

LEGAL FINANCIAL SECURITY HEAD OFFICE | GROUP DISPUTE RESOLUTION

SAPIN II LAW – BASICS

THE FRENCH ANTI-CORRUPTION AGENCY

LEGAL

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BNP PARIBAS

The bank
for a changing
world

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THE FRENCH ANTI-CORRUPTION AGENCY IN A NUTSHELL

At the heart of the Sapin II Law' anti-corruption rules lies a new authority: *l'Agence Française Anticorruption (AFA)*.

The AFA is a national agency, tasked with helping the French authorities and companies -in both public and private sectors- to detect and prevent bribery, corruption and influence peddling, as well as misappropriation of public funds, collusion, embezzlement and favouritism.

The AFA changes the approach to corruption enforcement in France. The AFA took over the duties of the previous *Service Central de la Prévention de la Corruption*, which had no investigative power and lacked the authority to impose penalties.

The AFA is affiliated with the Ministries of Justice and Budget, and is responsible for:

1 Monitoring

The implementation of the anti-corruption compliance program, and controlling its effectiveness and adequacy, with powers to investigate and levy sanctions.

2 Ensuring

At the Prime Minister's request, that companies under foreign investigations comply with the French Blocking Statute requirements.

3 Centralising and communicating information

Related to the prevention of corruption.

4 Issuing recommendations

To help companies prevent corruption. The AFA will also publish an annual report on its activities.

5 Informing

The public prosecutor of facts likely to constitute a crime or an offence.



GOOD TO KNOW

The AFA is chaired by a magistrate outside the judicial hierarchy, appointed by the French *Président de la République*, for a non renewable period of 6 years. Charles Duchaine has been appointed as the first *Directeur* of the AFA, in 2017.

The AFA is composed of two main committees: a Sanctions Committee and a Strategy Committee.

The AFA's controls started in October 2017. It aims to conduct approximately 100 controls a year (50 in the public sector, 50 in the private sector).

A questionnaire, available on the AFA's website, specifies the information and documents which may be required in case of control.

THE AFA'S POWERS

One of the objectives of the Sapin II Law is to make the implementation of an anti-corruption compliance program legally binding for large French companies (*), and for groups of companies. The AFA is responsible for monitoring the implementation of the anti-corruption compliance program, and controlling its effectiveness and adequacy, with powers to investigate and levy sanctions.

Broad investigative authority and enforcement powers

The AFA may:

- ❑ Carry-out on-site controls.
- ❑ Request any professional documents, relevant information, and make a copy of documents.
- ❑ Conduct interviews with any person whose cooperation seems necessary.
- ❑ Appoint experts.

The agents of the AFA are bound by professional secrecy. Any interference is liable to a 30.000 EUR fine.

1

- ❑ The Prime Minister, or any Minister,
- ❑ *Haute Autorité pour la Transparence de la Vie Publique*,
- ❑ Certain associations,

May request the AFA to control companies.

The AFA may also decide to investigate on its own.

2

The AFA controls the **effectiveness and the adequacy of the compliance program**, and issues a report regarding the quality of the anti-corruption compliance program.

3

If the company's compliance program is not implemented, adequate or effective, the *Directeur* of the AFA may:

- ❑ Address caution notices to Top Management.
- ❑ Refer to the Sanctions Committee of the AFA, in order to:

> **Compel** the company to adapt the anti-corruption compliance program

> **Order** financial penalties:
 EUR 200.000 (individuals),
 EUR 1 million (companies)
 The decision will be published.

Scope of the controls: any entity of the Group (even those located abroad)

TRACFIN (French FIU) may also provide the AFA with information necessary to its mission.

(*) All French based companies which employ at least 500 employees, or are part of a group of companies employing at least 500 employees, with a parent company incorporated in France, and with a gross annual revenue or consolidated revenues of over EUR100 million.

THE AFA'S GUIDELINES PROVIDE COMPANIES WITH THE LANGUAGE TO BE USED IN THEIR ANTI-CORRUPTION COMPLIANCE PROGRAM

On 22 December 2017, the AFA published its first guidelines, after a three-month public consultation.

1 The AFA published 8 very-demanding recommendations, going beyond the Sapin II Law requirements

- All measures of the anti-corruption compliance program are addressed (except the disciplinary regime): Code of conduct to fight corruption, internal alert set-up, risk-mapping, due diligence, training, accounting controls, internal control set-up.
- The Top-level commitment is also included in the guidelines, while not directly required by the Law.

