An implementation and impact assessment***, Colloque *L'avenir des lanceurs d'alerte dans l'Union européenne*, Université de Tours, 15 octobre 2021

- « **Autodétermination informationnelle, droit à la vie privée, *right to privacy* : quel noyau pour la protection des données personnelles ? L'apport du droit comparé : Union européenne, Allemagne, France, Royaume-Uni** », Colloque Droit et libertés numériques, Université de Nice, 7- 8 octobre 2021

- « **Conciliations juridiques complexes dans la régulation des *fake news*** », Intervention à la conférence-débat « Fake news » - Approches pluridisciplinaires, Laboratoire Informatique d'Avignon, Laboratoire Biens Normes et Contrats, Avignon Université, 10-11 juin 2021.

- « **De l'Etat de droit à l'Europe de l'éthique - La place de l'éthique dans les politiques de l'UE en matière du numérique** », Intervention au *webinair* : *Actualité internationale et comparée de l'éthique des affaires. Perspectives juridiques*, organisé par l'Observatoire de l'Ethique Publique et le CREDIMI, Université de Dijon, 21 juin 2021.

- « **Interroger la Compliance RGPD** », Conférence « Acteur du Numérique » organisée par le Laboratoire Biens Normes et Contrat et le Master Gouvernance des Données, Avignon Université, 12 novembre 2020.
- « **La transparence opaque : Protection des lanceurs d'alerte dans le cadre de l'Open Data de la Commande Publique** », Intervention aux 5th A*cademic days on Open Government & Digital Issues*, IMODEV, Université Paris I, 3 nov. 2020.
- « **Lobbying et séparation des pouvoirs en France** », contribution à l'atelier n°15 « Les mutations et les transformations de la division des pouvoirs : l'organisation constitutionnelle », Congrès Mondial de l'Association Internationale de Droit Constitutionnel « Défis constitutionnels globaux et locaux », Université d'Oslo, 16-20 juin 2014, 16p.
- « **La QPC et le contrôle de conventionalité** », intervention à la journée d'études "*Conseil constitutionnel und Bundesverfassungsgericht im Vergleich*", organisée par le Collège doctoral franco-allemand sur la comparaison des droits publics nationaux face à l'intégration européenne, Université de Freiburg, 2-3 mars 2012, 6 p.
- « **Un essai sur la clarification de l'inférence Etat de droit – principe de proportionnalit**é », intervention à l'atelier n°9 « Proportionnalité en tant que principe » du Congrès Mondial de l'Association Internationale de Droit Constitutionnel « Constitution et Principes », Université Nationale de Mexico, 6-10 décembre 2010, 29 p.
- « **The ambiguity of the concept of sensitive personal data** », International Seminar on Philosophy of Law, Universität Salzburg, 11 – 13 juin 2010, 12 p.

Formation au métier d'Enseignant-Chercheur

- « Médiation et traitement des pathologies sociales », Séminaire organisé par le Conservatoire National des Arts et Métiers et l'Ecole Doctorale de Droit Comparé, Université Paris I, janvier 2014.

- « Enseigner et Apprendre avec les T.I.C.E », Centre d'initiation à l'enseignement supérieur Sorbonne (CIES), février 2012.
- « Bien dans son corps, bien dans son cours », CIES, mars 2011.
- « Docimologie et évaluation », CIES, janvier 2010.
- « Enseigner à l'Université : un métier qui s'apprend ? », CIES, janvier 2010.
- « Techniques de mémorisation rapide pour l'expression orale », CIES, janvier 2010.

Responsabilités collectives

- Réfèrent alerte, Avignon Université, depuis 2022
- Membre du Conseil du Laboratoire, Biens, Normes et Contrats, Avignon Université depuis 2020
- Coordinatrice du Master 2 Recherche Droit Public Comparé Européen, Université Paris I Panthéon-Sorbonne, Directeurs : Pr. M.-F. Christophe-Tchakaloff et Pr. O. Pfersmann (2009-2010).
- Coordinatrice de la délégation française des doctorants de l'Université Paris I au Congrès Mondial de l'Association Internationale de Droit Constitutionnel, Université d'Oslo (2014).

Autres expériences professionnelles

- Agent d'orientation des Etudiants Etrangers, CIUP - Mairie de Paris - Cité Internationale Université de Paris (CIUP) (2008, 4 mois).
- Déléguée à la protection des données personnelles – stagiaire, Service Communication et Service des Affaires Juridiques de la Cité Internationale Universitaire de Paris (2008, 4 mois).
- Avocat stagiaire, Cabinet d'avocats « Fountedakis Law Offices », Thessalonique, Grèce – stage de préparation et réussite aux examens du Barreau de Thessalonique (2006 – 2008, 18 mois).

Langues

- Allemand Lu, Ecrit
- Anglais Lu, Parlé, Ecrit
- Français Bilingue
- Grec Langue maternelle

Participation associative et citoyenne

- Membre de l'Observatoire de l'Ethique Publique, Département Droit des Affaires, depuis 2020
- Membre de l'Association Française des Docteurs en Droit (AFDD), depuis 2020
- Membre de la Société Française pour la Philosophie et la Théorie Juridiques et Politiques (SFPJ) depuis 2020.
- Membre de l'Association Française de Droit Administratif (AFDC) depuis 2020.
- Membre de l'Association Française de Droit Constitutionnel (AFDC) depuis 2013
- Membre du Centre de Recherche en Droit Constitutionnel, Université Paris I-Panthéon-Sorbonne, depuis 2009
- Membre de l'Association DAAD Alumni, depuis 2014
- Membre du Conseil d'Administration de l'Alliance des Anciens et Amis de la Cité Internationale Universitaire de Paris, 2012-2016
- Secrétaire de l'association du Master 2 Recherche Droit public comparé européen, 2009-2010