High Authority
for transparency
in public life

2020 Activity report

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for transparency
in public life

2020
Activity report

Foreword

Faced with the unprecedented crisis that the country has had to face, the High Authority has responded in appropriate fashion. A modified organisational structure, put in place with immediate effect to address health constraints, made it possible to ensure the continuity of the control and advisory functions for which it is responsible.

2020 brought its share of challenges, requiring a strong commitment from members of the High Authority college (board), rapporteurs and agents amid exceptional circumstances, and I would like to acknowledge their efforts here.

First and foremost, the High Authority has had to appropriate and fully commit itself to new responsibilities. The Act of 6 August 2019 on the transformation of civil service, which entered into force on 1 February 2020, has made the High Authority France's leading institution in respect of ethics for public servants and agents.

This large-scale structural reform is aimed at strengthening the oversight of the revolving-doors phenomenon between the public and private sectors – which is increasingly frequent over a career – and thus preventing any risk of ethics and criminality. The High Authority is now directly involved in checking individuals in the most sensitive and strategic jobs, for whom prior referral is mandatory. For other functions, the control of proposals for business creation or professional transition to the private sector is conducted internally within the government bodies in accordance with a principle of subsidiarity, whereby the hierarchical authorities – followed by the ethics officers in the event of serious doubt – now play a leading role in public integrity. In cases where the opinion of the ethics officer has not resolved doubts over the compatibility of the proposal, a referral may be made to the High Authority by the agent's hierarchical authority.

465 opinions were issued during these first ten months of the law's implementation, nearly half of which fell into the pre-appointment control category – a notable innovation for this mechanism. However, with nearly one third of opinions declaring inadmissibility or lack of jurisdiction, it is evident that this new legal framework has been gradually adopted by public bodies and agents, enabling the High Authority to be more active than ever before in its awareness, educational and advisory role. This proactive support has taken the form of the provision of training sessions and the publication of a second volume of the Ethics Guide, presenting both the new ethical control procedures and High Authority doctrine in terms of conflicts of interest.

In addition to the incorporation of these new roles, the unusual volume of political and electoral developments has led to the receipt of more than 17,000 declarations of assets and interests, and has prompted considerable action on the part of the High Authority. Despite the extension of official filing deadlines, the initial compliance rate of public officials subject to a declaration requirement has proven to be unsatisfactory, which required a lengthy follow-up and support process from the relevant departments. The declaration control activity was also very sustained, leading to the referral of ten cases to the courts following the detection of acts that could represent potential breaches of ethics.

The most recent declaration year results for interest representatives (lobbyists) showed a similar difficulty in declaring spontaneously within the legal deadlines, but also a genuine improvement in the quality of the declarations filed, with activity reports that better met the requirements of clarity and readability. This growing appropriation of the system, and the promising options that the directory enables in terms of transparency in the regulatory process, with more than 2,300 registered entities and 38,000 declared activities, must not overshadow the inherent legal limits of the system. The removal of the initiative criterion, the clarification of the definition of interest representation and the recording of actions that trigger a registration obligation for the legal entity seem to constitute significant advances in making the directory more efficient.

This sixth activity report also provides an opportunity to take stock of the High Authority's control and investigative resources. The latter, far from being fixed, has seen its scope regularly extended by the legislative body ever since its creation. Now enjoying full recognition in the French institutional sector, the granting of additional powers commensurate to the objectives it pursues, in terms of the right of communication to third parties and administrative sanctions in particular, should enable it to consolidate its work and make it more effective in preventing breaches of probity.

Once again this year, the High Authority has worked tirelessly to promote a culture of integrity at the heart of the public sphere and of society as a whole. It will always be available to the public authorities to assist them and will also not hesitate to question them, as its independence enables it to do, in order to improve existing mechanisms with a single objective: to strengthen public confidence in democratic institutions and their representatives.

Didier Migaud
Chairman, High Authority
for transparency in public life

Contents

Key figures for 2020

Control of declarations of assets and interests

17,113
Declarations of interests and assets received

53
External alerts received

1,178
Declarations of interests checked

1,279
Declarations of assets checked

Intermediate checking steps

780
Requests for additional information from declarants

81
Declarations of interests subject to in-depth review due to a risk of conflict of interest

Additional measures following the check

52.9%
Declarations that comply with the requirements for completeness, accuracy and fairness

21.9%
Requested corrective declarations

1
Assessment

24.6%
Reminders of declaration requirements

10
Files sent to the courts

Ethical advice and support for public managers

24 Opinions issued in respect of the ethics advisory role

6,086 Calls processed on the telephone hotline for public officials and approximately **2,450** emails received.

1,332 Calls processed on the telephone hotline for interest representatives

Compliance checks of public officials and managers

220 opinions issued

Pre-appointment check

72 opinions issued

Control of business creation or acquisition projects

190 opinions issued

Check of professional transitions in the private sector, agents and public officials included

Oversight of interest representation

2,183 Entities entered onto the directory of interest representatives as of 31 December 2020

12,909 Representations carried out during the 2019 declaration year (**8.29** on average per entity)

90.4% Final declaration rate (in December 2020 after reminder)

26 Checks of annual declarations of activities

51 Checks of non-registered persons launched

137 Entities recorded on the list of interest representatives who have not disclosed all or part of the information required by law (as at 31 December 2020)

32 Notifications of grievances for non-filing of declarations of activities

The college (board)'s activity

26
Meetings

2,457
Checks of declaration of assets and interests completed

267
Deliberations issued

Transparency

1,029
Declarations made public on **hatvp.fr** and at the prefecture

6,453
Declarations of assets and interests consulted on **hatvp.fr**

401
Interest representative files consulted on **hatvp.fr**

2,418,694
Page views on **hatvp.fr**

456,562
Unique visitors

Administrative and financial management

€7,294,355
Budget

59
Jobs
(as at 31 December 2020)

External representation and international relations

23
Initiatives in France for conferences and training

10
Foreign delegations hosted
(videoconferencing)

Highlights of 2020

22 January

Working seminar with the European Commission

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31 January

Appointment of Didier Migaud as President of the High Authority

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1 February

Entry into force of the Act of 6 August 2019 on the transformation of public services

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6 February

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Deadline for filing declarations of assets and interests and for submitting activity reports for interest representatives (lobbyists)

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27 September

Senate elections (Series 2)

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21 October

Publication of an international comparative study of lobbying frameworks

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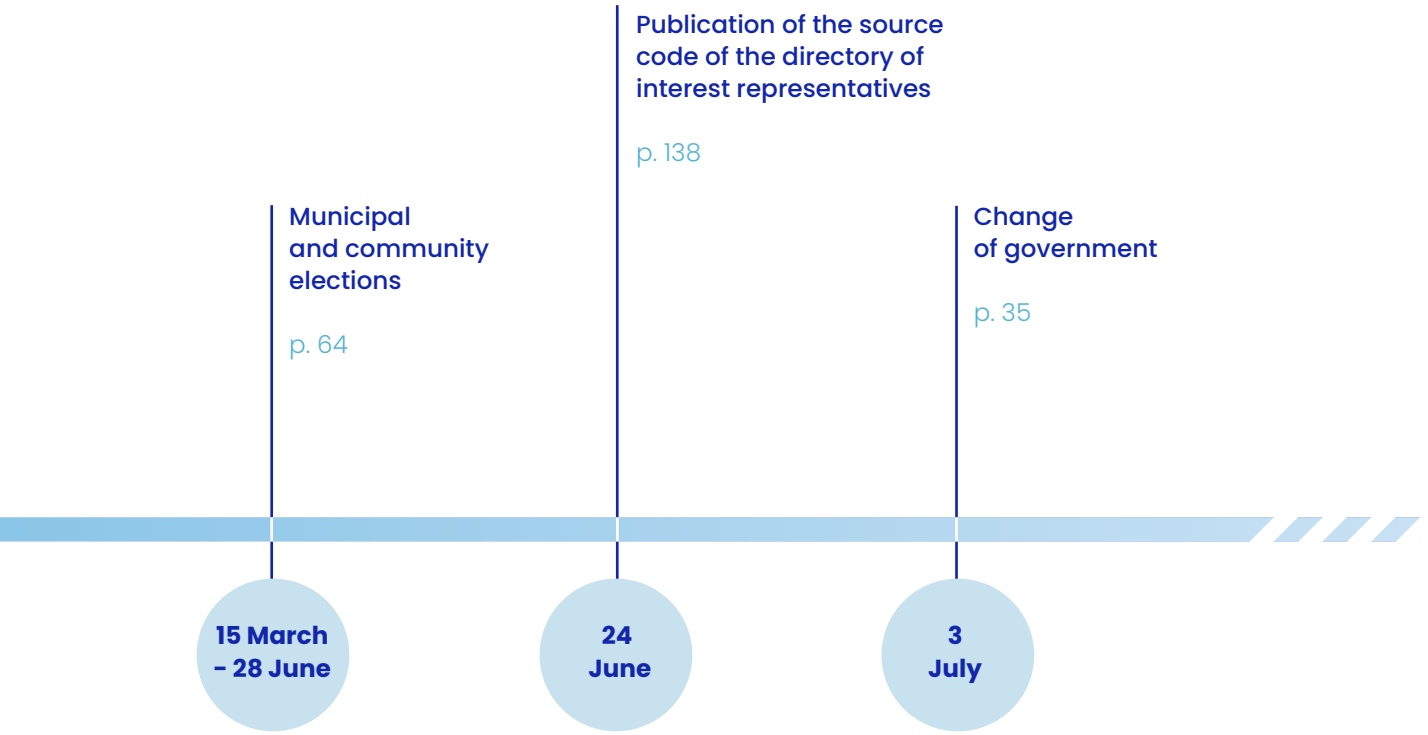
15 March - 28 June
Municipal and community elections
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24 June
Publication of the source code of the directory of interest representatives
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3 July
Change of government
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20 November
Publication of the 2019 report of declarations of activities by interest representatives
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24 November
Publication of the declarations of assets and interests of members of the Jean Castex Government
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1 February 2021
Publication of Volume II of the *Ethics Guide*
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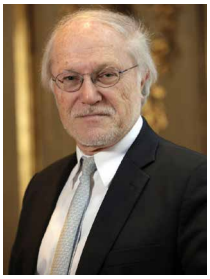
The College (board)

The Chairman

Didier Migaud was appointed President of the High Authority by decree of the President of the Republic of 29 January 2020, following a hearing by the law committees of each assembly, which overwhelmingly approved his appointment.

Didier Migaud was a member of parliament for the Isère department from 1988 to 2010, and successively held the positions of General Rapporteur for the Finance Committee (1997-2002), Quaestor (2002-2007) and Chairman of the Finance Committee (2007-2010). He is the co-author, with Alain Lambert, of the organic law on finance laws (LOLF), a new state budget constitution adopted in 2001. He has also held roles as a local elected official, as the Mayor of Seyssins and President of the Grenoble municipal community from 1995 to 2010.

Didier Migaud has been the first President of the Court of Auditors since 23 February 2010. In this capacity, he has also chaired the Court of Budgetary and Financial Discipline, the High Council of Public Finances and the Compulsory Levies Council.



Michel Braunstein
Elected in December 2015
by the council chamber
of the Court of Auditors

Michel Braunstein has served as master advisor at the Court of Auditors. Michel Braunstein has an *agrégation* qualification in history, and is an alumnus of France's National School of Administration. He has held such positions as General Inspector at the National Education administration and Adviser for school education, youth and sport in the Prime Minister's cabinet from 1997 to 2001.

Michèle Froment-Védrine
Elected in December 2015
by the council chamber
of the Court of Auditors

Michèle Froment-Védrine serves as master advisor at the Court of Auditors. A medical doctor and public health specialist, Michèle Froment-Védrine previously served as President of the Consumer Safety Commission and Director General of the French Agency for Environmental and Occupational Health Safety (AFSSET).

Odile Piérart
Elected in December 2017
by the general assembly
of the Council of State

Odile Piérart has served as State Councillor and President of the Mission for the Review of Administrative Jurisdictions. An alumnus of France's National School of Administration, Odile Piérart has held such positions as Secretary General of the administrative tribunals and administrative courts of appeal, and President of the Administrative Court of Appeal of Nancy.

Daniel Hochedez
Appointed in January 2017
by the President
of the National Assembly

A holder of a Master's degree in law and a graduate of the Institute of Political Studies in Paris, Daniel Hochedez joined the National Assembly as an administrator in 1975. In his time there, he held such roles as Director of the Information Systems department then, until June 2013, Director of the Public Finances department.

Patrick Matet
Elected in December 2019
by the General Assembly
of the Court of Cassation

A doctor of law and alumnus of the National School of Magistrates, Patrick Matet acted as honorary adviser at the Court of Cassation, where he held positions such as Dean of the section of the chamber dealing with dispute arbitration, private international law, the status of persons and family property law until 2017.

Martine Provost-Lopin
Elected in December 2019
by the General Assembly
of the Court of Cassation

Martine Provost-Lopin has a master's degree in law and is an alumnus of the National School of Magistrates. She exercised the role of an advisor assigned to the third civil chamber within the Court of Cassation. She was the first examining magistrate at the Tribunal de Grande Instance high court in Créteil before becoming an advisor to the Paris Court of Appeal, then first vice-president of the TGI of Paris.

Anne Levade
Appointed in January 2020
by the President of the Senate

Anne Levade has an *agrégation* qualification in public law, and is a professor at the University of Paris I Panthéon-Sorbonne. She has been a member of the committee responsible for considering and presenting proposals for the modernisation and rebalancing of the institutions of France's Fifth Republic. She heads the preparation centre for Prép ENA Paris I-ENS administrative examinations and chairs the French Association of Constitutional Law.

Frédéric Lavenir
Appointed in January 2020
by the Government

Frédéric Lavenir is Inspector General of Finance, and has held several positions within the Ministry of the Economy and Finance. He worked in the BNP Paribas Group as manager of a subsidiary, then as Head of Human Resources. He was Director and Chief Executive Officer of CNP Assurances. He chairs the Association for the Right to Economic Initiative (Adie).

Jacques Arrighi de Casanova
Elected in February 2020
by the general assembly
of the Council of State

A graduate of the Institute of Political Studies in Paris and an alumnus of the National School of Administration, Jacques Arrighi de Casanova serves as deputy chairman of the finance section within the Council of State. He has held such positions as adviser on constitutional questions to the Secretary General of the Government, deputy president of the litigation section of the Council of State and president of the Disputes Court before becoming president of the administrative section of the Council of State until 2019.

Pierre STEINMETZ
Appointed in May 2020
by the President of the Senate

Pierre Steinmetz holds a master's degree in law, and is a graduate of the Institute of Political Studies in Paris, and an alumnus of the National School of Administration. He held a succession of prefectoral roles and positions in ministerial cabinets before becoming Director General of the National Gendarmerie, then Director of the Cabinet of Prime Minister Jean-Pierre Raffarin in 2002. He served as State Councillor in extraordinary service before becoming a member of the Constitutional Council from 2004 to 2013.

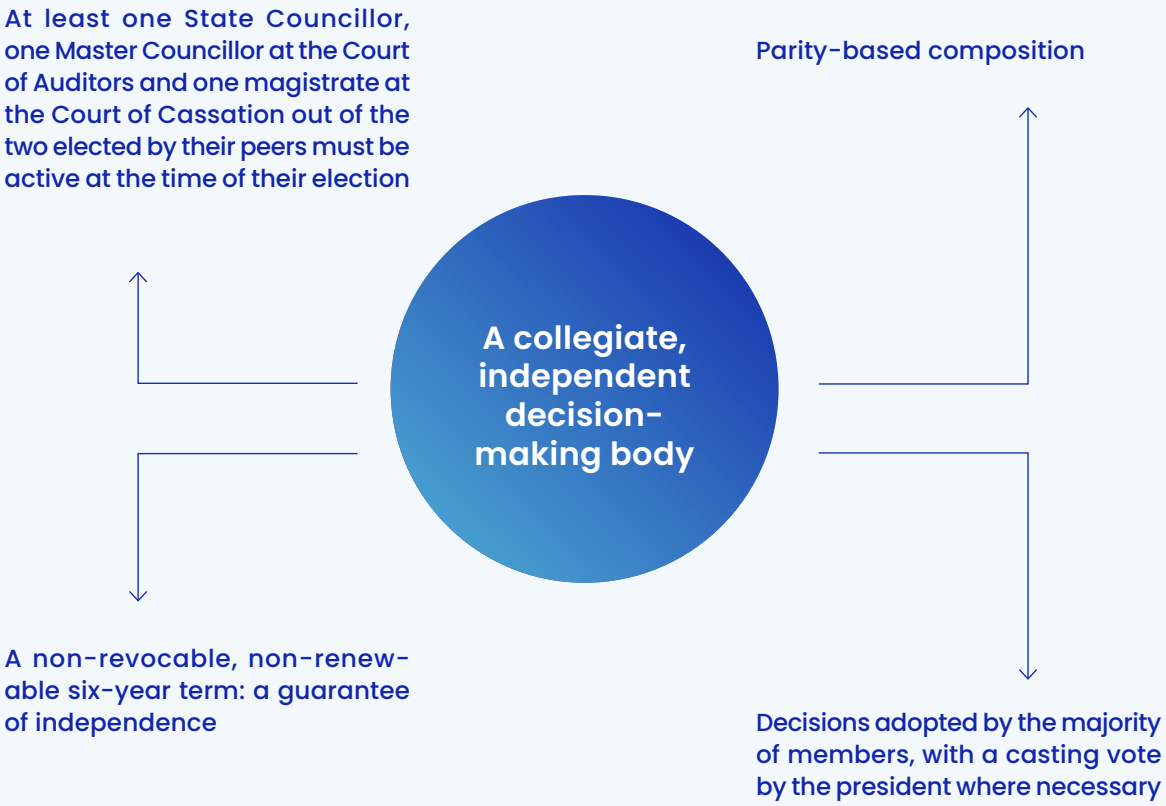
Sabine Lochmann
Appointed in February 2020
by the Government

Sabine Lochmann has been President of Vigeo Eiris since January 2020. A graduate of Paris 1 Panthéon-Sorbonne and Davis University, she previously worked as a corporate lawyer at Serete, JCDecaux and Johnson & Johnson, before joining and chairing BPI Group.

Florence Ribard
Appointed in February 2020
by the President of the
National Assembly

A holder of a batchelor's degree in law and a graduate of the Institute of Political Studies in Paris, Florence Ribard joined the National Assembly as a deputy administrator in 1988. She has occupied roles such as Chief of Staff to National Assembly president Mr Laurent Fabius then at the Ministry of the Economy, Finance and Industry.

Collegiate and independent operation



Presidential hearings by Parliament

13 May

National Assembly
Electoral law

24 July

Senate
Ethics of ministerial public officers

30 September

National Assembly
Ethics of civil servants and management of conflicts of interest

14 October

National Assembly
High Authority budget

6 November

Senate
Draft 2021 finance law

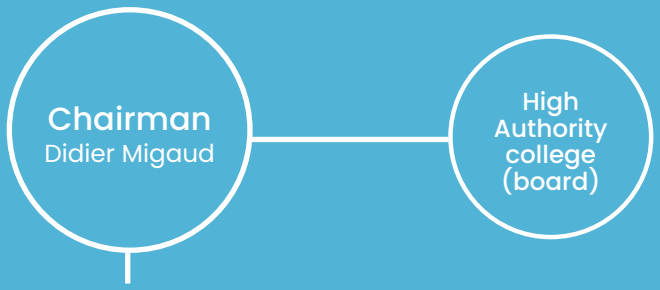
In-depth control of declarations of interests and assets

In accordance with the law of 20 January 2017, the member of the High Authority college (board) file a declaration of interests and a declaration of assets. Each is subject to in-depth control by two rapporteurs. The declaration of interests control enables the implementation of all appropriate withdrawal measures.

Since 2017, their declarations of assets have been made available for consultation on the High Authority's website. This contains an up-to-date record of declarations from members who joined the college in 2020.

Strong ethical guarantees

Organisation chart



General Secretariat
Secretary General: Lisa Gamgani
Deputy Secretary General: Sébastien Ellie
It assists the President of the High Authority and handles the administrative and financial management of the institution, co-ordinates services and prepares the work of the High Authority's college (board).

