

AFA

Agence Française Anticorruption

ANNUAL REPORT

2018



FOREWORD



Judge CHARLES DUCHAINE,
Director of the French Anti-Corruption Agency

This report is, of course, an account of our activities over the previous year. However, it is primarily an opportunity to take stock of the lessons learned so that they can be applied to AFA's organisation and actions, where necessary, and to the strategic choices it intends to make.

I would like to start by acknowledging the commitment and determination of my colleagues. All of them have opted for a new career by becoming part of a newly formed entity and by taking up a new line of work – anti-corruption compliance – that is still unfamiliar to much of the public sector.

Fighting corruption and publicising that fight are both absolutely necessary in this age of rapid circulation of both true and false information, which requires ever more transparency. Those responsible for handling public funds and resources have to show that they are making good use of them at all times. Some officials say and do nothing about this subject, which they find unseemly. Their silence and inaction merely feed suspicions and exaggerated tales of malfeasance. They enable some insiders to undermine trust in public institutions and give some outsiders an excuse to act in our stead.

Fighting corruption addresses dangers to our economy, our democracy and our sovereignty.

Fighting corruption is actually more a matter of prevention rather than punishment. Anti-corruption compliance examines the effectiveness and proper application of organisations' processes. It may make it possible, for example, to reveal misuse of public funds by certain public or private entities.

The year 2018 was the first full year of AFA's operations. Much has already been accomplished.

A lot of work has been done to raise the awareness of private and public organisations and to support implementation of their anti-corruption systems. A lot of effort has also gone into using our audits to encourage the most vulnerable organisations to implement such systems.

AFA drafted its first multi-year plan to fight corruption in 2018 and will adopt and implement it in the coming months. This plan is destined to be a major benchmark for coordinating the fight against corruption. It will be a full-scale drill for every stakeholder. Each ministry will have to develop its own risk map and use it to implement the necessary mitigation measures and procedures. Fighting corruption is not the sole responsibility of law enforcement authorities; it is everyone's business, especially government entities, which must set an example.

Strategic analysis, starting with a survey of local government entities in 2018, should be stepped up to map corruption risks. More importantly, it should map anti-corruption efforts to assess what these same government entities are actually doing in this fight.

But how extensive is corruption in France and, consequently, how intensive does the fight against corruption need to be?

Nobody knows the answer to this ceaseless question. There is no sufficiently accurate way to account for actual corruption. The only truly objective indicator is the number of criminal convictions and entities' prevention efforts, at the best of times, are obviously merely proportionate to their own perceptions of their risks.

We must accept the fact that we will probably never know the true extent of corruption, but that is no rea-

son to give up attempts to assess it or to deny its existence.

Obviously, measurement, however imperfect, will still provide indications that are more than mere numbers. We can use these at first to guide AFA's advice and supervision and then, perhaps, to guide lawmakers' action to improve the effectiveness of anti-corruption systems.

The first audits, particularly those of public entities, planned in 2017 and conducted in 2018, along with those planned in 2018, were too few to show any trends, but they did provide a measure of entities' commitment to implement the new requirements. Even though many of the audited systems need much improvement, the movement definitely seems to be under way. The strategic analysis findings should guide continued and intensified actions to protect business and government entities from the risks of accusations of corruption and enable prosecutors to distinguish between the responsibilities of individual employees and management, and those of individuals and legal entities.

In 2018, four *conventions judiciaires d'intérêt public* (French deferred prosecution agreements) were signed in France. One of them was matched to an equivalent agreement that the same company signed

with the United States Department of Justice. These agreements demonstrate France's commitment to the common fight against corruption and its determination to protect its judicial sovereignty and its national economic interests. AFA has played its own modest role by implementing the blocking statute.

The issue of extraterritoriality was hotly debated by the French Parliament on the eve of the passage of the Act of 9 December 2016. It will be merely a vain word if France does not commit the detection resources necessary to find corruption and prosecute it. Much work still needs to be done.

National governments need to clean their own houses and make it their business to deal with domestic corruption, which is incompatible with democracy and sound public finances. But we need to work together, through multilateral operational cooperation and with the support of major business entities, to fight international corruption. Failing to do so will be seen as acquiescence and give others the ability to invoke unsubstantiated accusations of corruption as an excuse for measures that undermine competition and make our companies vulnerable to multiple prosecutions.

If we are to establish a European model that so many people are calling for, we need to start by working together for the success of our national model.

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INTRODUCTION

The Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 created the French Anti-Corruption Agency (AFA). AFA has nationwide jurisdiction and is placed under the joint authority of the Minister of Justice and the Minister for Government Action and Public Accounts. Its mission is to help private and public entities to prevent and detect corruption, such as bribery, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism.

AFA performs its tasks using two complementary but totally independent means: advising business and government entities and auditing the quality and effectiveness of anti-corruption systems.

AFA disseminates information on its website:

<https://www.agence-francaise-anticorruption.gouv.fr/fr>



Charles Duchaine, Director of French Anti-Corruption Agency, Nicole Belloubet Minister of Justice and Gérald Darmanin Minister for Government Action and Public Accounts

KEY FIGURES

BUDGET AND STAFF



The Agency's operating grant in 2018 came to

446 712 €

120 000 €

was returned to the programme 218 manager during the fiscal year.



60

The Agency had **60 employees** as of 31 December 2018.

AUDITS

43

audits carried out on its own initiative

• **28** audits of **business entities** (including **2** audits of **state-owned enterprises** and **11** of **French subsidiaries of foreign groups**)

+ **15** audits of **government entities** and **non-profits**

4 audits conducted under the terms of deferred prosecutions agreements



ADMINISTRATIVE COORDINATION

In 2018, the Agency signed **8** agreements and memoranda of understanding:



ADVICE AND TRAINING

AWARENESS-RAISING

66

awareness-raising actions for government entities, of which:

29 for central government administrations and their devolved departments



TRAINING

8

teaching aids for business entities



17

technical workshops organised with business federations, attended by

40 an average of companies



12

training sessions on corruption knowledge and prevention including:

1 massive open online course (MOOC) on preventing local government corruption, which was attended by more than 6,500 participants

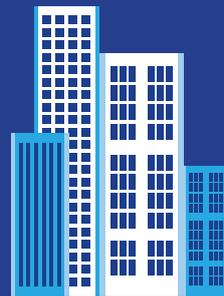


SUPPORT



152

questions sent to AFA (afa@afa.gouv.fr)



10

companies received support



10

government entities received support

OCTOBER
Cegefi**

13

SEPTEMBER

Bastia Public
Prosecutor's Office

* National Local Civil Service Centre

** General Economic and Financial Audit Department

INTERNATIONAL ACTION



The highlights of AFA's international activity in 2018 included:

- the launch of the **international network of anti-corruption authorities** in Sibenik, Croatia on 16 October 2018. **17 countries** joined the network;
- signature of a memorandum of understanding with the **European Investment Bank** in Luxembourg on 4 December 2018.

Furthermore:

- **4 bilateral agreements** signed with anti-corruption authorities from other countries:
 - Government Inspectorate of **Vietnam** , 15 January 2018;
 - Anti-Corruption Agency of the Republic of **Serbia**, 2 November 2018
 - National Anti-Corruption and Good Governance Agency of the **Republic of Guinea**, 16 November 2018;
 - Central Office for the Fight Against Illegal Enrichment of the Republic of **Mali**, 30 November 2018;
- **43 foreign delegations** attended a presentation of France's anti-corruption system at AFA;
- **52 international events and training sessions** were held in France and other countries, including:
 - **5** technical cooperation and training sessions with the **Tunisian National Anti-Corruption Body** held under the terms of a **cooperation agreement** signed with AFA in **December 2017**;
 - **3** sessions with the Government Inspectorate of **Vietnam**, following the signature of the cooperation agreement on **15 January 2018**.



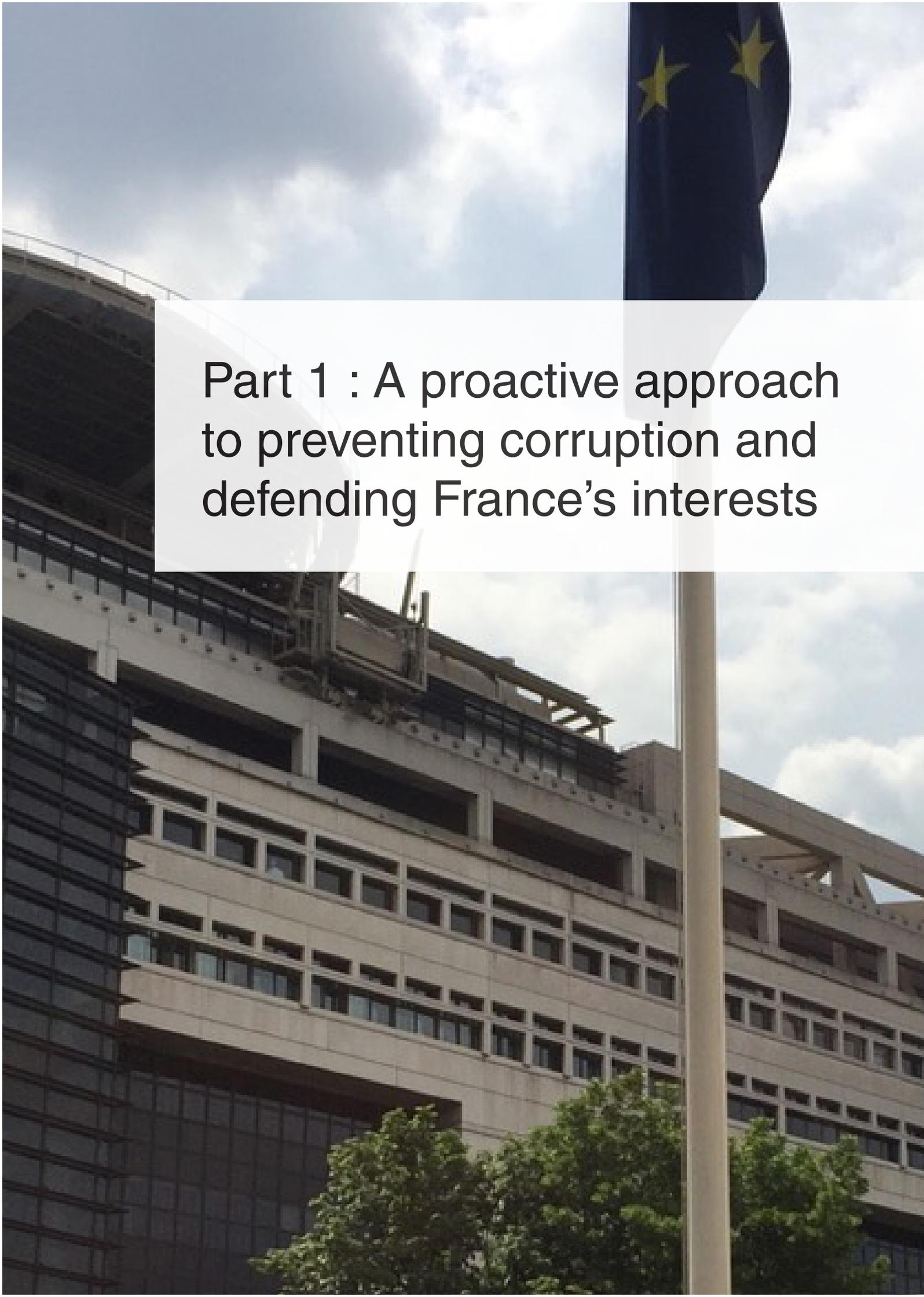
STAKEHOLDERS AND PARTNERS



- Council of Europe (GRECO)
- OECD
- European Investment Bank (EIB)
- World Bank
- G20
- United Nations Office on Drugs and Crime (UNODC)
- European Union (EU)
- Transparency International
- International Partnership Against Corruption in Sport (IPACS)

MAJOR EVENTS

- Meeting of the G20 Anti-Corruption Working Group (Argentina)
- Arab Forum for Anti-corruption Agencies and Financial Intelligence Units (Lebanon)
- France-Colombia Anti-Corruption Meetings (Colombia)
- International Anti-corruption Conference (IACC) (Denmark)
- Foreign Bribery and Corruption Conference (United States)
- Annual Global Anti-Corruption Summit (Netherlands)
- Creation of the Network of Anti-Corruption Authorities (Croatia)

The background of the slide is a photograph of a modern, multi-story building with a curved facade and a grid of windows. A flagpole with the European Union flag is visible on the right side. The sky is blue with scattered white clouds. A semi-transparent white box is overlaid on the image, containing the text.

