



MINISTÈRE DE LA JUSTICE

MINISTÈRE DE L'ACTION
ET DES COMPTES PUBLICS



French Anti-Corruption Agency

Annual Report

2017

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Foreword



It is only through political determination that institutions can find the courage and strength to combat corruption, an evil that "undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish."¹

This combat is not simply an issue of a domestic need to eradicate corruption *intra muros*; governments also have an obligation to contribute, in an impartial and determined manner, to the fight against transnational corruption.

After the creation of the High Authority for Transparency in Public Life and the French Financial Prosecutor's Office in 2013, the establishment of the French Anti-Corruption Agency – a service with national scope placed under the joint authority of the Minister of Justice and Minister for Government Action and Public Accounts by the Act of 9 December 2016 – capped these efforts. The new Agency is a reflection of the political will for probity and integrity, which are essential to preserving the social pact and maintaining France's place in the concert of nations. "Corruption distorts the democratic, economic and social rules to the detriment of the most vulnerable. It lies at the heart of disillusionment with democracy. This is why it must be fought, in all its forms, by political will."

These words were spoken by then-President Hollande on 23 March 2017 at the unveiling of the inaugural plaque of the French Anti-Corruption Agency (AFA), the capstone in France's tripartite anti-corruption arsenal.

¹ Foreword to the United Nations Convention against Corruption

No doubt the old saying "an ounce of prevention is worth a pound of cure" was not enough to dispel the doubts of those who witnessed the creation of yet another body whose usefulness they doubted. Others, however, believed that "a judgment is unfair when there was no prevention".²

This ancient expression is all the more timely in that the responsibility falls not merely on an individual but on an entire group, in this case a legal entity and its directors, and that this responsibility may lead to damage to its image which can seriously impair its economic value.

The creation of the AFA by the Act of 9 December 2016, also referred as the "Sapin II Act", which was favourably received by the international community, was also welcomed in economic circles which, without giving short shrift to the constraints that this new legislation would create for them, assessed its beneficial effects. First because some companies are already facing a requirement for integrity beyond the borders of France, and second because they saw it as a real competitive advantage.

Although it draws inspiration from foreign models, the French system for preventing breaches of probity nonetheless has its specificities. First, it involves public stakeholders and subjects them to Agency audits. Second, and more importantly, it obliges large economic stakeholders – outside of any situation involving prosecution and under penalty of administrative sanctions – to implement preventive measures, which require them to adopt anti-corruption compliance mechanisms. Thus, alongside the public authorities, companies contribute directly to the fight against corruption; their commitment to this can be seen in the quality of their contributions to the Agency's initial recommendations. Even though 2017 was the Agency's first year, the AFA made its mark and deployed its first actions.

² Publilius Syrus- *Sententiae*, 1st C BCE

Introduction

Corruption is a complex social, political and economic phenomenon that affects every country. In its resolution of 6 November 1997, the Council of Europe described corruption as "a serious threat to the basic principles and values of the Council of Europe, [which] undermines the confidence of citizens in democracy, erodes the rule of law, constitutes a denial of human rights and hinders social and economic development".³

What is at stake

Combating corruption is a political issue involving proper management of the public purse

When it involves a political figure, corruption damages the credibility of the political world as a whole. The bond of trust between citizens and political institutions is shaken to its core. In this sense, corruption is a threat to democracy, and politicians have a duty to make every effort to roll it back.

Furthermore, corruption that involves public expenditure (procurement, government subsidies, etc.) always results in the misdirection of public money and the degradation of public services. Public resources are diverted, at least in part, to satisfy private interests to the detriment of the general interest.

Combating corruption is a boon for both economic activity and companies' health

At a national level, corruption has a negative impact on the economy.⁴ It has the same effect as a production tax.

Conversely, the fight against corruption appears likely to foster economic growth.⁵

Corruption exposes a company to different risks that can threaten the good conduct of its business:

- **Risk of criminal sanctions**

More and more countries are criminalising acts of corruption committed outside of their territory. For example, the American Foreign Corrupt Practice Act (FCPA) and the UK's Bribery Act apply to both domestic and foreign companies. Article 21 of the

³ Council of Europe, Committee of Ministers, Resolution (97) 24 on the twenty guiding principles for the fight against corruption, adopted on 6 November 1997.

⁴ Cf. "Corruption: Costs and Mitigating Strategies", Staff Discussion Note No. 16/05, May 2016.

⁵ See *Trésor Economics* no. 180, "Fighting corruption: positive impacts on economic activity, including in developed countries", September 2016.

Act of 9 December 2016 extends the jurisdiction of the French criminal courts with respect to international corruption.

Thus, a company may be subject to audits and proceedings instigated by several countries concurrently, and may be obliged to provide significant amounts of information on its agreements and business partners, including third states.

- **Risk of financial losses and damage to the company's image**

Corruption has a high financial, human and commercial cost for all businesses. Regardless of their turnover or the size of their workforce, depending on their situation, multinationals, mid-tier firms (ETIs) and SMEs all run the following risks: temporary exclusion from public procurement, eroded investor and consumer confidence, a loss of value on the financial markets, downgraded ratings by rating agencies, being blacklisted by certain customers based on those companies' own rating procedures, etc.

- **Risk of destabilisation**

Audits and prosecution may disrupt a company's regular business to such an extent that significant resources must be diverted from operational activities.

An effective risk control policy is a strategic asset for any company, enabling it to ensure stability in the event of audit or prosecution.

Social perceptions of corruption in France and the lack of an objective yardstick

Perception of corruption in France

According to the European Commission's latest study on the subject⁶, France's perception of corruption is broadly in line with the European average. Thus, 78% of French respondents consider corruption unacceptable (EU: 70%) and 67% believe that it exists in France (EU: 68%), even if **only 8% of French respondents stated that they had been, in practice, victims of corruption** (EU: 25%).

On the other hand, 49% of French respondents believe that corruption is present in the business world (EU: 40%). For 29% of them, it exists in public administrations (EU: 33%) and among politicians (for 68% of French respondents, against 56% of Europeans). Finally, both French and Europeans consider that corruption is not very present in the courts (23% in both cases).

In Transparency International's Corruption Perceptions Index⁷ for 2017, the perception of corruption remains stable in France with an index of 70 (on a scale of 0

⁶ Special Eurobarometer 470, "Corruption", survey by the European Commission - October 2017.

⁷ Source: www.transparency.org.

to 100, with 100 representing a very low level of perceived corruption). France ranks 23rd out of 180 countries, and 12th amongst EU Member States.

Measuring corruption

The hidden nature of corruption makes it difficult to quantify. An objective assessment is, however, an important prerequisite to any discussion on its causes and consequences, and to be able to define and implement a public policy aimed at reducing it.

Currently, corruption in France is primarily measured through convictions handed down by criminal courts, but this does not allow us to measure the full scope of corruption. The National Police Record system (CJN) consists of extracts from these convictions, allowing the courts to understand a person's background in the event of new proceedings. But these extracts are not detailed enough to provide a qualitative assessment of corruption. Furthermore, the system is not accessible to the general public.

To prevent and to punish corruption more effectively, accurate data should be available on the number and location of breaches of probity in France, who commits these breaches and the circumstances under which they were committed. It is through analysing the reality of these violations that public resources can best be allocated to detect and prevent them.

Articles 20 and 21 of the Digital Republic Act 2016-1321 of 7 October 2016 provide that the judgments of judicial and administrative courts be made available to the public free of charge. When processed using an appropriate algorithmic toolset that ensures the protection of privacy, these data would make it possible to establish a detailed, up-to-date map of breaches of probity in France.⁸

Handling of breaches of probity by the courts

Proceedings relating to corruption, influence peddling, favouritism, extortion by public officials and unlawful taking of interest⁹

In 2016, the courts dealt with **758 proceedings** relating to breaches of probity. These cases involved a total of 886 individuals and 215 legal entities.

Of these, **57% of those implicated** as perpetrators were deemed "non-prosecutable", mainly because the investigation did not sufficiently characterise the offence (55% of non-prosecutable cases).

⁸ The implementing regulations for these texts had not been adopted as of the completion of this report.

⁹ The figures given here are taken from a document drafted by the Directorate for Criminal Affairs and Pardons (DACG), which is available on the AFA website.

In 2016, the sanction rate for prosecutable cases was 90.3% for breaches of probity, compared with 87.6% for all cases.¹⁰

In terms of subsequent action by the public prosecutor's offices as regards prosecutable cases:

- 40% of cases were tried in criminal court following the investigation
- 31% resulted in a judicial investigation being opened
- 27% resulted in alternative measure instead of prosecution: warnings, non-criminal sanctions, adjustment requests. It should be noted that the rate of alternative proceedings to prosecution is 56% for all cases.

The most frequently prosecuted offences in 2016 were:

- Corruption: 134 prosecutions
- Misappropriation of public funds: 91 prosecutions
- Unlawful taking of interest: 64 prosecutions
- Influence peddling: 23 prosecutions

Decisions handed down by the courts

In 2016, **297 offences** concerning breaches of probity resulted in final convictions. For 41% of them, the charge was corruption. These offences involved **253 individuals being convicted**, for a total of **161 cases tried**.

A few figures provide insight into how complex it is to process breaches of probity:

- In 2016, the **release rate** for these offences was 17%, compared with 5.6% for all cases
- The **appeal rate** was 17% in 2012, compared with 7% for all cases
- The **average processing time** was 5.5 years, compared with 1.2 years for all cases

The sentences handed mainly involved imprisonment (67% of convictions), mostly suspended (78% of prison sentences) and a fine (44% of convictions). Seventy confiscation orders were also issued, the highest number in a decade.

¹⁰ The figures for "total cases" do not include road cases.

Breaches of probity tried by the courts in 2016 in five numbers:

758: the number of persons involved in breaches of probity offences

312: the number of persons prosecuted for these offences

253: the number of convictions for breaches of probity

70: the number of confiscation orders issued in breaches of probity proceedings

5.5: the average time in years that breach of probity proceedings take from when the acts were committed to the date of conviction in a court of first instance

Part One: From Act to Agency: the creation of the AFA in 2017

1.1. Why the AFA was set up

The Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 (the so-called "Sapin II" Act)¹¹ was adopted in response to several weaknesses that had been noted in the French system.¹²

On the one hand, France had come in for repeated criticism from several international¹³ and national¹⁴ bodies.

On the other hand, the two departments that had been set up in the 1990s – the MIEM,¹⁵ an interministerial taskforce to investigate public service contracts and agreements and the Central Unit for the Prevention of Corruption (SCPC¹⁶) – had quickly reached their limits. The MIEM was not very active at all and was dissolved in 2012. The SCPC had no investigative powers,¹⁷ and there was no duty of care in preventing corruption applicable to the private sector.

In late 2014, the Ministry of Justice set up a task force to examine how the French system for detecting and preventing corruption and coordinating anti-corruption efforts could be modernised. After meeting with competent authorities from several countries (including the US, the UK, the Netherlands and Italy), the task force concluded that a dedicated body was required that would be tasked with detection (cf. the role of the BIBOB Act and *Adviespunt Klokkenluiders* in the Netherlands), prevention (cf. the role of the *Autorita Nazionale Anti Corruzione* in Italy) and coordinating anti-corruption efforts (cf. the role of the Cabinet Office in the UK).

The French Anti-Corruption Agency was created by the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016.

¹¹ The "Sapin II" Act is Act 93-122 of 29 January 1993 on the prevention of corruption and fostering transparency in economic activities and public procedures.

¹² See [the impact study for the bill](#).

¹³ See, for example, Report from the Commission to the Council and the European Parliament – EU Anti-Corruption Report (February 2014) – pp. 39 and 40 of the general report and p. 12 of the annex about France.

¹⁴ See the report submitted to the President of France in 2015 by the chairman of the High Authority for Transparency in Public Life (HATVP) on the topic of "restoring public trust".

¹⁵ Act 91-3 of 3 January 1991 on the prevention of corruption and fostering transparency in economic activities.

