



**RÉPUBLIQUE
FRANÇAISE**

*Liberté
Égalité
Fraternité*

The issue of facilitation payments

October 2023

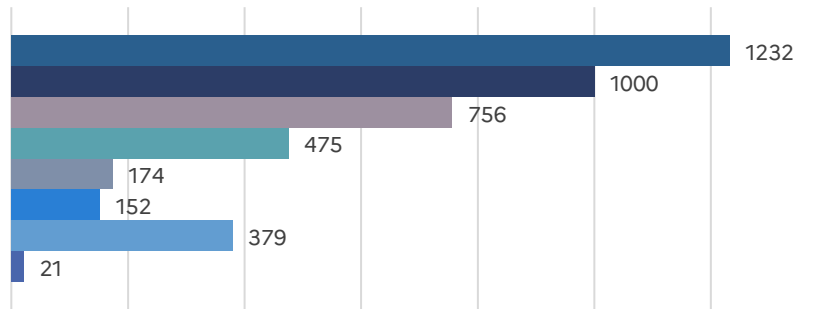
Disclaimer: this translation is provided as a courtesy and is not legally binding.



Anti-corruption issues for French companies

Recorded corruption offences

Number of offences recorded by the police and the gendarmerie between 2016 and 2021



Between 2016 and 2021 – Among the bribery offences recorded by the police and the gendarmerie, were identified:

- 16 offences of **bribery of foreign public officials**;
- 14 offences of **bribery by foreign public officials**.

Since 2017 – At June 30, 2023, **15 CJIP (Public Interest Judicial Agreement)** had been concluded for bribery or influence peddling.



Between 2016 and 2021 – **5 French companies were prosecuted by the DoJ or convicted by U.S. courts** for bribery of foreign public officials.

Corporate exposure to facilitation payments

2022 National survey of corporate anti-corruption programs

24 % of respondent companies reported they had been **confronted with at least one case of bribery or influence peddling.**

16 % of respondent companies stated they had been **confronted with one or more requests for facilitation payments in their activities abroad.** Amongst them:

- 84 % initiated an internal investigation,
- 64 % took disciplinary action,
- 60 % had been confronted with a case of bribery or influence peddling,
- 36 % filed a complaint or referred the case to prosecuting authorities.



However, facilitation payments are considered bribery under French law, which highlights the need to raise awareness about the risks associated with such payments.

Facilitation payments

Definition



There is **no official definition** of a facilitation payment.



A facilitation payment is a **sum of money paid by a natural person to a public official in order to obtain, facilitate or speed up a customary or necessary administrative routines**, which that person is entitled to expect.



A facilitation payment is a **form of bribe** and is prohibited in France.



Facilitation payments, regardless of their frequency or amount, in France or abroad, are liable to criminal prosecution.

Facilitation payments

An offence of bribery of national or foreign public officials (1/2)



Articles 432-11, 1°, 435-1 et 435-7 of the Criminal Code – Passive bribery of public officials:



- a person **holding public authority**, discharging a public service mission or holding a public electoral mandate,



- who unlawfully **requests or accepts**,



- **offers, promises, donations, gifts or advantages**, for oneself or others,



- **to carry out or abstain from carrying out an act related to his or her office, duty or mandate.**

Penalties: up to 10 years' imprisonment
+ fine of up to 1 million euros **or** twice the proceeds of the offence






In cases of organized crime: fine of up to 2 million euros **or** twice the proceeds of the offence

Facilitation payments

An offence of bribery of national or foreign public officials (2/2)



Articles 433-1, 1°, 435-3 et 435-9 of the Criminal Code – **Active bribery of public officials:**

-  • any person,
-  • who unlawfully offers,
-  • offers, promises, donations, gifts or advantages,
-  • to a person holding public authority, discharging a public service mission or holding a public electoral mandate, for oneself or others,
-  • to induce him or her to carry out or abstain from carrying out an act relating to his or her office, duty or mandate.