2 The guidelines aim at helping companies to

- Prevent bribery, corruption, influence peddling, extortion by public officials, misappropriation of public funds, collusion, embezzlement and favouritism.
- Comply with their obligations to implement the anti-corruption compliance program.
- Shield from penalties imposed by foreign authorities.

3 Scope

The guidelines apply to large French companies established in France and meeting the two cumulative criteria (see page 4 *), and to groups of companies, regardless of where they do business.

4 One size does not fit all

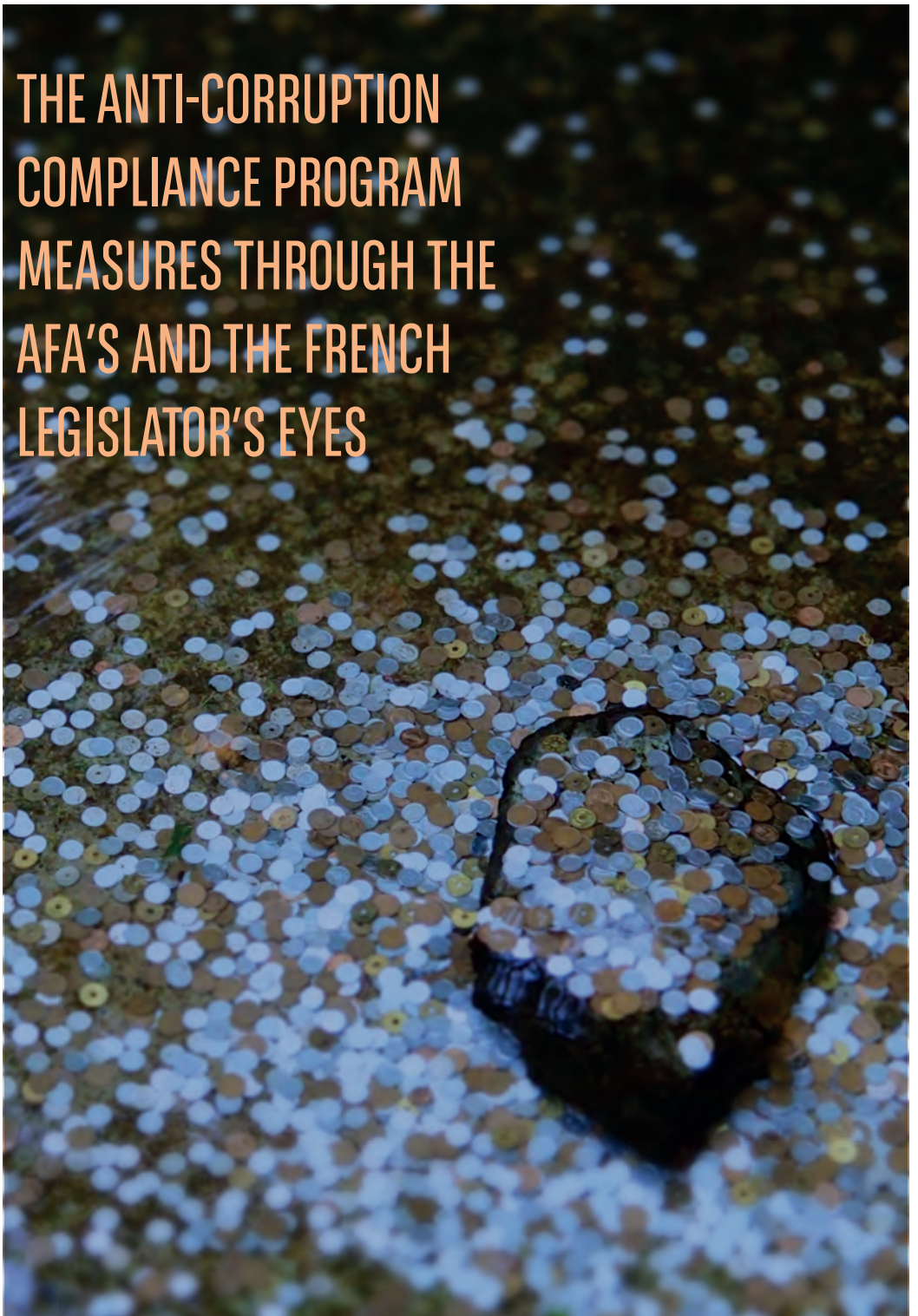
Implementation of the AFA guidelines must be adjusted to the company risks, business model and other specificities.