¹⁶ Act 93-122 of 29 January 1993 on the prevention of corruption and fostering transparency in economic activities and public procedures.

¹⁷ Constitutional Council Decision 92-316 DC of 20 January 1993.

Decree 2017-329 and the Order of 14 March 2017 established the Agency's mandate and its organisation. The magistrate overseeing the AFA was appointed by presidential decree on 17 March 2017. By virtue of this appointment and in accordance with the provisions of Article 5(I) of the Act of 9 December 2016, the Central Unit for the Prevention of Corruption (SCPC) was automatically abolished.

1.2. The AFA's mandate

Article 1 of the Sapin II Act summarises the AFA's mandate: "*to assist the competent authorities and persons involved in preventing and detecting acts of corruption, influence peddling, misappropriation of public funds and favouritism.*" These criminal offences, which are codified in Articles 432-10 *et seq.* of the Criminal Code in the section entitled "Breaches to the duty of probity", delimit the scope the Agency's jurisdiction.

Breaches of probity: the relevant articles in the French Criminal Code

- **Corruption** Articles 432-11 *et seq.*, 433-1(1°) *et seq.*, 434-9 *et seq.*, 435-1 *et seq.*, 445-1
- **Influence peddling** Articles 432-11(2°) *et seq.*, 433-1(2°) *et seq.*, 434-9-1 *et seq.*, 435-2 *et seq.*
- **Extortion by public officials** Article 432-10 *et seq.*
- **Unlawful taking of interest** Article 432-12 *et seq.*
- **Misappropriation of public funds** Articles 432-15 and 433-4
- **Favouritism** Article 432-14 *et seq.*

The AFA intervenes only as a preventive measure. Although it can detect offences, it is not a judicial authority and is therefore not required by law to investigate, record or prosecute criminal offences.

A remit that includes administrative coordination and advice

The French Anti-Corruption Agency is tasked with centralising and disseminating information¹⁸ and best practices¹⁹ to help prevent and detect corruption. It takes part in interministerial actions of the French government to combat corruption.

¹⁸ Article 3 of the Act of 9 December 2016.

¹⁹ Article 2 of the Order of 14 March 2017 relative to the organisation of the French Anti-Corruption Agency.

In particular, the Agency is responsible for drafting the **multi-year national plan to combat corruption**,²⁰ influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism. Work on this plan began in 2017.

In addition, the AFA **provides support** to individuals and legal entities, whether public or private, that request it. As part of this, it provides training and awareness-raising activities, answers questions, and provides technical expertise.

Through its recommendations, it seeks to disseminate best practices.

In the exercise of its remit, the AFA benefits from assistance provided by the services of the Ministry for the Economy and Finance and the Ministry of Justice, especially for statistical purposes. Lastly, the Agency prepares an annual report, which it makes public.²¹

AFA's actions abroad

Within its spheres of competence, the AFA helps establish the French authorities' position within international organisations.²² It also proposes **cooperation activities** and provides **support and technical assistance** to foreign authorities.²³

AFA audits

The AFA is responsible for carrying out audits of the measures and procedures put in place by public and private stakeholders as regards the prevention and detection of breaches to the duty of probity.²⁴

There are two types of audits:

- **the audits stipulated in Article 17 of the Act of 9 December 2016:**
Companies and government-funded industrial and commercial institutions (*établissements publics industriels et commerciaux* – EPIC), with 500 employees or more and turnover of more than 100 million euros are required to implement the measures provided for in Article 17 of the Act of 9 December 2016. The AFA is responsible for auditing compliance with this obligation.

²⁰ Article 1(I)(1°) of the Order of 14 March 2017 relative to the organisation of the French Anti-Corruption Agency.

²¹ Article 2 of the Order of 14 March 2017 relative to the organisation of the French Anti-Corruption Agency.

²² Article 3(7°) of Act 2016-1691 of 9 December 2016.

²³ Article 2 of the Order of 14 March 2017 relative to the organisation of the French Anti-Corruption Agency.

²⁴ Article 1 of the Order of 14 March 2017: "Through cooperation activities and the provision of support and technical assistance, the French Anti-Corruption Agency contributes to the implementation of the French authorities' international commitments."

²⁵ Articles 3 and 17 of the Act of 9 December 2016, especially Article 17(III) concerning audits.

- **the audits stipulated in Article 3 of the Act of 9 December 2016:**
Central government departments, local authorities and their associated government-funded institutions and semi-public companies, as well as public interest foundations and non-profit organisations, are also required to implement procedures to prevent corruption risks.

Audits carried out in enforcement of judgments

Organisations are required to implement anti-corruption compliance programmes under the control of the AFA:

- Pursuant to the **compliance programme sanctions** stipulated in Article 131-39-2 of the Criminal Code, supplementary sanctions that may be imposed by a criminal court
- In enforcement of a **judicial settlement in the public interest**, as stipulated in Article 41-1-2 of the Code of Criminal Proceedings

The AFA ensures compliance with the "blocking statute" when enforcing judgments by foreign authorities

Under the terms of Article 3(5°) of the Act of 9 December 2016, the AFA "shall, at the Prime Minister's request, ensure compliance with Act 68-678 of 26 July 1968 relating to the communication of economic, commercial, industrial, financial or technical documents and information to foreign natural and legal persons, **as part of the implementation of decisions by foreign authorities** obliging a company whose registered offices are located in France to make its internal corruption detection and prevention procedures compliant."

Together with other competent administrative authorities, the Agency shall take part in examining information that the legal entity in question intends to transmit to a foreign authority.

1.3. Setting up the AFA

Organisation

Pursuant to the **Order of 14 March 2017 relative to its organisation, the French Anti-Corruption Agency** consists of, in addition to a Sanctions Committee²⁵ and a Strategic Advisory Board:

- **A Consulting, Strategic Analysis and International Affairs Division, which is composed of:**
 - o A support department for economic stakeholders
 - o An advisory department for public bodies

²⁵ For the makeup of the Committee, please refer to p.22 of this report.

- An international affairs officer
 - **An Inspection Division, which is composed of:**
 - A department in charge of auditing economic stakeholders
 - A department in charge of auditing public bodies
 - **A General Secretariat**

The Secretariat is responsible for the **administrative and financial management** of the AFA. It proposes and implements the Agency's institutional communication and public relations policy. It acts as secretariat for the Sanctions Committee and the Strategic Advisory Board.

The AFA's director relies on a **Strategic Advisory Board**,²⁶ which he or she consults at least once a year with respect to:

- The overall strategy that the director intends to put in place
- Any and all topics relating to the Agency's remit

The Strategic Advisory Board met on 21 September and 12 December 2017.



Inauguration of the AFA on 23 March 2017

²⁶ Article 3 of the Order of 14 March 2017. The Board is composed of two members appointed by the Minister of Justice, two members appointed by the Minister with responsibility for the budget, two members appointed by the Minister of Foreign Affairs and two members appointed by the Minister of the Interior. Finally, the Director may appoint any individual to the Board on the basis of his or her duties or qualifications.

Human resources

The AFA was established in spring 2017, and recruited 51 staff during the year out of an initial cap of 70.

To carry out its remit, the AFA has created a culture of compliance by combining the know-how and professional qualifications of several corps of civil servants from various departments. It has also hired individuals with specific compliance skills from the private sector.

It benefits from the skills and experience of staff from the following ministries:

- Ministry of Justice: Directorate of Criminal Affairs and Pardons, Judicial Services Directorate, the courts
- Economy and finance ministries: Public Finances Directorate General, Directorate General of the Treasury, Directorate General of Customs and Excise, General Business Directorate, Directorate General for Competition Policy, Consumer Affairs and Fraud Control, Tracfin
- Ministry of the Interior: Administration Directorate General, National Gendarmerie, National Police and in particular the National Office for Combating Corruption and Financial and Tax Offences (OCLCIFF)
- Ministry for Solidarity and Health: Directorate General for Healthcare Provision

The AFA also recruited:

- Financial magistrates (French Audit Office (*Cour des Comptes*), regional audit offices)
- Regional civil servants
- Three contractual staff as at 31 December 2017

This diversity fosters a multidisciplinary approach to anti-corruption compliance issues. In addition, two special training sessions were provided to AFA staff.

Part Two: Auditing activities

The AFA is responsible for auditing compliance with measures and procedures to prevent and detect breaches of probity put in place by public and private stakeholders.

It also audits anti-corruption measures implemented in enforcement of court judgments (judicial settlements in the public interest²⁷ and compliance programme sanctions).²⁸

The AFA's director does not receive or request instructions from any administrative or governmental authority in the exercise of the AFA's auditing remit.²⁹

The director's functions may be terminated only at his or her request or in the event of impediment or serious breach.

2.1. Spot audits of prevention and detection measures and procedures

Spot audits address:

- Compliance with the eight measures and procedures to be implemented by managers of companies and government-funded industrial and commercial institutions that are subject to the provisions of Article 17 of Act 2016-1691 of 9 December 2016³⁰
- **The existence, quality and effectiveness of procedures implemented within central government departments, local authorities and their associated government-funded institutions and semi-public companies, as well as public interest foundations and non-profit organisations to prevent and detect acts of corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism.**³¹

²⁷ Article 41-1-2 of the Code of Criminal Proceedings.

²⁸ Article 131-39-2 of the Criminal Code.

²⁹ Article 2 of Act 2016-1691 of 9 December 2016.

³⁰ A code of conduct, an internal whistleblowing system, corruption risk mapping, third-party due diligence procedures, internal or external accounting control procedures, a training system for managers and members of staff most at risk, a disciplinary procedure, an internal monitoring and assessment system of the measures implemented.

³¹ Article 3(3°) of Act 2016-1691 of 9 December 2016.

Audits of economic stakeholders pursuant to Article 17 of the Act of 9 December 2016

Article 17 of Act 2016-1691 of 9 December 2016 requires directors of government-funded industrial and commercial institutions (EPICs)³² meeting certain criteria to set up procedures designed to prevent and detect corruption or influence peddling in France or abroad.

This obligation applies to the presidents, general directors and managers of:

- Companies³³ with at least 500 employees whose registered offices are in France
- Or those belonging to a group of companies³⁴ with at least 500 employees and whose parent company has its registered office in France
- And whose turnover or consolidated turnover exceeds €100 million.³⁵

The Act also specifies that, regardless of the directors' and managers' liability, the legal entity shall be liable in the event of breach of these obligations.

The eight measures and procedures that make up the anti-corruption systems of the companies and institutions subject to these compliance requirements are as follows:

- 1) **A code of conduct** defining and illustrating the different types of prohibited behaviour that are likely to characterise acts of corruption or influence peddling
- 2) **An internal whistleblowing system** that gathers alerts from employees concerning the existence of conduct or situations contrary to the legal entity's code of conduct
- 3) **A risk map** in the form of regularly-updated documentation designed to identify, analyse and prioritise the risks of the legal entity's exposure to external pressure for the purposes of corruption, in particular depending on to the activity sectors and geographical areas in which the entity conducts its business

³² Article 17 does not refer to companies or establishments in general.

³³ Since Article 17(I) does not specify the legal form of a company, all companies are concerned.

³⁴ In ruling 2016-741 DC of 8 December 2016, the Constitutional Council specified that the terms "group of companies" appearing in the first paragraph of Article 17(I) should be understood as designating the whole formed by a company and its subsidiaries within the meaning of Article L. 233-1 of the Commercial Code, or as the whole formed by a company and those which it controls within the meaning of Article L. 233-3 of the same Code. In this context, a "group of companies", for the application of Article 17 of the Act of 9 December 2016, shall mean any group formed by a company together with the companies it controls.

³⁵ The AFA does not have a list of entities that meet these criteria. The Public Finances Directorate General, which, on the basis of the information at its disposal, is in a position to draw up such a list, did not respond favourably to the AFA's request, insofar as its provision would undermine tax and statistical secrecy.

