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The AFA's guidelines for public sector entities

Advice, Strategic Analysis and International Affairs Division

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The guidelines

A mission given by law to the AFA

The French Anti-Corruption Agency (AFA) "*shall draft guidelines to help public and private sector entities prevent and detect bribery, influence peddling, extortion by public officials, illegal taking of interest, misappropriation of public funds and favouritism*".

first paragraph of Article 3(2°) of the Transparency, Anti-Corruption and Economic Modernisation Law n°2016-1691 of 9 December 2016

interpret the provisions of the Law dealing with arrangements for preventing and detecting these offences

define the procedures for implementing programmes for preventing and detecting corruption

The guidelines

update and supplement the previous guidelines on this subject issued in December 2017

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The guidelines

Legal force

The guidelines are not legally binding

The AFA refers to them when carrying out its advisory and audit missions

For public sector entities

A public sector entity that follow the guidelines = good practice in promoting compliance

A public sector entity that choses another method must demonstrate that its choices comply with the requirements of the Law if deficiencies are found during an audit.

The guidelines

Scope

The guidelines are intended to help organisations

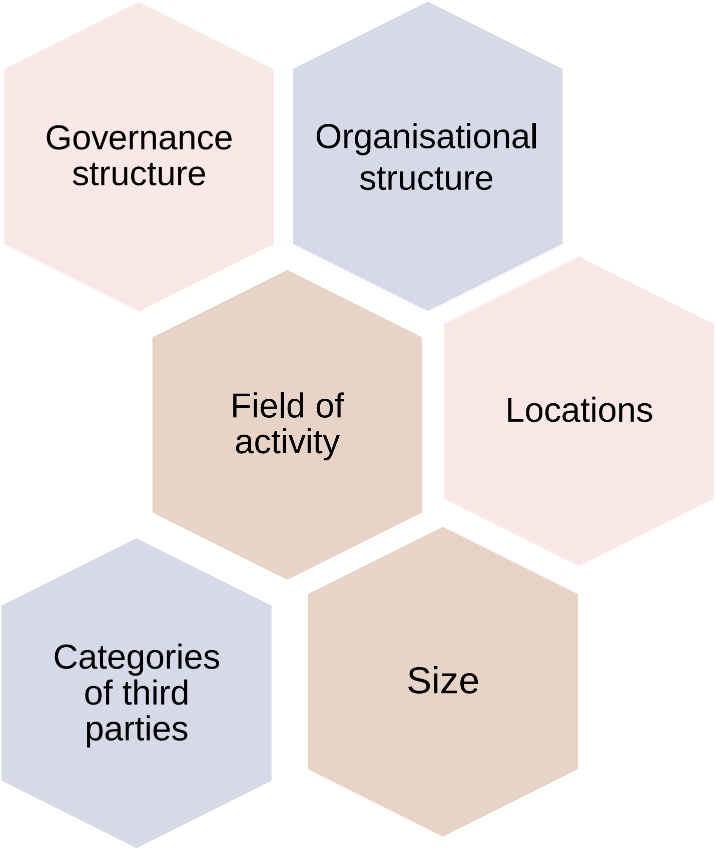
- Public or private sector entities
- Incorporated under French or foreign laws
- Carrying out their activities in France or abroad
- Regardless of their size, number of employees, budget
- From any business sector
- Regardless of their legal structure or status

That WANT to implement an anti-corruption

Or that are REQUIRED to implement such programme (in particular, the public sector entities subject to Article 3(3) of the Law of 9 December 2016)

The guidelines

Principle of proportionality



Organisations adapt these guidelines in accordance with their **RISK PROFILE**

Scope of intervention: Organisations that control other entities ensure the quality and effectiveness of the anti-corruption programmes implemented by all of the entities under their control.

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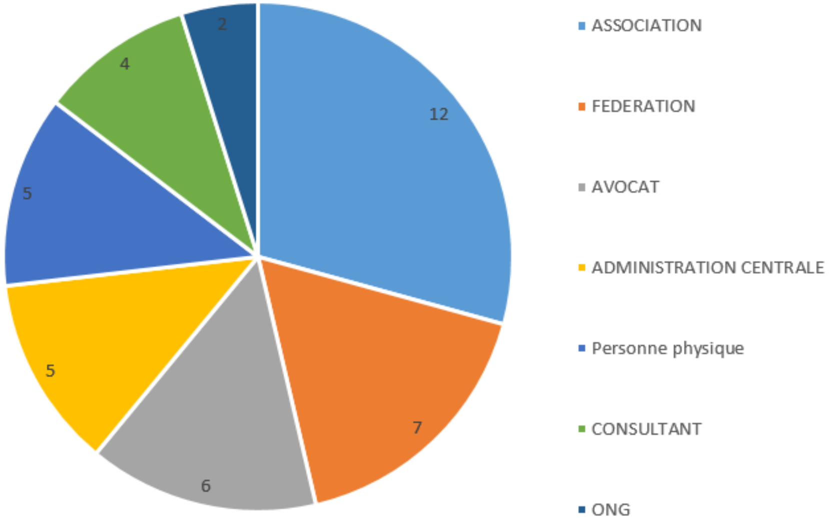
The guidelines - Update

The public consultation

Will to **involve** stakeholders

Usual practice on the AFA's publications

Public consultation from 10/16 to 11/16 2020



More than 40 contributions, mainly from representative bodies

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The guidelines - Update

Changes under the new guidelines

An adapted readability

Structure in three parts to enable each entity to implement a tailored programme.