Part 1 : A proactive approach
to preventing corruption and
defending France's interests



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PART 1 : A PROACTIVE APPROACH TO PREVENTING CORRUPTION AND DEFENDING FRANCE'S INTERESTS

Preventing and detecting corruption helps control the risk of destabilisation caused by corruption cases. This is a major thrust of public policy to fight corruption. Implementation of the policy is based on promoting a corruption-fighting culture by deploying anti-corruption programmes and shifting behaviours towards greater integrity in private and public business practices.

AFA decided to recruit a pluridisciplinary team in order to carry out its multiple missions aimed at entities with very different profiles and operating methods. As of 31 December 2018, the French Anti-Corruption Agency had 60 employees recruited from the ranks of central government civil servants (including officials from the ministries of justice, the economy and finance and the interior), local government civil servants, the French Government Audit Office, local government audit offices and the private sector.

The diversity of its recruits illustrates AFA's determination to use different approaches to deal with the often complex issues of anti-corruption compliance.

TRAINING AND AWARENESS-RAISING ABOUT BRIBERY AND CORRUPTION MATTERS

In accordance with the recommendations of the OECD¹ and the UNODC², AFA stresses training as a means of preventing and detecting corruption. Training efforts in 2018 focused on public officials, judges and the non-profit sector.

Training public officials

AFA instituted systematic collaboration with public service schools in 2018 to ensure greater dissemination of anti-corruption methods, with special attention for officials involved in financial transactions, audits, procurement and management functions.

Under this approach, training was provided at the National Police School, the National Gendarmerie Officers School, the National Public Administration School (specialised international public administration courses), the National School for Competition Policy, Consumer Affairs and Fraud Control and the National Institute for Local Government Research at the National Centre for Local Civil Service (CNFPT).

In 2018, the framework for cooperation with the National Public Administration School and ministerial training institutes was drafted. The CNFPT and the French Anti-Corruption Agency signed a partnership agreement aimed at organising training for local government officials.

Training for judges

Under the terms of the agreement signed with the National Magistrate School on 13 December 2017, AFA participates in initial and continuing education for judges. AFA hosted internships for eight judges and two judicial auditors.

SPOTLIGHT ON: Online course produced in partnership with the CNFPT

"Bribery, favouritism, misappropriation and how to prevent them in local government"

Nearly 50,000 local government entities are required to implement anti-corruption systems. The challenge of disseminating anti-corruption culture to elected officials and employees from such large numbers of entities led AFA and the CNFPT to develop an online seminar or massive open online course (MOOC). The seminar is free and accessible to everyone on the France Université Numérique site. The seminar was held twice in 2018. The training is organised into four sessions that are posted at weekly intervals and provide specific resources: videos, animated clips, case studies, interviews, bibliographies, quizzes, etc.

The progressive approach of the different sessions address:

- the reasons for fighting corruption using a historic, sociological and economic approach;
- corruption risks in local government: this session discusses the various offences and illustrates practical examples from local government life;
- measures for preventing local government corruption: this session presents the main mechanisms for preventing corruption;
- "Public officials: the good habits": this session reviews the resources individual officials have to prevent and detect corruption.

After the seminar ends, registered participants retain free access to all of the videos and teaching materials, which they can reuse for their training and awareness-raising needs, such as providing in-house training in their organisation. The online seminar was attended by 6,662 participants in 2018, including 44% from outside France.

¹ Recommendation on Public Integrity adopted by the Organisation for Economic Cooperation and Development on 26 January 2017.

² United Nations Convention Against Corruption adopted by the United Nations Office on Drugs and Crime on 31 October 2003.

On 17 May 2018, AFA, the National Magistrate School and the National Financial Public Prosecutor's Office hosted a symposium called "From Compliance to Negotiated Justice, News from the Anti-Corruption Front".

Furthermore, from 26 to 30 November 2018, AFA ran a training session coordinated by the International Department of the National Magistrate School called "Preventing, Detecting and Prosecuting National and International Corruption". 62 judges from 26 different countries attended this session.

Raising awareness in the non-profit sector

AFA's audits cover only associations and foundations that are recognised as public interest entities³, but all non-profits may benefit from its support.

In 2018, AFA strove to raise awareness of the need to institute an anti-corruption programme in the non-profit sector.

For this purpose, AFA worked with:

- the non-profits office at the Ministry of the Interior;
- the section of the National Auditors Association dealing with non-profits;
- the organisations that certify charity management, such as Idéas and Don en Confiance/Comité de la Charte.

The preliminary sessions were followed by technical workshops for administrators and financial managers from charities that are members of Don en Confiance.

PROMOTING IMPLEMENTATION OF ANTI-CORRUPTION SYSTEMS

In 2018, the French Anti-Corruption Agency defined the support requirements and procedures for private and public entities choosing to implement anti-corruption systems. This support complements the internal resources or the work of service providers that the entities use to design, implement or improve their anti-corruption systems.

A prerequisite: developing charters for providing support to business and government entities.

These charters were developed in 2018. They set out the various actions implemented to meet the needs of entities as they deploy or improve their corruption prevention and detection plans.

These charters are tailored to meet diverse needs and offer three levels of support:

- **general support**, which involves developing, updating and disseminating the French anti-corruption policy framework. This framework includes recom-

mendations published in the Official Journal of the French Republic on 22 December 2017 and practical guides and factsheets developed by AFA;

- **specific support**, which is aimed at providing answers to business and government entities. This usually takes the form of workshops organised jointly with their professional bodies. AFA uses the contents of these sessions to enhance its general support;
- **individualised support**, which includes legal and methodological consultations dealing with practical cases encountered by individual private or public entities. This support may take the form of individualised help provided on request. In such cases AFA's support covers discussions and work on some or all of an entity's anti-corruption plan.

AFA provides support for implementation or improvement of anti-corruption measures to any private or public entity that requests it. It maintains strict separation of its consulting and auditing functions.

Developing anti-corruption compliance in the public sector and ensuring compliance with pre-existing legal requirements

In 2018, AFA ramped up its actions on behalf of central and local government entities.

Central government departments

Under the terms of the third indent of Article 3 of the Act of 9 December 2016, central government departments are required to implement measures and procedures to prevent corruption. These measures are subject to auditing by the French Anti-Corruption Agency to ensure their quality and effectiveness.

AFA primarily examines compliance with pre-existing legal requirements, since the Act mentioned does not set out specific requirements. These earlier requirements could include appointing a compliance officer or setting up an internal whistleblowing system. They also aim to set a framework that suits the specific needs of central government and local government.

The anti-corruption compliance requirements apply to both the central administration departments of the various ministries and to their devolved departments and agencies.

AFA has organised meetings with certain central government entities and their devolved departments. The initial meetings were attended by representatives of staff responsible for risk control, internal accounting control, purchasing and legal affairs; later meetings were attended by ministerial compliance officers.

³ There are nearly 1,900 non-profit associations and 650 foundations that are recognised as public interest entities in France.

These meetings:

- reviewed the anti-corruption requirements applying to ministries and the option available to any ministry to request audits from AFA;
- covered the drafting of a national, multi-year plan to fight corruption;
- offered AFA's support to the relevant ministerial departments (awareness-raising, training, Agency support for implementation of some or all of a ministry's internal anti-corruption plan, including preventive measures in the oversight of government-funded institutions).

At the same time, working relationships were forged with certain entities having cross-cutting functions to promote rapid dissemination of the anti-corruption framework and consistency with related activities. For this purpose, AFA initiated cooperation with such entities as the Etalab task force⁴, the **Directorate for Central Government Procurement**, the Central Government Internal Audit Harmonisation Committee (CHAIE), the Directorate General for Administration and the Civil Service (DGAFP), the National Anti-Fraud Office (DNLF) and the Directorate for Criminal Affairs and Pardons (DACG) at the Ministry of Justice.

AFA also initiated contacts with other specific groups in view of future collaboration:

- public healthcare entities;
- the Association of Francophone Internal Auditors in Research and Higher Education;
- school groups, such as secondary-school students, through the Ministry of Education's Civic Reserves programme.

Support for two ministries: Two ministries with devolved departments requested support from AFA. This individualised support included AFA's oversight of risk mapping, with methodological support at the various stages in the process.

Local public entities

Only a few local government entities have a comprehensive anti-corruption plan. As is the case with central government departments, these entities can follow some recent standards:

- mandatory appointment of a compliance officer. A common compliance officer must be appointed at the Département management centre for local governments with fewer than 350 employees and for other local governments that want to choose this solution;
- stricter requirements for disclosure of interests and assets;
- legislation on employing close relatives⁵.

⁴ Task force reporting to the Prime Minister's Office that is part of the Interministerial Directorate for Digital Technology and the Government Information and Communication System.

⁵ Trust in Politics Act 2017-1339 of 15 September 2017.

AFA relies on some organisations to relay its awareness-raising for local public-sector entities and to promote an anti-corruption culture. The organisations in question include:

- the National Centre for Local Civil Service (CNFPT), which signed a partnership agreement with AFA on 28 May 2018;
- the National Federation of Management Centres (FNCDG);
- the National Federation of Local Publicly Owned Companies (EPL);
- the National Federation of Public Housing Boards (OPH). Representatives of the latter federation participated in the MOOC on preventing corruption in local government;
- elected officials' associations and professional bodies.



These bodies distributed to their members the survey questionnaire on the prevention of local government corruption that AFA posted online in February 2018.

The French Mayors Association invited the AFA Director to address a plenary session of the Mayors' Conference on 21 November 2018⁶.



Congress of Mayors, 21 November 2018

AFA provided support for 7 local governments and local public entities: a city with a population of more than 150,000 and a town with fewer than 3,500 inhabitants; two major départements; two inter-municipal cooperation institutions⁷; and one major technical syndicate.

⁶ See the speech by the AFA Director https://www.agence-francaise-anticorruption.gouv.fr/files/2018-12/Discours_D_devantAMF.pdf

⁷ Support for inter-municipal cooperation institutions provides indirect support for the member municipalities as well as direct sup-

Helping companies adopt the best anti-corruption standards

Specific support

In 2018, AFA worked with companies of all sizes from all sectors in conjunction with the Greater Paris Chamber of Commerce and Industry (CCI) and some forty professional bodies. These technical workshops were attended by an average of 15 to 60 companies, depending on the formats.

Several technical workshops were held for **general industry federations**: France's business federation (MEDEF), the French Private Enterprise Association (AFEP), the French Federation of Mid-Sized Firms (METI) and Middlednext. The workshops facilitated ownership of the French anti-corruption framework by the members of these federations. They were also an opportunity to review the practical problems raised by application of the AFA Recommendations and identifying companies' needs for advice.

AFA gradually extended this action to **sector-specific industry bodies**, trade federations and professional bodies⁸.

Most of the technical workshops dealt with corruption risk mapping, third-party due diligence and whistleblowing systems.

The contacts forged with the federations led to joint production of factsheets (e.g. a factsheet on corruption risk mapping) and different media for raising awareness of the practical procedures for preventing and detecting corruption.

Other specific support initiatives were launched at the request of the entities concerned. For example, a discussion group was set up to deal with the specific issues involved in anti-corruption systems in government-funded industrial and commercial institutions (EPICs).

Individualised support

AFA provided individualised support to 10 business entities in 2018: 8 companies and 2 EPICs. These entities varied in terms of size, business sector and advancement of their anti-corruption plans.

AFA validated the requests for support on the basis of the following criteria:

- diversity of requesters' business sectors;
- progress on their anti-corruption plans;
- the likelihood that providing support would produce useful knowledge for other entities.

port for the institutions themselves.

⁸ For example, the French Institute of Internal Auditors and Controllers (IFACI).

The individualised support dealt mainly with governance of the anti-corruption compliance function, managing conflicts of interest, risk mapping, codes of conduct and third-party due diligence.