The public, information and communication department
Director: Ted Marx

It defines and implements the procedures for receiving, recording, anonymising and publishing declarations. It advises declarants and informs citizens. It conveys the identity of the High Authority, promoting its image to institutions and the media.

Public officials control department
Director: Sébastien Margotte

It controls declarations of assets and interests. It checks the completeness, accuracy and sincerity of these declarations and implements the appropriate investigative powers.

The interest representatives control department
Director: Eliezer Garcia-Rosado

It monitors interest representatives' compliance with their declaration and ethical obligations. It ensures they are registered in the electronic directory, and that the information declared is accurate and complete.

The legal and ethics department
Director: Baptiste Henry

Its mission is to control revolving-door movements between the public and private sectors and provide expert assistance to declarants and public institutions in matters of conflict of interest. It is also responsible for the High Authority's partnerships and international relations, as well as preparing reports and studies.

The information systems department
Director: Frédéric Le Compagnon

It develops and operates the High Authority's information system and manages the institution's IT security policy.

The administrative and financial department
Director: Emmanuel Hoblingre

It defines and implements the human resources management policy. It designs and implements budgetary, accounting and property policy.

Part 1

Preventing ethical and criminal risks during the revolving door between public and private sectors

Having entered into force on 1st February 2020, Act No. 2019-828 of 6 August 2019 on the transformation of civil service has profoundly changed the ethical rules regarding public agents in order to better circumscribe revolving-door movements between the public and private sectors and thus prevent ethical and criminal risks. As of 1st February2020, it assigns new prerogatives to the High Authority, part of which had previously been vested in the *Commission de déontologie de la fonction publique* (civil service ethics commission), for the purposes of monitoring proposed multiple jobholdings for business creation or acquisition and professional transition to the private sector. A new check prior to the appointment of certain public agents to strategic roles has also been implemented.

The main object and effect of this reform has been to make government bodies accountable in relation to checking multiple jobholdings by their agents, their departure to the private sector and the resulting recruitments of individuals.

Ethics control is now performed internally within the government bodies, and must be conducted by the hierarchical authority for the agent in question. In the event of serious doubt as to the compatibility of the proposal, this hierarchical authority can refer the issue to the ethics officer for an opinion. If the ethics officer's opinion is not sufficient to resolve doubt over the decision to be taken, the hierarchical authority may then refer the issue to the High Authority. Prior referral to the High Authority by the hierarchical authority is mandatory only for public agents holding a role "*whose hierarchical level or the nature of the duties provide justification for it.*"[1]

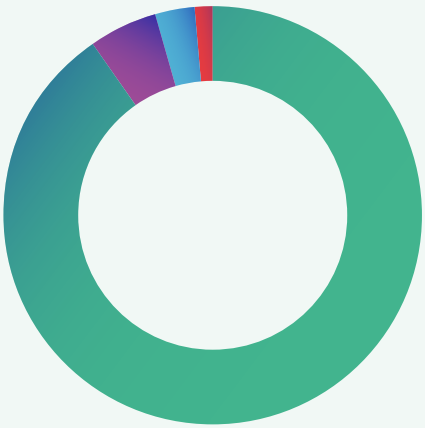
This principle of subsidiarity in the examination of referrals implies that government bodies, assisted by their ethics officers, will become focal points for checking: the success of the reform assumes a rapid appropriate of procedures and risks by the hierarchical authorities.

1. Roles mentioned in Article 2 of Decree No. 2020-69 of 30 January, 2020 relating to ethical controls in the civil service

*21 referrals received at the end of 2020 were processed in early 2021.

**Withdrawn referrals are the result of government bodies having realised that a referral should not have been made to the High Authority in the first place.

NUMBER OF ETHICS REFERRALS RECORDED IN 2020



90.3% Ethical controls resulting from Article 25 *octies* of the Act of 13 July 1983: control prior to appointment, professional transition to the private sector, business creation or acquisition *(public agents)*

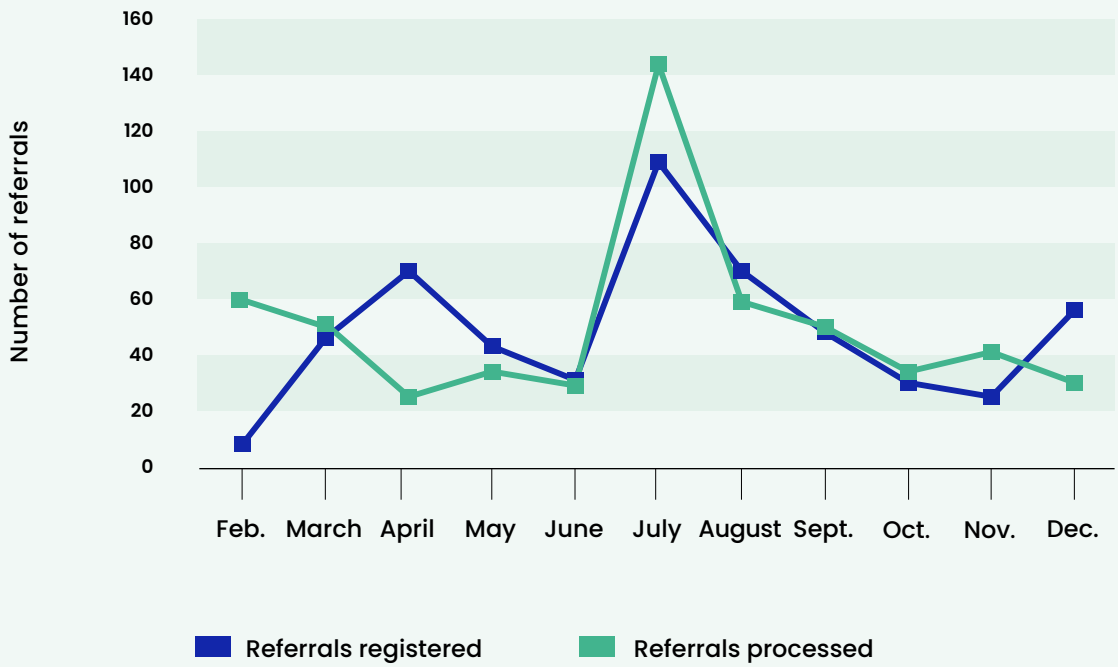
5.3% Ethical advice

3.2% Controls on professional transition to the private sector from Article 23 of the Act of 11 October 2013 *(former Government members, former local executives and former members of independent administrative or public authorities)*

1.2% Controls on multiple jobholding among research staff

NUMBER OF ETHICS REFERRALS RECORDED AND PROCESSED PER MONTH IN 2020

(all types of ethical controls combined)



1

Results of the first year of implementation of ethical controls from the Act of 6 August 2019 on the transformation of civil service

Entered into force on 1st February 2020, Act No. 2019-828 of 6 August 2019, on the transformation of civil service, endowed the High Authority with new powers in the area of ethical control of public officials. During this first year of implementation, 465 opinions were issued in this area by the High Authority.

The implementation of the reform within the High Authority

The entry into force of the Act of 6 August 2019 on February 1, 2020 required committed efforts by all High Authority departments over a period of several months. Firstly, preparatory meetings were held with the governmental and civil service Directorates General, during which the operation and processing of cases by the Civil Service Ethics Commission were discussed, as well as the issue of its archives. The High Authority has also stepped up discussions with government bodies as it considers how it can best understand its new roles and analyse existing doctrine with regard to ethics and public agents.

The publication of an implementing decree[2] made it possible to specify the scope of the functions falling within the scope of compulsory referral to the High Authority. A decree of 4 February 2020[3] then provided a list of the supporting documents that must be produced in referral files.

In order to give departments the ability to accept, register and process referrals in a manner that will enable efficient processing and complies with the timescales provided for by law, significant IT development work has been conducted. This has enabled Government bodies and agents to make referrals to the High Authority by electronic means, via its website.

2. Decree No. 2020-69 of 30 January, 2020 relating to ethical controls in the civil service

3. Ministry of Public Action and Accounts, decree of 4 February, 2020 on ethical controls in the civil service

Key figures

This initial assessment reveals that the High Authority has a good understanding of its new prerogatives, thanks to committed efforts by its agents during a difficult period related to the health crisis and to the exceptional organisational measures its departments have implemented.

513 → **465***

referrals in 2020 relating to the **new ethical controls** from Article 25 *octies* of the Act of 13 July, 1983, introduced by the law of 6 August, 2019 on the transformation of civil service

opinions issued in 2020

* The difference is explained both by withdrawn referrals and by referrals received at the end of 2020 and processed in early 2021

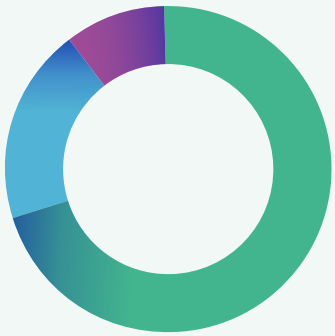
ETHICAL OPINIONS ISSUED BY THE HIGH AUTHORITY IN 2020, BY TYPE
(new controls introduced by the Act of 6 August, 2019 on the transformation of civil service)

47.3% Pre-appointment check

37.2% Business creation or acquisition

15.5% Professional transition to the private sector

CIVIL SERVANTS AND PUBLIC AGENTS AFFECTED BY ETHICS REFERRALS, BY TYPE



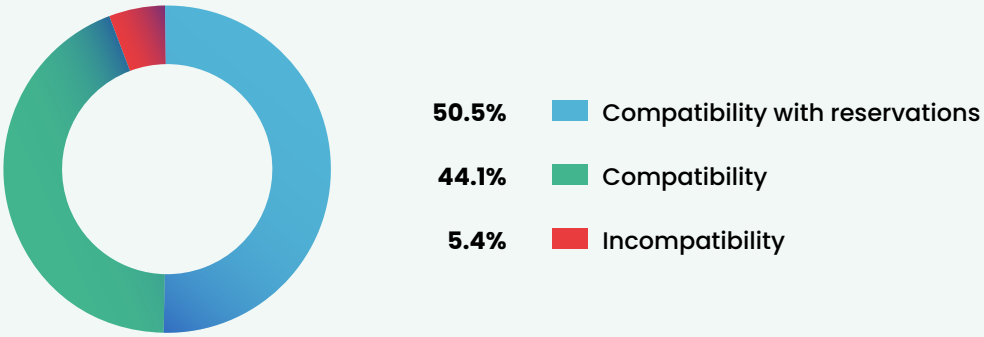
70.6% State civil service

19.4% Regional civil service

10.0% Hospital civil service

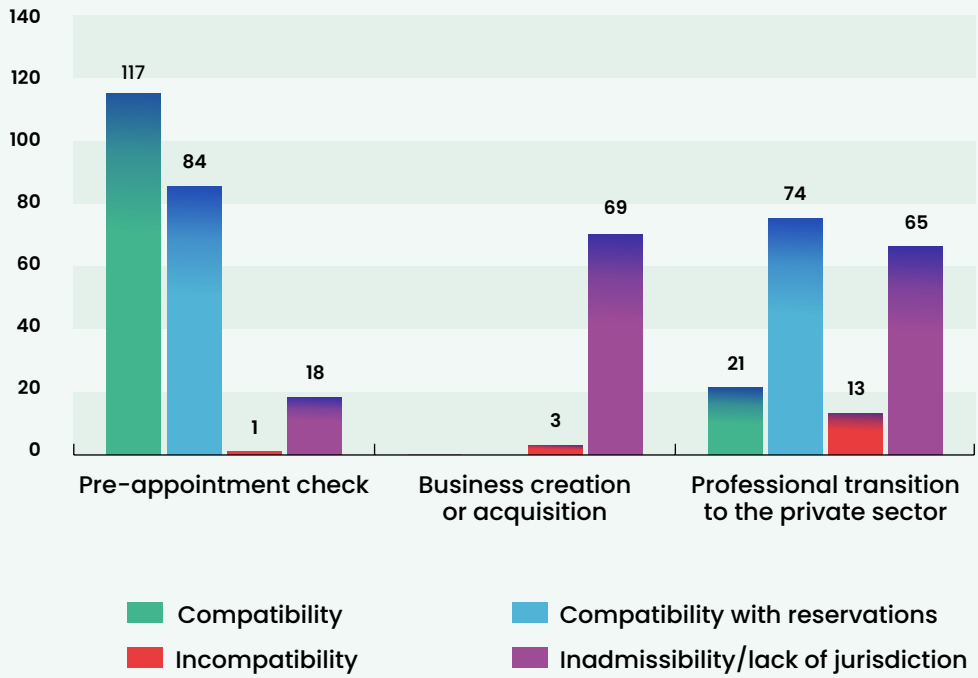
ETHICAL OPINIONS ISSUED BY THE HIGH AUTHORITY IN 2020

(excluding opinions of inadmissibility and lack of jurisdiction)



OUTCOME OF OPINIONS ISSUED BY THE HIGH AUTHORITY, BY TYPE OF ETHICS REFERRAL

(excluding opinions of inadmissibility and lack of jurisdiction)



32.7%

opinions of inadmissibility and lack of jurisdiction out of all opinions issued

The High Authority endeavours to issue ethical opinions that include measures strictly in proportion to the risks identified following an in-depth analysis of the cases. The targeted objective, as explained by the Council of State[4], is to avoid a situation where either the agent or the government body faces censure. This is the constantly delicate balance which is sought for each case. The issue at stake is not to impede movement, but to ensure it can be conducted in a context of total legal certainty.

94.5%

opinions of compatibility
(excluding opinions of inadmissibility and lack of jurisdiction)

Of which

50.4%

opinions of compatibility with reservations

5.5%

of opinions of incompatibility

or 17 opinions issued

Particular emphasis has been placed on compliance with the adversarial principle. The High Authority's staff are involved in multiple discussions with the government bodies generating the referrals and the agents in question in order to obtain additional details, particularly in situations where the cases reveal relatively significant risks of an ethical or criminal nature. The law has also provided for the possibility, upon referral to the hierarchical authority, of requesting a second deliberation by the High Authority within a period of one month from issue of the initial opinion. Such a scenario arose only twice in 2020, with one of the two deliberations having led to a change in outcome of the opinion from "incompatible" to "compatible with reservations", in light of new circumstantiated information presented for the re-examination of the case.

465 opinions were issued in 2020, 47.3% (220) of which related to pre-appointment checks. This high number of "pre-appointment" checks is explained by the current political situation and the change of Government in July 2020, given that positions involving members of ministerial cabinets are listed among the roles that cannot be filled until an opinion has been issued by the High Authority, in a case where the individual in question has held a position in the private sector in the three years preceding the appointment.

All types of checks combined, of the 94.5% of opinions issued (excluding opinions of inadmissibility and lack of jurisdiction), more than half of these opinions (50.4%) have been accompanied by reservations intended to prevent criminal and ethical risks. 17 opinions of incompatibility (5.5%) were issued, 13 of which involved proposals for professional transition to the private sector.

4. CE, 4 November, 2020, No. 440963 (see inset p. 31)

The monitoring system established by the High Authority identified 25 cases where a referral was not made to the High Authority when it should have been. The relevant parties and bodies made referrals to the High Authority following alerts, without its President being required to make a referral to it. The High Authority points out that a failure to refer can have significant consequences for both the body and the agent who, if no checks are made regarding the agent's new role, may find themselves having committed the crime of unlawful taking of an interest as provided for by Articles 432-12 and 432-13 of the French Criminal Code. A decision of incompatibility issued after the agent has taken on their new role is also likely to have serious consequences for them, such as the termination of their employment contract.

Since 1st February 2020, a large number of agents in all High Authority departments have been mobilised in response to requests for opinions with the aim of taking all necessary measures regarding checking of ethical obligations and monitoring legal reservations. The timely processing of referrals has been conducted on a just-in-time basis, sometimes to the detriment of the High Authority's other work (extension of processing times in some areas), despite the transfer of human and budgetary resources, a portion of which was delegated to the French civil service ethics commission.

The new powers of the High Authority have also required an increased frequency of meetings of the High Authority's college board, which are held every two weeks – not over a half-day as before, but over a whole day. In addition, extra sessions are scheduled from time to time in order to deal with matters such as referrals for pre-appointment checks for members of ministerial cabinets within the fifteen-day period specified by the law. This was, for example, the case during the change of Government in July 2020 in response to referrals regarding the composition of the Prime Minister's cabinet.

Gradual ownership of the system by government bodies and public agents

32.7%

of opinions of inadmissibility or lack of jurisdiction for the new ethical controls

In nearly one in three cases, the referral should not have been made to the High Authority, reflecting insufficient ownership of the new ethical control mechanism.

Some referrals related to requests that did not fall within the scope of the High Authority's control, such as additional multiple jobholdings under the meaning of Article 11 of the decree of 30th January 2020[5]. In these cases, the High Authority has issued an opinion of lack of jurisdiction. It is also frequently the case that the government body does not perform the ethical checking it is required to, and makes a direct referral to the High Authority without having assessed the proposal or referred the case to the ethics officer for an opinion. In these cases, the High Authority has issued an opinion of inadmissibility. In some cases, the ethics officer has not yet been appointed, despite the fact that the law has required such officers to be present in all bodies since 2016[6], or has been insufficiently trained to carry out his/her new role effectively.

5. Article 11 of decree No. 2020-69 of 30 January, 2020 relating to ethical controls in the civil service: for example, activities regarding expert assessment, consultation, teaching and training, home help to a relative or the sale of goods produced by the agent. See p. 37
6. Law No. 2016-483 of 20 April, 2016 on ethics and the rights and obligations of civil servants

In other cases, the government body has failed to make a referral to the High Authority within the allotted time in respect of the movement of one of its agents; in such cases, the High Authority then approaches the body to request it to make a formal referral as soon as possible[7].

Generally speaking, many cases are still incomplete, or the supplied documentation is not sufficient for the High Authority to assess the problems regarding the proposal for the agent; for example, when an insufficient description is provided. However, the High Authority has noted a significant improvement in the quality or referrals since the start of 2021.

Work in supporting hierarchical authorities and ethics officers

To facilitate an understanding of the new system, the High Authority has adopted an educational approach and increased its support work for hierarchical authorities and ethics officers, particularly via its website, through the creation of a space dedicated to movements between the public and private sectors or through the provision of educational tools.

It also shares its expertise and doctrine by publishing some of its deliberations on its website and posting the second volume of its ethics guide online[8].

The High Authority has also updated its online referral form in order to guide government bodies in their administrative actions[9].

Lastly, the High Authority maintains a constant dialogue with the government bodies who request its services for advice purposes ahead of referrals, and with ethics officers. In this respect, the General Directorate for Administration and Civil Service plays an important role regarding ethics officers, as does the National Centre for Local Civil Service and local management centres.

This report also provides an opportunity to encourage government bodies and local authorities to share High Authority opinions internally, and with ethics officers in particular, in order to circulate its doctrine with regard to ethical control of public agents. The High Authority has noted that in the vast majority of cases – and particularly in matters of subsidiary referral – the ethics officer found it hard to obtain feedback from his/her organisation regarding the outcome of the case for which he/she had issued an opinion.

Extra information provided on the opinions of the High Authority regarding ethical control of public agents

In November 2020, the Commission for Access to Administrative Documents (CADA) issued a ruling on the communicability of the opinions issued by the High Authority with regard to ethical controls of public agents on the basis of Article 25 *octies* of the Act of 13 July 1983 on the rights and obligations of civil servants[10]. CADA started by giving a reminder that the High Authority is entitled to decide to publish its opinions, which it has endeavoured to do by starting in January 2021 to publish verbatim or summarised opinions on its website. The decision to publish opinions – which is the responsibility of the High Authority's college (board) – takes into account several criteria such as the importance of the public functions exercised and the case-law value of certain decisions. CADA then noted that pursuant to the provisions of para.1 of article L. 311-5 of the code of relations between the public and government authorities, these opinions "*are not subject to the right of access to administrative documents*", as with all documents produced or held by the High Authority in connection with its work.