4) **Third party due diligence procedures for assessing the situation of customers**, first-tier suppliers and intermediaries with regard to the risk map

5) **Internal or external accounting control procedures** to ensure that books, registers and accounts are not used to conceal acts of corruption or influence peddling. These controls may be carried out either by the accounting and auditing departments specific to the legal entity, or by calling in an external auditor when carrying out the audits of certification of accounts provided for in Article L. 823-9 of the Commercial Code.

6) **A training programme** for managers and staff who are most exposed to the risks of corruption and influence peddling

7) **A disciplinary procedure** making it possible to sanction the entity's employees in the event that the entity's code of conduct is breached

8) **An internal monitoring and assessment system** of the measures implemented

Article 17 has been applicable since 1 June 2017.³⁶

The audit procedure stipulated in Article 17

Anti-corruption audits are carried out at the initiative of the AFA's director, where appropriate, at the request of the President of the High Authority for Transparency in Public Life, the Prime Minister, government ministers and – in the case of local authorities and their government-funded institutions and semi-public companies – at the request of government representatives. They may also be carried out after reception of information sent by an accredited non-profit organisation under the conditions laid down in Article 2-23 of the Code of Criminal Proceedings.

In 2017, no authority requested that AFA carry out an audit.

The schedule of audits drawn up by the AFA's director takes into account the sectors or geographic areas that are particularly exposed to the risk of corruption, as well as the potential impact of audits on the dissemination of best practices within the stratum or sector³⁷ to which the audited entity belongs. The schedule will contribute

³⁶ Article 17 of the Act of 9 December 2016.

³⁷ Economic stakeholders work in sectors that are unequally exposed to the risks of corruption: the OECD's 2014 report on transnational corruption highlights the weight of only a few sectors in corruption cases. The mining, construction, transport and storage industries, as well as information and communication sectors represent 59% of the cases examined. An analysis of convictions by US courts under the Foreign Corrupt Practices Act (FCPA) since 2008 shows a strong overlap with the OECD's statistics with, however, a more significant share of convictions in the healthcare industry, both in terms of numbers of convictions and amounts of fines levied.

to implementing the **multi-year national plan to combat corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism**.³⁸

An audit by the AFA is similar to an **external audit** of the entity in question. They may give rise to observations, where appropriate, and in the event of non-compliance, to administrative penalties.

AFA staff do not have judicial police powers or coercive powers (the power to carry out searches, for example). They shall have a right to discovery³⁹ that authorises them to obtain any information or professional document useful for the audit, and to interview any person whose assistance appears necessary to verify the accuracy of the information transmitted. They can therefore meet with the managers and employees of the entity under audit, as well as with people outside the organisation (suppliers, intermediaries and clients, for example), under conditions ensuring confidentiality.

Audited entities may not claim professional secrecy to refuse to answer questions or requests for documents.

In 2017, the AFA clarified its audit procedure by publishing a charter of the rights and duties of both auditors and auditees. This charter is available on [the AFA website](#) and is made available to entities during audits. In particular, it describes the audit procedure itself, which takes approximately six months, the main stages of which are as follows:

- A preliminary interview with the AFA audit team
- A desk audit
- A site audit
- Preparation and transmission of a draft audit report to the audited entity
- A two-month adversarial procedure based on this draft
- Drafting of the audit report

Obstruction of an AFA audit is an offence⁴⁰ punishable by a fine of €30,000.

Article 3(6°) of Act 2016-1691 of 9 December 2016 specifies that the AFA shall notify the competent public prosecutor of facts likely to constitute a crime or misdemeanour of which it became aware in the exercise of its remit.

The audit procedure is accompanied by guarantees for the audited entities, such as their right to be assisted by the legal counsel of their choosing at every stage of the audit and the right to communicate any written observations they may have within two months following notification of the audit report, even where the report does not establish a finding of non-compliance.

³⁸ Article 1(I)(1°) of the Order of 14 March 2017.

³⁹ First paragraph of Article 4 of Act 2016-1691 of 9 December 2016.

⁴⁰ Fifth paragraph of Article 4 of Act 2016-1691 of 9 December 2016.

Audits give rise to reports that are submitted to the authorities that requested them, as well as to the audited entity's representatives. They contain the Agency's observations on the quality of the anti-corruption system in place and recommendations on how it might be improved.

In 2017, the Agency adopted in-house guidelines on audit methodology.

Initial audits of economic stakeholders

The first six audits, which were notified on 17 October 2017, concerned five private and one public companies located in various parts of France.

These companies have turnovers of between 1.2 and 49 billion euros and employ between 2,000 and 80,000 people. At the time of the audit, they had between 5 and 277 subsidiaries, two-thirds of which were located abroad.

The desk audit phase began in early November 2017. Some 500 documents submitted by each audited entity were examined, more than a quarter of which were in English. The site audit phase took place in mid-December over a period of one week.

During this phase, an average of 21 interviews were conducted per audited entity, including some with third parties external to the entity. No facts were found that could constitute an obstacle to the AFA audit.

Possible post-audit actions

Non-compliance noted during audits carried out pursuant to Article 17 can be sanctioned as follows:

- Either the Director of the AFA sends a **warning** to the audited entity's representatives:
 - o Requesting them to draw useful conclusions from the Agency's recommendations in the final audit report
 - o And stating that a new audit is likely to be carried out within the time limits for the Agency's actions; in such a case, both the shortcomings already noted and any new shortcomings could justify referral to the Sanctions Committee
- Or the Director **refers the matter to the Sanctions Committee**, which may, where appropriate, cumulatively:
 - o Order the company and its representatives **to modify their internal compliance procedures** designed to prevent and detect acts of corruption or influence peddling, within a period of up to 3 years

- Impose financial penalties not exceeding €200,000 for natural persons or €1,000,000 for legal entities
- Order the publication, dissemination or posting of the injunction or financial penalty decision

The Director shall notify the grievances to the natural person and, in the case of a legal entity, to its legal representative.

No cases were referred to the AFA Sanctions Committee in 2017.

The Sanctions Committee

The French Anti-Corruption Agency includes a Sanctions Committee that is tasked with imposing the sanctions listed in Article 17(IV).

The Committee has six members:

- Two members of the *Conseil d'Etat* (France's highest administrative court), appointed by the *Conseil's* vice-president
- Two judges from the French Supreme Court of Appeal, appointed by the Court's first president
- Two senior officials from the French Government Audit Office, appointed by the Office's first president

Audits of public stakeholders on the basis of Article 3(3°) of the Act of 9 December 2016

Article 3(3°) of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 tasks the AFA with auditing "the quality and effectiveness of the procedures implemented within **central government departments, local authorities and their associated government-funded institutions and semi-public companies, as well as public interest foundations and non-profit organisations** for the purpose of preventing and detecting acts of corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism."

Article 3 does not refer to the eight measures and procedures set out in Article 17(II) and does not provide for an administrative sanction mechanism as Article 17 does.

Audits carried out on the basis of Article 3(3°) give rise to the preparation of reports submitted to the representatives of the audited entity, as well as to the authorities that requested the audit in cases where the latter is the result of a referral from the Prime Minister, a government minister, the President of the High Authority for Transparency in Public Life or a prefect.

These reports contain the **Agency's observations** on the quality of the corruption prevention and detection system set up within the audited entities, as well as **recommendations** with a view to improving the existing procedures.

Due to the gradual process of recruiting audit teams, no audits of public stakeholders took place in 2017.

2.2. Audits of anti-corruption measures imposed by court rulings

The AFA audits anti-corruption mechanisms implemented in enforcement of judicial settlements in the public interest (CJIPs) and compliance programme sanctions (PPMCs).⁴¹

Judicial settlements in the public interest (CJIPs)

Article 22 of Act 2016-1691 of 9 December 2016 introduces Articles 41-1-2 and 180-2 into the Code of Criminal Proceedings that create a new procedure, the CJIP.⁴²

The legislative branch, as parliamentary efforts prove, has openly taken inspiration from the American and British "deferred prosecution agreement" (DPA) models, which allow legal entities, through the conclusion of a legal settlement, to escape criminal proceedings in return for the payment of often very substantial fines⁴³ and for submitting to an anti-corruption compliance programme supervised by a monitor.

Like the guilty plea (*comparution sur reconnaissance préalable de culpabilité* – CRPC),⁴⁴ the CJIP responds to the concern for speed that is shared by the public ministry and the person or entity in question. In this field, the length of proceedings, which often concern acts committed in several countries, and the uncertainty about their outcome, are highly destabilising for the company and its image, and particularly for its governance, which is constantly distracted from managing the business. This is why "many companies wanted to be able to settle quickly, turning the page to move forward".⁴⁵

Current legislation authorises the public prosecutor to offer public⁴⁶ or private legal persons who have been accused of corruption, influence peddling, laundering of the proceeds of certain tax evasion offences⁴⁷ as well as related offences,⁴⁸ regardless of their nationality, turnover or number of employees, to conclude an agreement, the execution of which will have the effect of extinguishing the public action.

⁴¹ Article 3 of the Order of 14 March 2017 relative to the organisation of the French Anti-Corruption Agency.

⁴² The CJIP was the subject of implementing order 2017-660 of 27 April 2017.

⁴³ As a reminder, five French companies (BNP, Alstom, Total, Alcatel-Lucent and Technip) concluded such an agreement with the American authorities and were handed heavy fines (\$772 million for Alstom, for example) to avoid a public trial in the United States.

⁴⁴ Article 495-7 *et seq.* of the Code of Criminal Proceedings.

⁴⁵ "La convention judiciaire d'intérêt public, peut-elle tenir toutes ses promesses ?" (Option Finance Supplément 29 May 2017).

⁴⁶ Under the conditions of Article 121-2 of the Criminal Code: exclusion of government liability, criminal liability of local authorities and their groupings only in the context of activities likely to be the subject of public service delegation agreements.

⁴⁷ Offences set out in Articles 1741 and 1743 of the General Tax Code.

⁴⁸ Offences set out in Article 41-1-2(I) of the Code of Criminal Proceedings.

This agreement imposes one or more of the following obligations on the legal entity:

- **Payment of a "public interest" fine**, the amount of which shall be in proportion to the benefits derived from the infringements observed (within the limit of 30% of the average annual turnover calculated on the basis of the last three annual turnover figures known at the time of the finding of these infringements, payment of which to the Treasury may be staggered)
- **A compulsory compliance programme** for a maximum of three years, under the Agency's supervision.⁴⁹ In these cases, the costs incurred by the AFA in calling on experts or qualified persons or authorities to assist it in carrying out the legal, financial, tax and accounting analyses necessary for its audit shall be borne by the legal entity in question, up to a cap stated in the agreement.⁵⁰
- Compensation for damages caused by the offence to any known victims

The order validating the CJIP has neither the nature nor the effects of a conviction and does not carry a guilty plea. The CJIP is not registered in the criminal record bulletin no. 1.

In support of the adoption of this text, part of the legislature argued that "an admission of guilt prevents subsequent access to international procurement contracts, particularly American ones, which threatened to dissuade legal entities from taking this path".⁵¹ This new form of settlement has the major advantage of not excluding companies from public procurement.

For some, offering the prosecuting authorities the option, on the one hand, of sanctioning without convicting and, on the other hand, of obliging the company to enter a compliance programme, the agreement is part of "a more global political, legal and economic shift from a disciplinary society to a society of control", since the goal of the compliance audit is to nudge society towards a "regulated, standardised, habitual, and even ascetic way of acting".⁵²

The sixth paragraph of Article 41-1-2(II) stipulates that "the validation order, the amount of the public interest fine and the agreement shall be published on the website of the French Anti-Corruption Agency".

The first CJIP, which took place as part of the case against HSBC Private Bank (Suisse) SA⁵³ involving the laundering of tax fraud proceeds, was published on the AFA website on 30 October 2017.

⁴⁹ Article 41-1-2(I)(1°) of the Code of Criminal Proceedings.

⁵⁰ Article 41-1-2(I)(2°) of the Code of Criminal Proceedings.