AFA was able to distinguish 6 themes corresponding to business entities' priority support needs:

- anti-corruption compliance function (stakes, positioning, coordination with other corporate functions);
- managing gifts, invitations and other benefits within the entity;
- managing conflicts of interest;
- anti-corruption due diligence as part of mergers and acquisitions;
- hazards during internal investigations;
- anti-corruption compliance and protection of personal data.

Building on the experience of providing such support, AFA plans to publish guides and factsheets dealing with these themes.

ANSWERING QUESTIONS AND PROCESSING WHISTLEBLOWING REPORTS

Questions and answers

AFA responded to 152 questions in 2018, of which 32% were from individuals, 48% were from businesses, groups or non-profits and 20% were from government institutions.

These questions included:

- 70% dealing with AFA's missions (25% regarding anti-corruption legislation concerning government entities, 28% regarding anti-corruption legislation concerning businesses, such as the audits stipulated in Article 17 of the Act of 9 December 2016, 16% regarding AFA's information and advice missions and 1% regarding the blocking statute⁹);
- 20% of the referrals concerned French criminal legislation (11%) or comparisons with foreign legislation (9%);
- 10% concerned the links between anti-corruption legislation and related legislation regarding whistleblowing, compliance systems and protecting personal data.

Processing whistleblowing reports

Even though Article 8 of the Act of 9 December 2016 does not designate AFA to deal with the accomplished felonies and offences covered by the Act, AFA does receive whistleblowing reports. Depending on the nature and accuracy of the reports, they can be set aside with no further action, they can trigger an

⁹ Act 68-678 of 26 July 1968 on disclosing economic, commercial, industrial, financial or technical documents or information to foreign individuals or entities.



solocal

*TESTIMONY
FROM A FIRM
RECEIVING
SUPPORT*

Solocal is the third-ranking digital marketing firm in France. Its mission is to become the local trusted digital partner for any firm in order to accelerate its growth.

We offer firms of all sizes a unique and comprehensive range of services, including Digital Presence, Digital Advertising, Websites, New Services and Digital-to-Print. These services provide firms with one-stop shopping for all their digital needs. We have 431,000 customers, ranging from very small enterprises to major firms with branch networks. Some 4.7 million French companies are listed in our PagesJaunes and Mappy directories.

In February 2018, we unveiled a strategic plan called “Solocal 2020” calling for a sweeping transformation of the firm’s organisation. As part of this major transformation, we requested support and advice from AFA in May 2018 for setting up our anti-corruption system.

Ethical business practices lie at the heart of Solocal’s CSR strategy and approach. It is our ambition to stand out for our best practices in providing support and satisfaction for our customers, users, employees, suppliers and shareholders in their search for trusted business partners and reliable and high-quality digital content and services.

We aim not only to achieve full compliance by 2020, but also to be an ethical best practices leader for our stakeholders, particularly the French small and medium-sized enterprises whose growth we support through our digital solutions.

AFA shared its expertise with us in technical workshops dealing with several measures of the Sapin 2 Anti-Corruption Act. Our discussions enabled us to test our compliance actions against best practices in keeping with our goal and to share what we have learned with AFA.

With AFA’s support, we have achieved progress in deploying our compliance function and our vision for it, along with progress in our processes and our organisational structures. We recruited a compliance officer who is responsible for not only compliance execution, but also for shaping the corporate culture.



administrative audit or they can be referred to the relevant administration or public prosecutor's office.

In practice, whistleblowers communicate with AFA by letter or e-mail to disclose perceived corruption or failure to meet the compliance requirements stipulated in Articles 3 and 17 of the Act of 9 December 2016. AFA responds to the whistleblowers making the reports whenever they can be identified.

Of the 303 whistleblowing reports received in 2018, one report on suspicions of criminal activity was referred to the relevant public prosecutor's office and five others triggered audits by AFA.

AUDITING THE EFFECTIVENESS OF ANTI-CORRUPTION SYSTEMS

Organising audit activities

There was a significant increase in audit activities in 2018. The ramping up of these activities required further work to provide audit teams with appropriate tools and methods, as well as to inform entities about the requirements and procedures for conducting AFA's audits.

Providing audit teams with appropriate tools and methods

Actions to optimise AFA auditors' working environment and methods included:

- the signature of two agreements on 22 May 2018, one with the National Council of Commercial Court Registrars (CNGTC) and the other with the Economic Interest Grouping (EIG) Infogreffe giving AFA auditors access to the database of legal information on companies;
- the signature of an agreement with the General Economic and Financial Audit Department on 8 October 2018.

In 2018, AFA and the financial courts engaged in fruitful discussions to enhance coordination of their respective audits.

The general public prosecutor of the French Government Audit Office issued a recommendation on relations between financial courts and AFA to financial public prosecutors on 4 June 2018. The recommendation sets out the procedures for sharing information between AFA and the Local Government Audit Offices (CRTC). It opens the possibility of financial public prosecutors and AFA holding operational meetings. Three Local Government Audit Offices have already provided AFA with findings that may be relevant to its activities.

Information about the requirements and procedures for conducting audits

In October 2017, AFA published the charter of audit rights and obligations for the information of business entities. The charter was updated in April 2018 to include public entities, recognised public interest non-profits and entities.

The charter reviews the scope of the audits and stipulates the principles of good conduct followed by AFA auditors, along with the behaviour expected of persons solicited for auditing purposes.

SPOTLIGHT ON: The questionnaire and the list of relevant documents for audits of business entities

In February of 2018, AFA's website published a questionnaire and a list of documents to be provided to auditors by the entities subject to Article 17 of Act 2016-1691 of 9 December 2016.

The purpose of this questionnaire, which is available in English, is to provide the audit team with a preliminary description (subject to more in-depth follow-up questionnaires or requests for documents) of the audited entity and its environment, the structure of its anti-corruption compliance function, indications of top management's commitment and deployment of the eight measures and procedures stipulated in Article 17(II) of the Act of 9 December 2016. The answers to the questionnaire must be sent to AFA at the start of the audit.

The purpose of posting the questionnaire and the list of documents to be provided, along with any updates, is to enable the business entities subject to audits to be well prepared for a possible AFA audit. It also provides other entities with clarification of what AFA expects and supplements the recommendations published in the Official Journal dated 22 December 2017.

Audit strategy

Following 6 preliminary audits of French business entities in 2017, including one of a state-owned enterprise, AFA conducted 47 audits in 2018, 43 audits carried out on its own initiative. The other 4 were conducted under the terms of deferred prosecution agreements. The 43 audits carried out on AFA's own initiative into 28 audits of business entities and 15 audits of government entities.

Audits of business entities concerned "industry leaders" (where such a structure exists) or leading global, European or French firms whose anti-corruption compliance actions would help to spread best practices throughout their business environment. The criteria for selecting audit targets also included their presence in countries where corruption risks are especially high or in vulnerable industries.

Audits of government entities were aimed at targets with different legal status, with a preference for large entities that are particularly vulnerable to corruption given their activities or their governance structures, including entities with weak supervision and deficient external audits.

Whistleblowing reports led AFA to target four entities under the terms of Article 3(3°) of the Act of 9 December 2016 and one entity under the terms of Article 17 of the same Act.

Audits of business entities

Audits carried out on AFA's own initiative

Under the terms of Article 17(III) of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016, it is AFA's responsibility to audit the measures and procedures that business entities implement to prevent and detect bribery and influence peddling.

Of the **28 audits of business entities** conducted in 2018, two focused on state-owned enterprises and 11 focused on French subsidiaries of foreign groups.

Turnover at the audited businesses ranged from €297 million to €78.9 billion. Their workforces ranged from 600 to 376,000 employees. At the audit start dates, they had between zero and 1,127 subsidiaries, with an average of 40% located outside of France. Five of the audited businesses had their registered office outside of the Paris region.

28 AUDITS OF BUSINESS ENTITIES

Profile of the audited entities :
(including 2 state-funded industrial and commercial institutions and 11 French subsidiaries of foreign groups)

€ 297 M€ < **Turnover range** < 78,9 billion €
600 < **Workforce** < 376 000

Auditing execution of deferred prosecution agreements

Such audits are conducted in three types of situation: at the instigation of the sanctions committee, if the criminal court has imposed a supplementary sentence with a compliance remediation plan (PPMC) or if the public prosecutor's office has concluded a deferred prosecution agreement (CJIP).

As of 31 December 2018, no cases had been referred to AFA's sanctions committee and no criminal court had imposed a supplementary sentence with a compliance remediation plan.

The **four audits** in 2018 were conducted **under the terms of deferred prosecution agreements**.

The four audits focused on businesses with turnover ranging from €1.7 million to €23.95 billion and workforces ranging from 120 to 147,000, including one business with its registered office outside of the Paris region. Some of the audited businesses had up to 59 subsidiaries, of which 54% were located outside of France.

4 AUDITS UNDER THE TERMS OF JUDICIAL PUBLIC INTEREST AGREEMENT (CJIP)

Profile of the audited companies :

€ 1,7 M€ < **Turnover range** < 23,95 billion €

120 < **Workforce** < 147 000

Audits of government entities

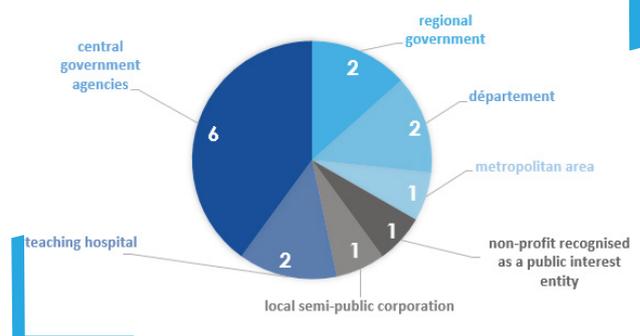
Under the terms of Article 3(3°) of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016, it is AFA's responsibility to audit the measures and procedures that government entities implement to prevent and detect bribery, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism, in other words, all types of corruption.

Fifteen government and non-profit entities were audited, including:

- six central government agencies,
- one non-profit recognised as a public interest entity,
- two teaching hospitals (CHU),
- two regional governments, two départements,
- one metropolitan area
- one local semi-public corporation.

The 15 audits focused on government and non-profit entities with budgets ranging from €21 million to €4.8 billion. They included eight entities with budgets in excess of €1 billion, five with budgets between €100 million and €1 billion, and two with budgets under €100 million. The workforces of the audited entities ranged from 23 to more than 14,000 and eight of them had their registered offices outside of the Paris region.

AUDITS OF GOVERNMENT ENTITIES IN 2018



For the first time, one of the authorities cited in Article 3(3°) of the Act, namely a prefecture, requested that AFA conduct an audit in October 2018. As of 31 December 2018, no whistleblowing reports had been referred to AFA by an authorised non-profit entity under the terms of Article 2-23 of the Criminal Procedure Code.

DEFENDING FRANCE'S INTERESTS

As part of its responsibility for helping prevent and detect corruption, AFA helps implement Act 68-678 of 26 July 1968 on disclosure of economic, commercial, industrial, financial or technical documents to foreign individuals or entities, more commonly known as the "blocking statute".

This act prohibits disclosures to foreign government authorities of information that could jeopardise France's sovereignty, strategic economic interests or public order¹⁰, with the exception of disclosures made under the terms of international agreements on mutual assistance in criminal matters.

It also prohibits the disclosure of any economic information that could be used as evidence in an investigation or prosecution instigated by a foreign authority¹¹.

Article 3(5°) of the Act of 9 December 2016 supplements these provisions by giving AFA the responsibility for ensuring application of the blocking statute in the execution of decisions by foreign authorities that impose anti-corruption compliance requirements on a French company.

In 2018, three cases involving the blocking statute were referred to AFA.

These cases were handled in close collaboration with the other administrations concerned (Directorate for Criminal Affairs and Pardons, Directorate General of the Treasury, Economic Strategic Intelligence and Security Department, Ministry for Europe and Foreign Affairs). The cases dealt with the American authorities' demands for information from French companies.

The purpose of the demands was to get the French companies concerned to disclose information about their commercial activity that could be used as evidence or allegations of behaviour that may be prohibited by American regulations.