General provision
on the anti-corruption programme applicable to all entities

Second part
concerns the companies subject to Article 17 of the Law

Third part
dedicated to public sector entities subject to Article 3 of the Law

The guidelines - Update

Why were the guidelines updated? What is different from the 2017 guidelines for public sector entities?

- Three years of advisory and audit activities have led to an update of this element of the anti-corruption policy framework.
- The expectations towards public sector entities are clarified and set out in Part III of the guidelines, which is dedicated to them. All of the points that enable the establishment of a system for the prevention, detection and effective treatment of breaches of probity within public sector entities are now explained “from start to finish”.
- A clearer definition of the scope of deployment of anti-corruption measures and the role of each of the actors who must be involved in the design and implementation of an anti-corruption programme.

The guidelines - Update

Why were the guidelines updated? What is different from the 2017 guidelines for public sector entities?

- Methodological clarifications on what is expected in terms of:
  - Corruption risk mapping
  - Risk management: adoption of a code of conduct, awareness-raising and training, third-party due diligence, internal whistleblowing system, internal control, sanctions for breaches
- Clarification on the linkage between anti-corruption programmes and “existing obligations” regarding:
  - Anti-corruption code of conduct / Ethical obligations
  - Third-party due diligence / Public Procurement Code
  - Anti-corruption whistleblowing system / « Ethical » whistleblowing system resulting from the Sapin II Law

The guidelines - Update

Why were the guidelines updated? What is different from the 2017 guidelines for public sector entities?

- An appendix highlights the particular issues (risks of infraction and prevention/detection measures) for public sector entities in three processes that deserve special consideration in the risk map:

Disbursement of subsidies

- Misappropriation of public funds (MPF)
- Illegal taking of interest (ITI)

Human resources management

- Bribery, influence peddling (IP)
- ITI, MPF, extortion by public officials

Public procurement

- Favouritism
- Bribery, IP
- ITI, MPF

General provisions

Three inseparable pillars

Commitment of senior management to corruption-free performance of the organisation’s tasks, competence or business.

Exemplary personal behaviour, personal communication, necessary resources, responsibility for steering and compliance with the programme, appropriate and proportionate sanctions are imposed in the event of violations of the code of conduct or breaches of the duty of integrity