⁵¹ According to the Senate rapporteur, "the company is simply accused, as there is no evidence of recognition of the commission of offences, and the execution of the agreement eliminates public action for the acts in question" – V.F. Pillet, Rapp. Sénat no. 712, p. 27.

⁵² "La convention judiciaire d'intérêt public : en attendant la transaction pénale", César Ghrenassia and Kévin El Gohari, lawyers, Vîgo law office, RLDA, No. 125 April 2017.

⁵³ Order 2017-660 of 27 April 2017 relative to judicial settlement in the public interest and the judicial surety provided details to the Sapin II Act concerning these agreements.

An AFA audit of the implementation of an anti-corruption programme in execution of a CJIP

The AFA, which supervises the execution of the anti-corruption programme provided for in the CJIP, must report to the public prosecutor, at his or her request and at least once per year, on the implementation of the programme.⁵⁴ The AFA will report any difficulties and will also submit a report when the time limit for execution of the measure lapses. As part of their audit, the AFA teams shall check the development, rollout and proper functioning of the anti-corruption system set up by the legal entity.

Compliance programme penalties (PPMCs)

Article 18 of Act 2016-1691 of 9 December 2016 inserts a new Article 131-39-2 into the Criminal Code, which provides that legal persons found responsible for corruption and influence peddling offences may be punished with a **"compliance programme penalty" (PPMC)** requiring them to submit, for a maximum period of five years, to the obligation to implement an anti-corruption compliance programme, under the supervision of the AFA.

The purpose of this penalty, as parliamentary efforts prove, is to bring France into line with certain foreign models.⁵⁵

Applicable to certain breaches to the duty of probity offences and to all legal entities, the content of the compliance programme is defined by law and corresponds to the measures and procedures set out in Article 17(II) of Act 2016-1691 of 9 December 2016, with the exception of point 8 corresponding to the "internal monitoring and assessment system for the measures implemented".

The PPMC is applicable to all legal persons, private and public,⁵⁶ regardless of their size, legal form and sector of activity, and regardless of whether they are French or foreign.

Like for the CJIP, the conditions of number of employees and amount of turnover, as set out in Article 17 of Act 2016-1691 of 9 December 2016, do not need to be met for the pronouncement of this penalty.

An AFA audit of the execution of the compliance penalty

The AFA, which supervises the execution of this penalty, must report on its implementation to the public prosecutor, at his or her request and at least once per year; the AFA will also have to submit a report when the time limit for execution of

⁵⁴ Article R. 15-33-60-7 of the Code of Criminal Proceedings.

⁵⁵ During parliamentary proceedings, it was stated that "this compliance programme penalty system must ensure that French companies, in the event of corruption, are not primarily subject to foreign law, for example to "monitoring" which may be decided by the American authorities, but to the law of their nationality – an objective which your committee surely shares". V^e Rapp. Senate No. 712, p. 26

⁵⁶ Under the conditions of Article 121-2 of the Criminal Code: exclusion of government liability, criminal liability of local authorities and their groupings only in the context of activities likely to be the subject of public service delegation agreements.

the penalty lapses, and as soon as any difficulties arise in setting up or implementing the compliance programme.⁵⁷

Difficulties in auditing the implementation of the compliance programme (transmission of documents, site audits of mechanisms, interviews with persons whose assistance the AFA deems necessary, etc.) will be the subject of notes sent by the AFA simultaneously to the entity in question and to the public prosecutor.

As part of their audit, the AFA teams shall check the development, rollout and proper functioning of the anti-corruption system set up by the legal entity in execution of the PPMC.

It is also stated that when this penalty has been pronounced against a company mentioned in Article 17(I) of Act 2016-1691 of 9 December 2016, account shall be taken, when executing the penalty, of the measures and procedures already implemented pursuant to Article 17(II).

The coordination of prosecutors and the AFA will therefore be decisive to ensure that the penalty is fully applied.

CJIP and PPMC guidelines

The AFA has developed guidelines for the CJIP and PPMC procedures including templates to assist prosecutors in implementing and monitoring them.⁵⁸

2.3. Audits on implementation of decisions by the Sanctions Committee

On referral by the director, the **Sanctions Committee** may order a company to adapt its anti-corruption compliance procedures.

The Agency is responsible for auditing implementation of this order.

No such audits took place in 2017.

⁵⁷ Article 764-44 of the Code of Criminal Proceedings.

⁵⁸ In this context, a questionnaire was created to establish a cap on the costs of experts and authorities that the AFA may call upon as part of the CJIP and PPMC procedures to audit compliance programmes.

Part Three: AFA's consulting activities

3.1. AFA recommendations

Pursuant to Article 3(2°) of the Act of 9 December 2016, the *Official Journal* dated 22 December 2017 published the AFA recommendations to help private and public sector entities prevent and detect corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism.⁵⁹

The purpose of these recommendations is to help:

- organisations to implement appropriate operating rules to protect themselves from damage to their reputations or their economic value that could result from breaches to the duty of probity
- EPICs covered by Article 17 of Act 2016-1691 of 9 December 2016⁶⁰ to fulfil their obligations
- organisations to protect themselves from sanctions that can be handed down by foreign authorities for failing to comply with an obligation to prevent or detect corruption

The AFA recommendations bring French legislation up to the highest standard in this area, and are part of France's efforts to comply with its international commitments. The AFA has carried out comparative research that highlights that its recommendations are at least as stringent as the FCPA Resource Guide, the UKBA Guidance and the World Bank's Anti-Corruption Guidelines.

These recommendations form a coherent set of measures that the AFA regards as constituting an effective anti-corruption programme.

Senior management's commitment to preventing and detecting corruption is key to a successful anti-corruption programme. It reflects a determination to focus anti-corruption efforts on limiting the risks of a legal entity or its governance bodies being implicated in corruption. Such a commitment must go hand in hand with appropriate resources for the internal departments responsible for the anti-corruption programme.

⁵⁹ *Official Journal of the French Republic (JORF)* no. 0298, 22 December 2017.

Under best practices, the risk map is the starting point for developing a strategy to control corruption risks. Risk mapping is defined as the process of identifying, evaluating, ranking and managing the corruption risks that are inherent to an organisation's activities.

Senior management's commitment takes shape in the anti-corruption code of conduct. This code defines and illustrates the various kinds of behaviour that must be avoided because they may constitute corruption.

The internal whistleblowing system enables all staff to report any behaviour (or situation) that may be contrary to the code of conduct so that this behaviour (or situation) can be stopped and sanctions can be handed down, if applicable.

Third-party due diligence procedures consist of using the corruption risk map as a basis for assessing the specific risk of an ongoing or prospective relationship with a given third party.

Accounting control involves all procedures aimed at monitoring proper financial and asset stewardship.

Corruption risk training is an effective way to embed a culture of integrity within an organisation. It helps spread the message about senior management's pledge to stamp out corruption, brings employees on board, and creates a common body of knowledge for all staff exposed to corruption risk.

The internal monitoring and assessment system aims to ensure the coherence and effectiveness of corruption prevention and detection measures. This system is based on the corruption risk map, and meets four objectives:

- monitoring the implementation of corruption prevention and detection measures, and testing their effectiveness
- identifying and understanding procedure failures
- defining recommendations or other suitable corrective measures, as needed, in order to make the anti-corruption compliance programme more effective
- detecting any corruption that may have occurred

The AFA recommendations are not legally binding and are provided for informational purposes only.

The law stipulates that these recommendations should be tailored to the size of the entities in question and to the kinds of risks identified.

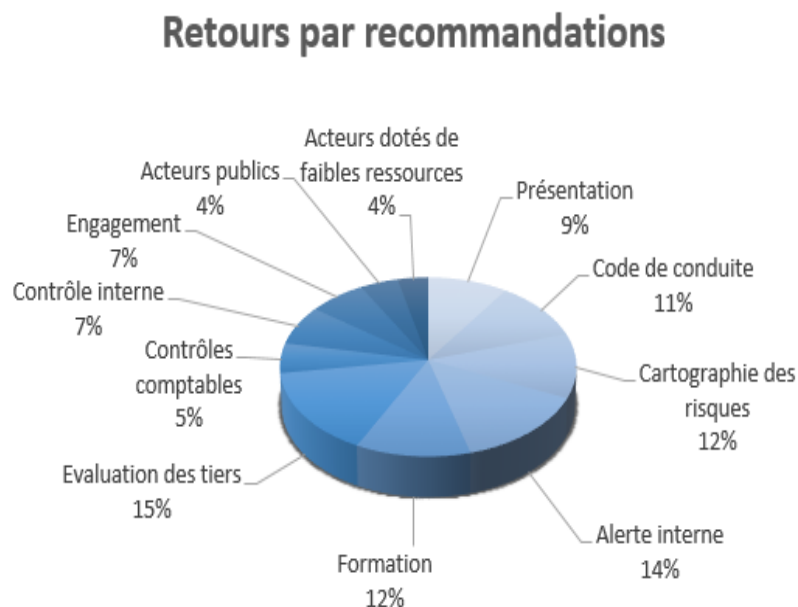
Through its auditing, consulting and administrative coordination duties, the French Anti-Corruption Agency contributes to mainstreaming this reference framework rapidly and ensuring that it is understood clearly by the private and public sectors.

How the recommendations were drafted

The French Anti-Corruption Agency organised a public consultation on its draft recommendations to tailor them as closely as possible to the actual economic conditions and constraints that businesses must face.

Between 15 October and 16 December 2017, the AFA received 450 responses from private or public companies and the professional federations representing them, from trade associations, consultants, auditing and law firms, from public stakeholders and academics, as well as from non-profit organisations dedicated to fighting corruption.

The two topics that elicited the largest number of contributions and questions were the internal whistleblowing system and third-party due diligence.



Légende : Contributions and questions by topic (% of all consultation responses)

Entities with limited resources – Presentation – Code of conduct – Risk mapping – Internal whistleblowing system – Training – Third-party due diligence – Accounting control – Internal control – Commitment – Public sector entities

The AFA used this feedback to make substantial improvements to its draft recommendations.

On 19 December 2017, the AFA organised a conference and debate entitled “Anti-Corruption Obligations: Findings from the Public Consultation”. Minister of Justice Nicole Belloubet and Minister for Government Action and Public Accounts Gérald Darmanin introduced this event, which was held prior to the recommendations being

published in the *Official Journal*. This was an opportunity for the two ministers to reiterate the government's enduring commitment to combat all forms of corruption.



The AFA event on 19 December 2017

Updating the recommendations

As provided by law,⁶¹ the AFA will update its recommendations frequently and in light of evolving practices, as well as experience garnered from the Agency's audits and consulting activities.⁶²

3.2. AFA support for economic entities

Anti-corruption: economic benefits for business

Implementing an anti-corruption compliance programme has several benefits for a company:

- Commercial benefits

⁶¹ Article 3 of the Act of 9 December 2016: "[these recommendations] shall be updated regularly to take into account evolving practices, and shall be the subject of a notice published in the *Official Journal*."

⁶² Article 2 of the Order of 14 March 2017 relative to the organisation of the French Anti-Corruption Agency: "The support department for economic stakeholders shall draft and update recommendations aimed at helping private law legal entities and government-funded industrial and commercial institutions (EPICs) referred to in Article 17(I) of the Act of 9 December 2016. [...] The advisory department for public bodies provides its assistance to government departments, local authorities, their government-funded institutions and semi-public companies, public interest foundations and non-profit organisations [...]. It shall draft and update recommendations aimed at helping the aforementioned entities to prevent and detect the offences listed above."

Some major international groups require their potential suppliers or partners to **align with their own conduct guidelines** in order to do business with them. Thus, commercial benefits can accrue to public or private entities that show strong commitment to anti-corruption principles. These benefits may include lower purchasing costs, favourable terms of payment, reduced due diligence requirements, etc.

- Financing benefits

International investment banks have a strong strategic focus on promoting transparency and combating corruption and illegal activities.

As such, the bidding procedures for projects financed by these banks not only prohibit bidders from engaging in corruption, but more and more frequently, also require bidders to have anti-corruption compliance programmes in place.