In addition, a Council of State decision clarified the regime for disputing opinions issued by the High Authority, as well as its role in assessing the risk from illegal taking of interests *(see inset)*.

7. XI of Article 25 *octies* of Act No. 83-634 on the rights and obligations of civil servants
8. See p. 80
9. See p. 74
10. Commission for access to administrative documents, Council meeting No. 20204549 of 19 November, 2020

INITIAL CASE LAW IN 2020 ON HIGH AUTHORITY OPINIONS REGARDING ETHICAL CONTROL OF PUBLIC AGENTS

Within the context of the procedures provided for in Article 25 *octies* of the Act of 13 July, 1983, a referral is made to the High Authority, by the hierarchical authority, prior to the decision it is required to issue on the proposed multiple jobholding or professional transition of the public agent.

The question of the scope of the opinion issued by the High Authority arose, and in particular the ability to contest it directly before the administrative judge.

An appeal lodged with the Council of State by a public agent, whose proposed professional transition had received an opinion of partial incompatibility from the High Authority, provided the high court with an opportunity to define the regime for such decisions. In its decision of November 4, 2020[11], the Council of State ruled that the opinion issued by the High Authority relating to control over the professional transition of public agents, in pursuance of Article 25 *octies* of the Act of 13 July, 1983, qualifies as a decision likely to be the subject of an appeal for abuse of power, which the Council of State is competent to hear in the first and last instance.

This decision also clarified the nature of the control by the High Authority, when examining whether the proposal for the agent could potentially "*place the individual in question in a situation of committing the offences provided for in articles 432-12 or 432-13 of the criminal code.*" On this point, the Council of State maintains that, *"in order to assess this risk, it is the responsibility of the High Authority for transparency in public life not to examine whether the constituent elements of these offences are actually satisfied, but to assess the risk that they may be satisfied, and to reach a decision that ensures that neither the individual nor the government body faces censure."*

In the present case, the Council of State rejected the agent's request, thereby approving the High Authority's reasoning.

11. CE, 4 November, 2020, No. 440963

2
The pre-appointment check

To provide better protection against risks likely to result from revolving-door movements between the public and private sectors, the Act of 6 August, 2019 on the transformation of civil service introduced a new control prior to appointments to certain public posts, which in 2020 was found to be highly dependent on the existing political situation.

Changes in the civil service, marked by more frequent revolving-door movements to and from the private sector, call for an adapted legal framework. This is why the legislative authority, for the first time, introduced a pre-appointment check for some roles, the regime for which is specified in the provisions of Article 25 *octies* of the Act of 13 July, 1983. This system provides a framework for the return of civil servants following a revolving-door movement or the recruitment of contractual agents, applicable in cases where the person in question has exercised one or more lucrative private activities during the three years prior to the appointment. Such activities are understood to include all private practice and any activity, whether salaried or not, in a private company, a body governed by private law or any body or company conducting its activity in a competitive sector under the rules of private law.

The system provides for systematic referral to the High Authority prior to appointments to the most strategic posts for the three public functions, as well as to the roles of co-worker with the President of the Republic and ministerial cabinet member[12]. It is also possible to make a referral to the High Authority, on a subsidiary basis, in respect of positions specified in Article 2 of Decree No. 2020-69 of 30 January, 2020[13], in cases where the hierarchical authority has a serious doubt which has not been resolved despite the issued opinion of the government body's ethics officer, on the compatibility of the appointment with the paid private activities carried out by the individual in question over the previous three years.

The purpose of the control by the High Authority (or by the appointing authority) is to prevent risks of an ethical nature; that is, potential threats to the normal functioning, independence and neutrality of the service, and also risks of a criminal nature, with regard to the offence of unlawful taking of an interest as sanctioned by Article 432-12 of the Criminal Code.

12. For co-workers with the President of the Republic and ministerial cabinet members, see Article 11 of Act No. 2016-483 of 20 April, 2016 on ethics and the rights and obligations of civil servants
13. This concerns positions subject to an obligation of prior submission of a declaration of interests, provided for in Article 25 *ter* of the Act of 13 July, 1983, members of the Council of State, magistrates of administrative tribunals and administrative courts of appeal, some members and staff of the Court of Auditors, court judges and rapporteurs for regional audit chambers. It also concerns positions subject to an obligation of submission of a declaration of assets and a declaration of interests as mentioned in paras. 4, 6, 7 and 8 of section I of Article 11 of the Act of 11 October, 2013.

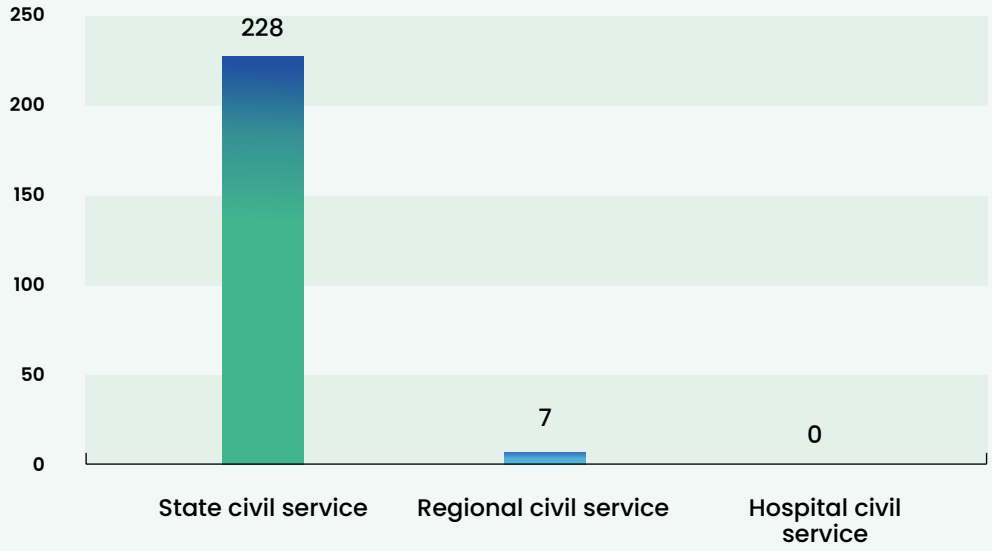
Key figures

235 referrals for pre-appointment control → **220** opinions issued*

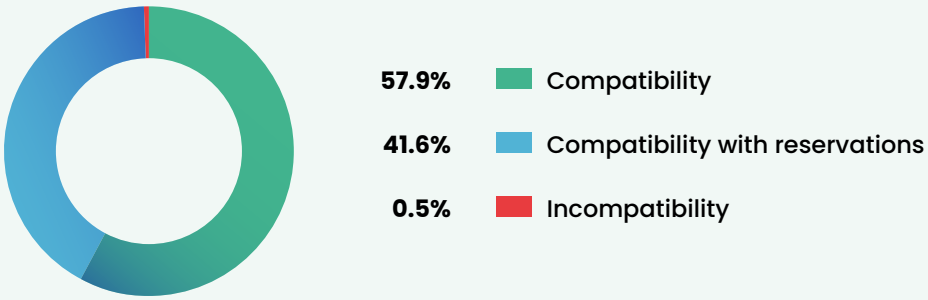
* The difference is explained both by withdrawn referrals and by referrals received at the end of 2020 and processed in early 2021

18 opinions of inadmissibility and lack of jurisdiction out of the 220 opinions from pre-appointment checks issued in 2020

CIVIL SERVANTS AND PUBLIC AGENTS COVERED BY REFERRAL FOR PRE-APPOINTMENT CHECKING, BY TYPE



OUTCOME OF ETHICAL OPINIONS ISSUED BY THE HIGH AUTHORITY CONCERNING REFERRALS FOR PRE-APPOINTMENT CHECKING
(excluding opinions of inadmissibility and lack of jurisdiction)



THE OFFENCE OF UNLAWFUL TAKING OF AN INTEREST WHILE IN OFFICE (Article 432-12 of the Criminal Code)

The 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, is punished by five years' imprisonment and a fine of €500,000, the value of which can be set at double the proceeds from the offence.

Controls heavily dependent on the existing political situation

Pre-appointment controls also account for the majority of the High Authority's work during this first year of service.

89.8%

of referrals in 2020
related to
ministerial advisers

This situation is explained by current political events; or to be more precise, by the change of government in July 2020 *(see inset)*. Posts for ministerial cabinet members are among the positions which can only be filled following an opinion from the High Authority, where the person in question has been involved in activity in the private sector over the past three years. Of the 203 referrals registered in July and August 2020, nearly 70% related to pre-appointment controls[14]. Of the total of 235 referrals received in 2020, 211 (around 90%) related to ministerial advisers.

Nearly 42% of controls (excluding opinions of inadmissibility and lack of jurisdiction) resulted in opinions of compatibility accompanied by reservations, such as the obligation to withdraw from meetings and discussions held with the entity within which the relevant party exercised a paid private role. Only one opinion of incompatibility, relating to a subsidiary referral, was issued.

In addition, the legal period of fifteen days granted to the High Authority for notifying the government body of its opinion turned out to be an additional requirement, accelerating the pace of checking. However, a two-month period applies to checks on business creation or acquisition and professional transition to the private sector. In general, the High Authority takes personal and professional issues into account when making referrals by showing flexibility with regard to the processing time for referrals. In addition, the High Authority's college (board) has taken measures that enable its President to rule alone on referrals that present no issues, once they have been investigated by its staff.

14. See p. 24

THE ROLE OF THE HIGH AUTHORITY IN THE EVENT OF A CHANGE OF GOVERNMENT

In 2014, the President of the Republic introduced a practice of making a referral to the High Authority prior to the appointment of a new member of the Government, to enable it to examine the information available to it on the individual in question, in cases where that individual is already subject to reporting requirements.

This practice continued until 2017 and was included in Article 8-1 of the Act of 11 October, 2013 by Act No. 2017-1339 of 15 September, 2017 on trust in political life. This article provides that the President of the Republic may approach the President of the High Authority to obtain information regarding the fulfilment of declaration obligations by individuals who are intended to be appointed to the Government. The President may also question the tax authorities with regard to payment of their taxes.

Such a referral also includes verification by the High Authority of any *"situation which could constitute a conflict of interest and the measures required to prevent or put an immediate end to this conflict of interest."*

This procedure is conducted within a limited timeframe of between a few hours and one or two days, and is based on a particularly strict principle of confidentiality.

The President of the High Authority makes reference in particular to the information already available to the High Authority; in essence, the declarations of assets and interests that the relevant members of Government may have filed as elected or public officials.

The President also examines the measures taken by the person in question to manage their financial instruments under "blind" conditions that exclude any right of scrutiny on their part, if they are subject to such a requirement under the terms of Article 8 of the Act of 11 October, 2013 or Article 25 *quater* of the Act of 13 July, 1983 on the rights and obligations of civil servants.

Just as with most public officials, members of the Government are required to prevent or put an immediate end to any conflict of interests under the terms of Article 1 of the Act of 11 October, 2013. In this case, the President of the High Authority carries out the initial identification work regarding potential conflicts of interest which could justify the implementation of withdrawal measures in certain areas, or could call into question the impartiality of the Government member and the integrity of the Government.

In addition to any declaration of interests that may have been filed for previous roles, this initial verification is based on searches of open public sources (general press, legal information on companies, etc.).

In the event of any actual or anticipated issues, the President of the High Authority will notify the President of the Republic.

This procedure is implemented at the time the Government is initially formed, but also in the event of a reshuffle or change of Prime Minister during the term of office.

Once the Government has been appointed, an in-depth check is made on declarations of assets and interests submitted by its members. The High Authority's college (board) then establishes whether the declarations are exhaustive, accurate and in good faith, and whether there is any risk of conflict of interest, the extent of such risks and the means of remedying them; for example, by means of withdrawal by the minister in question. A verification of the tax affairs of the new members of the Government is conducted at the same time by the tax authorities, under the control of the High Authority.

Once the declarations of the Government members have been checked and examined by the High Authority's board, they are published on the High Authority's website.

3
The multiple jobholding check

On 1 February, 2020, the High Authority was given responsibility for examining proposed multiple jobholdings for business creation or acquisition – a legal mechanism that is still not easily understood by government bodies and agents. It may also be called upon to issue an opinion on some proposals for multiple jobholdings for research staff.

Although civil servants and public agents are obliged to *"devote [their] entire professional work to the functions assigned to [them]*[15]*"*, the law nonetheless provides for a number of exemptions for:

— self-directed activities (e.g. production of works of the imagination[16]);

— activities that are subject to prior declaration to the hierarchical authority (e.g. for agents holding a part-time or non-full time role for which the working time is less than or equal to 70% and wishing to exercise a paid private activity[17]);

— activities subject to authorisation by the hierarchical authority (ancillary activities[18] and business creation or acquisition with a part-time request for full-time agents[19]).

The Act of 6 August, 2019 gave the High Authority a new prerogative in terms of controlling proposed multiple jobholdings for business creation or acquisition on a part-time basis under the provisions of Section III of Article 25 *septies* of the Act of 13 July, 1983.

15. Article 25 *septies*, section I of Act No. 83-634 of 13 July, 1983 on the rights and obligations of civil servants
16. Article 25 *septies*, section V of Act No. 83-634 of 13 July, 1983 on the rights and obligations of civil servants
17. Article 25 *septies*, section II of Act No. 83-634 of 13 July, 1983 on the rights and obligations of civil servants
18. Article 11 of Decree No. 2020-69 of 30 January, 2020 on ethical controls in the civil service
19. Article 25 *septies*, section III of Act No. 83-634 of 13 July, 1983 on the rights and obligations of civil servants

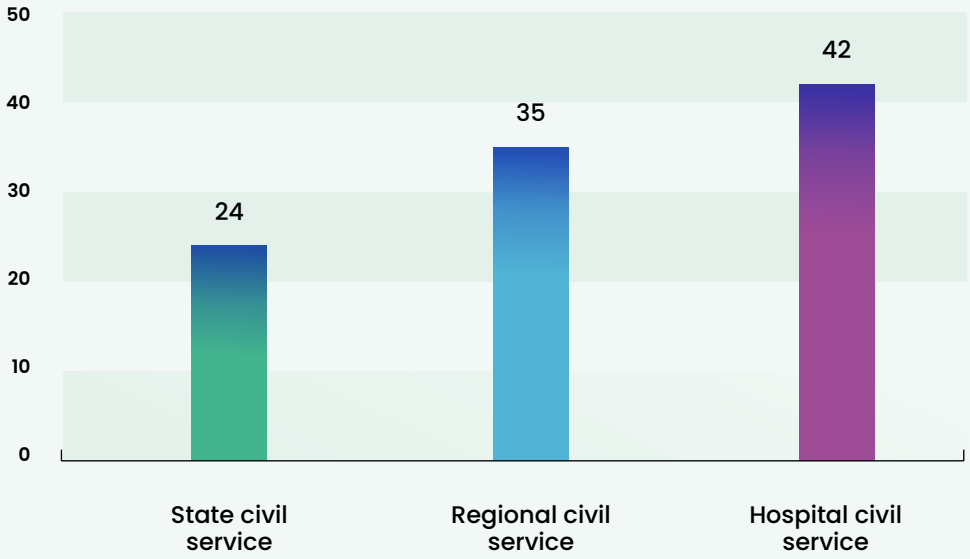
Key figures

101 → **72**

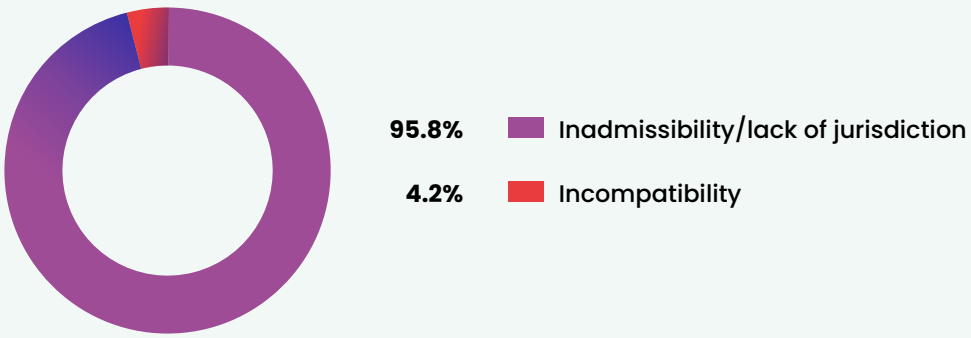
referrals for business creation or acquisition — **opinions** issued*

* The difference is explained both by withdrawn referrals and by referrals received at the end of 2020 and processed in early 2021

CIVIL SERVANTS AND PUBLIC AGENTS COVERED BY REFERRAL FOR BUSINESS CREATION OR ACQUISITION, BY TYPE



OUTCOME OF ETHICAL OPINIONS ISSUED BY THE HIGH AUTHORITY CONCERNING REFERRALS FOR MULTIPLE JOBHOLDING FOR BUSINESS CREATION OR ACQUISITION



A complex legal framework

95.8%

opinions of inadmissibility and lack of jurisdiction on referrals for business creation or acquisition

The legal framework relating to the various types of multiple jobholdings that may potentially be authorised is particularly complex to understand, both for government bodies and public agents. This observation partially explains the large number of opinions of inadmissibility and lack of jurisdiction (95.8%, or 69 opinions out of 72) issued following referrals relating to multiple jobholdings, representing nearly 45% of all opinions of inadmissibility and lack of jurisdiction issued by the High Authority, all types of ethical controls combined.

The complexity of this system governing the accumulation of authorised jobs, along with the confusion with tasks previously assigned to the French civil service ethics commission in this respect, goes some way to explaining these difficulties. Furthermore, since private activities are exercised concurrently with public functions, ethical and criminal risks are much more complex to neutralise by means of reservations. Lastly, only three opinions – all of incompatibility – were issued in 2020[20]. These opinions were issued as part of the subsidiary referral procedure, the hierarchical authority and the ethics officer having already pre-identified issues regarding the proposed business creation or acquisition.

In addition, referrals received by the High Authority or questions addressed to it by hospitals (41.6% of referrals for business creation or acquisition) often reveal problems understanding referral procedures, as well as the lack of qualified staff in the establishment in the role of ethics officer, despite the fact that such an appointment is required in all government bodies by virtue of the Act of 20 April, 2016. Small hospital organisations in particular experience difficulties in appointing an internal ethics officer because of lack of resources and qualified staff to perform such functions.

In this respect, the High Authority wishes to clarify that the ethics officer can be a person external to the establishment, and that several establishments can share the role of ethics officer[21].

It is important to remember that since 1 February, 2020, the High Authority **is responsible only for multiple jobholdings for business creation or acquisition that are related to a request to exercise part-time roles.** It is **never responsible for considering requests to exercise an ancillary activity.**

Three cumulative conditions must be met for the proposal of agent to be covered by the business creation or acquisition mechanism as specified in Article 25 *septies* of the Act of 13 July, 1983, and thus a referral can be made to the High Authority:

— the public agent must hold a full-time position;

— they must have plans to create or acquire a business;

— they must be asking to work on a part-time basis to conduct this new activity (if they are already performing their duties on a part-time basis, they must then request new authorisation to perform their duties on a part-time basis, but in this case on the basis of the business creation or acquisition mechanism).

20. Deliberation No. 2020-76 of 12 May, 2020

21. Decree No. 2017-519 of 10 April, 2017 relating to the ethics officer in the civil service

Furthermore, unless the agent occupies a role covered by Article 2 of Decree No. 2020-69 of 30 January, 2020 (e.g. directors and deputy directors of central administrations), a referral cannot be made to the High Authority in cases other than a serious doubt by the hierarchical authority on ethical or criminal issues presented by the agent's proposal that the ethics officer's opinion has not been able to resolve.

Specific nature of ethics checks on research staff

In addition to the provisions of the Act of 13 July, 1983 that are applicable to all public agents, public research department personnel have the option of participating in the creation of new businesses or the work of existing businesses for the purposes of exploiting the results of research work.