In the cases in point, AFA's action consisted of choosing the information that could be disclosed and the appropriate disclosure procedures. The blocking statute serves two purposes: defending the companies' interests as well as France's strategic and legal interests.

¹⁰ Article 1 of the Act of 26 July 1968.

¹¹ Article 1 bis of the Act of 26 July 1968.

SPOTLIGHT ON: AFA's contribution to changes in the rules on foreign investment in France

AFA made proposals for changes to the rules on foreign investment in France in the form of suggestions submitted to the Government that were aimed at mainstreaming anti-corruption concerns.

AFA's proposals were incorporated by Decree 2018-1057 of 29 November 2018 on foreign investment requiring prior authorisation.

As a result, the new Article 153-10 of the Monetary and Financial Code includes active bribery of and influence peddling by foreign agents in the list of offences that are grounds for rejecting foreign investment in France.

The AFA Director took part in discussions on enhancing the provisions protecting France's interests. He gave testimony:

- on 22 February 2018, to the Investigation Commission responsible for reviewing central government decisions on industrial policy regarding recent mergers and means of protecting national industrial flagships in a globalised market (<http://www.assemblee-nationale.fr/15/pdf/cr-cepo-lind/17-18/c1718030.pdf>)
- on 14 November 2018, to the Member of the National Assembly, Raphaël Gauvain, whom the Prime Minister charged with identifying measures to enhance protection of French companies involved in proceedings to enforce extraterritorial legislation.

UNITING THE STAKEHOLDERS

The proper use of financial and human resources and the effectiveness of action to prevent corruption require implementation of administrative coordination to reconcile the different legal requirements.

For this purpose, AFA has forged working relationships with:

- the **Directorate for Legal Affairs** of the Economy and Finance Ministries on the coordination of public procurement rules with third-party due diligence. A guide produced jointly with the **Directorate for Central Government Procurement** will incorporate the findings of these discussions. The guide will deal specifically with preventing corruption in public procurement;
- the **French Data Protection Authority** (CNIL) to reconcile protection of personal data and the constraints of efficiency, traceability and auditability of measures implemented as part of anti-corruption systems. A jointly-produced guide is being drafted;

- the **Competition Authority** and the **Financial Markets Authority** (AMF) to enhance the regulators' working methods and discuss possible avenues of coordination.

ASSESSING CORRUPTION RISK MANAGEMENT

A preliminary quantitative measurement

Entities' management of corruption risk has never been subjected to a comprehensive quantitative measurement.

In 2018, AFA started to address this deficiency by conducting a survey of local government entities on the prevention of corruption, with the assistance of the National Centre for Local Civil Service (CNFPT) and associations of local elected officials, such as the French Mayors Association.

The survey covered all of the entities concerned, regardless of their size or nature. The survey was sent to 55,000 local governments and **3,277 responses** were received and analysed.

The anonymous questionnaire was designed to make it easy to use for both the respondents and the statisticians.

Survey on the prevention of local government corruption: findings

The survey was conducted between February and May 2018 by sending a questionnaire to local governments, along with local public establishments and semi-public corporations. Detailed analysis of the 3,277 responses shows that very few local governments have an anti-corruption system or internal measures to prevent corruption¹².

¹² The complete findings of the survey have been posted to the AFA website: https://www.agence-francaise-anticorruption.gouv.fr/files/2019-07/Rapport_danalyse_-_enquete_service_public_lo-cal.pdf

MAIN SURVEY DATA

	All	Municipalities	Departments	Regions	EPCLs	EPLs	OPHs	CdG
Have an anti-corruption plan or measures	7,3%	4,4%	39,6%	84,6%	12,5%	30,0%	57,4%	9,4%
<i>of which have a plan</i>	3,2%	1,4%	22,9%	76,9%	4,0%	20,0%	39,7%	3,1%
<i>of which have measures</i>	4,1%	3,0%	16,7%	7,7%	8,5%	10,0%	17,6%	6,3%
Have a code of conduct	5,9%	3,9%	22,9%	69,2%	8,6%	10,0%	47,1%	18,8%
Practice risk mapping	1,7%	0,5%	8,3%	30,8%	1,7%	10,0%	39,7%	0,0%
Practice third-party due diligence	17,0%	15,1%	29,2%	7,7%	25,1%	40,0%	35,3%	31,3%
Have an internal control function	29,3%	24,7%	66,7%	84,6%	51,5%	55,0%	60,3%	62,5%
Have an audit function	5,2%	2,4%	62,5%	69,2%	10,2%	25,0%	35,3%	18,8%
Have a whistleblowing system	14,3%	8,7%	35,4%	30,8%	5,1%	15,0%	39,7%	40,0%
Have a compliance officer	21,1%	19,9%	58,3%	23,1%	18,8%	10,0%	26,5%	84,4%
Have an awareness-raising plan	18,4%	16,6%	25,0%	46,2%	20,5%	30,0%	58,8%	40,6%
<i>of which, plan for employees</i>	9,5%	7,8%	16,7%	23,1%	12,9%	25,0%	41,2%	31,3%
<i>of which, plan for elected officials</i>	8,9%	8,8%	8,3%	23,1%	7,6%	5,0%	17,6%	9,4%
Have a training plan	3,3%	2,8%	16,7%	30,8%	3,6%	5,0%	8,8%	6,3%
<i>of which, plan for employees</i>	2,0%	1,6%	8,3%	15,4%	2,3%	5,0%	8,8%	6,3%
<i>of which, plan for elected officials</i>	1,3%	1,1%	8,3%	15,4%	1,3%	0,0%	0,0%	0,0%

Anti-corruption plan or measures. Implementation of specific anti-corruption plans or measures is not a common practice (7.3% of all entities), with the notable exception of regions (84.6%) and, to a lesser extent, public housing boards (OPHs) (57.4%). Even when there is a plan, not all of the components, as defined by the Act of 9 December 2016, have been deployed.

Adopting a code of conduct is not a common practice (5.9% of all entities), except in the case of regions (69.2%) and public housing boards (47.1%).

Overall, entities clearly make little use of **risk mapping** techniques (1.7%), with the exception of public housing boards (39.7%) and regions (30.8%), though the proportions using these techniques are still quite modest.

Third-party due diligence is not a common practice (17.0% of all entities), except for local publicly-owned companies (EPLs), which rely on it more systematically (40.0%).

Internal control functions are more commonly deployed (29.3%) than internal audit functions (5.2%). Such practices are found in large entities, when they exist. Only 1.3% of all respondents report having both internal control and internal audit functions.

Whistleblowing systems are a more recent development and the deployment of such systems is still modest (14.3%). Entities that are not required to have such systems have sometimes complied voluntarily.

Compliance officers are still rarely reported (21.1%), except in the case of management centres (CdGs) (84.4%), which are required to have such an officer in principle. This pooling of compliance functions in a management centre at the département level obviously benefits municipalities with fewer than 350 employees. These municipalities are automatically members of such management centres.

Awareness-raising and training for corruption prevention are not widespread practices: only 18.4% of all entities provide awareness-raising for employees and elected officials. The exceptions are public housing boards (58.8%) and regions (46.2%).

PREVENTING CORRUPTION IN SPORT

Major sporting events involve a large number of entities and various issues, such as good governance and integrity. AFA is taking part in the prevention of corruption in the organisation of the 2023 Rugby World Cup and the Paris Olympic and Paralympic Games in 2024.

The 2023 Rugby World Cup

On 10 March 2018, the French government, the French Rugby Federation (FFR) and the French National Olympic and Sports Committee (CNOSF) signed an agreement establishing a **public interest group (GIP)** called “**Coupe du monde de rugby 2023**”. This agreement calls for setting up a committee to oversee the group’s ethical policies and to ensure that the group’s employees comply with the individual and mutual values that are the foundation for its action. AFA has a seat on this ethics committee.

2024 Olympic and Paralympic Games

AFA is a member of the ethics committee of the **Olympic Organising Committee (COJO)** that is responsible for organising and financing the 2024 Olympic Games in conjunction with the International Olympic Committee (IOC). In its capacity as a member of the Olympic Organising Committee, AFA supports the implementation of an anti-corruption system.

The Committee calls for a new vision for the Olympic Games “in which each investment benefits those who need it most” and aims to promote a strong ethical dimension. In its statement¹³, the Olympic Organising Committee highlights its commitment to implementing “the highest standards of ethics and transparency”.

AFA is also a member of the ethics committee of the **Olympic infrastructure delivery corporation (SOLIDEO)**. SOLIDEO is a state-funded industrial and commercial institution that is tasked with coordinating the contracting authorities responsible for the infrastructures and signing agreements with these authorities. But SOLIDEO also assumes the role of contracting authority for some of the infrastructures and, in this capacity, it acts as a state-funded development institution.

AFA auditing responsibilities under the Olympic Games Act

Article 30 of the 2024 Olympic and Paralympic Games Organising Act 2018-202 of 26 March 2018 calls for AFA’s audits of the entities responsible for preparations for the Games that are equivalent to AFA’s audits of government entities.

AFA’s audits of the entities concerned (COJO, SOLIDEO, local government groups and local governments) will be a means of assessing the soundness of the planned anti-corruption systems and ensuring their effective implementation.

SPOTLIGHT ON: AFA’s contribution to the International Partnership Against Corruption in Sport

AFA promotes building integrity and good governance issues into the international sport movement by participating in the International Partnership Against Corruption in Sport (IPACS). The members of the partnership are international sport federations, the International Olympic Committee (IOC), international organisations (UNODC, OECD, Council of Europe) and national government representatives. AFA represents the European anti-corruption authorities on IPACS Task Force 3 “optimising the processes of compliance with good governance principles to mitigate the risk of corruption”. The purpose of this task force is to adapt corruption prevention systems to international sport organisations.

AFA is calling for term limits on the most exposed officials, accuracy standards for accounts and financial transparency, along with systems for managing conflicts of interest.

PROMOTING FRANCE’S ANTI-CORRUPTION MODEL

Enhancing bilateral and multilateral cooperation

In 2018, four cooperation agreements were signed with Vietnam, Serbia, Guinea and Mali, and followed up with specific technical assistance activities.



Signing of a cooperation protocol between Gérald Bégranger, Deputy Director of AFA and Dragan Sikimić, Director of ACA (Anti-Corruption Agency of the Republic of Serbia), Belgrade, 1 November 2018

These activities included holding training seminars in Vietnam and Tunisia, where participants could share their experiences and enhance their knowledge of anti-corruption practices.

¹³ COJO Press Release of 20 December 2017.

AFA has also used its resources to monitor permanent working groups and mechanisms for assessment and evaluation of the OECD (as part of the Working Group on Bribery), of the Council of Europe (as a member of the GRECO) and of the UNODC (UNCAC).

AFA also promotes operational and technical cooperation between corruption prevention authorities. On 16 October 2018, AFA launched an international network of corruption prevention authorities jointly with the Italian national anti-corruption authority (ANAC).

SPOTLIGHT ON: Declaration for a network of corruption prevention authorities

The GRECO High Level Conference “Strengthening transparency and accountability to ensure integrity: United against corruption” took place in Sibenik, Croatia on 15 and 16 October 2018.

The Croatian Ministry of Justice and the Group of States Against Corruption (GRECO) organised the conference, which was attended by more than 250 senior policy makers and experts from different regions of the world. The conference agenda included many goals: reviewing two decades of the Council of Europe’s action to fight corruption, setting the major policy directions for the future and strengthening transparency and accountability to ensure integrity. One of the high points of the conference was the signature of the “Declaration for a Network of Corruption Prevention Authorities”. This signature marks a symbolic milestone and points to greater transparency and cooperation between governments.

The “Sibenik network” is aimed at remedying a shortcoming of the international cooperation system by providing authorities specialised in prevention with a dedicated forum for discussion of operational topics of common interest.

Cooperation with foreign law enforcement authorities

In 2018, AFA strengthened its relationships with foreign law enforcement authorities. Operational contacts on a regular basis were forged with:

- the United States Department of Justice (DoJ) and the Securities and Exchange Commission (SEC);
- the United Kingdom Serious Fraud Office (SFO);
- the World Bank;
- the European Investment Bank.