If they are implicated in corruption, companies that have successfully bid for projects financed by international investment banks are subject to penalties. In the case of corporate groups, the penalty applied by the bank will affect all group subsidiaries even if they were not directly implicated.

Moreover, companies and corporate groups that have not set up anti-corruption compliance programmes are increasingly not eligible for such projects on the grounds that they do not fulfil the “conditionalities” laid out by the international investment banks.

- Benefits for a company’s internal organisation

At company level, the measures included in an anti-corruption compliance programme can be performance drivers. Not only do these measures prevent risks, but the risk mapping process, by describing work processes, can also lead to streamlining efforts.

Anti-corruption
Ensuring compliance by SMEs and mid-tier firms

Mid-tier firms, defined as companies with annual turnover of between €50m and €1.5bn and headcount ranging from 250 to 5,000, are a very diverse category.

These firms account for 35% of French exports and are active in all regions of the globe, sometimes in strategic sectors or niche activities. **Many mid-tier firms are highly exposed to corruption risks.**

Some mid-tier firms are covered by Article 17 of the Act of 9 December 2016. As such, they have a legal obligation to introduce an effective system to prevent and detect corruption. They are also subject to the AFA's supervision.

Corruption is an issue that concerns companies not covered by Article 17, as well. These companies can be affected by third-party due diligence carried out by their commercial or financial partners. Depending on their geographic footprint and sources of financing, they may run the risk of being sanctioned by foreign authorities or international investment banks for failing to comply with an obligation to prevent or detect corruption, or for proven acts of corruption.

The Agency's objective is to guide economic entities towards ethical business practices by fostering ownership of the anti-corruption policy framework and raising awareness of the benefits of establishing compliance programmes.

In 2017, the Agency pursued its goals of raising awareness and providing assistance to economic entities through several activities:

- It participated in **working seminars** on anti-corruption and on enforcement of the Act of December 2016. These seminars were organised by civil society stakeholders.
- It issued opinions on **draft guidelines** submitted for its review by organisations, trade associations and professional federations.
- It answered **questions from companies** or consulting firms.
- It met with companies, upon request, to answer their questions about anti-corruption compliance. During these meetings, the Agency provided **methodological assistance** for the implementation of certain compliance programme measures, as well as legal advice to clarify the interactions between anti-corruption rules and other branches of the law (e.g. public procurement law, personal data protection law or labour law).
- It was invited by around 20 companies to present its remit and its support activities for companies.

Several representatives of the **business world** invited the AFA to present the new anti-corruption obligations laid out by the Sapin II Act. In addition, the AFA has focused on developing its relationships with private sector entities that have networks in regional France or abroad.

Lastly, the Agency **assists chief compliance officers** in their efforts to coordinate their companies' anti-corruption programmes or to raise awareness. It has also been invited by company representatives and by large corporate groups to make presentations to compliance officers.

Chief compliance officer

An emerging job role within anti-corruption systems

A chief compliance officer ensures that a company complies with current administrative, regulatory and legislative provisions. His or her role is to analyse the risks of non-compliance, to draft recommendations for senior management on how to cover these risks more effectively, and to foster a culture of compliance within the company.

In terms of preventing and detecting corruption, the chief compliance officer oversees the drafting, rollout, implementation, evaluation and updating of the anti-corruption compliance programme, in close collaboration with the organisation's stakeholders.

To fulfil this duty effectively, he or she must have an appropriate position within the company's organisational chart, along with operational independence and the adequate skills and resources.

3.3. Helping public entities adopt the anti-corruption reference framework

The Act 2016-483 of 20 April 2016 on the ethical duties, rights and obligations of civil servants stipulates that all civil servants must show integrity and probity.

However, public entities are only in the early stages of actually implementing internal processes for managing corruption risk. For this process to move forward, it can leverage the progress achieved since the early 2000s in internal control, auditing and management risk prevention.

Specific challenges for government administrations

Since 2011, all ministries have been required to introduce "internal control and audit systems to prevent and manage risk, adapted to the departments' duties and structure, and aimed at controlling the risks related to managing the public policies within the remit of these departments."⁶³

⁶³ Article 1 of the Decree 2011-775 of 28 June 2011 on internal audit in the administration.

Ministerial accounting and budgeting departments are familiar with the internal control process. However, outside these functions, this process is not as well developed. Internal audits are the responsibility of the various ministerial inspectorates.

The primary challenges for anti-corruption systems in government administrations are:

- to enable public entities to adopt the anti-corruption reference framework, e.g. by expanding internal control and audit processes to encompass operations
- to involve the central government departments, as well as local networks and public sector entities under their authority (including certain EPICs whose size places them within the scope of Article 17 of the Sapin II Act)

In 2017, ministerial departments were focused on introducing compliance advisers by the deadline on 1 January 2018.⁶⁴

During the year, a portion of the AFA's advisory activity for public bodies consisted of meeting with them to present the Agency, its consulting and auditing activities, as well as the anti-corruption reference framework that it is promoting.⁶⁵

In the scope of its advisory activities, the Agency met with 13 of 16 ministries in the last quarter of 2017. Each ministry has a ministerial risk map, which includes risks such as fraud. However, specific corruption risk, or the broader risk of breaches to the duty of probity, is not included.

The AFA presented its ministerial counterparts with the methods and stages for setting up an anti-corruption programme at their level. It also offered to provide them with methodological support.

In addition, collaborative efforts were begun with interministerial departments and entities including:

- The Directorate General for Administration and the Civil Service (DGAFP) for training civil servants working for the central government (2,398,000 civil servants⁶⁶)
- The Public Procurement Directorate (DAE) for efforts targeting public procurement officers

⁶⁴ See Decree 2017-519 of 10 April 2017 on compliance advisers in the civil service.

⁶⁵ The AFA recommendations published on 22 December 2017 include a section with information specifically for the public sector.

⁶⁶ Directorate General for Administration and the Civil Service (DGAFP), *Rapport annuel sur la fonction publique - Chiffres clés 2017*.

- DINSIC (the Interministerial Directorate for Digital Technology and the Government Information and Communication System), for the promotion of open public data⁶⁷
- CHAI (the committee for internal audit harmonisation)⁶⁸

The actions defined during these meetings with ministries will be included in the forthcoming multi-year national plan to combat corruption, to be issued in 2018.

The hospital sector has also been included in the AFA's advisory activities. This sector encompasses numerous stakeholders: 3,000 public-sector health care institutions and more than one million employees in the hospital public sector (staff of 1,161,000⁶⁹).

Managing corruption risk in the local public sector

The local public sector comprises **more than 50,000 local authorities** or related establishments, **a majority of which are small or mid-sized cities** (only 42 French cities have populations of 100,000 or more⁷⁰).

In addition, local authorities are responsible for 70% of non-defence public investment. Given the amount of public procurement that it accounts for, as well as its extensive responsibilities, local government is an important stakeholder in public decision-making.

Thus, one arm of the Agency's anti-corruption strategy is focused on local authorities. The goal is to raise awareness of the French anti-corruption reference framework and to help local authorities, "regardless of their size",⁷¹ to adopt this framework for their full scope of responsibilities. This strategy must be rolled out in different ways depending on the human and tangible resources available to local government, with

⁶⁷ Breaches of probity proliferate through isolated actions that are hidden out of necessity. By opening up their databases as broadly as possible, public administrations protect themselves from this risk.

⁶⁷ At interministerial level, the committee for internal audit harmonisation (CHAI) brings together the internal audit directors of each ministry (Article 2 of the Decree of 28 June 2011). Its duty is notably to harmonise the working methodology of the various ministries in terms of internal auditing.

⁶⁸ Directorate General for Administration and the Civil Service (DGAFP), *Rapport annuel sur la fonction publique - Chiffres clés 2017*

⁶⁸ Ministry of the Interior – Directorate General for Local Government – *Les collectivités locales en chiffres 2017*.

⁶⁸ See the AFA recommendations.

⁶⁹ Directorate General for Administration and the Civil Service (DGAFP), *Rapport annuel sur la fonction publique - Chiffres clés 2017*

⁷⁰ Ministry of the Interior – Directorate General for Local Government – *Les collectivités locales en chiffres 2017*.

⁷¹ See the AFA recommendations.

the objective of managing corruption risk to the same extent irrespective of the size of the local authority.

With regard to **large-scale local authorities**, some have set up internal audit departments even though they are under no legal obligation to do so. Recent research by the Conference of Regional Inspectors and Auditors (CIAT)⁷² shows that between 2015 and 2017, internal audit functions were developed by regions, *départements* and large cities. For instance, nearly all regions in mainland France have internal audit functions. The AFA believes that the local authorities with sufficient human and tangible resources should endeavour to comply with the same best practices as the private sector in terms of anti-corruption policy.

For local authorities with limited human or financial resources, corruption risk management cannot always rely on internal control or strategic design resources. Resource pooling at local government level could be one way forward. Transparency of local government decisions is also likely to improve in the years ahead with the mainstreaming of open data enabled by the Digital Republic Act. Some countries, such as the US, already publish local government integrity comparisons; these could serve as a model for future developments in France.

To assist local authorities in assessing corruption risk and in focusing their anti-corruption efforts, the Agency has published a self-assessment chart on its website. This chart is entirely anonymous.

In autumn 2017, the AFA held 16 working meetings with non-profits and organisations from the local government sector, representing:

- local elected officials⁷³
- local government civil servants⁷⁴
- local public enterprises⁷⁵
- certain local government insurance companies

The AFA wishes to develop more extensive working relationships with these groups in order to offer awareness and training materials specifically tailored to local government.

In 2017, the AFA's Director presented the Agency's duties with regard to local government stakeholders:

⁷² This report was presented at the CIAT's national meeting on 24 November 2017. It covered 131 large local authorities.

⁷³ In France, there are 524,280 city councillors, 4,052 general councillors (i.e. at *département* level) and 1,880 regional councillors (source: <https://www.collectivites-locales.gouv.fr>).

⁷⁴ 1,895,000 agents (Source: Directorate General for Administration and the Civil Service (DGAFP), *Rapport annuel sur la fonction publique - Chiffres clés 2017*)

⁷⁵ According to the Federation of Local Public Enterprises, these number 1,254.

- at a roundtable entitled “**Transparency in public life: What are the limitations?**” at the annual conference of the Association of Regional Administrators of France (AATF)⁷⁶ in Paris on 3 July
- during an event with the Provence-Alpes-Côte d’Azur Region, following an invitation from the chairwoman of the region’s **ethics committee**⁷⁷ in Marseille on 11 December

Sports federations and public interest foundations and non-profits

In France, almost 1,900 **non-profit organisations** and 650 **foundations** have “**public interest**” status.⁷⁸

This sector has developed labels (including the *Label Don en confiance/Comité de la charte* and the IDEAS label) that attest to stakeholders’ determination to self-regulate and to reassure their donors by promoting management based on transparency and a search for efficiency, integrity and selflessness. The best practices included in these approaches can lay a foundation for drafting effective anti-corruption programmes.

With regard to France’s 114 **sports federations**, they are dedicated to the practice of one or more sports, and are very diverse in their setup (including single-sport and multi-sport federations and community clubs). They have “public interest” status. The Minister for Sport is responsible for overseeing sports federations. These federations may have a public service remit – in this case, they have special authorisation. Seventy-six federations hold public service delegations; the central government has substantial powers to set standards for these federations. It provides them with the financial and human resources they need to fulfil their duties.⁷⁹

Within sports federations, rules for good governance are developing, but do not completely cover corruption risk. These rules are mainly focused on:

- preventing match fixing
- preventing doping

While the sports sector has broad autonomy, the central government’s powers to encourage sports bodies to adopt better governance practices are underused, as noted in a recent report by the Government Audit Office.⁸⁰

In parallel, the French National Olympic and Sports Committee (CNOSF) carries out joint interest activities on behalf of sports bodies.