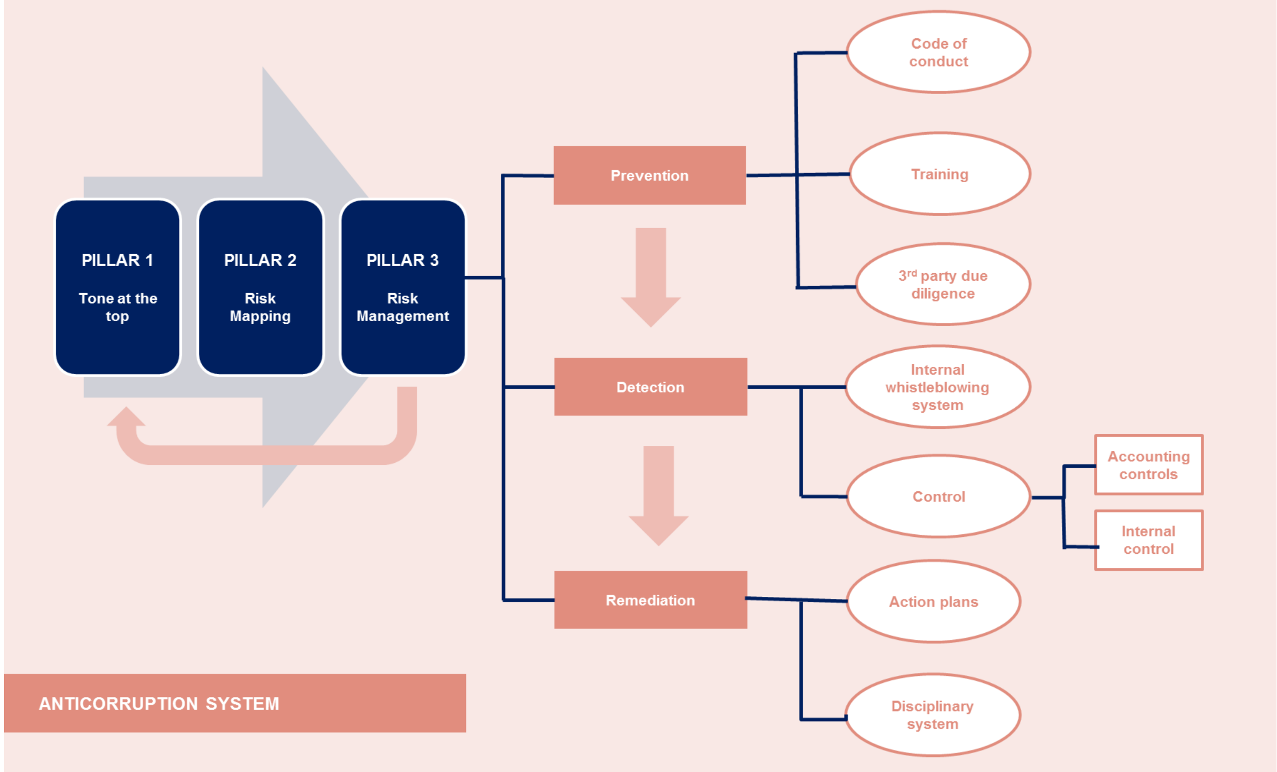
Risk management

Effectives measures and procedures for prevention, detection and remediation of corruption risks

Accurate knowledge of the corruption risks to which the entity is exposed through **risk mapping**

Anti-corruption programme

This programme includes the measures defined by the Law (Article 17-II), presenting them through a systemic approach, in accordance with the best practices identified in the field of anti-corruption.



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First pillar: Tone at the top

Identification

Top management consists of those persons – elected or appointed – with the authority and powers to manage a public sector entity

Central government: minister, secretary-general, central administration director, prefecture authority and devolved department manager

Local and regional government: executive body, chair of the public establishment for inter-municipal cooperation (EPCI) and general manager

Public establishments and semi-public companies: chair of the board of directors and director

State-funded healthcare institutions: director

Recognised public-interest foundations and associations: chair and director

First pillar: Tone at the top

Ensuring compliance with a set of regulations contributing to probity

Anti-corruption obligations

Articles 3 and 8 of the Sapin II Law and the Decree of 19 April 2017 on reception procedures for whistleblowing reports

Other ethical requirements

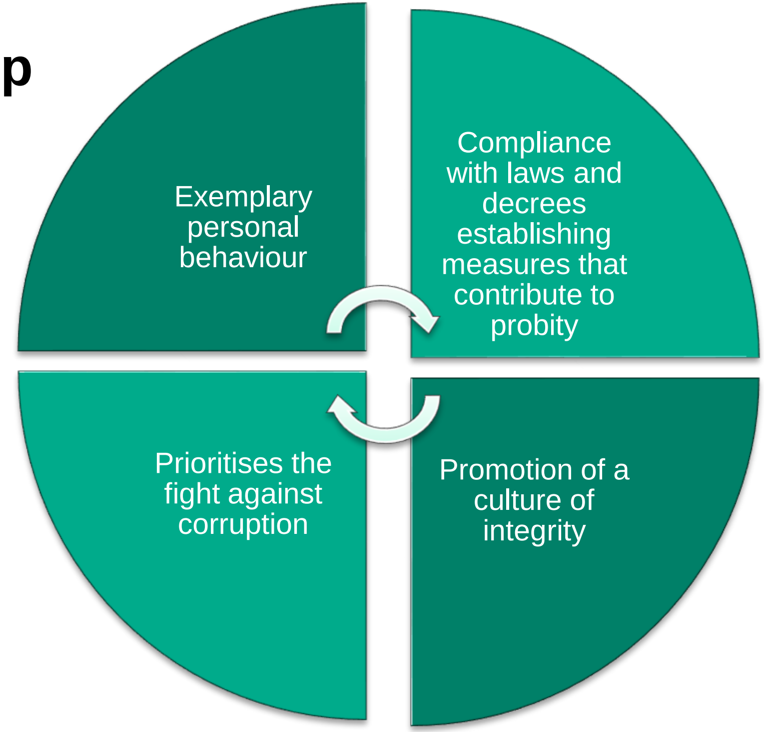
Disclosure of interests or assets, recusal or abstention in the event of a conflict of interest, regulation of multiple jobholding, prevention of conflicts of interest when a public servant leaves the civil service, requirement to appoint a ethics officer, etc.

Other provisions

From the General Local Government Code (functioning of deliberative assemblies), the public procurement rules, the Public Accounting and Budget Management Decree

First pillar: Tone at the top

Implementing an anti-corruption programme is the responsibility of senior management, which may, where appropriate and while retaining its personal responsibility, delegate the operational implementation and management of the anti-corruption programme to a staff member or department.