These options are enabled by Articles L. 531-1 et seq. of the research code, which identify three mechanisms:

— **participation in the creation of a new business or in an existing business (Articles L. 531-1 to L. 531-6):** research staff may be authorised to participate in a personal capacity, as a partner or a manager, in a business whose aim is to exploit the results of research and teaching work in fulfilment of a contract signed with the public research department;

— **the provision of scientific assistance to an existing business (articles L. 531-8 and L. 531-9):** research staff may be authorised to provide their scientific assistance to an existing company which exploits the results of research work in fulfilment of a contract with the public research department; this scientific assistance may be accompanied by an acquisition of an equity stake in the company;

— **participation in the management bodies of a commercial company (articles L. 531-12 and L. 531-13):** research staff may be authorised to be members of the management bodies of a commercial company, in order to publicise the results of the public research; they may then acquire an equity stake in the company.

Article 531-14 of the research code provides that the proposed agent appointment must neither be prejudicial to the normal functioning of the public service, nor compromise the dignity of the agent's functions or risk compromising or call into question the independence or neutrality of the service, nor harm the material and moral interests of the public research service.

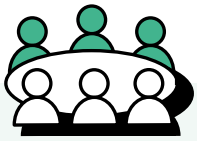
This article provides that the hierarchical authority, in cases where it receives a referral from research staff wishing to take advantage of one of these mechanisms, can make a referral to the High Authority for an opinion. In the absence of any provision specifying the High Authority's control, the High Authority must rule on the entire proposal regarding the agent, and not only on aspects relating to ethics. The opinion issued is a simple opinion, which is not binding upon the hierarchical authority.

In 2020, the High Authority received seven referrals on this basis. These seven referrals related in reality to just four proposals, two of which involved several agents. Of these seven referrals, six were made for scientific assistance and one for business creation.

Of the six referrals presented in relation to scientific assistance, the High Authority issued five negative opinions, relating to two proposals, for the same reason: that the requests should have been submitted in relation to participation in the creation of a business. The High Authority had concluded that agents participating in the creation of a business responsible for exploiting the results of research work cannot avail themselves of the scientific assistance mechanism in cases where this mechanism applies only in the presence of an existing business.

In three of the six opinions issued regarding scientific assistance, covering two separate proposals, the High Authority also issued recommendations aimed at ensuring better protection of the material interests of the public research service. These recommendations focused in particular on the terms for maintaining the exclusive exploitation right granted by exploitation contracts in the event that the transferred technology is not used, and on remuneration for this right.

Lastly, the High Authority did not identify any particular difficulty when examining the request for an opinion relating to the creation of a business. However, it did issue several reminders, relating in particular (1) to the need for the applicable agent exercising the duties of a laboratory director to withdraw from decision-making processes relating to the created company as part of his/her public functions, and (2) to the content of the provision agreement which must be signed before the agent's proposal can be implemented.



In its **deliberations No. 2020-225 and 2020-226 of 17 November, 2020 and nos. 2020-235, 2020-236 and 2020-237 of December 1 2020**, the High Authority gave its opinion that it follows from the provisions of Articles L. 531-1 to L. 531-15 of the research code, *"informed by the preparatory work for Act No. 2019-486 of 22 May, 2019 on business growth and transformation, that research staff who wish to participate – even as a basic minority shareholder – in the creation of a company whose purpose is to exploit the results of [research work] must make use of the mechanism provided for in Articles L. 531-1 to L. 531-5 of the research code. If they are authorised by their government body to participate in the creation of the company, they are then either seconded to the company or made totally or partially available to it. However, in cases where (firstly) the provisions of Articles L. 531-8 and L. 531-9 of the same code apply only in the presence of an "existing company" and (secondly) the provisions of section II of Article L. 531-15 implicitly but necessarily prohibit the issuance of such simultaneous authorisations on the basis of different mechanisms, the mechanism of scientific assistance with an equity stake cannot be used to authorise an agent to participate in the creation of a business."*

4

The check on the professional transition of public officials and agents to the private sector

The High Authority has seen its power of control extended from issues of professional transition to the private sector for certain public officials to also cover public agents in the interests of prevention of the risks of an ethical and criminal nature (unlawful taking of an interest) that are likely to arise from such revolving-door movements.

In relation to the referrals for professional transition to the private sector, both under Article 23 of the Act of 11 October, 2013 and Article 25 *octies* of the Act of 13 July, 1983, the High Authority implements a twofold checking process:

— by assessing the criminal risk of unlawful taking of an interest *(see inset)*;

— by assessing the ethical risks in order to verify that the new planned activity:

• is not likely to compromise or jeopardise the normal functioning, independence and neutrality of the former government body;
• does not undermine the dignity of the former public functions;
• does not interfere with the individual's public functions to an extent that raises reasonable doubt over the impartiality, integrity and probity with which the public official or manager has exercised them.

THE OFFENCE OF UNLAWFUL TAKING OF AN INTEREST AFTER TIME IN OFFICE (ARTICLE 432-13 OF THE CRIMINAL CODE)

An offence punished by three years' imprisonment and a fine of €200,000, the value of which can be set at double the proceeds from the offence, is committed by a person who, as a member of the government, of an independent administrative authority or an independent public authority, a holder of a local executive function, civil servant, soldier or agent of a public body, within the scope of the functions they have effectively exercised,
— is entrusted with the supervision or control of any private undertaking;
— or with the conclusion of contracts of any type with a private enterprise, or with issuing an opinion on such contracts;
— or directly makes decisions for the competent authority relating to operations carried out by a private company or issues an opinion on such decisions, or who by services, advice or investment takes or receives any part in such an enterprise before the expiration of a period of three years following the termination of these functions.

Key figures

Control of professional transition within the scope of Article 23 of the Act of 11 October, 2013 (former members of the Government[22], former members of independent administrative and public authorities, former members of local executives).

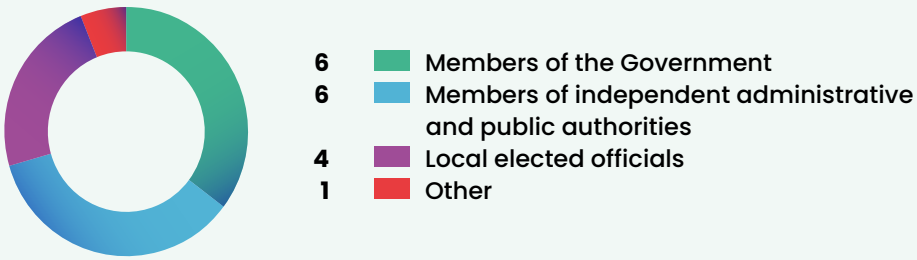
18 → **17**

referrals for professional transition to the private sector (article 23 of the Act of 11 October, 2013)

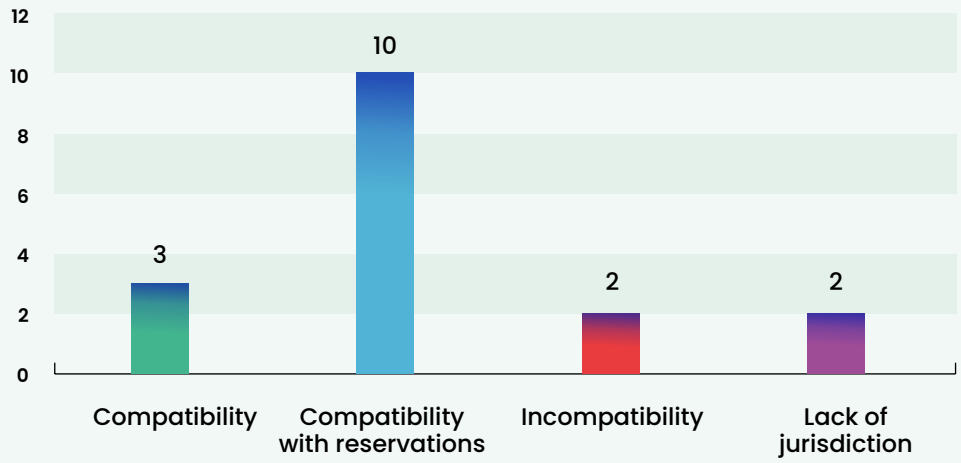
opinions issued*

* The difference is explained by a referral received at the end of 2020 and processed in early 2021

PUBLIC OFFICIALS RESPONSIBLE FOR REFERRALS OR AFFECTED BY A SELF-REFERRAL BY THE HIGH AUTHORITY, BY TYPE



RESULTING FROM THE CONTROL



22. Opinions regarding the professional transition of former members of Government to the private sector are published on the High Authority's website

NATURE OF ANTICIPATED ACTIVITY AFTER END OF FUNCTIONS

7 Participation in company management bodies

7 Consultancy work

3 Other

Check on the professional transition of public officials and agents under the meaning of Article 25 *octies* of the Act of 13 July, 1983 (introduced by the law of 6 August, 2019 on the transformation of civil service)

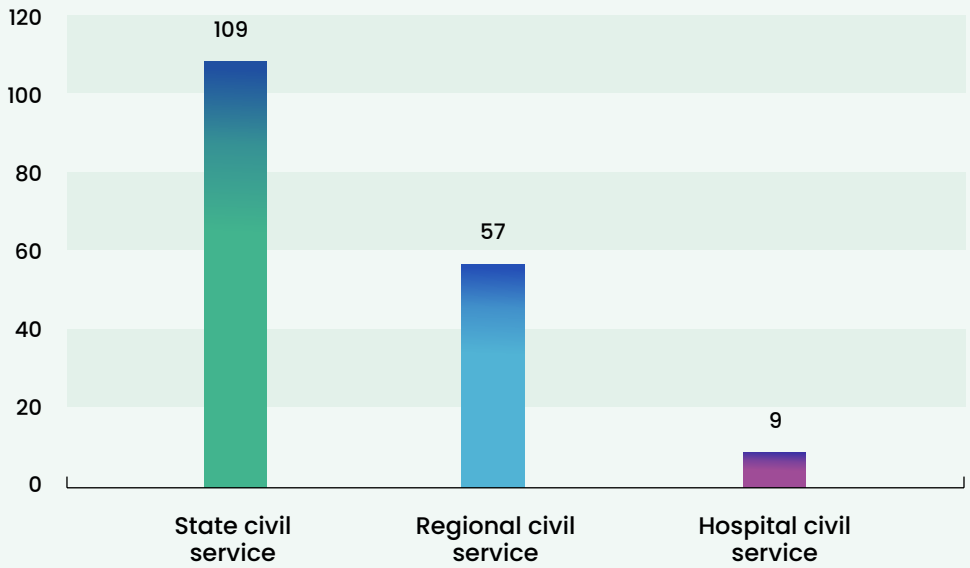
175 → **173**

referrals for professional transition to the private sector
(article 25 *octies* of the Act of 13 July, 1983)

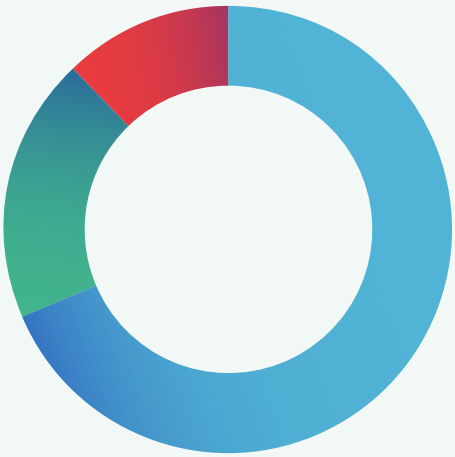
opinions issued*

* The difference is explained by a referral received at the end of 2020 and processed in early 2021, and also a withdrawn referral

CIVIL SERVANTS AND PUBLIC AGENTS COVERED BY REFERRALS FOR PROFESSIONAL TRANSITION TO THE PRIVATE SECTOR, BY TYPE



OUTCOME OF ETHICAL OPINIONS ISSUED BY THE HIGH AUTHORITY CONCERNING REFERRALS FOR PROFESSIONAL TRANSITION TO THE PRIVATE SECTOR
(excluding opinions of inadmissibility and lack of jurisdiction)



68.5% Compatibility with reservations

19.4% Compatibility

12.0% Incompatibility

65

opinions of inadmissibility and lack of jurisdiction of the 173 opinions over professional transition to the private sector (article 25 *octies* of the Act of 13 July, 1983) issued **in 2020**

THE EXTENT OF CONTROL WITHIN THE MEANING OF ARTICLE 25 *OCTIES* OF THE ACT OF 13 JULY, 1983

By virtue of section 4 of Article 25 *octies* of the Act of 13 July, 1983, the High Authority is responsible for issuing an opinion on a proposed temporary or permanent cessation of functions by a public agent who wishes to exercise a paid private activity. According to section III of that article, a public agent "*who permanently or temporarily ceases his functions must make an advance referral to the hierarchical authority to whom he is answerable in order to assess the compatibility of any paid activity, whether salaried or not, in a private company or a body governed by public law, or any private practice with the functions exercised over the three years preceding the start of that activity.*" Lastly, Section IV of this article provides that the hierarchical authority shall submit "*this request*" for the prior opinion of the High Authority in cases where the agent in question has held a post under the meaning of Article 2 of Decree No. 2020-69 of 30 January, 2020 over the three years preceding the start of his private activity.

However, for agents not occupying any such post, the procedure does not necessarily involve obtaining an opinion from the High Authority, which can only be requested by the hierarchical authority in the event of a serious doubt as to the compatibility of the proposal with the public functions exercised, and after having requested the opinion of the ethics officer.

However, the High Authority considers, for the purpose of the proper administration of controls, that when it receives a mandatory prior referral of a proposal involving a public agent who, over the previous three years, has held a post covered by Article 2 of the aforementioned decree, it is entitled to issue an opinion covering all of the public functions exercised by the agent over the three-year period preceding the start of the private activity, including those not normally requiring direct referral.

The question of public industrial and commercial establishments (EPICs) and certain special public establishments

It is assumed that public industrial and commercial establishments (EPICs) act like private companies. As such, they may be covered within the scope of illegal taking of an interest, within the meaning of the provisions of Articles 432-12 and 432-13 of the criminal code. In addition, the provisions of Article 25 *octies* of the Act of 13 July, 1983 cover paid private activities in private companies, while specifying that "*any organisation or company carrying out its activity in a competitive sector in accordance with the rules of private law is deemed to be a private company.*"

Staff of EPICs are in principle subject to the rules of private law. Civil servants seconded to an EPIC are also entering into a private law contract with the establishment. As an exception, according to case law for the Council of State and of the Disputes Court that has so far not been challenged[23], the director of an EPIC, and the head of its accounting department, provided that individual holds the status of public accountant, still hold the status of a public agent.

In cases where an EPIC is similar to a private company, the recruitment of any public agent – including as part of a posting or secondment – must be considered as a professional transition to the private sector. Consequently, such a movement will fall within the scope of the professional transition control, to be conducted by the hierarchical authority to which the agent reports, with an opinion from the High Authority where appropriate. This could be considered to be an "entry" control for the EPIC. However, when a public agent leaves an EPIC to exercise another activity in the private sector in the strict sense (private company, association, etc.), no control will be performed at "exit" since this movement must be deemed to be a "private/private" movement, including in cases where this EPIC actually performs work of an administrative nature. This stems from the statutory conception of ethical control, whose scope is closely linked to the scope of the Act of 13 July, 1983.

The situation is the opposite for the EPIC's director and accountant: insofar as case law considers them to be two public agents, no professional transition control is to be conducted upon "entry" in cases where these positions are filled by individuals who already hold public agent status, as their appointment should be deemed to be a "public/public" movement. Conversely, the professional transition control must be carried out if the director or head of accounting leaves the EPIC in order to join the private sector. This is then deemed to be a "public/private" movement, which is subject to control.

Lastly, an individual recruited by an EPIC who has not held any public position in the last three years is in principle not subject to any professional transition control either on "entry" or on "exit". The situation is only different where that individual is recruited to the post of director or accountant because, in such a case, they will be subject to a "pre-appointment" control upon "entry" and a transition control upon "exit".

23. CE, 8 March, 1957, No. 15219; TC, 4 July, 1991, No. 02670

This table summarises the situation:

		Ethical control upon "entry" to an EPIC	Ethical control upon "exit" from an EPIC to the private sector
Role of director* or public accountant for the establishment	**Public agent**	**NO** (public agent retaining their status as public agent)	**YES** (control over transition of a public agent)
	Individual coming from the private sector	**YES** (pre-appointment control)	**YES** (control over transition of a public agent)
Other roles	**Public agent**	**YES** (control over transition of a public agent)	**NO** ("private-private" revolving door)
	Individual coming from the private sector	**NO** ("private-private" revolving door)	**NO** ("private-private" revolving door)

* Pursuant to article 11 of the law of 11 October, 2013, chairmen and general managers of EPICs must file a declaration of assets and interests with the High Authority.

This situation poses several difficulties.

Upon "entry", the lack of control for a public accountant or director of an EPIC prevents the identification and processing of criminal and ethical risks, particularly if the individual in question has controlled this EPIC as part of their previous functions within the administration. An "entry" control over other public agents recruited by the EPICs prevents such exposure to risks.

Upon "exit", the lack of control over agents leaving an EPIC to join a private company prevents the identification and prevention of risks of an unlawful taking of an interest, as Article 432-13 of the Criminal Code specifically states in its fourth paragraph that it is applicable to "agents of public establishments". In addition, the normal functioning, independence and impartiality of the service could be called into question in the event of the departure of an agent of an EPIC to a private company that agent may have controlled, or with which they may have had strong links, particularly in respect to contracts; this risk can be particularly significant in the case of some EPICs which award numerous public contracts[24].

In addition to strictly legal questions, other issues (economic, financial, technological and even social) also suggest a need to control departures of agents from EPICs to private companies.

24. In common with all other legal entities governed by public law, EPICs are "adjudicating authorities", and as such are subject to Articles of L. 1210-1 and L. 1211-1 of the public procurement code.

Insofar as criminal and ethical risks do not entirely overlap, a prior control would ensure greater security for EPICs, their agents and the administration to which the agent is answerable if they are a public agent, where such a control is conducted upon "entry" to and "exit" from the establishment. For the exercise of such control, the question of the status of agents – public or private – is secondary compared to the question of the structure in question, which justifies the application of specific ethical rules and an appropriate control.

Ethical controls for the director could be required to fall under the jurisdiction of the High Authority, for State EPICs, the *offices ublics de l'habitat* (low-cost housing organisations) referred to in section III of Article 11 of the Act of 11 October, 2013 and other EPICs whose budget exceeds an amount specified by law. Other agents would be subject to an internal control, in accordance with the principles resulting from the Act of 6 August, 2019. However, the legislating body would need to be involved to conduct such controls upon "entry" to and "exit" from the EPICS, as there is no legislation providing for them.

Other public establishments, which are neither administrative nor industrial and commercial in nature, are also likely to pose difficulties in terms of control over professional transition. This is particularly true in the case of the *Caisse des dépôts et consignations* special public establishment, which may recruit public agents and private-law agents to the same roles. While public agents must be subject to a professional transition control when they leave the *Caisse*, the same is not true of private-law agents.

In addition to the resulting difference in treatment for agents who nevertheless occupy the same positions, this creates a situation of legal uncertainty for private-law individuals: as agents for a public establishment, they can be accused of the offence of unlawful taking of an interest as specified in Article 432-13 of the Criminal Code, yet without having the benefit of a prior control from their hierarchical authority and, where applicable, the High Authority.

In cases where a government body can indiscriminately employ public agents and private-law agents, it may appear logical that they should all be subject to the same ethical obligations and controls. Indeed, Article 25 *nonies* already makes such a provision for some government bodies finding themselves in this situation, by subjecting their private-law agents to Articles 25 to 25 *octies* of the Act of 13 July, 1983.

PROPOSAL NO. 1

Create a professional transition control for agents (regardless of their status) of some State EPICs such as UGAP or SOLIDEO, special public institutions such as the *Caisse des dépôts et consignations* investment fund and public establishments associated with local authorities such as public housing offices, at the point when they leave to join the private sector.

Assessment of the criminal risk of unlawful taking of an interest by the High Authority

The High Authority conducts an *in concreto* analysis of the criminal risk.

The time period of "*three years after leaving office*" stipulated by this provision could give the impression that there is a need to declare an incompatibility for the three years following departure from office once any of the stated acts has been identified.