⁷⁶ Regional administrators manage the departments of large local authorities in France (i.e. more than 40,000 inhabitants).

⁷⁷ The ethics committee is notably responsible for advising and alerting regional elected officials about potential conflicts of interest during their terms in office.

⁷⁸ Ministry of the Interior; data on data.gouv.fr.

⁷⁹ Government Audit Office – 2018 annual public report: *L’Etat et le mouvement sportif* – Feb. 2018.

⁸⁰ Government Audit Office – 2018 annual public report: *L’Etat et le mouvement sportif* – Feb. 2018.

On 13 November 2017, the AFA took part in a **CNSOF training session on integrity in sports**.

The audience was made up of around 20 **delegates in charge of sports integrity issues** for sports federations or professional sports leagues.

The training was focused on sports betting, doping and criminal offences. Alongside the AFA, presenters included the Central Racing and Gaming Unit (SCCJ) and the Online Gaming Regulatory Authority (ARJEL).

In terms of preventing corruption in the sports world, the forthcoming **2024 Summer Olympic and Paralympic Games in Paris** should be an incentive for sports federations and all other sports stakeholders to introduce sound anti-corruption systems. The AFA intends to play a leading role in helping sports stakeholders take ownership of its anti-corruption framework and implement it effectively. Furthermore, an AFA representative will sit on the ethics committees established by the charters of the Organising Committee of the Olympic Games (OCOG) and the Olympic Games Delivery Authority (SOLIDEO).

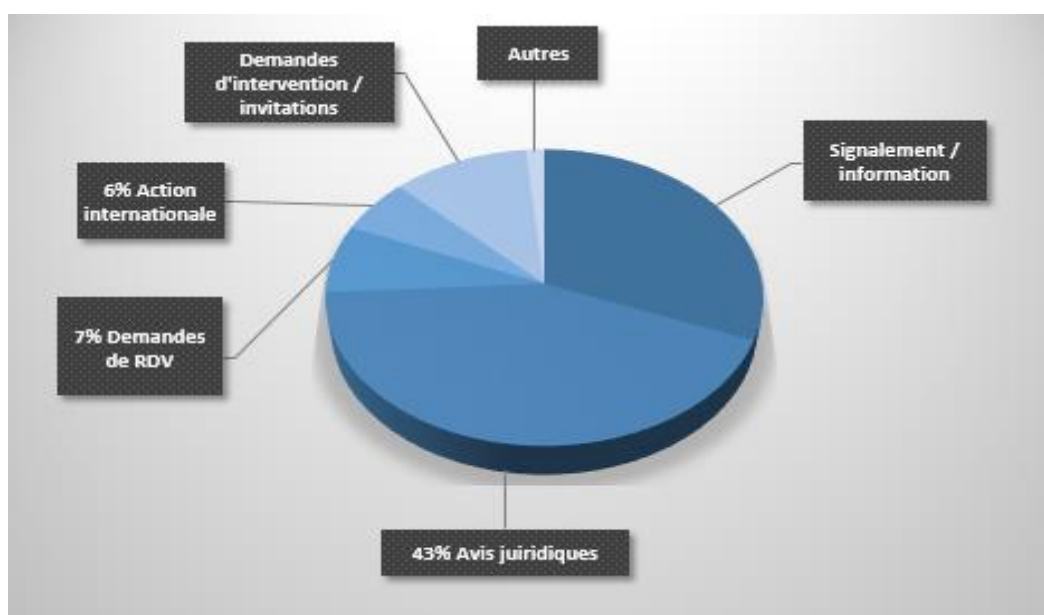
3.4. Assisting anyone confronted with breaches of probity

The French Anti-Corruption Agency answers questions from all types of institutional or civil society stakeholders that are confronted with breaches of probity and would like to take part in the fight against corruption. To gather and answer these requests for advice and assistance,⁸¹ the Agency has set up a special email address: afa@afa.gouv.fr.

In 2017, the AFA received 135 questions: 15 between April and September, then 120 between September and December.

Referrals to the AFA in 2017, by type of question

⁸¹ Article 1 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 states: "The French Anti-Corruption Agency is a department with national scope, reporting to the Minister of Justice and the Minister responsible for the Budget, whose mission is to help the **competent authorities and concerned individuals** to prevent and detect corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism."

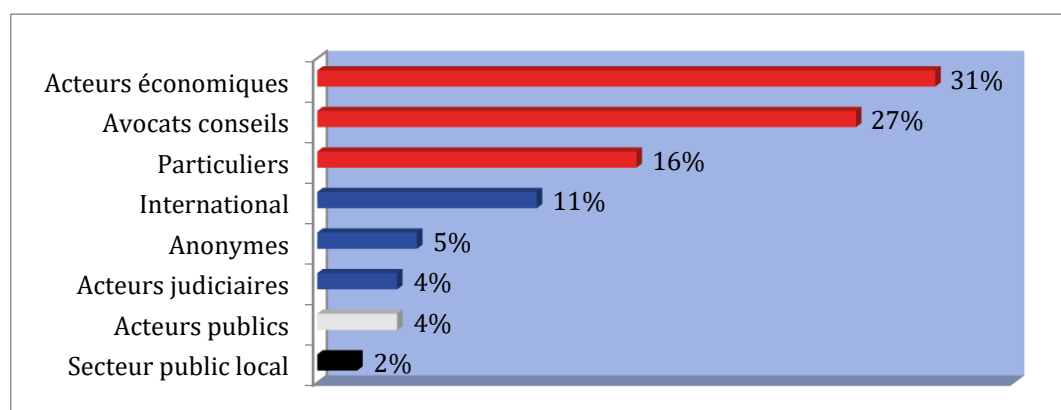


Légende : Requests for intervention/invitations ; Other ; Alerts/information ; Legal advice 43%; Requests for appointments 7%; International activities 6%

The most frequent types of referrals were for legal advice (58 out of 135, i.e. 43%) and alerts (42 out of 135, i.e. 31%).

In 2017, requests for legal advice mainly covered the application scope of the Sapin II Act, notably the provisions of Article 17 regarding the scope of companies concerned and the definition of the anti-corruption system for companies of a certain size (42 out of 58 questions of this type). Among alerts, 80% came from individuals or were submitted anonymously (with the AFA committed to respecting anonymity).

Referrals to the AFA in 2017 by type of stakeholder



Légende : Economic stakeholders ; Legal and consulting professionals ; Individuals ; International ; Anonymous ; Legal stakeholders ; Public sector ; Local public sector

Of the legal questions sent to the Agency in 2017, 65% came from economic stakeholders or the private sector. This includes companies and non-profit organisations, as well as legal or consulting professionals (law firms or consulting firms). The bulk of questions (58%) and appointment requests (70%) originated with these two types of stakeholders.

The public sector (i.e. central government departments or public entities) ask the Agency to provide training, whereas the local public sector primarily submits requests for legal advice.

Lastly, legal stakeholders (public prosecutor's office, investigating magistrates and police departments) can ask for legal advice, in particular for questions about penal classification (30%). Prosecutor's offices also refer to the Agency for evaluating the cost of expert appraisals that may be required to establish a judicial settlement in the public interest (30%) or to inform the Agency of the judicial consequences to an investigation of breaches to the duty of probity (40%). The Agency can also be summoned as a "qualified person"; this is the rule of thumb when legal authorities intend to provide the Agency with procedural exhibits that are protected by the secrecy of the enquiry or the investigation.

Potential follow-up by the AFA for these requests

The most frequently-asked questions and answers will be published in the FAQ section of the AFA's website.

3.5. AFA's communication, awareness and training efforts

Communicating about the AFA's activities and anti-corruption

In 2017, the AFA already launched a **comprehensive communication strategy**, combining press relations, digital communications and outside presentations, in order to provide information about its duties and latest news. This strategy also enabled the AFA to take a place in the French institutional landscape by meeting with the various stakeholders affected by its activities: professional organisations and companies, public prosecutor's offices, journalists, associations of elected officials, central government administrations, MPs, NGOs, etc.

Beginning in September 2017, the AFA published a web page at the following address: **www.agence-francaise-anticorruption.gouv.fr**. This page received more than

30,500 site views in 2017. On this page, the AFA publishes daily news and provides access to documents, in particular:

- factsheets about the **scope for its audits**
- **the charter of rights and duties** of stakeholders involved in auditing the entities covered by Article 17
- **a self-assessment questionnaire**, including around 20 questions, so that anyone can assess the extent to which corruption risk is taken into account in his or her company or organisation

Through this web presence, the AFA announced the public consultation on its draft recommendations that it launched in October 2017. It then published the final version of its recommendations in English and French.

The AFA must also publish on its website the judicial settlements in the public interest signed by public prosecutor's offices. For example, it published the judicial settlement in the public interest signed on 30 October 2017 between the French financial prosecutor's office and HSBC.

The AFA wishes to continue to develop its website into a genuine resource centre with informational and guidance tools for all anti-corruption stakeholders and the general public.

To round out this digital system, the AFA opened its Twitter account [**@AFA_Gouv**](#) on October 2017.

Raising stakeholders' awareness during conferences, seminars and professional events

Between September and December 2017, the AFA gave around 20 presentations upon invitation by companies, company representatives or law firms.

A few examples:

- presentation at the trade day for the National Federation of publicly-funded housing offices (OPH) on 5 July 2017, on the topic "Publicly-funded housing offices and preventing corruption"⁸²
- presentation at the annual conference of the French Institute for Audit and Internal Control (IFACI)⁸³ on 16 November 2017. The AFA took part in a roundtable on "Ethical Corporate Behaviour" that raised the concept of

⁸² This National Federation groups together more than 220 OPHs (with EPIC status).

⁸³ The IFACI brings together more than 5,100 professionals from the fields of audit, internal control and risk management functions (source: www.ifaci.com).

corporate ethics, as compared to compliance and Corporate Social Responsibility (CSR), new duties, potential penalties for companies in cases of violations, and the consequences of these trends on audit and control functions

- participation in the Marcus Evans conference “Risk Prevention and Anti-Corruption Strategy”, 30 November 2017, during which the AFA spoke about the necessary collaboration with authorities in corruption cases in order to create a beneficial working relationship, while also presenting its recommendations
- participation in a technical meeting on audit and accounting news, organised by the National Company of Auditors (CNCC), on 30 November 2017. The AFA presented its organisation, ongoing consultation on its draft recommendations, and the role that auditors are expected to play

Moreover, the AFA was invited by several “grandes écoles” and universities in 2017 to present its duties and the stakes of anti-corruption. As these schools sometimes invite their alumni to these kinds of conferences, this is an effective means to raise awareness amongst students and professionals alike.

The AFA made three presentations in “grandes écoles” in 2017:

- lecture at Paris-Dauphine University on 16 November 2017, on the AFA’s role with regard to companies
- lecture at the ESCP Europe on 14 November 2017, on the French anti-corruption system
- lecture by the Agency’s Director, following an invitation from the Association of the School of Public Affairs (AEAP) at Sciences Po, on 24 November 2017, entitled “Tax evasion and combating corruption: the current situation”

Lastly, the AFA took part in a conference organised by Université du Maine in Le Mans on 1 December 2017. This event brought together academics, professionals and magistrates. The aim was to analyse the anti-corruption systems established by lawmakers.

Provide training for targeted audiences

Fostering an “anti-corruption compliance” curriculum at university level

The development of the compliance officer role within organisations requires support from an “anti-corruption compliance” curriculum at university level.

In the AFA’s view, training students in this curriculum (either as part of their initial education or as continuous education) is a priority. The aim should be to give students the university-level credentials that they need to seize the growing job opportunities

in the compliance sector, notably by including this curriculum in the appropriate legal and management training programmes.

The Agency plays an active role in such training by hiring interns who work on its projects. In 2017, the AFA hosted two second-year master's students from the master's programmes "Fighting Financial and Organised Crime" (Université d'Aix-Marseille) and "Business Law and Ethics" (Université de Cergy-Pontoise). Moreover, the AFA has sketched out a collaborative project with the existing master's or university degree programmes in this field.