These contacts have promoted a better understanding of our respective national systems. They have also helped to ensure proper application of French laws wherever they apply, without impeding the action of foreign authorities.

AFA has taken particular care to ensure its foreign partners comply with the provisions of Act 68-678 of 26 July 1968, as amended by Act 80-538 of 14 July 1980, called the “Blocking Statute”. AFA has also taken part in producing the first joint settlement of

a transnational corruption case by France and the United States. The settlement involved parallel deferred prosecution agreements signed in both countries on 4 June 2018. AFA will audit the execution of the French agreement over the next three years.

AFA has also built up its operational links to the multilateral international development banks, especially the World Bank and the European Investment Bank, with respect to French companies that are liable to penalties. A preliminary cooperation agreement with the European Investment Bank was signed on 4 December 2018 and other agreements are under negotiation.

When necessary, this cooperation is also based on agreements that AFA signs with other entities involved in the fight against corruption.

Assistance for French authorities in international negotiations

Under the terms of Article 1(2°) of the Act of 9 December 2016, AFA “assists the relevant French authorities in international organisations with the definition and implementation of their positions on issues relating to bribery, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism by taking part in the interministerial coordination conducted by the Minister of Foreign Affairs and the Secretary General for European Affairs.”

In 2018, this task took two complementary directions:

Preparations for and participation in international meetings

For this work, the existence of a specialised agency such as AFA makes it easier to make technical use of the documentation and to define France’s positions.

Promotion of a permanent coordination framework for the different entities taking part in negotiations

Such a framework is needed in view of the large number of international bodies discussing the issues and the diversity of the government entities involved: office of the Secretary General for European Affairs, which is responsible for coordinating France’s positions as a member of the European Union and the OECD, the Ministry for Europe and Foreign Affairs¹⁴, the Ministry of Justice and the Economy and Finance Ministries¹⁵.

¹⁴ The United Nations Directorate monitors the Mérida Convention, the Legal Directorate occupies the French seat and vice-presidency at GRECO, the Directorate General for Globalisation, Culture, Education and International Development helps monitor the OECD Convention.

¹⁵ The Directorate General of the Treasury and the Directorate for Criminal Affairs and Pardons share the French seat on the OECD Working Group on Bribery. The Directorate General of the Treasury also represents France in the G7 and G20 anti-corruption groups.

AFA's assistance to these entities is facilitated by the technical expertise of its employees and its relationships with other government entities.

AFA's goals are to act as a transmission channel for importing foreign best practices, to improve France's international standing, and promotion of France's best practices in other countries, and to improve France's international image.



Creation of a network of corruption prevention authorities in Sibenik, Croatia, 15-16 October 2018



Part 2 : What has been learned so far from AFA's activities



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PART 2: WHAT HAS BEEN LEARNED SO FAR FROM AFA'S ACTIVITIES

AFA's audit and advisory tasks are a source of information about the maturity of the anti-corruption systems deployed by government and business entities.

WHAT HAS BEEN LEARNED ABOUT BUSINESS ENTITIES

Shortcomings

Generally speaking, business entities have achieved different levels of maturity in terms of anti-corruption compliance, but three main lessons have been learned.

Top management's commitment is often inadequate or not visible enough

When such a commitment exists, it is all too often merely a statement from top management about a few measures, such as the signature of a code of conduct. Subsidiary managers' lack of awareness about their own responsibilities also raises questions, even though subsidiaries are subject to Article 17 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016.

The entities audited are not fully aware of their corruption risks

The level of awareness about corruption risks seems inadequate, either because entities have not got an appropriate risk map or because the mapping methodology used does not ensure that all of the risks are identified, assessed and prioritised.

Inadequate risk management systems

Systems for preventing and detecting corruption are often incomplete, as shown by:

- the lack or inadequacy of third party due diligence procedures;
- the inadequacy of accounting audits and internal control;
- failure to complete implementation of the whistleblower report and protection system in some cases.

Furthermore, codes of conduct, training plans, third-party due diligence procedures, accounting audits and internal control and audit systems rarely correspond to the risk map.

Finally, the measures and procedures are not always effective, as seen in cases where internal whistleblowing systems are not used because of misinformation about them, or training plans do not always reach the most at-risk employees.

AFA also finds that third-party due diligence systems are often defined, but unused, or used, but the results of the due diligence are not really taken into account when the entity makes its final decision.

AFA has also found that the fact that an entity belongs to a given category that should be familiar with compliance is not necessarily a positive factor:

- the anti-corruption systems of French subsidiaries of foreign groups are not any better than those of French companies. If such systems are in place, they are often a few measures that are merely copied from the parent company's system;
- the fact that a company is part of an industry with longstanding compliance or ethical requirements, such as finance/insurance and healthcare, is no guarantee of the existence or the quality of the anti-corruption system.

Audits of business entities have shown that their employees participate in bodies where government and private-sector representatives work together, such as the National Industrial Council and its industry-specific strategy committees, centres for industrial techniques, professional economic development committees and national strategy working groups.

Even though there are regulatory requirements in some cases, AFA found that virtually all business entities lack any measures or procedures to manage their employees' participation in such bodies. This lack of management oversight, both with regard to the appointment and possible recusals of these employees, may lead to unidentified or unaddressed conflicts of interest.

One audit of a business entity revealed an employee's decision to recuse himself with regard to certain topics, where the decision was made by the employee himself rather than the employer.

SPOTLIGHT ON: Conflicts of interest in business enterprises

The Transparency in Public Life Act 2013-907 of 11 October 2013 defines a conflict of interest as “any situation of interaction between a public interest and public or private interests that could influence or appear to influence the independent, impartial and objective performance of a duty”. The Organisation for Economic Cooperation and Development (OECD) defines a conflict of interest as “a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her duties”¹⁶.

On the other hand, there is no official definition of a conflict of interest in the private sector.

Interconnected interests are inherent in organisations, but they may turn into conflicts of interest that could lead to illegal actions in a business entity, such as concealment of unlawful taking of interest or misuse of corporate funds.

Various risk prevention and detection measures can be implemented to protect a company from the risks arising from conflict of interest. These measures are initiated by top management on a case-by-case basis in consideration of the individual circumstances of each organisation.

When a conflict of interest is declared, various precautionary measures can be taken that are proportionate to the risk incurred in each case.

Practices that can facilitate implementation of anti-corruption systems

At the same time, AFA found some best practices that could be implemented by business entities:

- **setting up a single system for the entire group for registering gifts and invitations.** Employees report gifts received and given, along with the actual cost of gifts given or the estimated cost of gifts received, the identity, employer and position of the giver or recipient of the gift. Once the report is filed, each employee receives an e-mail notification. This system simplifies audits and means that they can be automated;

- **setting up an information system that can handle whistleblower reports in any of the languages used within the group.** Such a system enables whistleblowers to choose to remain anonymous and explains the consequences of their choice.

The system also has an encrypted internal mail system that makes it possible to send and receive messages with complete confidentiality. The data are stored on a dedicated encrypted server located in Europe.

The system then automatically makes the documents relating to the case anonymous and keeps them on file, but without destroying it. If the whistleblower

¹⁶ Recommendation R (2000) 10 of the Committee of Ministers to the Member States on codes of conduct for public officials of the Council of Europe.

claims that they have been subjected to reprisals for making the report, particularly in terms of human resources decisions, the entity will be able to verify the claims by reopening the files using a code that only the whistleblower knows;

- **classroom training provided by entities for their third parties most at risk;**

- **when third-party due diligence is outsourced,** the entity does not merely pay for the service; it takes part in developing a method that fits its needs. Furthermore, the entity does not hesitate to use its own resources, such as internal databases, to enhance the analytical work done by the external service provider. Based on this work, the legal responsibility for assessing the third party and deciding to initiate, continue or end the relationship rests with the entity alone.

SPOTLIGHT ON: Gifts, invitations and other benefits within a company

The giving of gifts or any other benefit in any form should be done in such a way as to avoid two risks: corruption and conflict of interest.

Preventing corruption risk implies verification that the gift or benefit in question:

- is lawful and has not been solicited by the recipient
- is not aimed at receiving an improper counterpart or benefit in exchange,
- is not aimed at influencing a decision,
- is not given at a strategic time (e.g. during a call for tenders),
- is not a regular occurrence and is appropriate to business activity.

Preventing conflict of interest risk implies verification that the gift or benefit in question:

- does not create a conflict of interest,
- is given under strictly professional circumstances,
- is recorded in the records and books of the entity (e.g. record of gifts given and received),
- will not lead to any embarrassment if the gift or benefit becomes public knowledge.

WHAT HAS BEEN LEARNED ABOUT GOVERNMENT ENTITIES

Government entities are subject to provisions that directly or indirectly impose requirements for preventing and detecting corruption. However, to be effective, such requirements need to be supplemented and incorporated into a comprehensive system to prevent and detect corruption.

In the absence of any specifications as to the content of anti-corruption systems in Article 3 of the Act of 9 December 2016, AFA decided to align its recommendations on the provisions of Article 17 of the Act.

This means that AFA's recommendation to government entities is to adopt measures to ascertain their own risks and to prevent, detect and penalise any corruption. Such measures include:

- corruption risk mapping;
- codes of conduct that define and illustrate various types of improper behaviour and specify the procedures for preventing conflicts of interest;
- corruption risk training systems;
- third-party due diligence procedures for suppliers, partners, etc.;
- internal whistleblowing systems;
- a disciplinary system that can penalise an entity's employees if they break the rules;
- internal audit and assessment systems.

Shortcomings

The shortcomings found concern the code of conduct, practices regarding gifts, invitations and other benefits, and conflicts of interest.

Code of conduct

According to the AFA recommendations, the code of conduct is a set of rules that:

- define and illustrate the types of proscribed behaviour that could constitute corruption;
- specify the disciplinary sanctions incurred for violations;
- outline the internal whistleblowing system for receiving reports from employees, managers or elected officials about conduct or situations that violate the code of conduct.

The code of conduct should apply to managers and employees, using procedures that may vary. It may be incorporated into a system of ethics or good conduct that may encompass more than just the fight against corruption, so long as it is presented and disseminated in a manner that is perfectly understandable.

The AFA audits show that very few government entities have a genuine code of conduct as specified in AFA's recommendations. Of the audited entities, one state-funded inter-municipal cooperation institution (EPCI), one state-funded administrative institution (EPA) and one local government had a charter or a guide that was akin to a code of conduct. Other entities may have had charters, but they were too abstract to mitigate conflict of interest risks.

Practices concerning gifts, invitation and other benefits

The law sets the requirements for accepting "gifts" in certain business sectors, such as healthcare. In addition to the legal provisions that concern only certain professions, AFA recommends that government entities set rules for accepting gifts and invitations to improve prevention of conflicts of interest. AFA's first

audits showed that government entities do not give this problem due consideration.

OUR RECOMMENDATIONS

AFA recommends that all government entities should develop a policy on accepting gifts and invitations. The code of conduct could incorporate some or all of this policy.

Furthermore, a register can be used to record the nature, value, frequency and origin of gifts received or given, along with any other information that could be helpful for preventing conflicts of interest.

Managing conflicts of interest

Any anti-corruption policy should include management of conflicts of interest. Interconnected interests are inherent in the life of government and business entities, which means that conflict of interest risks need to be identified in risk maps and dealt with in the code of conduct.

Under the Civil Servant Ethics and Rights and Obligations Act 2016-483 of 20 April 2016, the general civil service regulations¹⁷ defines a conflict of interest as "any situation of interaction between a public interest and public or private interests that could influence or appear to influence the independent, impartial and objective performance of a duty".

Unlike unlawful taking of an interest¹⁸, a conflict of interest is not a criminal offence. And yet, it creates a situation or an appearance of partiality that undermines civil servants' performance of their duties. This is why the Act of 20 April 2016 enhances the mechanisms for preventing and ending conflicts of interest¹⁹.

In 2018, AFA's auditing of government entities subject to civil service rules or labour code rules produced preliminary findings on these entities' implementation of the applicable regulations and on their ownership of the issues.

¹⁷ This definition is taken from Article 2 of the Transparency in Public Life Act 2013-907 of 11 October 2013.