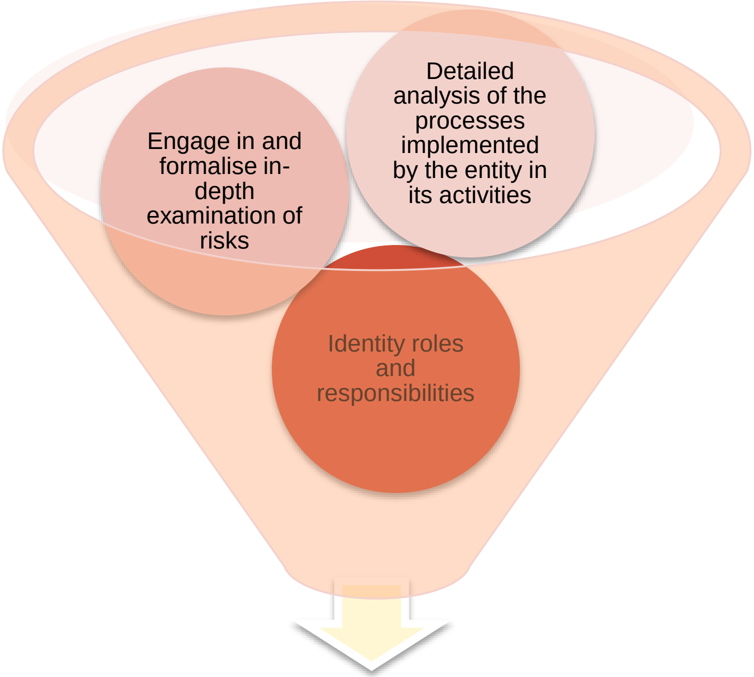
- Ethics officer
- Disclosure obligations
- Conflict of interest management
- Transparency of public data
- Employment in cabinets
- Rules on revolving doors

Their appointment is then announced in a special memorandum to all staff and formalised by a brief from senior management stating the assigned tasks, the elements guaranteeing their autonomy (such as hierarchical position), the coordination with the other functions of the entity and the human and resources allocated. Easy access to senior management is ensured.

Second pillar: Corruption risk mapping

Definition, objectives and method

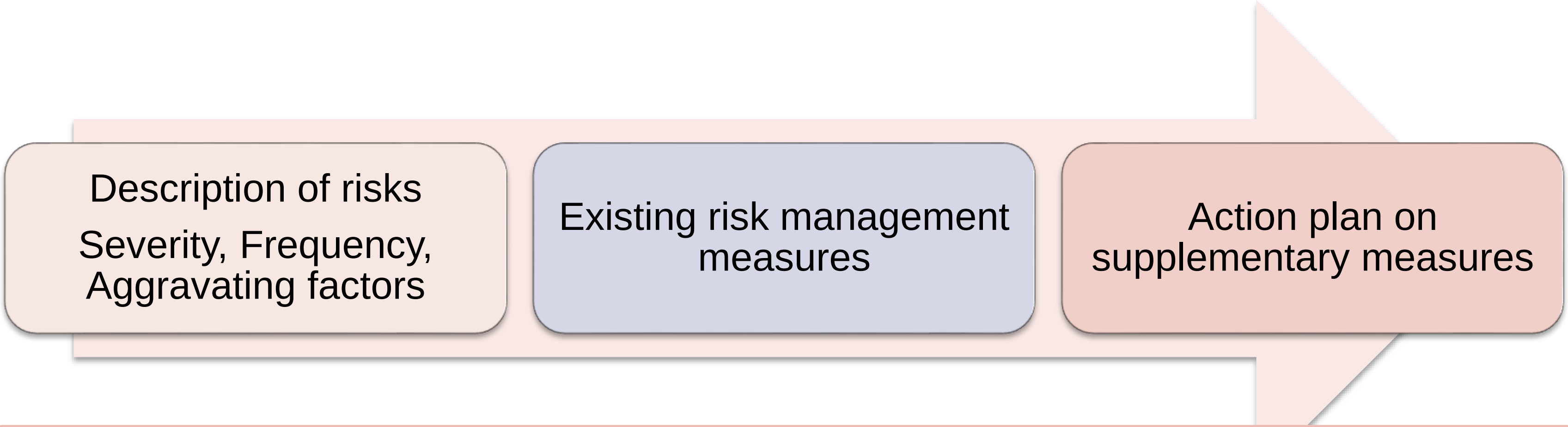
Key tool for taking stock of corruption risks, established according to a methodology that offers reasonable assurance that the risks identified, assessed and ranked truly reflect the public sector entity’s real risk exposure.