However, such an analysis would omit an essential element of the provision: Article 432-13, in its wording taken from Act No. 2007-148 of 2 February, 2007 on modernisation of the civil

service, specifies that the criminal judge's assessment must be based on "*functions [...] effectively exercised*" by the former public agent or manager. The three-year period must therefore be counted not from the date of departure from office, but from the last act of supervision or control, from the date of signature of the last contract, from the last decision adopted, or even the last opinion issued, as each of these actions represents the effective exercise of functions. In addition, such an approach appears to be in line with the intention of the legislative body which, in 2007[25], shortened the time period from five to three years.

A study undertaken on Articles 432-12 and 432-13 of the Criminal Code specifying offences of unlawful taking of an interest during and following public office?

• Article 432-12 of the Criminal Code

Article 432-12 of the Criminal Code adopts a very broad definition of the concept of unlawful taking of an interest, with sanctions specified for *"the taking, receiving or keeping of any interest in a business or business operation, either directly or indirectly, for which [the person] at the time in question has the duty of ensuring, in whole or in part, its supervision, management, liquidation or payment."*

This offence is characterised by its potentially very wide scope – an observation made in 2011 by the Commission for the Prevention of Conflicts in Public Life, which noted "*[its] extensive scope*", particularly with regard to the central concept of "*any interest*".

Indeed, although links relating to assets (personal gains or advantages) make it easy to characterise the offence, moral links – such as family or personal ties – are also sufficient, the Court of Cassation having recently stated its belief that a relationship of friendship could be sufficient to characterise a conflict of interest of a sort that could potentially lead to an unlawful taking of an interest[26]. The implications of this case law are significant in that it invites local elected officials to exercise the greatest caution, since the offence of unlawful taking of an interest can be applied to many situations.

In addition, the Court of Cassation ruled that the offence was committed in cases where municipal officials had participated "*in voting or deliberations concerning subsidies allocated by the municipality to their various different associations*", even though they exercised managerial functions within these associations in their capacity of representatives of the municipality, that they had not obtained "*any benefit whatsoever*" from the operation, and that the local community had not suffered any harm[27]. "Any interest" may thus exclude any remuneration[28], and it may also be taken indirectly via other people.

In 2011, this interpretation led the Commission for the Prevention of Conflicts of Interest to propose the replacement of "*any interest*" to the wording "*an interest that may potentially compromise the impartiality, independence or objectivity of the individual*", thus providing a better definition of the concept of interference between public functions and the private interests of the public decision-maker. The High Authority proposes that this recommendation be adopted.

It transpires that the application of the current legal rule is difficult to reconcile with the requirements for the status of local elected officials when sitting "ex officio"[29] within a public industrial and commercial establishment (EPICs), semi-public companies (SEMs) or local public companies (SPLs).

25. Article 17 of Act No. 2007-148 of 2 February, 2007 on the modernisation of the civil service

26. Crim., 5 April, 2018, No. 17-81.912

27. Crim., 22 October, 2008, No. 08-82.068

28. Crim., 25 June, 1996, No. 95-80.592

29. See p. 96

Articles L. 1524-5 and L. 1531-1 of the general code of local authorities provide that, in SEMs and SPLs, shareholding local authorities are entitled to "*at least one representative on the board of directors or the supervisory board*". These representatives are generally elected officials from the local authority. As representatives of their authority, "*[they] are not deemed to have an interest in the matter, under the meaning of Article L. 2131-11, in cases where the authority or group makes deliberations on its relations with the local semi-public company*".

This provision does not exempt elected officials from criminal liability. Because SEMs and SPLs are legal entities governed by private law, their interests cannot be perceived as strictly converging with the public interest. The same is true for an EPIC insofar as, although a legal entity governed by public law, it conducts economic activities in the same way that a private entrepreneur does. Consequently, when elected officials sit on such bodies, the High Authority recommends that they withdraw from decisions by their authority in regard of these bodies, including in cases where they are representing that authority.

The High Authority is already of the opinion that, in the interests of discharging the tasks entrusted to him, the elected official may take part in discussions of a general nature regarding the entity on which he sits "ex officio", taking account in particular of the provisions of Article L. 1524-5 of the general code of local authorities, which provides that "*the legislative bodies of local authorities and their shareholder groups will vote on the written report submitted to them at least once a year by their representatives on the board of directors or the supervisory board*". It is indeed justified for a member of the board of directors of an SEM or an SPLE, appointed by their home authority, to report on the activities of that company to the other members of the authority's legislative assembly.

In a more general sense, to take account of the status of these elected officials who represent their authority, an exemption could be provided for in Article 432-12 of the Criminal Code to enable them to participate in decisions relating to these bodies, excluding the case of deliberations that provide them with a personal benefit, including remuneration issues.

Such an exemption is justified by the fact that the general code of local authorities makes provision, with regard to designated elected officials in SEMs and SPLs, for modifications to the concept of *"adviser with an interest in the matter".*

Furthermore, such an exemption would not prevent the High Authority, on the basis of the Act of 11 October, 2013 (providing for the eventuality of a conflict between public interests) from requiring specific individuals to withdraw where justified by the situation, following an *in concreto* analysis.

Although the specific characteristics of SEMs, SPLs and EPICs would seem to justify a more appropriate criminal offence, associations – which are sometimes created or controlled in law or in reality by local authorities – should not benefit from them, since there is no specific provision conferring upon them an *ad hoc* status. Furthermore, the risks of de facto management or distortion of competition or rules relating to public procurement contracts cannot be ruled out either, particularly when the association could potentially be described as a "transparent" association, which cannot be the case for an SEM or an SPL.

• Article 432-13 of the Criminal Code

In its current wording, the material component of Article 432-13 – the unlawful taking of an interest "after public office" – may seem restrictive. Indeed, the requirement for the duties of office to have been "*effectively exercised*" would, for example, potentially exonerate a local mayor or ministerial adviser from any responsibility in a given case, provided that they had not directly followed that case and had not taken any formal decisions. Conversely, an official involved in preparing the case – for example, by analysing a financial proposition or giving an opinion on a project – would not be excluded from the risk of criminal proceedings, even in the event that official had no decision-making power or power of influence, and that their opinion was filtered through their various managers before being presented to the authority responsible for taking the decision.

The logic and consistency of these provisions must be adhered to: a sliding scale requires that the higher the position occupied by an official in the administrative hierarchy, the greater their responsibilities, ensuring that they are not able to evade criminal or administrative responsibility for the simple reason that they did not personally investigate the case themselves.

PROPOSAL NO. 2

– Specify, in Article 432-12 of the Criminal Code, that the acquisition of an "*interest of whatsoever kind*" is not punishable, but the acquisition of an interest "*that is threatening to the impartiality, independence or objectivity*" of the person is punishable.

– By adding a paragraph, provide for an exemption from the provisions of Article 432-12 of the French Criminal Code, so that the elected representative, as representative of its community, the governing bodies of an industrial and commercial public institution, a mixed-economy company or a local public company, may participate in the decisions of its community concerning this body, with the exception of decisions giving it a direct or indirect personal advantage in respect of decisions to award grants and decisions relating to public contracts and public service delegations, in accordance with Article L. 1524-5 of the French General Code of Local Authorities.

Inconsistencies in the legislation governing the professional transition of public officials and agents

This first year of the High Authority's exercise of ethical controls has highlighted the difficulties caused by the disparities between Article 23 of the Act of 11 October, 2013 and Article 25 *octies* of the Act of 13 July, 1983, governing the professional transition of public officials and agents.

In order to improve the consistency of its doctrine, the High Authority has chosen to exercise a similar control to these two groups by conducting an *in concreto* analysis of the planned activity and of the structure the individual plans to transition to (*see inset*). The naming of the body in the legislation is therefore not sufficient to establish the High Authority's jurisdiction or lack thereof, requiring an assessment based on the actual nature of the activities. This is, for example, the case for the *Centre national d'études s atiales*[30] or the *Institut français*[31] which, although described as EPICs, in reality perform an administrative public service function.

	For public officials covered by Article 23 of Act No. 2013-907 of 11 October, 2013* on transparency in public life	For civil servants and public agents covered by Article 25 *octies* of Act No. 83-634 of 13 July, 1983 on the rights and obligations of civil servants (since the Act of 6 August, 2019 on the transformation of civil service)
Scope of control for professional transition to the private sector	Any private practice: consultancy work, exercise of legal profession, etc.	
	Any paid activity within: • a company; • a public establishment whose business is of an industrial and commercial nature; • a public interest group whose business is of an industrial and commercial nature	Any paid activity, whether salaried or not, in a private company or an organisation governed by private law (foundation, association). > A private company is taken to mean "*any organisation or company that o erates in a com etitive sector in accordance with the rules of private* law".
	Purely voluntary activities excluded from the scope of control	

* Former members of the Government, former local executives and former members of independent administrative or public authorities

30. Deliberation No. 2020-197 of 20 October, 2020

31. Deliberation No. 2020-223 of 17 November, 2020

HIGH AUTHORITY DOCTRINE WITH REGARD TO PUBLIC ESTABLISHMENTS OF AN INDUSTRIAL AND COMMERCIAL NATURE

The High Authority considered that it was not competent[32], on the basis of Article 23 of the Act of 11 October, 2013, to rule on the professional transition of a public official within the public establishment *SOLIDEO – Société de livraison des ouvrages olympiques*: taking into account its duties and the essentially public nature of its resources, this public company, despite holding the status of a public establishment of an industrial and commercial nature, could not be regarded as operating in a competitive sector in accordance with the rules of private law.

It is also not competent[33], on the basis of Section III of Article 25 *octies*, to rule on the proposed move of a public agent to the public establishment *Union des groupements d'achats publics* (UGAP), since this establishment, which is a procurement centre under the meaning of the public procurement code and is thus involved in the implementation of a rationalised public procurement policy for the benefit of the State, its public establishments and local authorities, and despite having the status of public establishment of an industrial and commercial nature, could not be regarded as operating in a competitive sector in accordance with the rules of private law.

Although legislation does not currently enable the High Authority to control the professional transition of public officials within such establishments, this type of revolving-door movement should be governed by a framework because of the inherent ethical and criminal risks.

32. Deliberation No. 2020-176 of 22 September, 2020
33. Deliberation No. 2021-25 of 16 February, 2021

Other differences between professional transition as covered in the Act of 2013 and professional transition as covered in the Act of 1983 can be noted, without resulting from differences in situations that justify the use of a specific mechanism. This applies in particular to:

— *the duration of an opinion of incompatibility*: Article 23 of the Act of 11 October, 2013 provides for a period of incompatibility which expires three years after the individual leaves office. This strict time limit is not necessarily justified in relation to the duties actually performed, and the High Authority should be given a margin of flexibility for assessment. Article 25 *octies* of the Act of 13 July, 1983 does not contain provision for such a strict period of incompatibility.

— *notification of the opinions*: Article 23 of the Act of 11 October, 2013 only provides for notification of the opinion to the private company that the public official has joined in the event that there has been no referral prior to the transition. In addition, no notification of the ministry, local authority or independent administrative or public authority from which the former public official has come is required. Article 25 *octies* of the Act of 13 July, 1983 provides for such notifications, which contribute to the effectiveness of the opinions and the protection of the individuals concerned.

— *publication of the opinions*: Article 23 of the Act of 11 October, 2013 only provides for publication of opinions of compatibility with reservations or incompatibility, but not opinions of straightforward compatibility. The Act of 13 July, 1983 makes no distinction between the types of opinion. Publication of an opinion does not constitute a sanction, and also protects the public official and the authority or administration from which they have come.

— *sanctions incurred*:

• article 23 of the Act of 11 October, 2013 stipulates, for actions performed in disregard of an opinion of incompatibility, that contracts signed by public officials who have not made a referral to the High Authority prior to taking up their new duties shall be annulled, providing justification for the referral of those duties by their chairman, and the termination of these contracts, in the event of prior referral. Although a different sanction may be justified, the main effect of annulment is to undermine the legal security of third parties. Article 25 *octies* of the Act of 13 July, 1983, which makes no distinction regarding the existence or otherwise of a prior referral, provides for the termination of contracts in the event of disregard of an opinion of incompatibility.

• Article 23 of the Act of 11 October, 2013 provides that in cases where an opinion of incompatibility is not adhered to, or when reservations are disregarded, the High Authority will publish a special report in the *Journal officiel* and forward the case to the public prosecutor. This is not a sanction as such, and although a breach raises ethical issues, the act of forwarding to the public prosecutor has no practical consequences in the absence of a criminal offence.

• Section X of Article 25 *octies* of the Act of 13 July, 1983 provides for sanctions which, as things stand, only appear to apply in cases where there has been a referral to the High Authority, which is manifestly contrary to the intended objective of attempting to bring responsibility to government bodies and make them the focal point of ethical controls for all public agents.

By way of a reminder, Article 25 *octies* provides that in the event of **breaches of opinions of incompatibility and reservations:**

— the civil servant may be subject to disciplinary proceedings;

— a retired civil servant may face a deduction from their pension of up to 20% of its value for the three years after leaving office;

— the government body may not recruit the contracted agent in question for a period of three years following the date of notification of the opinion issued by the High Authority;

— the contract held by the agent on the date of notification of the opinion will be terminated without notice and without compensation for termination.

The sanctions regime can therefore result in the termination of the agent's employment contract with a company in the event of an activity that places the agent in a situation of violation of a reservation or an opinion of incompatibility.

• Article 25 *octies* of the Act of 13 July, 1983 provides for sanctions that are hard to interpret, being based on the status of the individual, whereas they should more logically be based on the nature of the control being carried out. For example, appropriate sanctions for disregarding an opinion from a pre-appointment control would be a disciplinary sanction or the termination of the employment contract; in the case of professional transition or multiple jobholding, appropriate sanctions would be the termination of any contracts signed (employment contract, service provision contract) or the withdrawal of the authorisation for multiple jobholding.

PROPOSAL NO. 3

Harmonise the texts relating (a) to the control of the professional transition of members of the Government, certain local executives and members of the administrative authorities and independent public authorities (Article 23 of the Act of 11 October 2013) and (b) to the control of the professional transition of public officials (Article 25 *octies* of the Act of 13 July 1983), in particular with regard to the definition of private activities falling within the scope of the control and the sanctions incurred in the event of non-compliance with the opinion of the High Authority and, for public agents, the decision of the hierarchical authority.

5

The issue of monitoring reservations and opinions of incompatibility issued in relation to new ethics checks on public agents

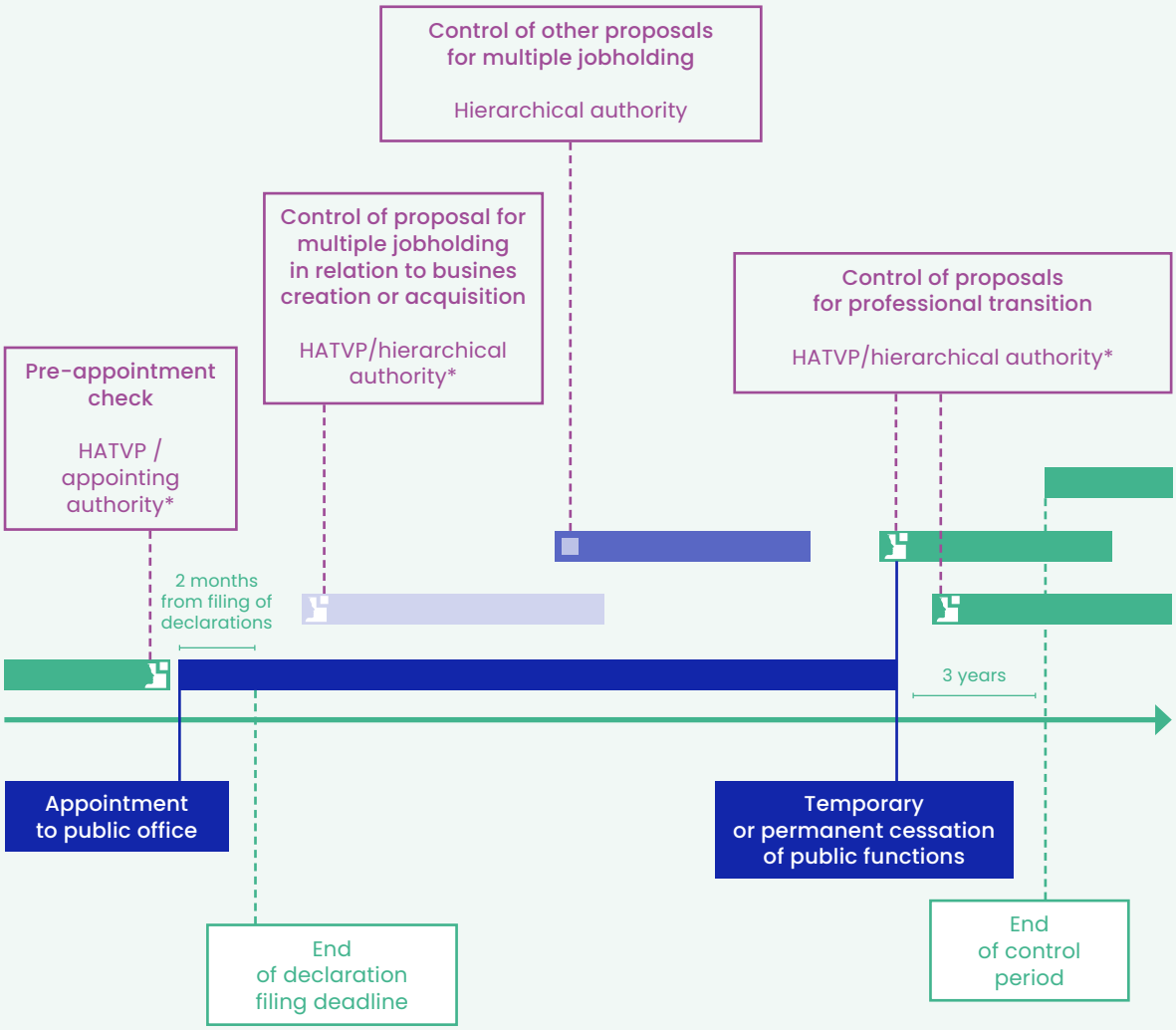
The High Authority regularly arranges for the monitoring of reservations and opinions of incompatibility to ensure that they are being adhered to. Sanctions are also provided for in the event of non-compliance with these opinions.

The government body and the agent are required to comply with the opinion of the High Authority in the case of opinions of incompatibility. They are also required to comply with any reservations that may accompany an opinion of compatibility. In cases involving an opinion of compatibility, or compatibility with reservations, the government body may still adopt a reasoned decision declaring an incompatibility or imposing additional reservations.

In accordance with the law, the High Authority must regularly monitor reservations and opinions of incompatibility for the three years following the issuance of its opinion. The purpose of this is to make regular checks of compliance with the High Authority's recommendations, which is achieved by means including contacting the person in question to obtain evidence of compliance.

In the absence of a response, the High Authority may give the agent formal notice to reply within a period of two months. In cases where it has not obtained the necessary information, or observes that there has not been compliance with its opinion, the High Authority may inform the authority responsible for the agent to enable the implementation of sanctions.

ETHICAL CONTROLS APPLICABLE TO PUBLIC OFFICIALS AND AGENTS



* The control is exercised by the HATVP or the hierarchical authority, depending on the nature of the office held. For more details, refer to the content of the *Ethics Guide*.

Exercise of a paid private activity

Exercise of public office

Multiple jobholding for business creation or acquisition with a request for part-time work

Ethical control

Other multiple jobholding

Part 2

Raising awareness, supporting and advising public officials in compliance with their declaration requirements

The declaration requirements incumbent on the 16,000 public officials who fall within the scope of the High Authority pertain to the "*public interest motive*[34]" of preventing and combating conflicts of interest. But some public officials can find them difficult to understand, especially when first subject to them. Dialogue, education and support for public officials are, therefore, essential aspects of the High Authority's mission, to which it has remained committed throughout the health crisis. A number of assistance and advice mechanisms have been deployed to answer the questions of these public officials and to offer them the best support in their actions.