5 Best international anti-corruption standards

In many ways, the AFA's guidelines are inspired by the UK Bribery Act and the U.S Foreign Corrupt Practices Act's best practices : Top-level commitment, risk assessment, one size does not fit all, due diligence, controls and improvement, training and communication.

The AFA guidelines are not legally binding.

THE ANTI-CORRUPTION
COMPLIANCE PROGRAM
MEASURES THROUGH THE
AFA'S AND THE FRENCH
LEGISLATOR'S EYES



1 TOP LEVEL COMMITMENT

The Sapin II Law requires Top Management to implement the anti-corruption compliance program.

AFA's Guidelines

The AFA makes the Top-level commitment a key component of the anti-corruption compliance program by issuing a specific recommendation on the "Top management's commitment to prevent and detect corruption".

The Top-level commitment is defined as the foundation of the company anti-corruption set-up

The Top-level commitment reflects the Top Management's:

- Willingness to establish a culture of integrity, transparency and compliance.
- Determination to ensure and promote business behaviour and ethics that meet strict integrity rules, regardless of resources or of the impact on the business.

The Top-level commitment is based on four pillars

- A zero-tolerance policy for bribery, corruption, influence peddling.
- Anti-corruption measures that are integrated in policies and procedures, in particular in Human Resources policies, whistleblowing mechanisms, and high-risk processes identified by the risk mapping.
- Management of the anti-corruption compliance program at the Top level, in order to reflect the Top Management's determination to fight against corruption, and its active approach.
- A wide communication, internally and externally.

Form and dissemination

By approving the anti-corruption compliance program and the Code of conduct, the Top Management shows its determination to commit the company in preventing corruption.

JEAN-LAURENT BONNAFÉ 'S ANTI-BRIBERY CORRUPTION STATEMENT (JANUARY 2018)

"Our Group and its management have zero tolerance for corruption and influence peddling, whatever form it may take".

"Whatever the commercial interest at stake, we will not tolerate corruption under any circumstances within our Group".

WHAT IS THE CONCRETE EXPRESSION OF THE TOP MANAGEMENT'S ZERO TOLERANCE POLICY, ACCORDING TO THE AFA?

- 1 Prevention of corruption is a priority.
- 1 Adequate resources are allocated to the prevention of corruption.
- 1 Any act of corruption is firmly refused. A disciplinary regime and enforcement of sanctions are concrete expressions of this commitment.
- 1 Wide communication of the commitment to fight corruption.
- 1 Top Management should ensure that the anti-corruption set-up is well organised, effective and updated.

2 CODE OF CONDUCT TO FIGHT CORRUPTION

According to the Sapin II Law, the Code of conduct to fight corruption should define and illustrate prohibited conducts. The Code of conduct is incorporated into the company rules and regulations.

AFA's Guidelines

The Code of conduct to fight corruption embodies the Top Management's decision to engage the company in the prevention of corruption.

Content

Clear, unambiguous and unconditional, the Code of conduct to fight corruption consists of:

- ❑ Prohibitions and illustrations: the Code of conduct describes the situations to be avoided and prohibited conduct, supported by relevant illustrations.
- ❑ Prohibited practices: gifts and entertainments, invitations, facilitation payments, conflicts of interest, sponsorship, patronage, and where appropriate, lobbying*.

In addition, the Code of conduct to fight corruption refers to:

- ❑ Disciplinary measures.
- ❑ The internal alert set-up to report any breach of the Code of conduct.

Scope

The Code of conduct to fight corruption is widely applied:

- ❑ Wherever the company does business, in France and abroad.
- ❑ To all employees.
- ❑ As an internal and external communication tool: in particular in dealing with clients, suppliers, or any counterparty.

Update

The Code of conduct to fight corruption should be periodically updated, especially after any significant update of the risk mapping.

(*) Please refer to the relevant Compliance policies.

BNP PARIBAS GROUP CODE OF CONDUCT

Since January 2018, the Code of conduct to fight corruption has been incorporated into the BNP Paribas Group Code of conduct.

The BNP Paribas Group Code of conduct is available in the four official languages of BNP Paribas : French, Dutch, English, Italian.

THE CODE TO FIGHT CORRUPTION CONSISTS OF:

- 1 Basic anti-corruption principles.
- 1 Prohibited behaviours that are likely to be construed as bribery or influence peddling: gifts and invitations, facilitation and other cash payments, data confidentiality, donations to non-profit organisations and financing of political parties, lobbying and sponsorship.
- 1 Illustrations of the prohibited behaviours.