Take stock of corruption risks to manage them

Second pillar: Corruption risk mapping

An objective, structured and documented risk analysis



Public sector entities already familiar with mapping risks, such as operational, strategic, fiscal, accounting and European fund management risks, could capitalise on these pre-existing approaches

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Second pillar: Corruption risk mapping

Six steps to follow: Step 1 - Assign roles and responsibilities

Senior management	• promotes the risk mapping exercise and provides suitable resources to the staff member or department to which it has assigned the task; • checks the reasoning behind the risk management strategy used and ensures that the chosen action plan is implemented.
Relevant staff member or department	• coordinates the risk mapping, assisting the departments with process identification, identification of corruption risks, assessment and ranking of these risks, and the definition and implementation of measures to manage them; • communicates each risk map update and action plan monitoring report to senior management.
Managers of processes	• decision-making process, operational, accounting and support managers: contribute to the development and updating of the risk map; • report on the specific risks in their area of responsibility.
Risk manager	• contributes to defining the methodology for identifying, analysing, ranking and managing corruption risks.
Staff members	• all the staff, irrespective of their status: managers, elected officials, employees, trainees, volunteers; • by virtue of their practical experience of the public sector entity's processes; • contribute to the mapping exercise by reporting on the factors specific to their functions and their related risks.

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Second pillar: Corruption risk mapping

Step 2 - Process identification and risk scenarios

Identification of processes

On the basis of the activities carried out

No ex-ante list of processes deemed the most exposed to risks

Consultations on each process

Workshops, interviews, questionnaires

Encourage free expression

Keep a written summary

Staff at all levels of the hierarchy, chosen for their operational familiarity with the processes

To list the risk scenarios

These scenarios are specific to the public sector entity

A list of risks drawn up in advance is just a starting point for discussion

Second pillar: Corruption risk mapping

Step 3 – Assessment of gross risks

Objective: assess the **public sector entity's vulnerability to each risk scenario** before any management measures are taken, on the basis of a **uniform methodology** enabling the consistent aggregation of the different components of the entity concerned

Impact: reputational, human, financial, economic, legal

Frequency or probability of **occurrence** (e.g. past incidents)

Aggravating factors assessed by applying severity coefficients (e.g. international activities)

Gross risk

Adopt a **uniform methodology** enabling aggregation between the various business lines, subsidiaries and geographical areas

Second pillar: Corruption risk mapping

✓ **Step 4: Assessment of net or residual risks**

Gross risks

Existing risk management measures

Identification of measures during the discussions on processes (Step 2)

Effectiveness of these measures

By the compliance officer with the managers of the functions concerned and the audit/risk functions

Net risks

✓ **Step 5: Net or residual risk ranking and preparation of the action plan**

Classification of net risks

Net risk is deemed acceptable

Acceptability threshold

Net risk must be better managed

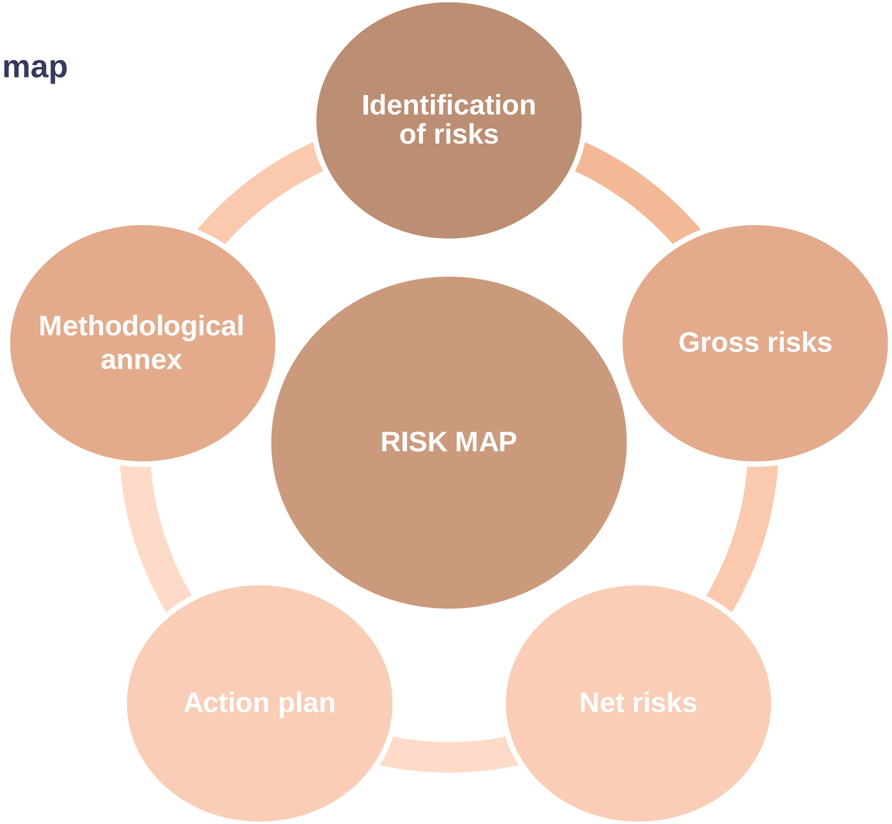
- Action plan
- Timetable
- Responsibility

Second pillar: Corruption risk mapping

✓ Step 6: Formalising, updating and archiving the risk map

Once a year, the need for possible updates is assessed.