34. Constitutional Council Decision No. 2013-676 of 9 October 2013

1
A record year for filing declarations of assets and interests

The unusual volume of electoral and political developments in 2020 has led to an exceptional influx of declarations, with more than 17,000 declarations of assets and interests received.

Initial declarations of assets and interests must be filed by the person subject to this requirement within two months of taking office.

As for the **declaration of assets held at the end or the term of office or functions**, this must be submitted within a specific period that differs depending upon the person subject to this requirement:

— the President of France submits a declaration of assets to the High Authority no earlier than six months and no later than five months before the expiry of his/her term of office[35];
— members of Government submit their end-of term declarations of assets within two months following the end of the functions exercised;
— members of parliament must submit this declaration no earlier than seven months but no later than six months before the end of their mandate;
— local elected officials submit it no earlier than two months and no later than one month before the end of their mandate.

Furthermore, any substantial change in their assets or interests[36] must give rise to an amending declaration within two months following the change, reduced to one month for members of the Government.

The filing of declarations constitutes the first stage of control by the High Authority, followed by a "substantive" control verifying the completeness, accuracy and sincerity of the declared information.

35. This provision was introduced by organic Act No. 2017-1338 on trust in political life. It provides that the declaration of the President of France's assets shall be made public and will be subject to an opinion from the High Authority in order to control changes in the President's assets between the start and end of his/her term of office.

36. For more on the concept of substantial change, please refer to the *Guide for declarants* published by the High Authority.

General report on declarations received in 2020.

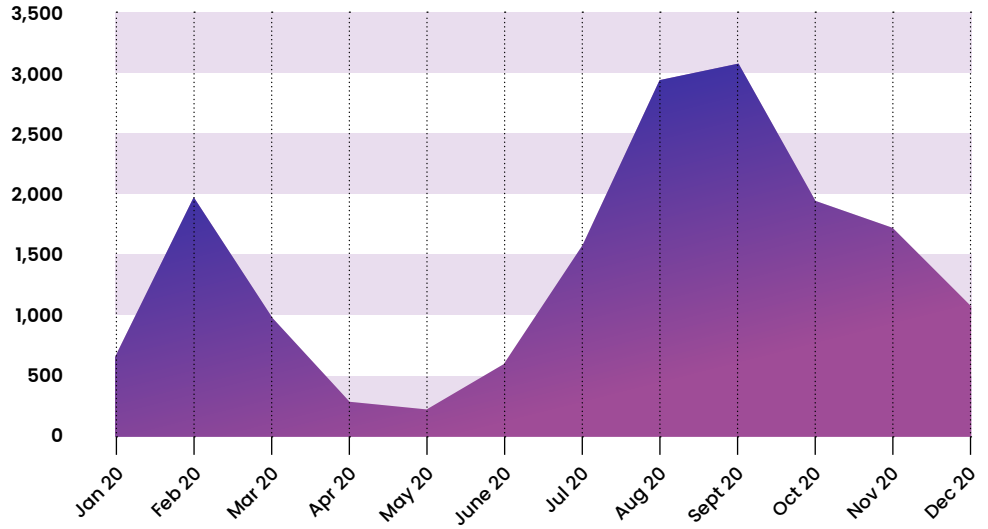
The year 2020 was particularly busy: the changing of municipal and community councils and their offices, and the election of 178 series 2 senators[37] in September 2020 led to an exceptional influx of declarations. The change of government, which took place in July 2020, and the arrival of new ministerial advisers, also contributed to the increased number of declarations received.

Deadlines for the filing of declarations extended due to the health crisis.

Due to the health crisis, the deadlines for the filing of initial declarations of interest and assets and the end-of-term declarations of assets were extended by decree[38], for the most part to 24 August 2020. The postponement of the second round of municipal and community elections to 28 June 2020 also affected the submission deadline for the newly elected.

The influx of declarations of interests and assets received was thus especially concentrated towards the end of the year 2020, with more than two thirds of the declarations, that is 10,791 declarations, received from the month of August onwards.

NUMBER OF DECLARATIONS OF ASSETS AND INTERESTS RECEIVED EACH MONTH IN 2020



37. Half of the Senate is reshuffled. Series 1 consists of 170 seats and was reshuffled in September 2017. Series 2 consists of 178 seats and was reshuffled in September 2020. A senator's mandate is for 6 years.

38. Order No. 2020-306 of 25 March 2020 on the extension of deadlines expiring during the health crisis period and the adaptation of procedures during this same period, amended by Order No. 2020-560 of 13 May 2020 establishing deadlines applicable to various procedures during the health crisis period.

Key figures

17,113
declarations of assets and interests received in 2020

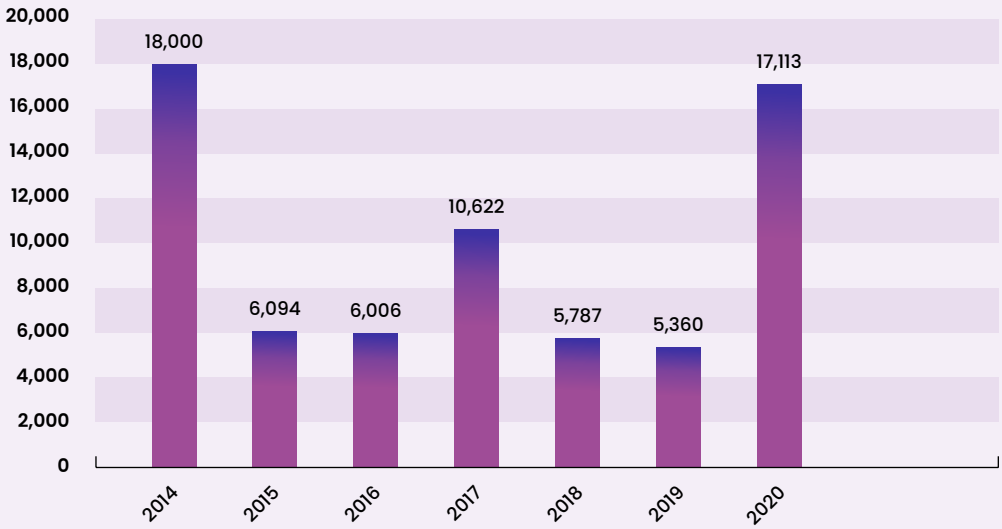
17,113 declarations were received in 2020, i.e. nearly three times as many as in 2019:

— **6,833** declarations of interests;

— **5,597** declarations of assets;

— **4,683** declarations of assets at the end of the term of office or functions.

NUMBER OF DECLARATIONS OF ASSETS AND INTERESTS RECEIVED EACH YEAR SINCE 2014



BREAKDOWN OF DECLARATION TYPE RECEIVED IN 2020

39.9% Declarations of interest

32.7% Declarations of assets

27.4% Declarations of assets at the end of the term of office or functions

<table>
<tr><th>Public officials</th><th>Declaration type</th><th>Initial deadline for filing declarations</th><th>Deadline for filing declarations after postponement</th><th>Declaration type</th><th>Deadline for filing declarations</th></tr>
<tr><td>Mayors of municipalities of more than 20,000 inhabitants</td><td rowspan="8">Declaration of assets at the end of the term of office or functions</td><td colspan="2" rowspan="2">29 February 2020</td><td rowspan="8">Declaration of assets and interests at the end of the term of office or functions</td><td rowspan="2">• 24 August 2020 if role commenced between the first round of municipal elections and 23 June 2020

• If elected in the second round: two months from the start of the mandate, around the end of August or start of September 2020 depending on when the 1st municipal council meeting is held</td></tr>
<tr><td>Deputy Mayors of municipalities of more than 100,000 inhabitants</td></tr>
<tr><td>Presidents of EPICs with their own taxation exceeding 20,000 inhabitants or whose operating revenue surpasses 5 million euros</td><td rowspan="3">Between 24 February and 24 March 2020</td><td rowspan="4">24 August 2020</td><td rowspan="3"></td></tr>
<tr><td>Presidents of other EPICs without their own taxation whose operating revenue surpasses 5 million euros</td></tr>
<tr><td>Vice-presidents of EPICs with their own taxation of more than 100,000 inhabitants, who hold delegated signature authority or duties</td></tr>
<tr><td>Series 2 senators</td><td>31 March 2020</td><td>27 November 2020</td></tr>
<tr><td>Local authority offices cited above</td><td colspan="2">Within two months following the end of duties</td><td>Within two months following the commencement of duties</td></tr>
</table>

Practical difficulties linked to the legal framework for filing certain declarations

Filing of declarations of assets at the end of the term of office

Article 11 of the Act of 11 October 2013 provides that local public officials must send "*a new declaration of assets no earlier than two months and no later than one month before the expiry of [their] term of office or [their] duties*".

Although, in practice, the date of the end of duties may be known precisely in advance (barring exceptional cases such as resignation or death), this is not the case for the end of their term of office. This wording causes difficulties for local elected officials, as it could potentially be understood as the date of the election (first or second round) or as the date when the new incumbent takes up their position after the elections.

This question was raised recently in the context of the municipal and community elections of 2020, for which the "outgoing" officials experienced difficulties regarding the implementation of their filing requirement. The High Authority therefore considers that a single date could be set in order to establish a fixed and clear deadline for filing end-of-term declarations of assets. This date could be that of the next election which ends the term of office or duties of the declarant, or that of the first polling round in the case of two-round elections.

Such a measure would increase the legal certainty of persons subject to this obligation, in cases where the election date is known a long time in advance, and a poor understanding of the periods for filing would risk leading to the non-reimbursement of campaign expenses. Indeed, the electoral code[39] provides that the standard reimbursement of electoral expenses will not be paid to candidates who have not filed their declaration of assets "*within the legal deadline*". These provisions entered into force on 30 June 2020.

This amendment would, moreover, have no impact on the substance of the requirement itself, the end-of-term declaration having the purpose of allowing changes in assets to be checked across the entire term of office or duties.

Multiple declarations of assets and interests in the case of multiple jobholding by one person

In the state of the provisions of article 11 of the Act of 11 October 2013 and appendices 1 and 3 of decree No. 2013-1212 of 23 December 2013, the Act imposes the filing of a declaration of interests for each mandate or office exercised by the same person where these are subject to this declaration requirement. The declaration of assets follows the same principle, but a legal exemption has nonetheless been provided for in the case where a declaration of assets has already been filed less than a year before the commencement of duties.

For example, a person who is elected Mayor of a municipality of more than 20,000 inhabitants and then President of a federation of municipalities and, finally, the chair of a local public company, must file a declaration of assets and three separate declarations of interest, which it is assumed will contain the same information.

This process does not seem optimal and represents an excessive constraint both for the declarant and for the High Authority. The filing procedure could be simplified by requiring a single declaration of interests and a single declaration of assets linked to the first election to an elected office or to a first appointment to the duties that fall within the scope of article 11 of the Act of 2013 and then the successive updating of these two "original" declarations by adding the other elected offices or duties that start later. This rule seems especially necessary for local executives who frequently combine several offices or duties.

39. Article L. 52-11-1 of the electoral code:

In substance, if it is necessary to make public all the public offices and duties exercised by a public official, it is much more in keeping with the spirit of the mechanism to unify these offices and duties within a single declaration and thus be able to check potential or proven interferences between the declarant's personal interests and all of these public duties.

The filing requirement for public officials and agents who remain in their role for less than two months

Pursuant to articles 4 and 11 of the Act of 11 October 2013, and article 25 *quinquies* of the Act of 13 July 1983, declarations of assets and interests are due from the person in question "*within the two months that follow their appointment*", whatever the duration in which they exercise their duties or office.

Thus, if a public official or a public agent leaves their duties after a few days or a few weeks, the declarations are deemed to be due. In practice, when a person leaves their duties after holding them for less than two months and has not filed their declarations in the intervening period, the filing requirement seems superfluous and excessive, insofar as the risks for such a short period may be considered as very limited. This situation has arisen, notably, for senators and members of Government, who have remained in their role for a short period.

It is proposed that the filing of declarations no longer be required when the public official or agent leaves their role within before the completion of a period of two months from their election or appointment where the declarations have not already been submitted.

PROPOSAL NO. 4

– Clarify the time limit within which the declaration of assets for the end of the term of office of local elected officials must be filed, using the next election day (or the 1st polling round in the case of two-round elections) as the date from which the filing period must be calculated.

– In the event that multiple mandates or functions are held by a single person, provide for the filing of a single declaration of interest.

– No longer require the filing of a declaration of assets and interest for public officials and agents who remain in office less than two months, in the event that these declarations have not already been filed.

2
The important task of issuing compliance reminders for public officials

Following the extension of declaration filing deadlines due to the health emergency, the High Authority has stepped up its actions to raise awareness and friendly reminders, permitting improved compliance by public officials.

Communication in advance

To raise the awareness of public officials and, in particular, local elected officials about their declaration requirements, the High Authority has posted the filing deadlines for each category of public officials several times on its website. This information was also sent to associations of elected officials and to the specialised press for wider distribution. The postponement of the legal deadlines for filing was then similarly communicated. Moreover, the declaration requirements for local elected officials, have been the subject of reminders by the Ministry of the Interior in its *Guide to municipal and community elections 2020*.

Unsatisfactory rates of compliance with the declaration requirements at the expiry of the legal deadline

However, as the figures below demonstrate, due to the health crisis and despite the High Authority's efforts at communication, the rates of compliance by local executives following expiry of the legal deadlines have proven to be particularly low. The High Authority's departments have therefore stepped up the numbers of friendly reminders to public officials in default, in order to request the filing of their declarations of assets and/or interests.

Slightly over 1,500 friendly formal reminders have been sent to public officials failing to file their declarations by the expiry of the legal deadline. The reminders were mostly sent to presidents of EPICs and to Mayors and Deputy Mayors making their first declarations to the High Authority. 77.3% of them took action to comply. 349 injunctions were then issued to declarants who remained in default.

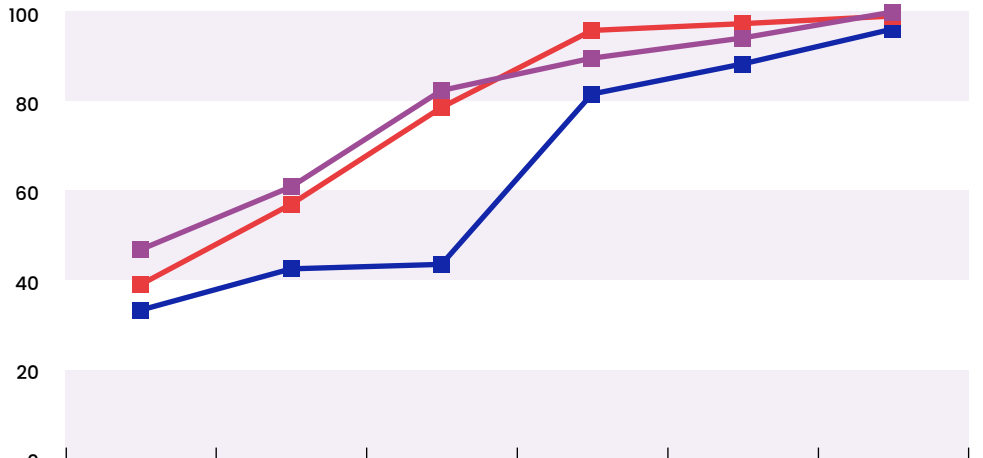
The series 2 senatorial elections (27 September 2020)

100% of the 172 outgoing senators from series 2 filed an end-of-term declaration of assets. A similar rate of compliance was observed among newly-elected senators.

Only 33% of presidents of public establishments for cooperation between local authorities had filed their declarations before the expiry of the legal deadline, 4% remaining in default as of 15 March 2021 after the reminder campaign carried out by the High Authority.

1,538 friendly formal **reminders** sent for the filing of declarations which had resulted in **349** **injunctions**

RATE OF COMPLIANCE BY LOCAL ELECTED OFFICIALS WITH THEIR REQUIREMENTS TO FILE DECLARATIONS OF ASSETS AND INTERESTS (in %)



	Legal date of filing	15/09/2020	15/10/2020	15/12/2020	15/01/2020	15/03/2020
Mayors	46.8%	60.8%	82.3%	89.5%	94%	99.8%
Deputy Mayors	39%	56.9%	78.5%	96.2%	97.2%	98.9%
Presidents of EPICs	33.3%	42.5%	43.5%	81.5%	88.2%	96%

It is also worth highlighting that the filing rate for declarations of assets by local elected officials is higher than that for declarations of interests. For example, as of 15 September 2020, 60.8% of Mayors had filed their declaration of interests, compared to 83.4% for their declaration of assets. This higher rate can be explained primarily by the existence of a legal exemption for any elected official who had filed a declaration of assets less than a year prior to the election date. The re-elected officials had already had to file an end-of-term declaration of assets, and are therefore considered as already being in compliance with their declaration requirements with regard to assets. Additionally, since 30 June 2020, the filing of a declaration of assets within the deadline is also a condition for the refunding of campaign expenses[40]. However, it is important to remember that a failure to file a declaration of interests, or a late filing, exposes the declarant to a risk of conflict of interest and unlawful taking of interests, as the High Authority would not be able to recommend the necessary precautionary measures in a timely manner.

40. See p. 67

2021 TIMEFRAME

THE PUBLICATION OF THE STATE OF COMPLIANCE OF PUBLIC OFFICIALS WITH THEIR REQUIREMENTS TO FILE A DECLARATION OF ASSETS AND INTERESTS

At the beginning of 2021, the High Authority updated its website to increase transparency concerning information about the declaration requirements of public officials.

By way of a reminder, the Acts of 11 October 2013 on transparency in public life provide that the declarations of assets and interests filed by certain public officials[41] with the High Authority are to be published on its website or in prefectures[42]. These declarations also verified by the High Authority and, where applicable, rectified by the declarant at the request of the college (board) to meet the requirements of completeness, accuracy and sincerity.

Pending publication of a declaration, notes appearing on the named records for public officials permit citizens to know the situation of a declarant whose declaration is public and, in particular, to find out whether the declarant has fulfilled the requirements of the High Authority:

— the wording "*Declaration filed – publication forthcoming*" appears on the record when the declarant has actually fulfilled the declaration requirement;

— the wording "*Declaration not filed*" identifies a declarant who is still in default at the expiry of the time limit for corrective action specified in the injunction sent to them;

— the wording "*Being processed*" appears where the legal deadline for filing has not yet expired or where the High Authority departments are still controlling the declaration.

41. This concerns members of the Government, local executives, members of parliament, senators and French representatives at the European Parliament.

42. See p. 106 for more details on this dual publication regime.

3
Assistance to help declarants better understand their obligations

Despite the Health crisis, the departments of the High Authority have remained fully committed to maintaining a dialogue with public officials and supporting them, by telephone or by email, in fulfilling the declaration requirements[43].

Personalised support

Much use was made of telephone assistance in 2020, with 6,086 calls handled (in spite of a limited service in March and April) – nearly five times as many as in 2019.

A peak was reached in February with 1,037 calls corresponding to the filing deadlines for end-of-term declarations of assets for local elected officials.