3 INTERNAL ALERT SET-UP

The Sapin II Law introduces two alerts mechanisms:

- ❑ *Large French companies (see page 4*) must implement an internal set-up to report any breach of the Code of conduct to fight corruption.*
- ❑ *French companies employing at least 50 employees must implement internal procedures to protect whistleblowers: whether employees, external or occasional staff.*

AFA's Guidelines

The internal alert set-up is the corollary of the Code of conduct to fight corruption, as it enables employees to report any breach to the Code of conduct

Procedure

Companies should adopt an internal policy, specifying :

- ❑ The role of the line manager, who will offer guidance to the whistleblower, except if he/she's involved in the corruption act.
- ❑ The referent in charge of dealing with alerts.
- ❑ The communication process: alerting, notifying the receipt of the alert and terminating the internal investigation.

The AFA specifies that the two alert mechanisms may be covered in one technical reporting set-up, as long as corruption alerts are handled specifically.

Confidentiality

Companies should implement policies offering strict confidentiality to whistleblowers, person(s) referred to in the disclosure.

Facts reported are also confidential.



ANONYMOUS ALERTS

While the law does not encourage anonymous alerts, the AFA's guidelines refer to anonymous reports, which should be addressed by internal company policies.

ALERTS TO THE AFA

According to the AFA's guidelines, alerts related to the breach of the Code of conduct to fight corruption may be submitted directly to the AFA, which will in turn refer the case to the French prosecutor.



BNP PARIBAS GROUP WHISTLEBLOWING PROCEDURE

**Applicable to all employees
of BNP Paribas.**

**No retaliation for
employees acting in good
faith.**

4 RISK-MAPPING

As part of the anti-corruption compliance program, companies should design a risk-mapping, in order to identify, analyse, and prioritise risks of exposure to external corruption requests, in particular by integrating its activity and country risks. The risk-mapping should be regularly updated.

AFA's Guidelines

Risk-mapping is crucial for monitoring corruption risks. It is the foundation of the risk management system.

Objectives

Risk-mapping aims to ensure that the anti-corruption compliance program is effective and appropriate, and that Top Management and Compliance are provided with a clear picture of the measures designed to prevent and detect corruption and influence peddling, and are informed of corruption risks.

Features

Risk-mapping needs to be:

- ▣ Comprehensive: covering the companies' processes from end-to-end.
- ▣ Tailored to companies specific risks, depending on their activities, products, processes stakeholders, geographical areas.
- ▣ Formal: written, structured, with summarised documentation.
- ▣ Adjustable: needs to periodically re-assess risks.

TOP MANAGEMENT

According to AFA's guidelines:

▮ The risk-mapping should be presented to the Top Management, who validates it and supports the risk management strategy.

▮ Top Management ensures that resources allocated to fight corruption are proportionate to the risks.

5 DUE DILIGENCE

Companies should conduct due diligence on clients, first-line suppliers and intermediaries.

AFA's Guidelines

If an organisation is not vigilant enough about the integrity of third parties with which it deals, it may find itself more or less directly involved in corruption.

Scope

The AFA extends widely the Sapin II legal requirement, as companies are advised to implement due diligence on any third parties with whom the company has a relationship or is beginning a relationship, and in priority those identified in the risk-mapping as presenting a risk of corruption.

Design

The due diligence should be developed in light of the risk-mapping.

The AFA emphasises that anti-corruption due diligence is different from that of AML.



Tick the due diligence box on the Third party!

- ❑ Country risk (country of residence, business, registration).
- ❑ Sector risk.
- ❑ Third party :
 - identification, shareholders and beneficial owners
 - expertise
 - integrity and reputation
 - anti-corruption compliance system
 - cooperation
 - nature and type of relationships
 - compensation methods
- ❑ Involvement of other parties.
- ❑ Financial aspects at stake.



Red flags

- ❑ Politically Exposed Persons.
- ❑ Sanctions Targets.
- ❑ Intermediaries.
- ❑ Payment amount (consistency, adequacy), origin, channel, accounts location, forms (cash, crossboarders, etc.).
- ❑ Country Risk.
- ❑ Sector Risk.

6 TRAINING

The Sapin II Law requires companies to offer anti-corruption trainings for employees and executives particularly exposed to the risks of corruption and influence peddling.

AFA's Guidelines

Training is the vector for the culture of integrity within the organisation.

Audience

The AFA recommends raising awareness of all employees and training them to prevent corruption - including board members and directors.

Content

Trainings vary depending on the audience. They should be adapted to the type of corruption risk they are exposed to, the duties they perform and the geographical areas of business.