Training civil servants in France and abroad

In 2017, the AFA was involved in three training courses for foreign participants:

- **Training session at École Nationale d'Administration (ENA) for 38 senior civil servants from 22 countries (13 November 2017)**

Upon an invitation from ENA, the AFA presented its work to 38 senior civil servants from the corps of inspectors and decision-makers of various ministries from 22 countries: Afghanistan, Argentina, Azerbaijan, Belarus, Brazil, Bulgaria, Cameroon, Croatia, East Timor, Ecuador, Egypt, Ghana, Greece, India, Israel, Lebanon, Lithuania, Pakistan, South Africa, the Russian Federation, Tanzania and Uzbekistan.

This conference was part of ENA's short specialised international cycles in public administration (CISAP).

The presentation of the Agency and of France's anti-corruption reference framework was part of a two-week cycle entirely dedicated to breaches of financial probity and international anti-corruption frameworks.

- **Presentation to senior civil servants from Mali as part of a special ENA/CISAP for high-level officials from Mali, Côte d'Ivoire and Benin (17 November 2017)**

A video conference presentation of the AFA concluded this 20-hour training course on fighting corruption. Participants for this remote training were brought together at the Distance Learning Centre of Bamako, Mali.

- **Presentation to a West African audience invited by GIABA, the Intergovernmental Action Group against Money Laundering in West Africa (21 December 2017)**

GIABA is tasked with preventing and monitoring money laundering and terrorism financing in West Africa. Upon invitation from the general prosecutor's office of the Government Audit Office, the AFA spoke on 21 December 2017 to an audience assembled by GIABA.

Furthermore, the Agency collaborated with the National Magistrates Academy (ENM) on an initial comprehensive training seminar held from 20 to 24 November 2017 on the ENM's premises. Sixty-seven magistrates, police officers and academics from 20 countries⁸⁴ (including France) took part in this session entitled "Corruption: detection, prevention and repression".

Other French anti-corruption stakeholders were involved in this seminar: HATVP, the Inspectorate General of the Administration, DGAFF, the Central Office for Fighting Corruption and Financial and Tax Offences (OCLCIFE), the economic and financial division of the Paris public prosecutor's office, as well as academics, legal scholars and sociologists, representatives of foreign administrations (such as the UK's Serious Fraud Office) and international organisations (OECD and GRECO⁸⁵), and anti-corruption professionals from companies, law firms and specialist consultancies.

Lastly, in autumn 2017, contacts were established with some of the member schools of the Network of Public Service Schools (RESP⁸⁶). The AFA specified in its recommendations, published in December, that the rollout of training efforts for the public sector would rely on this network of 39 schools that provide initial and continuous education training to civil servants.

On 13 December 2017, the AFA signed its first partnership agreement with an RESP member: the ENM.

From the AFA's standpoint, this agreement gives its agents access to the 550 training courses organised by the ENM. In exchange, the ENM can ask AFA agents to give presentations to justice students in initial education or for continuous education training for the various target audiences of the ENM. This participation also extends to training sessions organised on a devolved basis within appeals courts.

The agreement stipulates that the Agency will host magistrates on continuous education internships, as well as justice students as part of their immersion experience in an institution outside the justice system. As such, the Agency welcomed its first justice student for an internship in 2017.

⁸⁴ Including Tunisia, Iraq, the UAE, Algeria, Brazil, Belgium, Mali and the Democratic Republic of Congo.

⁸⁵ The Council of Europe's Group of States against Corruption (GRECO).

⁸⁶ Joint statement by the Network of 39 Public Service Schools on the network's values: "These shared guiding professional values that we claim are grounded in the principles of our law: continuity, commitment, integrity, legality, loyalty, neutrality, respect, responsibility."

Part Four: AFA's international activities

Under the terms of Article 2 of the Order of 14 March 2017 regarding its organisation, the AFA contributes, within its fields of competence, to “defining the position of the relevant French government bodies within international organisations”. Moreover, it “proposes and implements cooperation, support or technical assistance activities targeting foreign authorities”.

The AFA has international activities⁸⁷ of a bilateral nature (working directly with foreign counterparts) and a multilateral nature (within the fora of international organisations and negotiations).

4.1. Bilateral international activities

The AFA's bilateral activities are based on three priorities:

- making expertise available to foreign administrations
- negotiating strategic cooperation partnerships
- improving international coordination

Technical cooperation

From the time it launched operations until 31 December 2017, the AFA welcomed 21 foreign delegations and officials in its premises, at their request, for special study visits.

These visits last between a half-day and several days. In most cases, they are organised in a context of ongoing or planned reforms for anti-corruption systems in these countries. These visits are an excellent opportunity to discuss best practices and actual experiences with the AFA's experts.

Depending on the needs and expectations of the delegations, legislative, strategic or operational challenges are discussed in a comparative approach that benefits both parties.

⁸⁷ Article 2 of the Order of 14 March 2017 stipulates that the Deputy Director of the Advice, Strategic Analysis and International Affairs Division “has an expert adviser in charge of coordinating the Agency's international activities”.

The 21 foreign delegations hosted by the AFA in 2017		
March	Mexico	Secretariat of the Civil Service
April	Azerbaijan	General Prosecutor's Office of Azerbaijan
June	Mexico	Senate
August	Guinea (Conakry)	Anti-Corruption Agency (ANLC)
September	China	Prosecutors from the Guangxi Zhuang Autonomous Region
September	China	Delegation from the Department of Government Ethics Taipei City Government
August	Guinea (Conakry)	Anti-Corruption Agency (ANLC)
September	Burkina Faso	High Authority for State Control and Anti-Corruption
September	Kazakhstan	Agency for Civil Service Affairs and Anti-Corruption
September	South Korea	Delegation from Gangwon Province
October	Albania	Central Inspectorate of Albania (ICA)
October	Italy	Permanent Representation of Italy to the OECD
October	Iran	Iranian Parliament's Legal and Judicial Commission
October	Romania	Ministry of Foreign and European Affairs Guest Programme for Future Leaders
October	China	Legislative Affairs Commission of the National People's Congress
October	Mali	Anti-Illicit Enrichment Central Office
November	South Korea	Anti-Corruption and Civil Rights Commission (ACRC) of the Republic of Korea
November	Nigeria	Ministry of Foreign and European Affairs Guest Programme for Future Leaders
December	Tunisia	Anti-Corruption Agency (INLUCC)
December	Tunisia	Anti-Corruption Agency (INLUCC)
December	South Korea	General Prosecutor's Office of the City of Gwangju

Strategic partnerships

In keeping with the highest international standards for anti-corruption agencies, as laid out in the Jakarta Statement adopted internationally on 26-27 November 2012, the French Anti-Corruption Agency joins forces with its foreign counterparts in order to combat cross-border corruption.

In addition to joining the European network of anti-corruption agencies and authorities EPAC/EAC⁸⁸ on 17 November 2017, over the course of 2017, the AFA developed and maintained close operational and strategic partnerships with several foreign counterparts.

An AFA delegation led by the Director went to Rome on 25-26 October 2017 to meet with Raffaele Cantone, the President of the Anti-Corruption National Authority (ANAC), and his teams.

This trip was an opportunity for the AFA to gain greater knowledge about the compliance and auditing tools available for monitoring public bidding processes,⁸⁹ and to discuss the ANAC's particularly dynamic institutional partnerships, including with prosecutors at local and national levels. This trip also laid the groundwork for a closer collaboration under the formal terms of a memorandum of understanding that is currently being evaluated by both agencies.

In Paris on 14 December 2017, the Director of the AFA signed a memorandum of understanding with his Tunisian counterpart Chawki Tabib, President of Tunisia's Anti-Corruption Agency (INLUCC). This memorandum upholds the same objective of strengthening joint efforts to combat corruption.

⁸⁸ European Partners against Corruption (EPAC); European contact-point network against corruption (EACN).

⁸⁹ Following on from the ANAC President's visit to the SCPC on 19 November 2015.

INLUCC, Tunisia's Anti-Corruption Agency

INLUCC, created by the decree-law 2011-120 of 14 November 2011, took the place of the National Commission to Investigate Corruption and Embezzlement.

INLUCC plays a general role as a facilitator in the fight against corruption. As such, it tables anti-corruption policy proposals, lays out general guidelines, gives its opinion on draft legislation or regulation related to anti-corruption, collates data on corruption, fosters contact among stakeholders and promotes a culture of anti-corruption.

It is also tasked with preventing, detecting and carrying out independent investigations of cases of corruption in the public and private sectors. It transfers such cases to the competent authorities, including the judicial system, in order to fulfil one of the earliest demands of the Tunisian revolution and to ensure the population's confidence by reporting on its efforts to the legislature (initially the National Constituent Assembly (NCA) and then the Assembly of the Representatives of the People (CDP)).

The draft agreement between the AFA and INLUCC makes it easier for the two agencies to exchange information, experiences and best practices in the fulfilment of their duties as defined by respective national rules.

Under the terms of this agreement, the AFA and INLUCC have agreed to exchange all relevant information. They can lend each other mutual assistance, notably to carry out their objectives or to handle cases of joint interest. Lastly, the agreement provides for technical assistance, including an exchange of best professional practices in order to help both agencies to fulfil their duties and to strengthen their mutual cooperation.

This cooperation may entail technical resources, data processing and analysis methods, IT hardware or knowledge, legal knowledge or operational practices.

International coordination

In an international context marked by an increase in national anti-corruption legislation with extraterritorial effect, French anti-corruption rules must be brought up to the highest international standards – notably with regard to the US⁹⁰ and the UK⁹¹ – in order to protect the competitiveness of French businesses. This is one of the priorities of the AFA's international activities.⁹²

⁹⁰ Foreign Corrupt Practices Act (FCPA, 1977) and International Anti-Bribery Act (IABA, 1998).

⁹¹ Bribery Act (UKBA), 2010.

⁹² In keeping with the intentions of the writers of the Sapin II Act. See the impact study carried out prior to the Transparency, Anti-Corruption and Economic Modernisation Act (NOR: FCPM1605542L), 30 March 2016.

Agreements and plea bargains signed in foreign countries, including the Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs) in the US, are a specific focal point for the AFA's international activities. These agreements effectively suspend or halt criminal proceedings in exchange for payment of a fine and making a commitment to be monitored by a third party (generally a law firm) over a specific period of time. Such agreements must be subject to careful review with regard to the provisions of Act 68-678 of 26 July 1968, as amended by Act 80-538 of 14 July 1980, known as the "blocking statute". This law prohibits any sensitive economic information from being communicated to any foreign authority, including during third-party monitoring as part of a DPA or NPA.

In this context, the AFA management and technical services began a constructive and regular dialogue with their counterparts and with the representatives of foreign agencies responsible for implementing these agreements.

In particular, the AFA management team went to New York City and Washington, DC, on 8 and 9 November 2017 for the 40th anniversary of the FCPA. There, they met with senior officials from the Fraud Section (FRD) of the Department of Justice and with representatives of the Securities and Exchange Commission (SEC). These high-level meetings continued with frequent contacts by technical services, notably during plenary sessions of the OECD's Working Group on Bribery in Paris.

Close ties have gradually been forged with other foreign partners, such as the UK. The AFA's Director travelled to the UK on 21 and 22 November 2017 to take part in a working seminar attended by the Director of the Serious Fraud Office (SFO), which is responsible for corruption investigations and prosecution in the UK.

Along the same lines, the Director also invited representatives from the World Bank's leadership to visit the Agency's offices on 13 December 2017.

These privileged contacts continued in early 2018, offering an opportunity for the AFA and foreign counterparts to discuss ways to work together on joint interest issues.

4.2. Multilateral international activities

In parallel with its bilateral activities, the Agency participates directly in the anti-corruption work of international and regional organisations and fora, where it represents France alongside the Ministry for Europe and Foreign Affairs and the General Secretariat for European Affairs (SGAE).