There were also numerous conversations in the autumn after the second round of municipal and community elections, within the framework of first filings of declarations.

around

2,450

emails received
in **2020** on the dedicated address for public officials

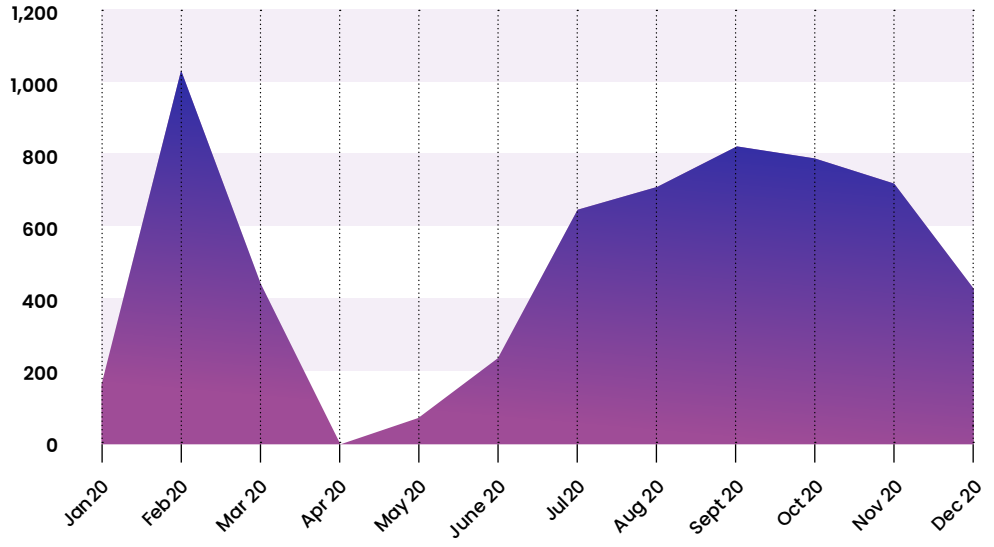
6,086

phone calls handled in **2020**
on the dedicated support line for public officials
5 times more than in 2019

Average call length of **5'34**

43. Public officials may contact the High Authority by telephone on 01.86.21.94.97 or by email at **adel@hatvp.fr**

NUMBER OF PHONE CALLS HANDLED ON THE DEDICATED SUPPORT LINE FOR PUBLIC OFFICIALS



Updating the guide for declarants

In order to support public officials and agents at each step of their declaration of assets and/or interests, the High Authority publishes a *Guide for declarants* on its website[44], which is regularly updated as the High Authority's doctrine evolves. Seven sections were updated in July 2020 to provide clarification on the following:

— the procedure for updating a declaration;

— the declaration of business assets, customers, expenses and offices;

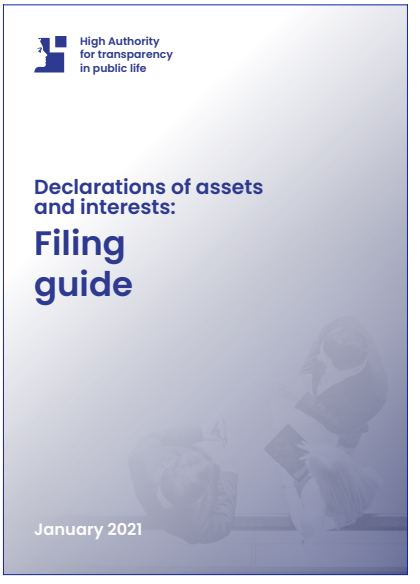
— the declaration of professional activities giving rise to remuneration or bonuses;

— the declaration of participation in the governing bodies of public or private bodies[45];

— the declaration of a spouse's professional activity;

— the declaration of volunteer roles;

— the declaration of elected duties and offices.



44. https://bit.ly/3umFyg9
45. See p. 96

Improvement of electronic declaration mechanism

The "ADEL" platform for electronic declaration intended for public officials was updated several times in 2020 in order to facilitate entering data. These public officials now have access, when filing their declaration of assets and interests, to the history of their previously filed declarations.

The High Authority has also updated the space dedicated to ethical referrals in order to guide government bodies (and, in rare cases, agents) in their actions. Thus, before accessing the referral forms, the government body replies to a brief questionnaire to determine whether it needs to refer, for example, the case of its agent's revolving-door movement proposal to the High Authority or whether it can rule on the case itself.

This update aims to limit the number of unnecessary referrals to the High Authority (in response to which it issues a decision of lack of jurisdiction or inadmissibility).

The publication of new communication media

The High Authority has updated its institutional brochure to integrate the institutional changes implemented in 2020 and its new powers. This brochure is available in French and English on the High Authority's website[46]. Several brochures have also been published targeting specific audiences: local executives, their offices, ministerial employees and the managers of local public companies.

All documentary resources and practical tools have been centralised within a new section of the High Authority's website[47]. They are also accessible from the homepage, making it easier for public officials and agents to find them.

46. https://bit.ly/3y8D1Z4
47. https://bit.ly/3bmsMX7

4
Ethical advice

Alongside its duties of control, the High Authority supports public officials in understanding their ethical obligations, ensuring that they have practical operational advice and reassurance to face the questions raised in the performance of their duties.

Reminder of the legal framework

Public officials and agents subject to declaration requirements may request an opinion from the High Authority on any ethical issues encountered during their term of office or duties[48].

Requests for ethical advice may be submitted by an individual, on behalf of an institution or for a third party, on the basis of article 20 of the Act of 11 October 2013 by any person subject to the requirements to declare their assets and/or interests to the High Authority.

171
ethical opinions
issued since **2014**

By way of a reminder, referrals for ethical advice may be formulated:

— **for an individual**, concerning the personal situation of the public official making the referral (planned professional transition, multiple jobholding, risk of conflicts of interest in connection with their entourage, etc.);

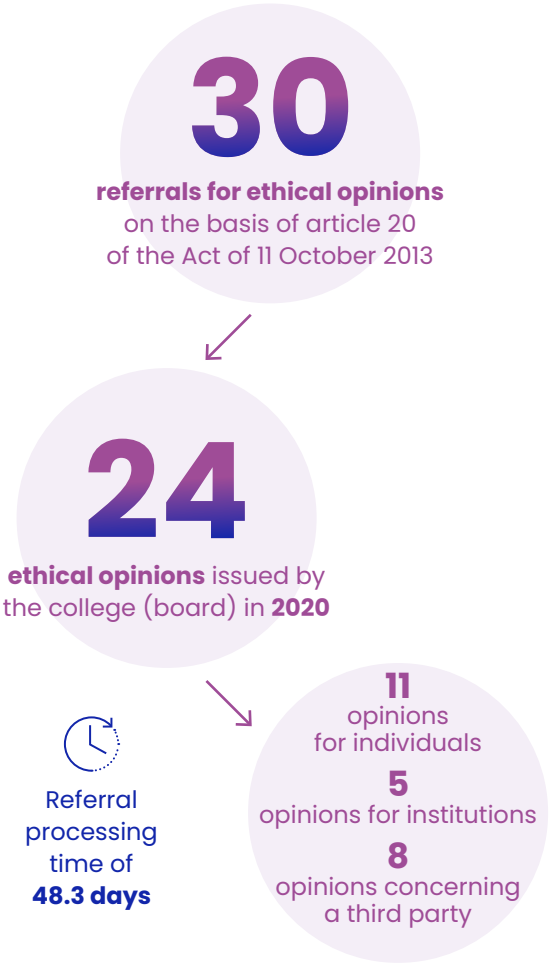
— **for an institution**, notably for an opinion on a proposed ethics code or on a general mechanism for the prevention of conflicts of interest and breaches of probity planned within the government body or local authority in question. It is, moreover, in this respect that more and more referrals have been made to the High Authority over the last two years, providing material for the second volume of the *Ethics Guide*;

— **on behalf of a third party**; for example, where an appointment is planned or when the president of a local executive raises questions about one of their vice-presidents holding an office alongside a private activity.

48. The methods of referral are available from the High Authority's website: https://bit.ly/3sehyd6

In addition, on the basis of article 25 *ter* of the Act of 13 July 1983 on the general status of civil servants, in cases where a hierarchical authority is unable to assess whether a civil servant whose appointment is conditional upon the submission of a declaration of interests has a conflict of interests, the hierarchical authority may approach the High Authority. No such situation occurred in 2020.

Within the framework of these referrals, the High Authority implements a twofold checking process, in order to prevent both the criminal risk of an unlawful taking of an interest (articles 432-12 and 432-13 of the criminal code) and ethical risks, particularly the risk of a conflict of interests.



Key figures concerning ethical advice in 2020 (on the basis of article 20 of the Act of 11 October 2013)

In 2020, the High Authority received 30 referrals and issued 24 ethical opinions. This difference is explained by several referrals deemed inadmissible but also by opinions issued at the beginning of 2021. Despite the relative consistency in the number of ethical opinions issued compared to 2019 (25) the average time to process them has increased from 36 days to 48.3 in 2020. This increase mainly results from the new powers with regard to ethical control of public agents implemented since 1st February, which have placed a strain on the High Authority's other advisory duties.

This year, local elected officials have been the source of about half the referrals, showing the deeper integration of an ethical culture based on prevention and raising awareness. Among the recurring questions, was the performance of duties by local elected officials in external bodies (semi-public companies, local public companies, associations), and the appropriate means for preventing any criminal or ethical risk.

A constant dialogue with government bodies, local authorities and ethics officers

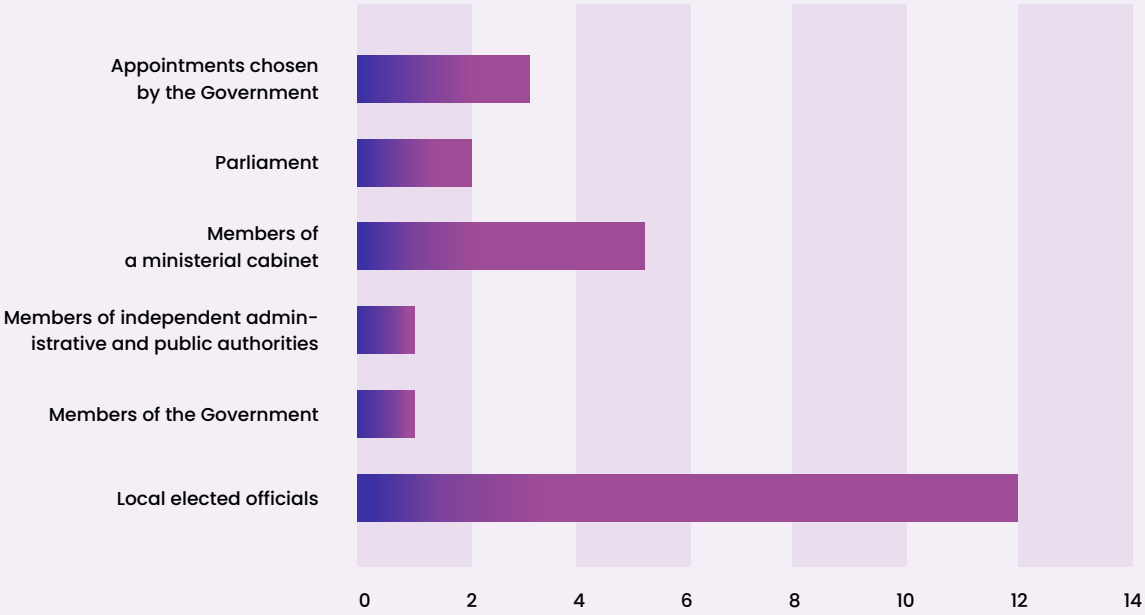
The implementation of new ethical controls from 1 February 2020 has given rise to a number of questions from government bodies, local authorities and ethics officers. In 2020, therefore, the High Authority has stepped up its discussions with them in order to educate and to reply to their legal questions.

Key figures

ISSUES RAISED BY REQUESTS FOR ETHICAL OPINIONS BASED ON ARTICLE 20

5	Holding a public service role (elected or otherwise) while carrying out a private professional activity
5	Conflict of interests linked to family situation
4	Professional transition
4	Other
2	Proposed ethics charter or code
2	Opinion prior to an appointment

PUBLIC OFFICIALS WHO SUBMITTED A REFERRAL TO THE HIGH AUTHORITY UNDER ARTICLE 20, BY TYPE



5
Disseminating the expertise and roles of the High Authority

As a key institutional stakeholder in the propagation of a culture of integrity, the High Authority shares its legal and ethical expertise on a daily basis by presenting its work and its doctrine, and by developing educational tools for government bodies, ethics officers and public officials.

Initiatives by the President of the High Authority

Appointed on 30 January 2020, the President of the High Authority, Mr Didier Migaud, has on several occasions been invited to talk about and publicise the action of the High Authority with regard to the control of the integrity of public agents and officials and the prevention of conflicts of interest and breaches of probity.

On 1st October 2020, the President closed the training session organised for around a hundred elected officials of the deliberative assembly of the *Syndicat des eaux d'Île-de-France* union on the theme of ethics – a particularly fitting theme in the context of management method renewal. A few days later, the President participated in the work of the general assembly of the National Council of Bars.

Finally, in July 2020, as part of the launch of the *OECD Public Integrity Handbook*[49], the President took part in a webinar held by the department for integrity in the public sector to present the powers of the High Authority and, particularly, its means of investigation and its cooperation with the other French authorities. "The month of public innovation", organised by the inter-ministerial department for public transformation in December 2020, provided an opportunity to reconsider the commitments of the High Authority with regard to transparency and openness of public data, as part of the Open Government Partnership[50].

49. See p. 170
50. See p. 175

External symposia and training

In 2020, the High Authority continued its educational work, carrying out, in spite of the health crisis, 23 initiatives aimed not only at public officials and agents but also at students, to present its work and disseminate its expertise in the field of ethics. To promote understanding of these issues by the participants, most of these initiatives alternate between theoretical content and carrying out case studies and role-plays.

Training for local authorities	— A round-table conference from the National Centre for Local Civil Service dedicated to the new ethical controls — A day dedicated to the new local elected officials "The Mayor on the front line: criminal liability and conflicts of interest" organised by the Finistère Management Centre
Initiatives at Public Service Schools	— A joint event day for the National School of Administration (ENA) and the National Institute for Local Studies (INET) dedicated to ethics (initial training) — Training course for parliamentary assistants at the ENA on the prevention of conflicts of interest — "Expert in European Public Affairs" specialised master's degree at the ENA (ongoing training)
Initiatives at universities and institutes of political studies	— 4 initiatives within master's degrees in public affairs and in political representation (initial and ongoing training) including the Certificate of Public Affairs Strategy and Influence from Sciences Po Paris and the Master 2 Public Affairs from the Paris-Dauphine university

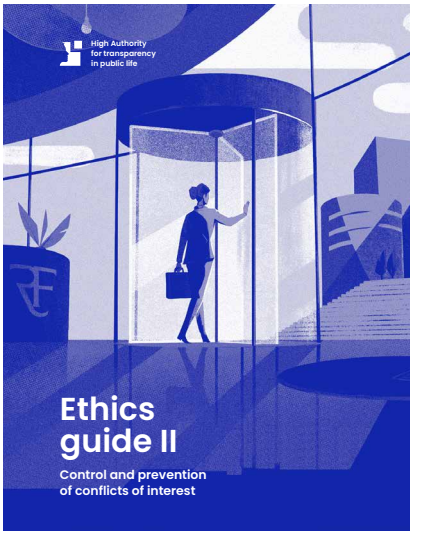
Publication of Volume 2 of the Ethics Guide

The Act of 6 August 2019 on the transformation of the civil service has made the High Authority the main actor in the ethics of public action, ensuring it has a prominent involvement throughout the mandates of public officials and agents. Through its responsibility for controlling professional transitions between the private and public sectors, the High Authority supports them in the course of their duties in following the ethical requirements, and ensures the prevention of conflicts of interest.

Within this new mechanism for the ethical control of public agents, the hierarchical authorities and ethics officers now play a leading role. These recent developments have raised legitimate questions, especially as certain concepts – such as the conflict of interests and the unlawful taking of interests – can be difficult to understand.

In line with the first volume of the *Ethics Guide*, which appeared in spring 2019, the High Authority's aim has been to continue its efforts to support public officials by sharing its legal expertise and doctrine, clarified and developed since 1 February 2020, in an educational way. This second volume of the *Ethics Guide*, in preparation throughout 2020, was published in January 2021[51].

The first part of the guide focuses on the High Authority's handling of conflict of interests by tackling, in particular, the question of conflict between public interests and the assessment of the risk of unlawful taking of an interest. Furthermore, it reveals the measures to implement in order to prevent risks of a criminal or ethical nature.



The second part is made up of practical guides clarifying the new division of responsibilities for ethical control and advice. It also contains clarifications for criminal and administrative judges regarding the assessment of conflict of interests. This guide is to be regularly updated in accordance with the development of the High Authority's doctrine.

The use of new educational media: the online course in partnership with the CNFPT

As follow-up to its educational work with public officials, public agents, ethics officers and students, and in the context of the health situation where face-to-face interactions were limited, the High Authority has sought to set up new formats for initiatives, particularly via digital media.

51. The *Ethics Guide* can be consulted on the High Authority's website: https://bit.ly/3azsgoT

To this end, it was called upon by the National Centre for Local Civil Service (CNFPT) to help with the third edition of its online course (MOOC), developed in partnership with the *FUN-MOOC* platform, dedicated to "Ethical procedures in the civil service".

This online course covers procedures that apply to the ethical controls on public agents and the inherent risks, including conflicts of interest and the unlawful taking of interests. In it the High Authority, notably, presents its recommendations for the implementation of practical preventative tools within public organisations.

Three videos were recorded for this purpose by Sébastien Ellie, the deputy Secretary General of the High Authority. The easily accessible online course is open to all, with no prerequisites. Those completing it receive a certificate of successful completion issued by FUN-MOOC and the CNFPT.

Publication of legal contributions

In order to disseminate its expertise and doctrine and to contribute to enriching and enlivening public debate on subjects linked to its duties, the High Authority regularly publishes contributions in specialised journals and collections of symposium papers[52].

Three new practical guides, focusing on the new ethical controls, have been placed online on the legal platform *Lexis 360*. Moreover, with regard to the electoral status in 2020, President Didier Migaud discussed the implementation of local ethical mechanisms in the *La Semaine Juridique – Government bodies and local authorities* journal. He also wrote a contribution on the theme of "The Exemplary State", which was published in the 500th edition of the journal *The ENA outside the walls*. Finally, the High Authority was called upon to contribute to the *Revue française d'administration publique* as part of a section dedicated to the prevention of corruption.

Legal updates report and the international letter[53]

Every two months the High Authority publishes a legal updates report, collecting articles of doctrine, jurisdictional rulings and institutional news on the themes of transparency, integrity, ethics and interest representation (lobbying). A dedicated email address[54] was also created in 2020 to allow those interested to sign up to the distribution list.

The international letter[55] from the High Authority, published in French and English each month, summarises the international news on the subject of public integrity and the fight against corruption, mentioning, in particular, national reform initiatives within the field.

The legal updates report and the international letter, placed online on the High Authority's website, are also published on the Twitter and LinkedIn social networks.

52. The complete list of High Authority publications in 2020 can be found in the appendix, pp. 198-199

53. https://bit.ly/3r90S6c

54. To receive the legal update report: **veillejuridique@hatvp.fr**

55. To receive the international letter: **comm@hatvp.fr**

Part 3

Controlling the compliance of declarations of assets and interests by public officials

The control of declarations of assets and interests submitted by more than 16,000 public officials, elected officials, members of the Government, senior civil servants and members of cabinet is the historical core of the High Authority's mission, and continues to prove its usefulness in the prevention and detection of illicit enrichment during office, conflicts of interest and criminal offences against probity (including illegal taking of interests and corruption).

Declarations of assets, filed with the High Authority at the beginning and at the end of the mandate or the functions exercised, provide a means of detecting unexplained variations in assets which may be attributable to breaches of probity.

The declaration of interests provides a map of the interests held by the declarant at the time they assume their duties. It helps to prevent the majority of conflict of interest situations that may arise during the performance of their duties.

In order to be relevant, the two types of declaration must be updated in the event of any substantial amendment to assets and interests.

A substantive control of the declarations received is intended to provide an assessment of their completeness, accuracy and sincerity; it foreshadows, and represents a key prerequisite to, the search for potential criminal offences, and in particular breaches of probity such as unlawful taking of an interest, corruption or embezzlement of public funds. In cases where the High Authority detects evidence that may suggest such offences have occurred, it immediately informs the public prosecutor[56].

KEY FIGURES FOR CONTROL OF DECLARATIONS IN 2020

56. Article 40 of the Code of Criminal Procedure.

1
The procedure for controlling declarations received

In order to verify the completeness, accuracy and sincerity of the declarations received, the High Authority has its own investigative prerogatives that enable it to detect any breach or omission relating to the assets and interests of public officials, as well as any acts that may potentially indicate a criminal offence.

Substantive control investigations

Controls over the filing of declarations have been succeeded by controls over their content. In 2020, substantive controls underwent upheaval as a result of several major events: the postponement of the deadline for filing end-of-mandate declarations as previously mentioned, but also the change of Government, which happened in July 2020, requiring focused departmental activity. In a more general sense, deadlines have been extended for declarants involved in managing the health crisis, to avoid taking up their time during the first lockdown.