7 ACCOUNTING CONTROLS

Companies must develop accounting controls designed to ensure that accounts, registers and books are not used to conceal corruption or influence peddling.

Controls may be carried out by internal or external auditors.

8 INTERNAL CONTROL MECHANISM

According to the Sapin II Law, companies must assess the effectiveness and adequacy of the anti-corruption compliance program.

4 objectives

- ❑ Verifying the implementation of measures to prevent corruption, and testing their effectiveness (KPI).
- ❑ Identifying and understanding deficiencies in how procedures are implemented.
- ❑ Defining recommendations or corrective measures, where needed.
- ❑ Detecting corruption (if any).

3 levels of control

- ❑ Operational.
- ❑ Compliance.
- ❑ Internal audit.

MOST EXPOSED EMPLOYEES TRAINING

Topics:

- 1 Top level Management commitment, and the Code of conduct to fight corruption.
- 1 Corruption and bribery.
- 1 Obligations and penalties.
- 1 Roles and responsibilities.
- 1 Anti-corruption compliance framework.

THE AFA'S CONTROLS

The AFA'S Charter describes the Agency's control process, which takes place during a 6 month period approximately.

- 1 **Prior interview with AFA**
- 2 **Documentary inspection** (may be set aside where needed)
- 3 **On site control**, announced prior to the control, by a letter sent to Top Management
- 4 AFA provides the company with a **draft of the control report**
- 5 **The company reviews draft of the control report**
- 6 **Final version of the control report**

Persons authorised to conduct controls:

Agents, experts, qualified persons or other authorities contributing to the AFA's missions are subject to professional secrecy obligations.

They must have/present their cards.

Controls are conducted in business premises, during business hours.

The AFA'S agents do not have judiciary police powers.

However, the AFA's agents :

- 1 are empowered with the right to ask for any relevant information or document

1 may conduct interviews with any person whose cooperation seems necessary (including Top Management).

During the on-site control, the AFA's agents are entitled to conduct:

- 1 Verifications.
- 1 Interviews (no minutes sent by the AFA).

They may ask for any information, document, and can make copies of these items.

According to the AFA, professional secrecy (including banking secrecy) cannot be opposed to the AFA.

Any interference is subject to a 30.000 EUR fine.

While the AFA may ask for any information, they cannot look for themselves.

PREVENTION OF CORRUPTION BY CHARLES DUCHAINE

The *Directeur* of the AFA provided 10 keys to prevent corruption risks: (extracts)

1

Adopt an anti-corruption approach

Any companies willing to efficiently prevent corruption have to set-up an internal anti-corruption framework.

2

Raise awareness of the Top Management on corruption prevention

The effectiveness of the anti-corruption framework relies on the coherence between the actions carried out by the company and the Top Management statement.

3

Risk mapping

Raise the key questions.

4

Adopt an exhaustive approach

Risk-mapping should be exhaustive. Corruption often raises in non-controlled areas. By way of illustration, anti-corruption cannot be limited to the company's internal perimeter and set aside relationships with third-parties.

5

Focus on anti-corruption stakes, and not only on financial interests at stake

Designed to ensure that the company's books and records are not used to conceal acts of bribery.

6 Design a mandatory Code of conduct

The Code is not only a sum of good practices. The Code of conduct must enable employees to differentiate prohibited conducts and adequate actions.

7 Implement internal control

Internal control set-up should be regularly examined by the Top Management to adapt the anti-corruption set-up to experienced risks.

8 Implement an internal alert set-up and protect whistleblowers

9 Training employees and executives

10 Contact the AFA

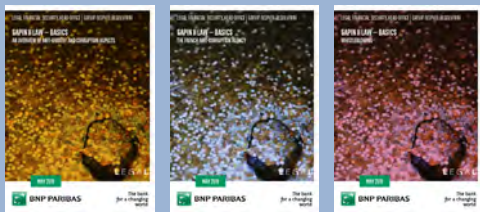
Should you need any help for an anti-corruption compliance program. A self-assessment questionnaire is available on the AFA's website.

PLEASE READ

- 1 Jean-Laurent Bonnafé's anti-corruption Statement (January 2018).
- 1 The "Code of conduct: fighting corruption", incorporated into the Group Code of conduct (January 2018).
- 1 Compliance policies.

All these documents are available on the BNP Paribas Echonet or website.

- 1 Sapin II Basics, available on GDR > LFS > LEGAL portal.



- 1 The AFA Guidelines and other useful documents are available on the AFA website.

ANY QUESTIONS?

Happy to help, please contact us.

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