¹⁸ Article 432-12 of the Criminal Code: "Taking, receiving or keeping of any interest in a business or business operation, either directly or indirectly, by a person holding public authority or discharging a public service mission, or by a person holding a public electoral mandate who at the time in question has the duty of ensuring, in whole or in part, its supervision, management, liquidation or payment."

¹⁹ Furthermore, the General Local Government Code invalidates decisions made when a conflict of interest exists.

Recusal requirement

Act 2013-907 of 11 October 2013²⁰ defines the recusal requirement. This requirement concerns local government officials with executive powers performing public service duties who have power of signature or are under the authority of a hierarchical superior, and members of the Government. Act 2016-483 of 20 April 2016 extends this recusal requirement to all permanent and contract civil servants²¹. When these persons deem that they have a conflict of interest, they must abstain from discussing or deliberating the issues, or using their power of signature, as the case may be.

AFA's audits have revealed the diversity of the practices implemented to ensure compliance with the recusal requirement. One of the state-funded institutions audited has instituted a system of declarations of interests for all its employees, even though it was not required to do so by law. The Secretary General's office retains the completed declaration forms. However, the lawfulness of such a practice is debatable.

OUR RECOMMENDATIONS

The recusal requirements under the terms of the Act of 11 October 2013 and the Act of 20 April 2016²² are the personal responsibility of elected officials and employees. However, we recommend that the government entities concerned:

- **inform** the individuals concerned of their obligations and the penalties that could be incurred;
- **define official procedures** for ensuring compliance with the recusal requirement. Such procedures could include:
 - according to the risks identified, a review of potential conflicts of interest (declarations of interests or no conflicts of interest),
 - verification of recusal in cases of declared conflicts of interests,
 - recording of recusals in meeting minutes.

Disclosure requirements

Articles 4 and 11 of the Act of 11 October 2013 require certain officials (ministers, members of parliament, presidents of local executive authorities, mayors of certain municipalities, etc.) to file declarations of interests and declarations of assets with the High Authority for Transparency in Public Life (HATVP) within two months of taking up their duties.

²⁰ Article 2 of the Transparency in Public Life Act 2013-907 of 11 October 2013.

²¹ Article 2 of the Civil Servant Ethics and Rights and Obligations Act 2016-483 of 20 April 2016.

²² There are also specific recusal rules for certain jobs, such as health consulting (Article L. 1451-1 and following of the Public Health Code).

For civil servants, Article 5 of the Act of 20 April 2016 requires appointees to positions where the rank or nature of the duties warrant such requirements to file a declaration of interests with the authority empowered to appoint them and, for certain positions, to file a declaration of assets with HATVP.

The list of positions concerned by these requirements is stipulated in a regulation²³. Article 29 of Act 2016-1691 of 9 December 2016 requires the general managers, general secretaries and their deputies of the entities stipulated in the Act to file declarations of interests with HATVP within two months of their appointment.

OUR RECOMMENDATIONS

The legal requirements concerning declarations of interests and assets apply to the individuals concerned and compliance is a matter of their personal responsibility and initiative. Nevertheless, AFA recommends that the entities employing these individuals remind them that the requirements exist and ensure that they comply with them.

Multiple jobholding

The Act of 20 April 2016 and Decree 2017-105 of 27 January 2017²⁴ changed the rules applying to persons holding multiple jobs. There are special rules in certain sectors, such as healthcare and research.

Compliance with these rules is the personal responsibility of the individuals concerned, as well as the responsibility of the authorities with the power to appoint them, since these authorities can decide whether to authorise these individuals to hold other jobs.

AFA's audits showed that few entities had informed employees about these legal requirements or had procedures for handling authorisation requests.

Furthermore, the audited entities generally filed requests for authorisation to hold multiple jobs in the employees' administrative records instead of monitoring them in a consolidated manner. This restricts auditing possibilities, for example in cases when the end date for the job mentioned in the authorisation

²³ Decree 2016-1967 of 28 December 2016 on the filing requirements for the declaration of interests mentioned in Article 25ter of the Civil Servants' Rights and Obligations Act 83-634 of 13 July 1983 and Decree 2016-1968 of 28 December 2016 on the filing requirements for the declaration of assets mentioned in Article 25 quinquies of the Civil Servants' Rights and Obligations Act 83-634 of 13 July 1983.

²⁴ Decree 2017-105 of 27 January 2017 on the holding of private-sector jobs by government employees and certain contract employees subject to private sector labour law after their government employment ends, on multiple jobholding and on the Civil Service Ethics Commission. This Decree sets the rules for holding a second job, creating or buying a business, continuing to work at a private-sector job for a business or a non-profit, multiple jobholding by full-time and part-time employees.

has passed or when the employee is assigned to a new position.

In addition to the general rules, there are specific rules on multiple jobholding in healthcare and research.

AFA found that the supervisory authorities and top management of state-funded healthcare institutions did not have policies to prevent conflicts of interest within these institutions, that the official procedures for regulating multiple jobholding by part-time hospital practitioners and by teaching hospital practitioners were too vaguely defined and that, on the whole, supervision of multiple jobholding was inadequate.

The Innovation and Research Act 99-587 of 12 July 1999 introduced a legal framework for developing cooperation between research personnel and businesses. The Act of 20 April 2016 modified this framework with three provisions concerning: businesses created by research personnel²⁵, scientific support for businesses that use research work produced by research personnel²⁶, participation in the governance of public limited companies²⁷.

In its audits, AFA found that procedures or monitoring were not always in place for the implementation of these provisions.

OUR RECOMMENDATIONS

In addition, AFA found a lack of information about the legislation governing multiple jobholding. It is critical for these entities (and their supervisory authorities, where applicable) to:

- give employees better information about the rules in force (Civil Service Code or Labour Code);
- develop an official policy internally dealing with the requirements for accepting multiple jobholding, with reference to compatibility with the applicant's position, time limits, etc.);
- establish internal procedures for monitoring and auditing applications for requests to hold multiple jobs.

Regulating "revolving doors"

When a public official leaves the civil service, the Civil Service Ethics Commission²⁸ is responsible for deciding whether a potential new job is compatible with the positions the official held over the three previous years. The Act of 20 April 2016 requires all officials²⁹ to submit their plans to this Commission.

²⁵ Articles L. 531-1 to L. 5317 of the Research Code.

²⁶ Articles L. 531-8 to L. 531-11 of the Research Code.

²⁷ Articles L. 531-12 to L. 53114 of the Research Code.

²⁸ Article 10 of the Civil Servant Ethics and Rights and Obligations Act 2016-483 of 20 April 2016.

²⁹ Decree 2017-105 of 27 January 2017 stipulates the organisation, operation and procedures of the Ethics Commission.

AFA found that few of the audited government entities had informed their employees about this legal requirement. Only one of the audited entities had analysed the potential risks arising from the official's previously-held positions before submitting the case to the Ethics Commission.

OUR RECOMMENDATIONS

AFA recommends:

- that government entities inform their employees about the requirements in this area and that they monitor the opinions of the Civil Service Ethics Commission;
- that businesses hiring former civil servants verify that the plan has been submitted to the Civil Service Ethics Commission, ensure that any reservations expressed by the Commission are actually taken into account, analyse the potential ethical risks with regard to the new employee's former duties and the job offered by the new employer, and establish a plan of action for these risks.

Compliance officer

Civil service compliance officers introduced in 2018³⁰

Under the Act of 20 April 2016³¹, the general civil service regulations ensure that every civil servant has the right to "consult a compliance officer, who is responsible for providing helpful advice for compliance with ethical obligations and principles." The Decree of 10 April 2017 specifies the procedure for appointing a compliance officer³², whose function may be performed by a committee.

OUR RECOMMENDATIONS

AFA encourages dissemination of clear and instructive information about these new officers so that the greatest number of civil servants can learn about the functions of the compliance officer and the whistleblower contact. This information must be easily accessible.

AFA reviewed the ministerial appointment orders, which showed that most of the ministries' compliance officers were appointed in 2018:

- as of 31 December 2018, 15 of the 17 ministries had published an order appointing a compliance officer. Most of them were appointed before 1 July 2018;

³⁰ Article 28 bis of the Civil Servants' Rights and Obligations Act of 13 July 1983.

³¹ Article 11 of the Civil Servant Ethics and Rights and Obligations Act 2016-483 of 20 April 2016.

³² Article 3 of Decree 2017-519 of 10 April 2017 on Civil Service Compliance Officers.

- nine of the 15 ministries opted for a committee to perform the compliance officer function;
- in 10 of the 15 ministries, the compliance officer was also appointed to be the whistleblower contact, as defined in Article 8 of the Act of 9 December 2016 and the related implementing decree³³).

AFA reviewed the websites of the department management centres and made the following observations about local civil service³⁴:

- 78 (or 80%) of the 97 management centres in existence had appointed a compliance officer³⁵ ;
- in many cases, groups of 2 to 5 management centres opted to pool this function;
- some 40% of the management centres reported that they chose to set up a compliance committee;
- 41 (or 52%) of the 78 compliance officers appointed will also act as the whistleblower contact, as defined in Article 8 of the Act of 9 December 2016;
- several management centres have devoted an entire, easily accessible, webpage to compliance with practical compliance guides and examples of typical questions and answers;
- the review of management centres' websites shows that access to clear and simple information about the compliance officers' function and the procedures for contacting them is not always available;
- the information published on some of the websites tends to show that ownership of the Act of 20 April 2016 and the Decree on compliance officers is uneven and sometimes subject to confusion. In its survey on the prevention of local government corruption, which was published in November 2018, AFA also found that the whistleblowing reporting system is still largely unfamiliar and that a compliance officer has not always been identified in local government entities, especially municipal governments.

In its preliminary audits, AFA found that the deadlines for appointing a compliance officer had not always been met. In two instances, this obligation still has not been met. Furthermore, the tasks assigned to the compliance officers vary greatly. Some of them act only on complaints submitted to them, whereas others play an active role in compliance training, cor-

ruption risk mapping or drafting a code of conduct, or centralising declarations of interests, including declarations filed by elected officials.

Some ideas about compliance officers' role in an anti-corruption system

AFA's work has led it to suggest some ideas for government entities to discuss regarding the role that compliance officers can play as part of an anti-corruption system.

Compliance officers' tasks include preventing corruption insofar as these tasks include preventing and managing conflicts of interest.

Article 8 of the Decree of 10 April 2017 stipulates: "When the compliance officer is informed of situations that are likely to be qualified as conflicts of interest, based on Article 6 ter (A) of the Act of 13 July 1983, he or she shall provide the persons concerned, as the case may be, with any advice that could end the conflicts³⁶.

In practical terms, when the compliance officer receives a report of a potential conflict of interest, either from the employee directly concerned, or from a third party, in the case of a whistleblowing report (Article 6 ter (A) of the Act of 13 July 1983), he or she must be able:

- to analyse the situation reported and determine whether it actually constitutes a conflict of interest that could lead to unlawful taking of interest or another form of corruption, such as favouritism. The compliance officer should conduct this analysis in collaboration with the government employee who reported on his or her own situation;
- if the answer is yes:
 - to advise the government employee making the report about his or her own situation on the attitude to take in order avoid committing an offence³⁷ ;
 - or to talk with the hierarchical superior of the employee concerned by a whistleblowing report to see if the superior is aware of the conflict of interest and to define ways of ending it; it is the superior's responsibility to decide whether disciplinary measures should be considered.

It is also the compliance officer's task to intervene in the implementation of a system for preventing and detecting corruption within the government entity.

The compliance officers' contributions to the following aspects of an anti-corruption system can be precious:

³³ Decree 2017-564 of 19 April 2017 on reception procedures for whistleblower reports in government and business entities, or in central government departments, which came into force on 1 January 2018. A circular issued by the Directorate General for Administration and the Civil Service (DGAFP) on 19 July 2018 specifies the scope of the Decree and the civil service whistleblowing reporting procedure, along with the guarantees and protections provided to civil servants.

³⁴ See Article 4 of the Decree of 10 April 2017.

³⁵ Including 95 departments in metropolitan France (excluding Paris) and 5 overseas departments; French Polynesia also opted to make the appointment of a compliance officer mandatory in the local civil service.