Retaining the following elements can be useful to assess the effective implementation of the risk mapping exercise:
- Records of discussions with the staff concerned (diaries, notes, written summaries);
- The method for calculating “gross” risks, and the definitions used;
- The method for calculating “net” or “residual” risks, and the definitions used;
- The procedures for identifying and categorising risks;
- The different versions of risks maps submitted to senior management, their approval and the related approved action plans;
- The minutes of the different committee meetings.



Third pillar: Risk management – Prevention

Code of conduct – Definition (1/2)

Code of conduct = document that is an expression of senior management's decision to commit the public sector entity to a corruption prevention and detection approach

It may be incorporated into a system of "ethics" (such as a charter of ethics) or good conduct that may encompass more than the strict prevention of corruption, providing it is presented and disseminated in a manner that is perfectly understandable

It defines and illustrates with examples of the public sector entity's activities the different types of behaviour that are unacceptable since they are likely to constitute corruption

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Third pillar: Risk management – Prevention

Code of conduct – Construction and approval process (2/2)

Senior management promotes the code of conduct and scrupulously applies its principles, with a view to leading by example.

Senior management provides leadership by writing the preface to the code of conduct, which reiterates its commitment with respect to corruption prevention and detection.

The code of conduct for entities whose staff are subject to the General Civil Service Regulations is signed by the department head after consulting with the technical committee or, in the future, the relevant social committee.

Where the entity has rules of procedure, the code of conduct is incorporated into them and forms the subject, where appropriate, of a consultation procedure with the relevant bodies, authorities and departments.

Third pillar: Risk management – Prevention

Awareness and training

Objectives

TRAINING	AWARENESS
Priority to managers and staff most at risk. An anti-corruption training programme: - provides knowledge and skills; - is part of the general training plan.	**Designed for all staff**, it fosters the sharing of information and advances awareness of the implications of corruption for the public sector entity and its environment.

Third pillar: Risk management – Prevention

Third-party due diligence – Definition and objectives (1/6)

Definition: an approach, conducted on the basis of the corruption risk map, to assessing the risks associated with different categories or groups of third parties with which the organisation has dealings

Objective: to decide whether to enter into a relationship with a third party, continue with a relationship – with enhanced due diligence measures where necessary – or terminate a relationship

Wide scope: suppliers and sub-contractors, entities subsidised by the public sector entity, recipients of individual support, recipients of authorisations, partners or sponsors, public service users, and any private or public sector entity with which a given public sector entity has dealings in the course of its work

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Third pillar: Risk management – Prevention

Third-party due diligence – Definition of the due diligence mechanism (2/6)

Exhaustive inventory of third parties

Creation of groups of third parties

- with comparable risk profiles
- based on the risk map

Determination of due diligence methods adapted to the risk level of each group

- groups of low-risk third parties require no due diligence or simplified due diligence
- high-risk third parties require thorough due diligence
- determining the third parties that can be ruled out for due diligence is important for public services accessible to large numbers of users

Within a group of third parties, due diligence is conducted on each third party separately

- according to its particularities
- a third party deemed to be part of a low-risk group can be reclassified as high-risk after its individual assessment (incident, report, conviction, behaviour changes)

An internal database of third parties, which is compliant with the regulations, up-to-date and secure, can facilitate the performance and management of third-party due diligence

Third pillar: Risk management – Prevention

Third-party due diligence (3/6)

WHO

- **Staff in charge of due diligence**: collect the information and issue a preliminary appraisal, which counts as a decision in cases judged to be low-risk;
- **Staff member or department in charge of the anti-corruption programme**: provides expertise and advice to the staff in charge of due diligence and assists the operational level with its appraisals of and decisions on high-risk cases;
- **Senior management** decides on further action to be taken with respect to the highest-risk cases.

HOW

- Following a formalised procedure;
- With information and documents determined on the basis of the risk map;
- In compliance with the applicable regulations, especially those governing personal data protection or, for third parties with contracting authority status, in accordance with the Public Procurement Code;
- Lists of sanctioned natural and legal persons.

WHAT

- Identity of the third party;
- Professional references attesting to the experience, credentials and skills required to conduct the task;
- Unfavourable information or convictions;
- The existence of an anti-corruption programme within the third party.