Organisation for Economic Co-operation and Development (OECD)

Corruption is a threat to the rule of law, democracy and human rights. It undermines good governance, equity and social justice, distorts competition, hampers economic development and dampens growth. In terms of international business, corruption interferes with the market and raises the cost of doing business, preventing a sound, competitive global economy from taking shape.

This is why a wide majority of the main global exporters and investors have become signatories to the OECD's 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

This anti-corruption agreement – negotiated and signed under the aegis of the Organisation for Economic Co-operation and Development (OECD)⁹³ – is a legally-binding international instrument that prohibits bribery of foreign public officials in international business transactions.

All the signatories to this convention have committed to making bribery a criminal offence. They have also agreed to open investigations and, if necessary, to prosecute anyone who offers, promises or pays a bribe to a foreign official and to hand down appropriate punishment to those guilty of corruption. Moreover, they must disallow tax deductions for any such bribes.

Based on this convention, individuals and legal entities can be prosecuted even when their actions are tolerated in the country of the foreign official in question.

The keystone for the effectiveness of this scheme lies in a peer monitoring system, which the NGO Transparency International describes as the “golden rule” for anti-corruption. Peer monitoring ensures that the convention and related recommendations are applied properly. It is carried out by the OECD's Working Group on Bribery, where France is represented by the AFA, DG Trésor and the SGAE. This Working Group, comprising representatives of the convention signatories, meets four times a year in Paris and publishes all its monitoring reports online.

Apart from continuously monitoring the enforcement of the convention by all signatories, the AFA's priority for its work with the OECD is to prepare France's forthcoming Phase 4 evaluation, which is due by 2019-2020.⁹⁴

In this context, an AFA delegation, headed by the Deputy Director, went to OECD headquarters in October 2017 to meet with the main officials responsible for anti-corruption activities at the OECD Secretariat: the Director for Legal Affairs, the Anti-Corruption Division Head, and the Public Sector Integrity Division Head.

⁹³ The OECD, with headquarters in Paris, has 39 Member States representing 80% of global trade and investment. Its Member States include the US, Brazil, India and China.

⁹⁴ The OECD's evaluation procedure includes several phases of mounting intensity. Each phase results in an evaluation report with recommendations regarding points to be corrected or improved in each country being reviewed, as well as follow-up reports on these recommendations. The most recent evaluation for France was Phase 3 in October 2012.

In the interests of strengthening their institutional partnership, senior OECD officials have frequently met with the AFA's executive managers and teams. For instance, a meeting was held at AFA headquarters on 19 December 2017 with the two ministers responsible for the Agency and Gabriela Ramos, the Chief of Staff and Sherpa of the OECD.

In turn, the OECD has also invited AFA experts to take part in several conferences and technical meetings, notably as part of the 20th anniversary of the signing of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Council of Europe's Group of States against Corruption (GRECO)

The Council of Europe plays a driving role in international anti-corruption efforts as corruption undermines the basic values that the Council is sworn to uphold.

To combat corruption, the Council of Europe has drafted several legal instruments that enhance governments' ability to tackle corruption domestically and internationally. The Criminal Law Convention on Corruption (STE 173) and the Civil Law Convention on Corruption (STE 174) are two such instruments. The Group of States against Corruption (**GRECO**) is tasked with making sure that these standards are upheld.

GRECO currently comprises 49 Member States, including non-European countries. Its aim is to improve its members' ability to combat corruption by making sure that they comply with the Council of Europe's anti-corruption standards. To achieve this aim, it uses a dynamic evaluation process and a peer-based approach.

GRECO holds four plenary sessions a year. France is represented by the AFA, alongside the Ministry for Europe and Foreign Affairs. The AFA contributes actively to the peer evaluation process driven by GRECO. Preparations are scheduled for GRECO's next evaluation for France (due at the end of 2018). This evaluation will be the fifth cycle aimed at preventing corruption and promoting integrity in central government (at the highest echelons) and in law enforcement agencies. This is obviously one of the strategic objectives for the AFA's international activities.

The United Nations Convention against Corruption

France, alongside 182 other countries and international organisations, is also a party to the United Nations Convention against Corruption, commonly known as the **Merida Convention**. This legally-binding, global agreement was adopted by the UN General Assembly in resolution 58/4 on 31 October 2003. It took effect on 14 December 2005.

The Merida Convention notably requires criminalisation of all active and passive corruption involving domestic or foreign public officials, any diversion by public officials, and any obstruction of justice.

Moreover, this convention is a comprehensive instrument as it addresses every aspect of anti-corruption, including prevention, investigations and criminal prosecutions, international cooperation methods, and the issue of asset recovery.

In 2017, as part of the French delegation, the AFA actively contributed to anti-corruption works during the Conference of the States Parties to the Merida Convention. This biannual conference is one of the largest global anti-corruption fora. It serves as an opportunity to report on progress in ratifying and implementing the Merida Convention and to share experiences.

The AFA was part of the French delegation at the 7th Session of the Conference of the States Parties, held in Vienna from 6 to 10 November 2017. At the event, the AFA presented its remit and its activities, and described how the French anti-corruption system contributes to the convention's principles. In particular, the AFA directly organised and took part in four side events and conferences:

- The Director of the AFA took part in a side event co-organised by France, the Kingdom of Morocco and the United Nations Office on Drugs and Crime (UNODC), on the follow-up to the Marrakech Declaration on the prevention of corruption. This event pertained to setting up effective anti-corruption frameworks and structures.
- Following a request from France's permanent representatives to UNODC and the Organisation for Security and Co-operation in Europe (OSCE), the Director took part in the "2017 cycle for French-speaking countries and strategic affairs" to present the main anti-corruption stakes to an audience of French-speaking professionals assembled in Vienna.
- AFA teams participated in a special event to strengthen the independence and effectiveness of anti-corruption agencies, in compliance with the principles of the Jakarta Statement.
- AFA teams also took part in the meeting of the Network of National Anti-Corruption Institutions in West Africa (RINLCAO).

In parallel to these activities, the Director of the AFA and his team members met with foreign counterparts from Germany, the US, Morocco, the UK and Iraq. During a meeting with UNODC's Executive Director Yuri Fedotov, the Director of the AFA also initiated several collaborative projects with UNODC's anti-corruption teams.

Lastly, the AFA delegation collaborated with the French Ministry for Foreign Affairs to push for an international resolution for all Merida Convention signatories to continue and strengthen their efforts to prevent and detect corruption. This

resolution was adopted unanimously by all States Parties – the first such resolution to receive unanimous support in several years.

Resolution 7/5 emphasises the legal, material and human resources that must be provided to anti-corruption agencies so that they can effectively fulfil their duties, as well as the conditions for effective, useful collaboration with the private sector to prevent corruption, in compliance with the international commitments of the States Parties under the Merida Convention.

In addition, continuing with the activities of the Central Service for the Prevention of Corruption (SCPC), the AFA remains on the front lines representing France in UNODC's Open-ended Intergovernmental Working Group on the Prevention of Corruption,⁹⁵ which held its eighth plenary session from 21 to 23 August 2017 at UNODC's headquarters in Vienna.

Under the leadership of the Ministry for Europe and Foreign Affairs, the AFA contributes to the review process for implementation of the Merida Convention as part of the intergovernmental "Review Mechanism" in place since 2009. This mechanism is intended to make sure that the States Parties are implementing the Merida Convention properly. Since December 2017, the AFA has also taken part in the second review cycle, which covers Chapter 2 (preventive measures) and Chapter 5 (asset recovery) and will continue in 2018.

Other international cooperation fora

The AFA assists in drafting and implementing anti-corruption strategies and metrics within the main intergovernmental cooperation bodies.

During a special meeting held on 27 October 2017 in Rome, under Italy's G7 presidency, the Director of the AFA expressed his strong commitment to better understanding and evaluating corruption, based notably on a scientific measurement of this phenomenon to allow more detailed comparisons across countries and time periods. More in-depth knowledge about corruption appears crucial for achieving the AFA's goals, notably that of developing an effective multi-year national strategy, which must propose and deploy reliable, quantifiable metrics.

The AFA also contributed to the activities of the G20 Anti-Corruption Working Group, particularly during the meetings held in Brasilia from 10 to 12 April 2017 and in Vienna on 13 and 14 September 2017. During these meetings, projects were finalised

⁹⁵ This working group was created by Resolution 3.2 of the Conference of the States Parties to the United Nations Convention against Corruption. Its purposes is to help the Conference of the States Parties to elaborate and gather knowledge in corruption prevention; to facilitate the exchange of information and experience among states; to facilitate the collection, dissemination and international promotion of best practices; and to encourage cooperation amongst all parties, including non-states.

that the Working Group had launched or pursued while co-chaired by Brazil and Germany in 2017.

A series of high-level principles for the G20 were adopted: organising the public administration to combat corruption; combating corruption related to illegal trade in wildlife and wildlife products; cooperation in searching for individuals wanted for corruption and in the recovery of illegal assets; and combating customs-related corruption. With all relevant government departments, under the leadership of DG Trésor, the AFA also helped prepare the Working Group's future activities in 2018, with France and Argentina as its co-chairs.

As part of its responsibilities to audit and assist the private sector, the AFA accepted invitations to participate in the anti-corruption meetings of the World Economic Forum and the AMLP (Anti Money Laundering Professionals) Forum. These meetings were held in Geneva on 31 October and in London on 21-22 November 2017, respectively.

These meetings, attended by a large number of private-sector companies from across the globe, were an opportunity for the AFA to develop and enrich its doctrine with regard to economic stakeholders, while also feeding into its work on its recommendations in autumn 2017.

Part Five: Initial results of administrative coordination efforts

The Agency's teams are dedicated to forging working relationships with other anti-corruption agencies, as well as with all public, economic and non-profit stakeholders in **preventing and combating corruption**:

- ministries and other government departments, especially those responsible for financial, legal, internal control and inspection aspects,⁹⁶ as well as directorates and departments responsible for supervisory matters or for partnerships⁹⁷
- regulatory authorities
- professional federations representing the economic world, associations of local elected officials, trade associations
- experts from academia
- NGOs and non-profits involved in the fight against corruption⁹⁸

These meetings had five goals:

- maintaining working relationships established by the SCPC
- incorporating the experience acquired in national and international work on integrity, transparency, and preventing breaches to the duty of probity
- gathering the technical expertise of specialists and best practices in anti-corruption compliance
- preparing for the drafting of a **multi-year national plan to combat corruption**⁹⁹ by undertaking a concerted effort to identify the actions likely to drive the plan's successful implementation
- preparing for the OECD's evaluation of France in June 2020

⁹⁶ In terms of detecting breaches to the duty of probity, the Agency is endeavouring to sign working agreements with the auditing bodies and financial courts in order to disseminate its anti-corruption reference framework.

⁹⁷ Working relationships have also been built with specialised departments involved in the development of anti-corruption programmes, such as the French Development Agency or the Interministerial Directorate for Digital Technology and the Government Information and Communication System (which is responsible for coordinating the government's open data initiatives).

⁹⁸ As at 31 December 2017, three non-profits are authorised to act as plaintiffs in civil suits involving breaches of the duty of probity (pursuant to Article 2-23 of the Code of Criminal Procedure). These are Anticor, Sherpa and Transparency International France.

⁹⁹ Article 1 of the Order of 14 March 2017 states: "As part of its remit to participate in the administrative coordination referred to in Article 3(1°) of the aforementioned Act of 9 December 2016, the French Anti-Corruption Agency [...] shall prepare a multi-year national plan to combat corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism."

Lastly, the Agency participated in awareness-raising activities at the Government Audit Office¹⁰⁰ and in coordination efforts between **the judiciary courts and the financial courts**.¹⁰¹

¹⁰⁰ On 1 December 2017, the Director addressed the general prosecutor's office of the Government Audit Office and the financial prosecutors reporting to the Regional Audit Offices.

¹⁰¹ The Director's first contribution to this topic took place in Orleans on 24 November 2017, during an interjurisdictional meeting attended by the general prosecutor's office of the Government Audit Office.

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