³⁶ Article 25 bis of the Act of 13 July 1983: "Civil servants shall ensure that conflict of interest situations in which they find themselves or could find themselves are immediately ended or prevented [...]".

³⁷ Employees have several options, as indicated in Article 25 bis of the Act of 13 July 1983: abstention, recusal, etc.

- **risk mapping:** compliance officers can contribute to the identification and documentation of ethical risks as part of the risk mapping required by the Act of 9 December 2016.
- drafting a **Code of Conduct:** the compliance officer's contributions seem to be very relevant for such matters as defining the notion of conflict of interest, describing the action to be taken in such situations, highlighting the compliance officer's role or drafting an entity's policy on "gifts and invitations". The coordination of the anti-corruption Code of Conduct and the institution's Code of Ethics (if it has one) can be facilitated by involving the compliance officer.
- the **internal whistleblowing system:** either because the compliance officer is also the whistleblowing contact, or because of the role the compliance officer plays in handling conflict of interest reports.
- **training:** compliance officer's function is to participate in designing anti-corruption training, based on the Code of Conduct, in which the compliance officer also has a hand.

Practices that can facilitate implementation of anti-corruption systems

Deploying anti-corruption systems

A local government, having signed the "Responsible Supplier and Procurement Relations" charter³⁸, took the opportunity offered by implementation³⁹ of this charter to undertake a corruption prevention strategy in procurement, as well as "for the organisation as a whole".

A state-funded inter-municipal cooperation institution (EPCI) has taken part in an experiment on auditing local government accounts and used this opportunity to deploy an anti-corruption system. Conducting these two developments simultaneously makes it possible to combine the benefits of the analysis of procedures, the risk mapping exercise and the implementation of internal control, particularly in accounting.

Risk mapping

A central government department's strategic risk mapping exercise identified the risk of "unlawful practices or ethical violations". As it deployed its anti-corruption system, the department considered a reassessment of the criticality of this risk so that the impact could be mitigated more effectively.

³⁸ The Responsible Supplier Relations Charter was drafted in 2010 by the Business Mediation Service and the National Procurement Council. The Charter's 10 commitments "help forge a balanced and lasting relationship between major businesses and their suppliers with knowledge and respect for the each party's respective rights and obligations". Some government entities have signed the Charter. Source: <http://www.rfar.fr>.

³⁹ Commitments 8 and 9 in the Charter concern fighting corruption and call for "procedures and processes to prevent conflicts of interest, active or passive bribery in the procurement process, including, bribes, extortion, fraud and rules on gifts and invitations".

A recognised public-interest foundation reused work done by its audit and internal control directorate to build its anti-corruption system. The foundation relied on the risk maps produced earlier and decided to improve its corruption risk management by:

- reviewing all of its processes in light of potential corruption offences;
- reusing scorecards from the other risk maps to manage the risks related to such offences more effectively;
- holding meetings with line personnel to raise their awareness of these risks.

Raising employee awareness

One of the weekly meetings of the management committee for the pooled functions of a municipality and its state-funded inter-municipal cooperation institution (EPCI) focused on corruption, and on favouritism and unlawful taking of interest in particular. The legal affairs department leads workshops for which it has prepared a selection of case studies that are relevant to the local government's powers.

A state-funded inter-municipal cooperation institution (EPCI) hosted a morning awareness-raising session about corruption risks for local elected officials. It also invited the general services managers of the member municipalities to take part and share their experiences with identifying high-risk situations.

Practices regarding gifts and invitations

In the course of an audit, AFA found that one local government had instituted a code of ethics for elected officials that included:

- mandatory disclosure of gifts and donations in excess of €150 received in the exercise of their office;
- and mandatory disclosure of any travel invitation, specifying the itinerary and financing details.

Managing conflicts of interest

Recusal requirement

In some of the audited local governments, when elected officials enter office they report all of the structures in which they hold responsibilities or they fill out a simplified declaration of interests. The offices of the presidents of the elected assemblies can use these reports and declarations to identify items on a given agenda that would create conflicts of interest for the elected officials. The president of the assembly and the elected official are then informed of which items require a recusal.

One of the audited local governments has also introduced declarations of no conflicts of interest for its employees. These declarations need to be signed occasionally, when public procurement ordering procedures are deemed to be critical.

Disclosure requirements

AFA's audits revealed some practices aimed at ensuring implementation of these disclosures:

- several of the audited entities reminded the persons concerned of the disclosure requirements;
- one of the audited local governments made its compliance officer responsible for issuing the reminders and centralising the declarations of the elected officials and managers who are subject to disclosure requirements.

Multiple jobholding

- Civil service law

One of the audited local governments addressed multiple jobholding by using its intranet to disseminate factsheets on holding multiple jobs. Its compliance officer was given responsibility for assessing the ethical compatibility of applications for authorisation to hold other jobs with the applicants' main positions.

In the case of starting or taking over a business, where the plan must be submitted to the Ethics Commission beforehand, AFA noted that it was the human resources department at an audited teaching hospital that made the submissions to the Commission. The Commission's decisions are tracked using a monitoring table that cross indexes the Commission's opinion with the employer's decision.

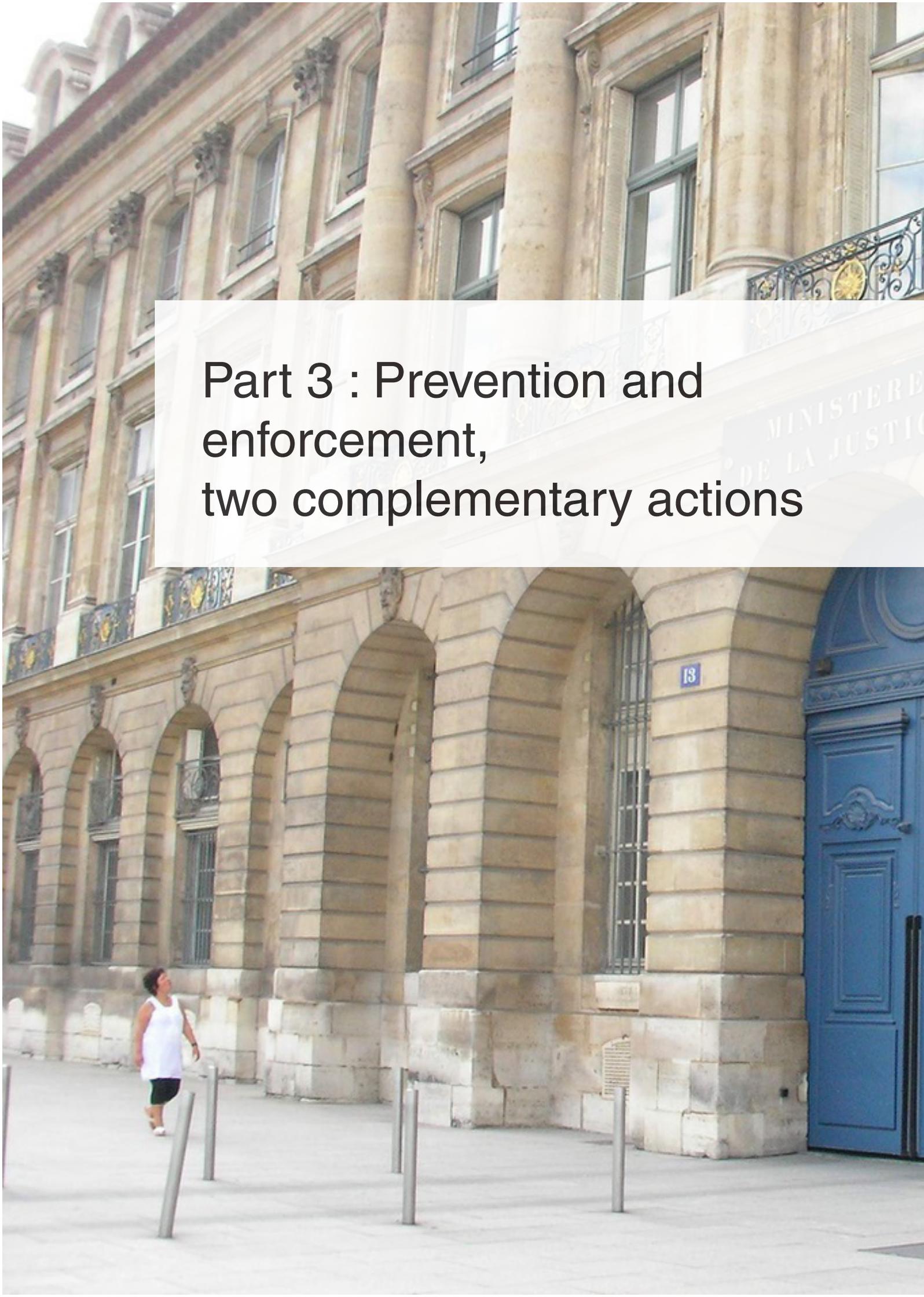
- Labour Code

The Labour Code calls for good faith execution of contracts of employment⁴⁰. This applies to employees wishing to hold another paid or unpaid job, or take over a business⁴¹. For example, an employee cannot hold another paid job that could be in competition with his or her employer or jeopardise the employer's interests. This applies to self-employment or a job performed for another employer.

AFA's audit of a local semi-public corporation where the employees are subject to the Labour Code showed that a system requires any employee wishing to hold an outside paid job to seek management's prior agreement and then report any other paid jobs. Management then ensures that there are no conflicts of interest on a case-by-case basis.

⁴⁰ Article L. 1222-1 of the Labour Code: "*The contract of employment shall be executed in good faith.*"

⁴¹ For this point see: Cour de cassation, civile, Chambre sociale, 15 January 2015, 12-35.072; Cour de cassation, civile, Chambre sociale, 28 January 2015, 13-18.354.



**Part 3 : Prevention and enforcement,
two complementary actions**



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PART 3 : PREVENTION AND ENFORCEMENT, TWO COMPLEMENTARY ACTIONS

France's strategy to fight corruption relies as much on enforcement, with administrative penalties for violating prevention requirements and criminal penalties for breaking the law, as it does on prevention and detection of corruption risks.

Under the circumstances, AFA's action and that of the judicial authorities are inextricably linked because they both support the same public policy and need to be closely coordinated.



Signing of a cooperation protocol with Caroline Tharot, public prosecutor of Bastia and Charles Duchaine, director of AFA, 13 September 2018

DEVELOPING A NATIONAL STRATEGY TO FIGHT CORRUPTION

The Transparency, Anti-Corruption and Economic Modernisation Act of 9 December 2016 has brought France's anti-corruption system up to the highest international standards. The implementing Decree of 14 March 2017 gives the French Anti-Corruption Agency the task of drafting "a multiannual national plan to fight bribery, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism."

AFA prepared a draft of the multiannual plan to fight corruption in 2018 and submitted it to its Strategic Committee and then to the Minister of Justice and the Minister for Government Action and Public Accounts, which have joint authority over the Agency under the terms of the Act of 9 December 2016.

The draft sets out an ambitious national policy aimed at coordinating the actions of all of the government entities concerned by the fight against corruption. The draft is also unique because its implementation involves business entities, so that the fight against corruption can become a means of boosting our country's economic performance.

The draft has been influenced by the recommendations of high-profile international organisations, such as the UNODC⁴², the OECD⁴³ and the Council of Europe⁴⁴, as well as the strategies adopted by other countries⁴⁵ and the scrutiny of non-governmental organisations. The draft proposes long-term action by France and promotion of France's commitment in the eyes of the international community. The proposed strategy is both ambitious and realistic. The priorities are:

- enhancing knowledge and detection of corruption;
- training and raising the awareness of government entities;
- supporting the deployment of anti-corruption systems in the public sector;
- promoting consideration of integrity in sports organisations and events;
- supporting businesses in their efforts to take ownership of the French anti-corruption standards and encouraging them to make anti-corruption compliance a means of boosting their competitiveness;
- enhancing anti-corruption penalties.