Penalties: up to 10 years' imprisonment
+ fine of up to 1 million euros **or** twice the proceeds of the offence

In cases of organized crime: fine of up to 2 million euros **or** twice the proceeds of the offence

Facilitation payments

A separate offence from private bribery



Passive private bribery:

(article 445-1 of the Criminal Code)



No public official (as defined in the Criminal Code)



To carry out or abstain from carrying out an act relating to the office, duty or mandate of the bribed person



Sanction : up to 5 years' imprisonment
+ fine of up to 500 000 euros **or** twice the proceeds of the offence

Facilitation payments:

(articles 433-1, 432-11 et 435-3 of the Criminal Code)



Public official involved (requests payment or accepts the payment proposal)



To carry out an act relating to the office, duty or mandate of the bribed person



Sanction : up to 10 years' imprisonment
+ fine of up to 1 million euros **or** twice the proceeds of the offence

Facilitation payment cannot be considered as private bribery
as they **imply the intervention of a public official.**

Facilitation payments



In international and national regulations


Facilitation payments are prohibited by:

 the 2003 [United Nations Convention against Corruption](#), known as Merida Convention (art. 15 and 16);

 the [United Kingdom Bribery Act 2010](#) (§1 to §6);

 the [World Bank Group Integrity Compliance Guidelines](#) (§4.6).

In the United States, they are an exemption to the FCPA:

 [Foreign Corrupt Practices Act](#) : facilitation payments are tolerated under two conditions: they are made to further routine governmental actions **and** they are authorized by the legislation of the place of transaction (§78dd-1 (b), §78dd-2 (b), §78dd-3 (b)).

Facilitation payments

A potentially high cost for the organisation



Facilitation payments

What to do? (1/3)

ESTIMATE



- Prepare for your trip: **understand local laws and regulations governing facilitation payments** (authorizations, permits, etc.);
- Include **facilitation payments as a bribery scenario in corruption risk mapping**.

PREVENT



- **Prefer official online procedures;**
- **Prohibit facilitation payments;**
- **Detail in the anti-corruption code of conduct and/or a specific procedure** the best practices to be adopted and behaviours to be avoided in the event of solicitation;
- Implement **training modules** on facilitation payments for employees most exposed to this risk;
- **Centralize bank account management** and subject the opening of project accounts to risk analysis;
- **Avoid cash payments:** use electronic transfers or banks cards instead;
- **In particular, avoid the use of “slush funds”** which can be used to pay all types of solicitations;
- **Find out whether other companies face similar requests for facilitation payments and try to re-group** (to have more “weight” to collectively refuse these practices).

Facilitation payments

What to do? (2/3)

REACT

- **Comply with the country's official administrative procedures**, even if they seem excessive;
- **Do not be alone** with the third party (the presence of another person will corroborate your testimony);
- **Note the day, time, purpose of the request and the identity of the person making the request for payment**, when possible;
- **Refuse to pay**, stating that this is prohibited by French and international law;
- **If the company has an anti-corruption code of conduct, present or communicate it;**
- To dissuade the person requesting the facilitation payment:
 - **ask to see the rule or formality that justifies the requested payment;**
 - **ask to speak to the superior** of the person requesting payment;
 - **ask whether a receipt will be issued** before any payment is made;
- **Contact your manager and/or compliance officer** to ask what action to take in the light of the situation ("formalize" the request for payment), using the internal whistleblowing system if necessary;
- **Notify the relevant embassy and its economic services** in writing, so as to leave a record.



Facilitation payments

What to do? (3/3)

DETECT



- If the payment could not be avoided, record it in the company's accounts, clearly identifying it;
- Record all solicitations, including those for which no facilitation payment has been made;
- Implement **controls** to identify, trace and monitor any facilitation payments.



**RÉPUBLIQUE
FRANÇAISE**

*Liberté
Égalité
Fraternité*



Contact:

Mailing address: Agence française anticorruption, 23 avenue d'Italie, 75013 Paris

E-mail: afa@afa.gouv.fr