Third pillar: Risk management – Prevention

Third-party due diligence – Assessment of the third party's risk level (4/6)

Risk factors on the third party

Third party tasked with helping the public sector entity to procure contracts

Recommended third party

Behaviour of the uncooperative third party in providing the requested information and documents

Risk factors on the relationship with the third party

Long-term financial relationship

High-value financial relationship

High level of economic dependence

Consistency between the cost of the deliverable, the goods or services sold and market prices

Commissions, payment methods

Third pillar: Risk management – Prevention

Third-party due diligence – Conclusions to be drawn from due diligence (5/6)

The results of the due diligence may lead to:

- Approve the relationship – with or without enhanced due diligence measures;
- Postpone the decision (e.g. pending further assessments);
- Terminate or refrain from proceeding with the relationship.

The identification of risk factors does not rule out the relationship, but must lead the organisation to take appropriate <u>due diligence measures</u> to prevent the risk.

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Third pillar: Risk management – Prevention

Third-party due diligence by public sector entities applying the Public Procurement Code (6/6)

Must be conducted in accordance with **the fundamental principles of public procurement**: freedom of access to government contracts, equal treatment of bidders and transparency of procedures

The public sector entity may take **prevention measures** in case of a high risk: strengthen collective decision-making, arrange recusal of potential procurement players with a conflict of interest, enhance internal control

Check, in particular, for the existence of any **measures that may exclude a bidder** from the public procurement procedures (final conviction for certain offences including corruption)

Caution on the introduction of criteria related to bidding firms' anti-corruption commitment as the addition of such criteria could expose the contracting authority to accusations of favouritism

Third pillar: Risk management – Detection

Internal whistleblowing system – Definition and objectives, entities concerned (1/5)

The internal whistleblowing system enables staff to inform a **dedicated contact person** about behaviours or situations that could violate the code of conduct or constitute corruption so that they can be eliminated and the appropriate sanctions applied, where necessary.

The following public sector entities are required to implement such system :

1. Central government (central administrations, departments with nationwide jurisdiction, devolved departments);
2. Municipalities with more than 10,000 inhabitants;
3. Departments and regions, overseas local governments mentioned in Article 72-3 of the Constitution and public establishments under their purview;
4. Public inter-municipal cooperation institutions with tax-levying powers that include at least one municipality with more than 10,000 inhabitants;
5. Independent public authorities with at least 50 employees;
6. Independent administrative authorities;
7. Any other public sector or private sector entity with at least 50 employees (public institutions, public interest groups, etc.).

Third pillar: Risk management

Risk detection: Internal whistleblowing system (2/5)

Organisation of the whistleblowing system (2/5)

The internal whistleblowing system must be appropriate for the public sector entity's risk profile

The internal whistleblowing system specifies the role of the superior, who must be able to guide and advise staff, except where the superior is the perpetrator of the reported conduct.

The public sector entity ensures the training of:
- Persons responsible for processing whistleblower reports;
- Supervisory personnel;
- The most exposed staff.

Ensure that the confidentiality of the processing of reports is respected and that there are no conflicts of interest.

The internal whistleblowing system is presented immediately to the public sector entity's new hires.

The internal whistleblowing system is to be deployed so that it covers the entire scope of the public sector entity.

The system is adapted to the specific features of the constituent entities (activity, size, local legislation, etc.).

Management of this system **may be contracted out to a third party**, provided the latter has the **necessary competence** for proper processing of whistleblower reports and the means to **ensure confidentiality**. The services provided for this purpose must be **monitored regularly**.

Third pillar: Risk management – Detection

Internal whistleblowing system – Processing whistleblower reports (3/5)

A procedure specifying

- Different steps to be followed when making a report
- Procedures for the recipient’s processing of the report
- The rights and the protection of the persons concerned
- Security and protection measures for personal data

Persons

- The contact person that receives reports and the one that processes them
- The whistleblower: importance of protecting confidentiality
- The persons named in the reports

Security

- Restricted access privileges
- Vigilance over the protection of evidence or documents
- Compliance with the GDPR

Access and information

- The different channels
- The conditions for providing information
- The documents that may be used for an internal investigation
- Acknowledgement of receipt
- Closing