FORGING WORK RELATIONSHIPS WITH THE JUDICIAL AUTHORITIES

Defining the framework for cooperation with the judicial authorities

When Parliament created AFA, it stressed the complementary nature of the new Agency's work with regard to the actions of the judicial authorities. AFA worked to forge close links with public prosecutors who specialise in corruption cases in 2018 in order to make the complementary nature of their tasks operational. For this purpose, AFA made a proposal to the National Financial Public Prosecutor's Office, specialia-

⁴² UNODC, National Anti-Corruption Strategies, A Practical Guide for Development and Implementation, New York, 2016, https://www.unodc.org/documents/corruption/Publications/2015/National_Anti-Corruption_Strategies_-_A_Practical_Guide_for_Development_and_Implementation_E.pdf

⁴³ OECD Recommendation of the Council on Public Integrity, 2017, <http://www.oecd.org/gov/ethics/recommendation-public-integrity/>

⁴⁴ Council of Europe, Designing and Implementing Anti-Corruption Policies, Handbook, 1st edition, March 2013 <https://rm.coe.int/16806d8ad7>

⁴⁵ For example, the anti-corruption strategy implemented by the United Kingdom: UK anticorruption strategy 2017 to 2022, 2017, 72 pages: <https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022>

lised inter-regional jurisdictions and economic and financial units to define cooperation procedures.

Four public prosecutors' offices responded to the proposal in 2018. This led to agreements with the National Financial Public Prosecutor's Office, the Paris public prosecutor's office (which includes an inter-regional specialised jurisdiction), the Nanterre public prosecutor's office (which includes an economic and financial unit) and the Bastia public prosecutor's office (which also includes an economic and financial unit).

These agreements deal in particular with the procedures for implementing deferred prosecution agreements and court-ordered compliance remediation plans. The agreement with the National Financial Public Prosecutor's Office calls for a liaison group to be set up to discuss implementation of deferred prosecution agreements.

AFA's expertise assists the judicial authorities

In 2018, AFA responded to four requests from public prosecutors for technical opinions. The cases in question mainly involved the offences of favouritism and unlawful taking of interest.

The public prosecutors' requests to AFA enabled them to benefit from the Agency's technical expertise in legal matters related to public procurement or government decision-making. It is the task of the French Anti-Corruption Agency to help the competent authorities prevent and detect corruption. The Agency also centralises information that can be used to help prevent and detect corruption.

In this capacity, it has thorough knowledge of corruption case law.

Requests for technical opinions enable AFA to assist public prosecutors in their decision-making and help enhance the quality of judicial proceedings.

Reports submitted to public prosecutors' offices

In 2018, AFA sent five reports to the National Financial Public Prosecutor's Office, as well as the public prosecutor's offices in Paris, Marseille, Nanterre and Lille.

The cases reported were potential corruption cases involving bribery, misappropriation of public funds, favouritism, unlawful taking of interest, as well as forgery, breach of trust, fraudulent use of corporate property, accounting fraud, tax fraud, concealment of tax fraud, statutory auditors' failure to report criminal offences, complicity and concealment of these criminal offences.

JUDICIAL TREATMENT OF CORRUPTION CASES

The data presented below were published by the Ministry of Justice in 2018. They concern proceedings conducted and sentences passed in 2017.

Prosecution of corruption offences

In 2017, the public prosecutor's offices dealt with 816 proceedings involving 1,134 natural and legal persons charged with corruption offences, which represents an increase of 6.7% over 2016.

Of the persons implicated, 55.2% were not prosecuted because the investigation failed to prove that an offence had been committed. For the others, 94.9% were subject to criminal indictment, versus 88.9% for all cases.

The criminal indictments rarely resulted in alternatives to prosecution:

- 76.3% (or 338) of the persons under indictment were prosecuted: 185 via a preliminary examination by an investigating magistrate (54.7% of the persons prosecuted), 152 were remanded for trial before a criminal court (44.9%), including 21 appearing after entering a guilty plea.
- 23.7% were subject to alternative proceedings (105 persons), of which 44 received a cease and desist order (*rappel à la loi*).

In cases implicating legal entities, 80.8% were not prosecuted, primarily for lack of evidence.

In the 816 cases dealt with in 2017, the criminal indictments (including some multiple counts) were for:

- bribery: 381 cases processed (number of persons) and 141 prosecutions;
- unlawful taking of interest: 308 cases processed and 47 prosecutions;
- misappropriation of public funds: 267 cases processed and 78 prosecutions;
- influence peddling: 178 cases processed and 72 prosecutions.

Sentences in corruption cases

In 2017, the courts handed down 297 final sentences for corruption offences. This number ranged from 271 to 355 between 2008 and 2017. The sentences were given to 275 natural persons, since one person may be sentenced for several offences in the same ruling.

Bribery accounted for 41.8% of the sentences, misappropriation of public funds for 23.9%, unlawful taking of interest for 15.5%, favouritism for 11.1% and other offences for 7.7%.

In 66% of the cases, the culprit received a custodial or suspended prison sentence of 21.7 months on average. The courts also ordered 51 confiscations.

One legal entity was convicted of corruption charges in 2016 (latest available data), the number of such convictions varied from 1 to 7 between 2008 and 2016.

Some figures provide a clearer picture of the complexity of judicial treatment of corruption cases:

- the acquittal rate for corruption offences stood at 13.4% in 2017, compared to a rate of 6.9% for all cases;
- the appeal rate stood at 26.9% for corruption cases, compared to 6.9% for all cases;
- the average procedure, from the commission of the offence to the first court ruling, lasted 6 years, compared to 1.2 years for all cases. This was the longest time since 2008.

DEFERRED PROSECUTION AGREEMENTS (CJIP)

French deferred prosecution agreements were introduced under Act 2016-1691 of 9 December 2016. These agreements enable a legal entity subject to a preliminary investigation or a judicial investigation for bribery, influence peddling, tax fraud or concealment of tax fraud, along with any related offences, to put an end to prosecution by agreeing to pay a public interest fine and, as appropriate, successfully implementing compliance programme obligations for enhancing its corruption prevention and detection procedures, under AFA's oversight⁴⁶.

This solution is in the interests of all parties.

A balanced and efficient procedure

A balanced procedure for all parties

The deferred prosecution agreement procedure is **transparent**:

- the agreement is validated at a public hearing, which determines whether the agreement is justified and appropriate;
- AFA posts the decision to validate the agreement on its website so that everyone can see the offences, the damages found, and the way the fine is calculated.

This procedure also ensures:

- **the defendants' rights** by specifying management's right to retain counsel and by introducing the right to withdraw from an agreement up to ten days after the order validating it is issued;
- **the role of plaintiffs claiming damages** by requiring the public prosecutor to seek parties in-

- **jured by the offence** so that they can present testimony and obtain compensation for damages;
- **the public interest**, because if the agreement is unsuccessful and there are no new developments, the public prosecutor is required to initiate proceedings with no possibility of dropping the case or applying alternatives to prosecution. This legal requirement is a de facto obligation to conduct a thorough investigation before any negotiations in view of a deferred prosecution agreement can begin. This distinguishes French deferred prosecution agreements from the American version, where negotiations can start before the investigation is completed. Furthermore, the French law specifically stipulates that a deferred prosecution agreement can be offered as part of a judicial investigation, so that there is a clear separation between the investigation and the initiation of proceedings.
- **comprehensive and lawful proceedings, sentences that are proportionate** to the offences and the **compensation amounts and procedures** for the plaintiffs claiming damages. These matters are overseen by the judge.

An efficient procedure

For the public prosecutor, deferred prosecution agreements save time in the treatment of corruption and tax fraud cases because it restricts the use of appeals and accelerates the judgment of the case.

Deferred prosecution agreements also provide public prosecutors with the best assurance that the agreement will be executed. Payment of the public interest fine is one of the keys to a successful agreement. If the fine is not paid, the agreement can be terminated. Furthermore, the implementation of compliance programme obligations is audited by AFA, which provides yearly progress reports to the public prosecutor.

For the company implicated, the main advantage of a deferred prosecution agreement is that it does not constitute a conviction and does not lead to a criminal record. This means that the company can **continue to bid for public procurement contracts** in France and in other countries.

The speed with which the agreement is reached limits the impact on the company's reputation that would come with drawn out proceedings and media coverage at each stage of the investigation and trial. This mitigates the risk of damage to the company's image, industrial relations and business reputation.

In addition, it provides greater predictability about the penalty. The negotiable nature of a deferred prosecution agreement means that a company can weigh the interest of accepting this alternative to prosecution against the risks of a criminal trial. These risks include a fine of €5 million, which could be increased to double the gains made from the offence, as well

⁴⁶ Articles 41-1-2, 180-1 and R. 15-33-60-1 and following of the Code of Criminal Proceedings.

as additional penalties that could affect its business, such as a ban on bidding for public procurement contracts, closure or winding up of the company.

Predictability also helps reassure investors and financial markets, and makes it possible for the company to set aside a provision for the fine during the investigation.

Finally, if a company is implicated in proceedings in several countries, a deferred prosecution agreement allows a coordinated response from the authorities initiating the proceedings. As was recently confirmed by France's highest court, the double jeopardy principle, which means that the same person cannot be tried for the same crime more than once, does not apply when the proceedings are instigated before the courts of different countries.

The law itself mentions the possibility of deferred prosecution agreements being joined to proceedings instigated in other countries. This new instrument is a mechanism for comprehensive settlements that professionals have been seeking for years. It responds to their wish for *more 'concerted' regulation of transnational prosecutions*.

For plaintiffs claiming damages, a deferred prosecution agreement is above all the guarantee that compensation will actually be paid. The implicated entity has an incentive to reach an amicable arrangement for compensation before the agreement is signed, thus enabling a company to settle both the civil and criminal consequences of the offence at the same time.

If no amicable arrangement is reached, Article 41-1-2 of the Code of Criminal Proceedings requires the implicated entity to pay compensation in the first year after the deferred prosecution agreement is validated. If this deadline is not met, the validation order constitutes a security that can be used to collect the damages using the order for payment procedure. Failure to pay the sums owed to the plaintiff also constitutes grounds for terminating the agreement.

[An easily-implemented measure that has been applied very early](#)

The first agreements were reached within months of the measure's introduction

The **Courts of First Instance in Nanterre and Paris** validated the **first deferred prosecution agreements** in 2018. These agreements required the implicated entities to submit to compliance programme obligations audited by AFA.

The entities entering into three of the agreements chose to do so during an investigation conducted by an investigating magistrate and, in another case,

the agreement was the result of a criminal investigation conducted in France and the United States at the same time.

SPOTLIGHT ON: "The first coordinated deferred prosecution agreement between France and the United States"

Since 2017, five companies in very different business sectors have paid nearly €555 million in fines to the French Treasury and four companies agreed in 2018 to submit to compliance programme obligations lasting up to two years. One of the deferred prosecution agreements split the fine payment evenly between France and the United States under the terms of an arrangement between the French National Financial Prosecutor's Office and the US Department of Justice, which involved simultaneous deferred prosecution agreements in France and the United States. This arrangement shows the effectiveness of international cooperation between countries proposing similar legal arrangements and equivalent rules for calculating fines.

A measure that is easy to implement

Under the terms of the deferred prosecution agreement, the entity may undertake to establish a mandatory corporate compliance programme and agree to be audited by AFA for up to three years. The audits are aimed at ensuring that the entity implements the measures and **procedures spelled out in the deferred prosecution agreement**.

For the purposes of these audits, AFA may call on experts or qualified persons and authorities to assist with legal, financial, tax and accounting analyses. The entity is liable for the expenses incurred up to a cap set in the deferred prosecution agreement. To this end, the judges have a questionnaire and a list of documents to be submitted by the entity that AFA can use to assess its consulting expenses.

The first four deferred prosecution agreements audited by AFA seem to show that the entity's interests are best served by accepting a programme lasting at least two years so that AFA can ensure that the measures and procedures deployed are effective.

[Deferred prosecution agreements when there is a change of management](#)

New management may find it advantageous to back up the change in governance by entering into a deferred prosecution agreement in order to "leave the past behind". This was the case for two of the deferred prosecution agreements signed in 2018.

Even though natural persons cannot enter into a deferred prosecution agreement on their own behalf, they can do so on behalf of the entity they manage to enhance:

- the company's ethical image;
- good faith cooperation from management, which makes investigations more efficient;
- implementation of an internal inquiry;
- implementation of internal remedial measures, including deploying or strengthening a compliance program.



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