

The French Anticorruption Agency released its Inspection Charter

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The new French Anticorruption Agency (the “**AFA**”) has the power, *inter alia*, to inspect companies in order to assess the compliance of their anticorruption programmes with the provisions of the Sapin II Law from 9th December 2016. In this respect, the AFA published in October a Charter specifying the rights and duties of both the Agency and the companies being controlled. This Charter is clearly inspired by existing texts published by other authorities in the banking, financial and antitrust sectors.

In view of the powers granted to the AFA, companies and their directors should prepare for inspections in order to avoid the sanctions that can be imposed on both of them.

Background

Scope

The provisions related to the implementation of anticorruption programmes are applicable to any company (i) having at least 500 employees, or belonging to any group whose parent company's headquarters is located in France and which has at least 500 employees, and (ii) whose annual turnover is more than €100 million.

Implementation of the anticorruption programme

Since mid-2017, these companies are under a duty to implement an [anticorruption programme composed of 8 measures and procedures](#).

Sanctions

Where a company fails to implement or to improve its anticorruption programme, the Sanctions committee of the AFA may either issue a warning or impose sanctions. These include:

- A fine on the company's executives of up to EUR 200.000.
- A fine on the company of up to EUR 1 million.

Any decision issued by the AFA can also be made public.

Inspections of the AFA

The AFA is notably in charge of monitoring the implementation by companies of an anticorruption programme including the above mentioned 8 measures. To do so, the AFA can conduct both off-site and on-site inspections.

An on-site inspection is usually preceded by an off-site inspection. That being said, the AFA may decide to directly launch an on-site inspection.

In both cases, the AFA sends a letter to the company's executives announcing the inspection, its scope and expected duration. To facilitate the inspection, the AFA asks the company's executives to designate a representative in order to respond to mails and procedural requests sent by the AFA.

Rights and duties of the parties

Rights and duties of the AFA inspectors

On the one hand, the AFA inspectors can obtain communication of all information and documents they deem necessary for the inspection.

The AFA inspectors have the right to hear any person they deem necessary for the inspection, i.e. executives and employees, as well as any person in business relation with the controlled company, i.e. service providers, clients, intermediaries, etc. In this respect, a preliminary list of persons whose hearing is requested is attached to the letter sent by the AFA.

These hearings cannot be listened to nor recorded by third parties or by the persons heard and must take place in a dedicated room on the company's premises, ensuring confidentiality. In this frame, assistance by a lawyer is not set out by the AFA Charter which does not specify whether a transcript of the hearings will be drafted and signed by the person heard.

On the other hand, the AFA inspectors are bound by professional secrecy and by rules of conflicts of interests. In addition, the AFA inspectors must refrain from giving any advises or personal opinions and must comply with data protection rules when accessing to electronic devices and information system.

Rights and duties of the controlled company

The controlled company must communicate its organization chart to the chief inspector and, as generally speaking, all requested documents under an electronic format (USB drive or dedicated online platform). The transmission deadline depends on the amount of documents requested.

During an on-site inspection, the company's representative may be assisted by the person of his/her choice, e.g. a lawyer.

The controlled company cannot rely on professional secrecy to refuse complying with the above mentioned obligations. Indeed, any measure whose purpose is to obstruct the inspection may be punishable by a fine up to EUR 30.000.

How to prepare for inspections

To anticipate a control by the AFA, companies can already take the following steps:

- Make sure that their anticorruption programme is implemented (e.g., through an external audit) and that all the procedures set up in this respect are available electronically.
- Designate a company's representative in case of an inspection.
- Deliver training to their employees in case of on-site an inspection.

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