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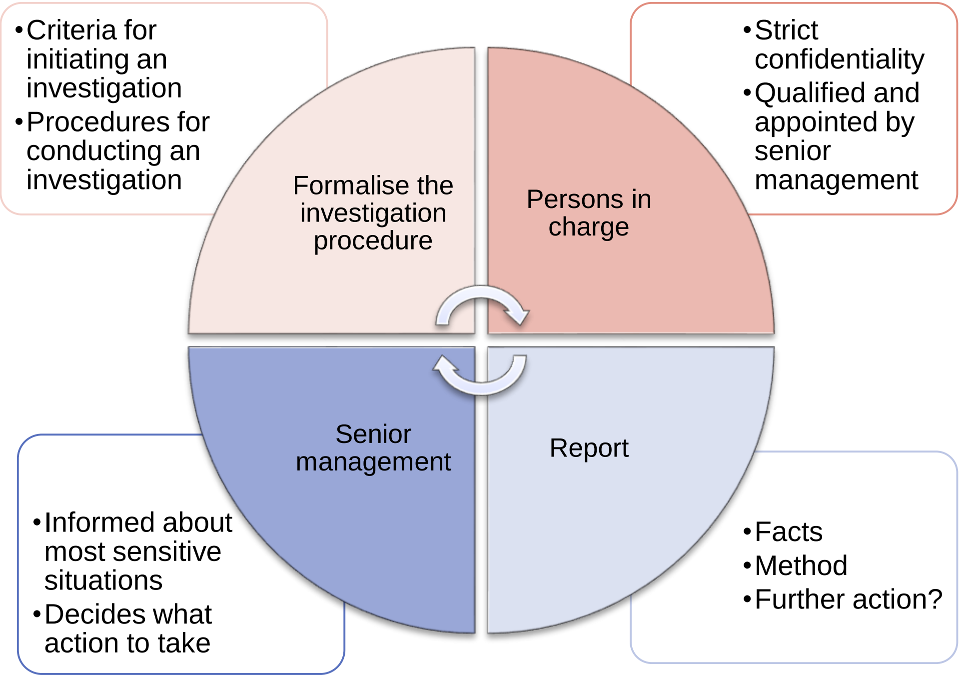
Third pillar: Risk management – Detection

Internal whistleblowing system – In the event of an internal investigation (4/5)



If the internal investigation is outsourced, the services rendered by the **selected provider must be monitored regularly** for compliance with the confidentiality and data protection rules.

Further action:
Sanctions?
Legal proceedings?
Update of the risk map

Third pillar: Risk management – Detection

Internal whistleblowing system – Archiving (5/5)

Whistleblower report

- No further action
  - Personal data must be destroyed or rendered anonymous within **2 months** of closing the investigation
- Further action
  - All of the personal data collected during the investigation may be retained until the end of the proceedings, up to the statute of limitations (**6 years**), or until after all appeals have been exhausted

Third pillar: Risk management – Detection

Internal control – 3 lines of defence (1/3)

1. Ensure that the tasks that are part of an operational or support process are performed in compliance with the public sector entity's procedures and purposes
   - Performed by the operational or support staff or by their superior

2. Ensure, at prescribed intervals or randomly, that the 1st-line-of-defence controls are properly executed
   - Performed by a different department than the ones that implement the operational and support processes daily, such as the risk management, quality control, management control or compliance departments, etc.

3. Ensure that the control system complies with the public sector entity's requirements and is implemented effectively and kept up to date
   - Performed by the internal audit services

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Third pillar: Risk management – Detection

Internal control – Accounting controls: content (2/3)

Are part of the general framework of the main principles of reliability of public accounts: constitutional principle (47-2) of accuracy, lawfulness and true and fair view for all public administrations; principle of segregation of authorising officers and accountants

- Persons responsible for entering and validating accounting entries
- Different person than the one making the entries

1st line of defence: entries are properly justified and documented

2nd line of defence: proper performance of the anti-corruption accounting controls for the 1st line of defence.

- Persons who are independent from those who performed the controls for the 1st line of defence
- All year long
- Sampling method must be representative of the inherent risks in the transactions

- Appropriateness of governance and resources for anti-corruption accounting controls
- Appropriateness of the methods for the development and application of anti-corruption accounting controls for the 1st and 2nd lines of defence

3rd line of defence: accounting audits: anti-corruption accounting controls comply with the public sector entity's requirements, and are effectively implemented and kept up to date

Third pillar: Risk management – Detection

Internal control – Accounting controls: Treating any problems found (3/3)

Finding problems may lead to

- Amend certain existing accounting procedures
- Update the corruption risk map
- Include additional examples to illustrate the code of conduct and training materials
- Reminder about the rules or sanction, depending on the severity of the failure
- In the event of a breach of the duty of integrity, informing senior management, which may initiate an internal investigation

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Third pillar: Risk management – Corrective action

Management and follow-up of deficiencies found

Deficiencies associated with the implementation of procedures – and potentially flagged by the monitoring and audits – are analysed to identify their cause and correct them.

Disciplinary system

The public sector entity may take **disciplinary sanctions**

against a staff member for misconduct: behaviour constituting a breach of the duty of integrity, violation of the code of conduct

Depending on the case, charges may be pressed or the public prosecutor notified (Article 40 of the Code of Criminal Procedure) in parallel

Procedural framework to be respected

Principle of a scale of sanctions (sanction proportionate to the misconduct as set out in the scale of sanctions provided for by the applicable disciplinary rules)

Sanctions list in compliance with the rules on confidentiality and personal data protection

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Thank you for your attention

For more information:

Check out the guidelines on the AFA's website

https://www.agence-francaise-anticorruption.gouv.fr/fr/recommandations

To contact the AFA: afa@afa.gouv.fr