Consequently, and despite the progress made in previous years, the average control time for a declaration increased in 2020 to 186 days, compared to 116 in 2019.

780

requests for additional information
from declarants

Generally speaking, the High Authority engages in extensive interactions with the declarants themselves: from the stage of preliminary examination of the files onwards, the High Authority may request any information or supporting documentation that would enable it to better assess the content of the controlled declarations.

In very rare cases, where declarants reject or omit to respond to this request, the High Authority may issue an injunction against them; such a procedure was initiated only 8 times in 2020, which in every case resulted in a response from the declarant, making it possible to complete the initiated control.

This constant connection with declarants is accompanied by a strong attachment to the adversarial principle. At each stage of the control, but also at their own initiative, declarants have the option of submitting information or supporting documentation of any kind. Likewise, the High Authority offers them the opportunity to present their observations, in cases where there is a substantive deficiency in their declaration (a substantial omission or a false assessment) which could justifiably result in an assessment – if it is subject to publication – or submission to the public prosecutor. The rapporteur, who may be a High Authority agent or an external rapporteur, may – where he/she deems it to be appropriate, interview the declarant.

APPOINTMENT OF A RAPPORTEUR

The ordinary procedure consists of the examination of a case by the college (board), on the basis of an in-depth investigation carried out by the relevant staff. Cases that present a serious difficulty or raise a new legal question or potential infringement, detected at the investigation stage by staff or during their examination by the college, are generally entrusted to rapporteurs from the Council of State, the Court of Cassation or the Court of Auditors, but also to High Authority agents. The external rapporteur, assisted by High Authority staff, prepares a draft deliberation, which he/she presents to the college.

A rapporteur is appointed in every case when examining initial declarations by new members of Government.

60

cases assigned to
external rapporteurs

Investigative resources specific to the control of declarations of assets

The High Authority has extended investigative resources in connection with the control of declarations of assets.

Direct access to several databases maintained by the tax authorities, obtained in 2017[57], ensures that it can carry out essential checks, in particular on bank accounts and life insurance.

Lastly, in cases where prompted by the requirements of the control, the High Authority may issue requests to the tax authorities to obtain information that it holds, or to enable it to exercise its right of communication on its behalf, for example with other administrations or legal entities governed by private law. The Directorate General of Public Finances (DGFiP) responsible for processing these requests has two months to submit the requested information to the High Authority. As a result of efforts to clarify and specify requests carried out in conjunction with the DGFiP, the average response time has decreased.

57. Act No. 2016-1691 of 9 December 2016, specified by Decree No. 2017-19 of 9 January 2017

Over 2020 as a whole, 444 requests for information were sent to the DGFiP – a figure representing a marked increase over the previous year (202 requests), whereas the consistent trend over previous years had been towards a decrease. This change is explained by a large number of controls involving members of the Government and members of parliament, in respect of whom the law requires the DGFiP to be consulted in all cases.

444

requests for information made to the **DGFiP**

Controls carried out on the basis of external reports

Although the majority of controls conducted by the High Authority are based on predefined guidelines, and specifically a control plan, external reports – whether they come from approved associations, journalists or citizens – can prompt in-depth controls to be carried out.

Such reports may relate to the failure to file a declaration, the false valuation of an asset, or a substantive omission regarding the interests held by the public official or agent named in the report.

Although the number of reports received decreased in comparison to the previous year, these reports have proven to be more substantiated: a larger proportion resulted in a (re)opening of cases for control – 53% in 2020, compared to 27% in 2019.

53

external reports with a significant peak ahead of **municipal elections**

including

4

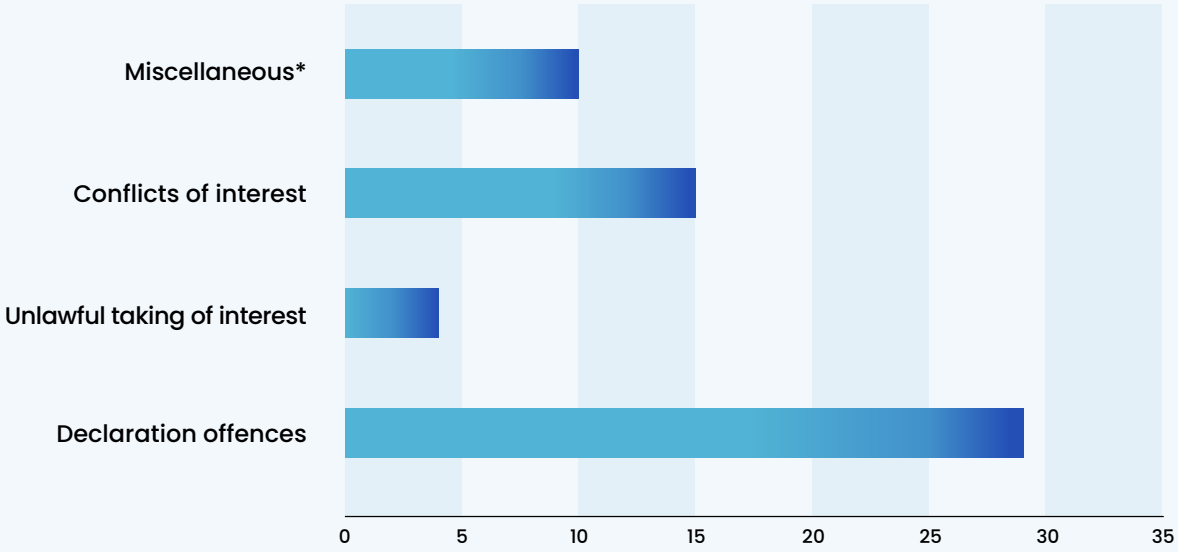
4 reports from **approved associations**

28

cases for control (re)opened

Key figures

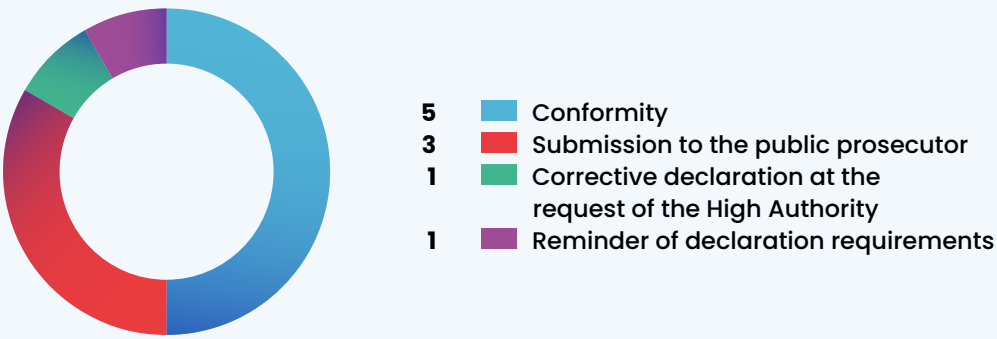
SHORTCOMINGS RAISED BY THE AUTHORS OF EXTERNAL REPORTS, BY TYPE



*"Miscellaneous" reports cover acts which do not fall within the remit or competence of the High Authority.

Among the 28 (re)opened cases for control, 11 were controlled and closed out in 2020, and 3 were reported to the public prosecutor under Article 40 of the Code of Criminal Procedure.

ACTION TAKEN FOLLOWING CONTROL OF CASES (RE)OPENED FOLLOWING AN EXTERNAL REPORT



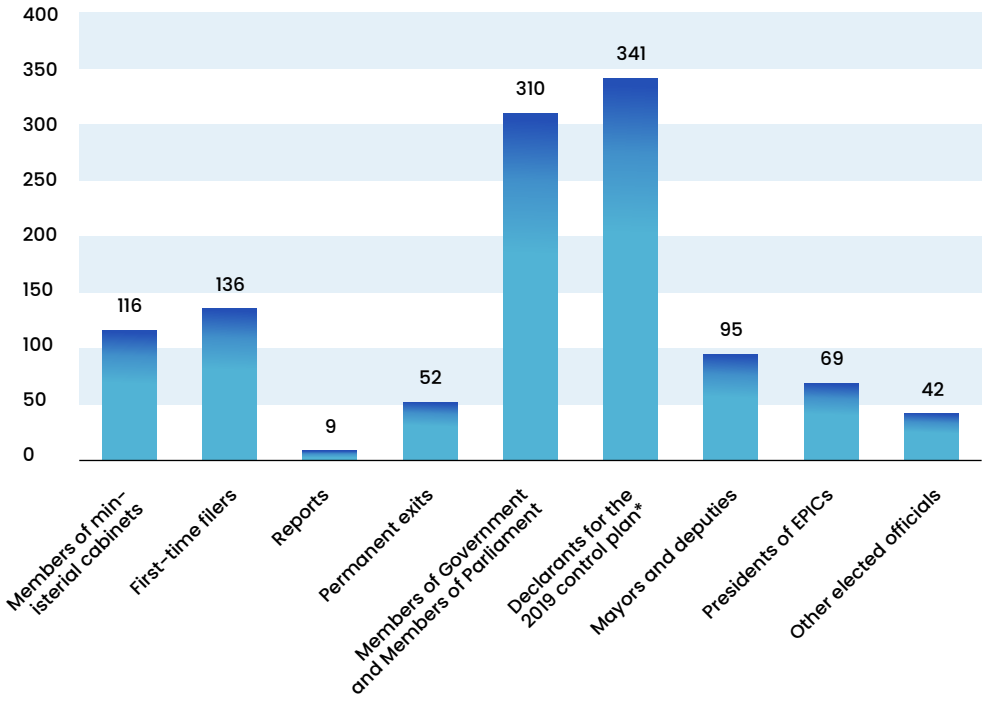
2
Declarations of assets

In 2020, the High Authority completed controls on 1,279 declarations of assets, nearly half of which consisted of examinations of variations in assets. The adopted control plan took account of the current political and electoral situation.

Status of controls conducted in 2020

In early 2020, the High Authority college (board) adopted a two-year control plan to provide it with a strategic view conducive to the management of the considerable influx of declarations anticipated as a result of electoral deadlines.

CATEGORIES OF PUBLIC OFFICIALS WHOSE INITIAL OR END-OF-MANDATE DECLARATIONS OF ASSETS WERE CONTROLLED IN 2020



*Declarants for the 2019 control plan mainly included public officials coming under the scope of the High Authority for the first time or permanently ceasing their public functions, and also French representatives at the European Parliament.

In addition to the completion of the controls undertaken in 2019, accounting for the most significant control item, the High Authority's work therefore focused in particular on the declarations of the most prominent local elected officials and senators. Members of Government were also the subject of considerable attention as a result of the reshuffle of July 2020.

As a logical consequence of the increase in the processing times for cases related to the health crisis and the concentration of resources on the most sensitive sections of society, the number of controls completed in 2020 fell compared to the previous year (-44.6%).

1,279 declarations of assets were controlled in 2020. 560 examinations of changes in assets were conducted during end-of-mandate asset declarations controls with the aim of detecting any illicit enrichment during the term of office or duties.

In addition, 109 amending declarations, filed as a result of substantive amendments to assets during office or duties, were examined by the High Authority.

948

controls of declarations of assets **started**

1,279

controls of declarations of assets **completed**

1,170

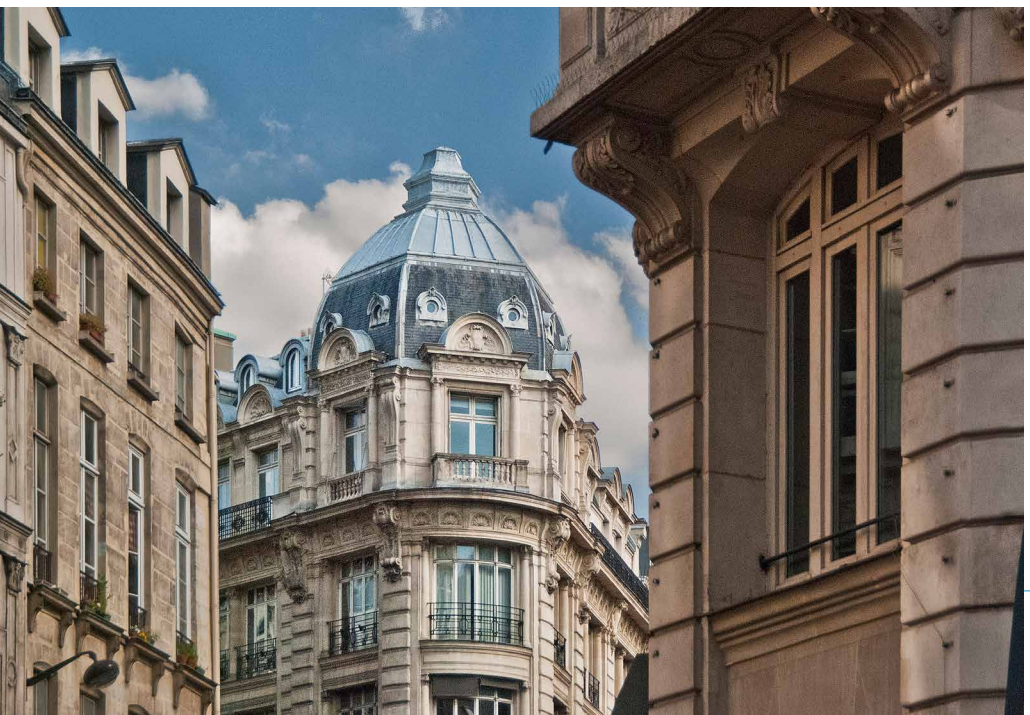
initial and end-of-mandate declarations of assets

109

amending declarations of assets

560

examinations of **changes in assets**



3
Declarations of interests

Established in 2013 by the legislative body, the obligation to file a declaration of interests during election or appointment to certain public functions constitutes a crucial tool for the prevention of conflicts of interest. It establishes and formalises a period of ethical reflection that enables those who complete the declaration to examine the risky situations that could result from the exercise of their future functions, and the preventive measures to be adopted.

While in office, all public officials and agents must also update their declarations in the event of a substantial amendment to their interests. This may, where appropriate, result in the adoption of new measures to prevent conflicts of interest.

The majority of preventive measures for conflicts of interest are **provided for under current** legislation.

The High Authority has published a **summary table** on its website[58].

Detecting and preventing conflicts of interest

The High Authority's work in controlling declarations covers two aspects:

— firstly, the assessment of the completeness, accuracy and sincerity of the declarations, ensuring that they present anyone who consults them with a true picture of the interests held by a public official;

— secondly, the detection of situations of risk of conflict of interest or unlawful taking of an interest in order to implement appropriate precautionary measures.

Where applicable, the High Authority, in compliance with the adversarial principle, corresponds with the declarant to obtain any information that could clarify the content of the declaration. Preventive measures – tailored to the situation of each declarant and to the nature and scale of the interests in question – may, where applicable, be recommended, in order to prevent or put an end to the conflict of interest.

The most frequently recommended of such measures are internal publication of the interest – in other words, the act of ensuring that the information is shared with colleagues or members of the deliberating body – and withdrawal. In the case of a public official, withdrawal means not taking a decision which would normally fall within his/her competence, nor preparing or issuing an opinion on such a decision. In cases where the public official is a member of a deliberative assembly, withdrawal means not participating in voting or discussions prior to the decision.

More rarely, and in cases where no other measure is available for preventing or putting an end to the conflict of interest, the abandonment of the interest in question may be recommended; taking the practical form, for example, of resignation of a volunteer role or the blind management of financial instruments.

58. https://bit.ly/3y74BFJ

Where such discussions are unfruitful, the High Authority has the power to order the declarant to put an end to the identified conflict of interest. This injunction may be made public, and criminal sanctions apply in the event of failure to comply[59]. As a direct consequence of the principle of the separation of powers, the powers available to the High Authority with regard to members of parliament come under a special regime, which does not allow it to issue them with such an injunction. Where applicable, it will make a referral to the office of the National Assembly or the Senate, which will take such measures as it deems to be appropriate, and hold discussions with the ethical body of the relevant chamber.

Status of controls conducted

Like declarations of assets, declarations of interests are controlled by means of a control plan geared towards functions with the highest exposure to risks.

2,577 controls of initial declarations of interests **initiated**

1,178 controls of initial declarations of interests **completed**

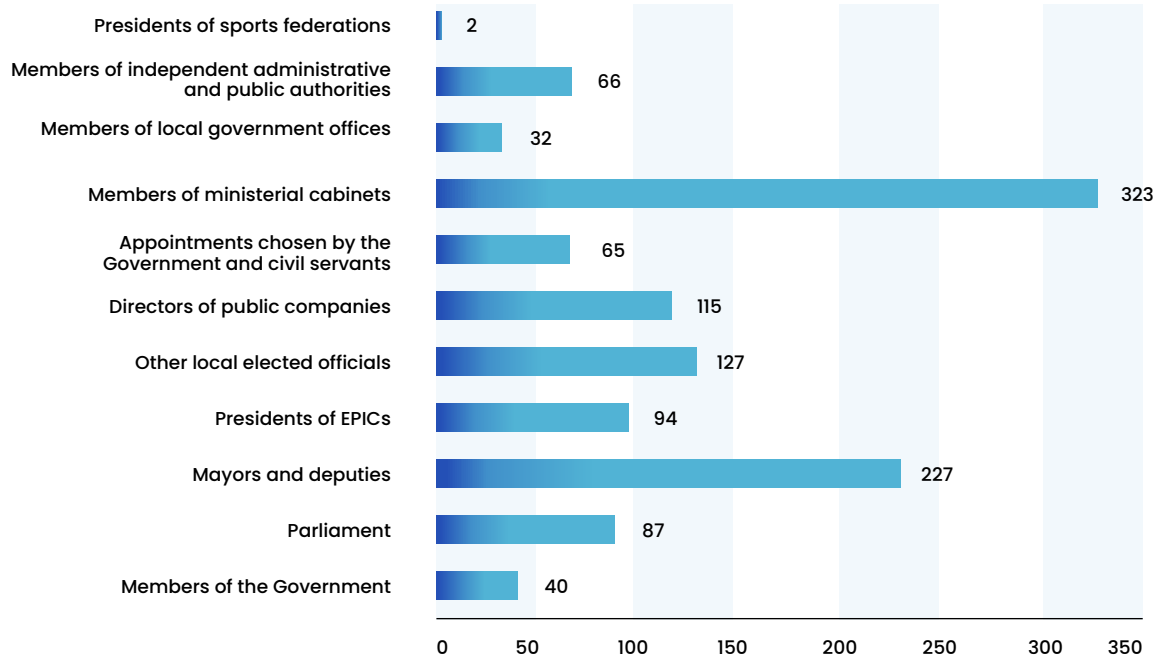
81 declarations of interests subject to **in-depth review**

81 declarations were the subject of an in-depth control following the detection of a potential conflict of interest; such an examination being intended, where applicable, to implement measures to prevent or put an end to such a conflict.

The majority of the 2,577 initial declarations of interest controls initiated are still under investigation as a result of the additional investigation deadlines granted during the health crisis.

59. Article 26 of Law No 2013-907 of 11 October 2013

CATEGORIES OF PUBLIC OFFICIALS WHOSE DECLARATIONS OF INTERESTS WERE CONTROLLED IN 2020



In 2018, the High Authority began a risk mapping process intended to offer more effective control of the declarations of interests submitted to it by means of improved risk identification. This project resulted in a major effort to reorganise and deepen control and detection work from the earliest phases.

The government reshuffle in July 2020 also influenced the control activity of the High Authority, which particularly affected members of ministerial cabinets, due to the risks of conflicts of interest inherent in the exercise of their functions. Similarly, declarations of interests by elected municipal officials represent a significant part of the control activity for the year 2020. This is justified by reasons such as the risks of conflicts between public interests specific to local public management, to which these elected officials are exposed.

CLARIFICATION OF THE HIGH AUTHORITY'S DOCTRINE ON PUBLIC - PUBLIC CONFLICTS OF INTEREST

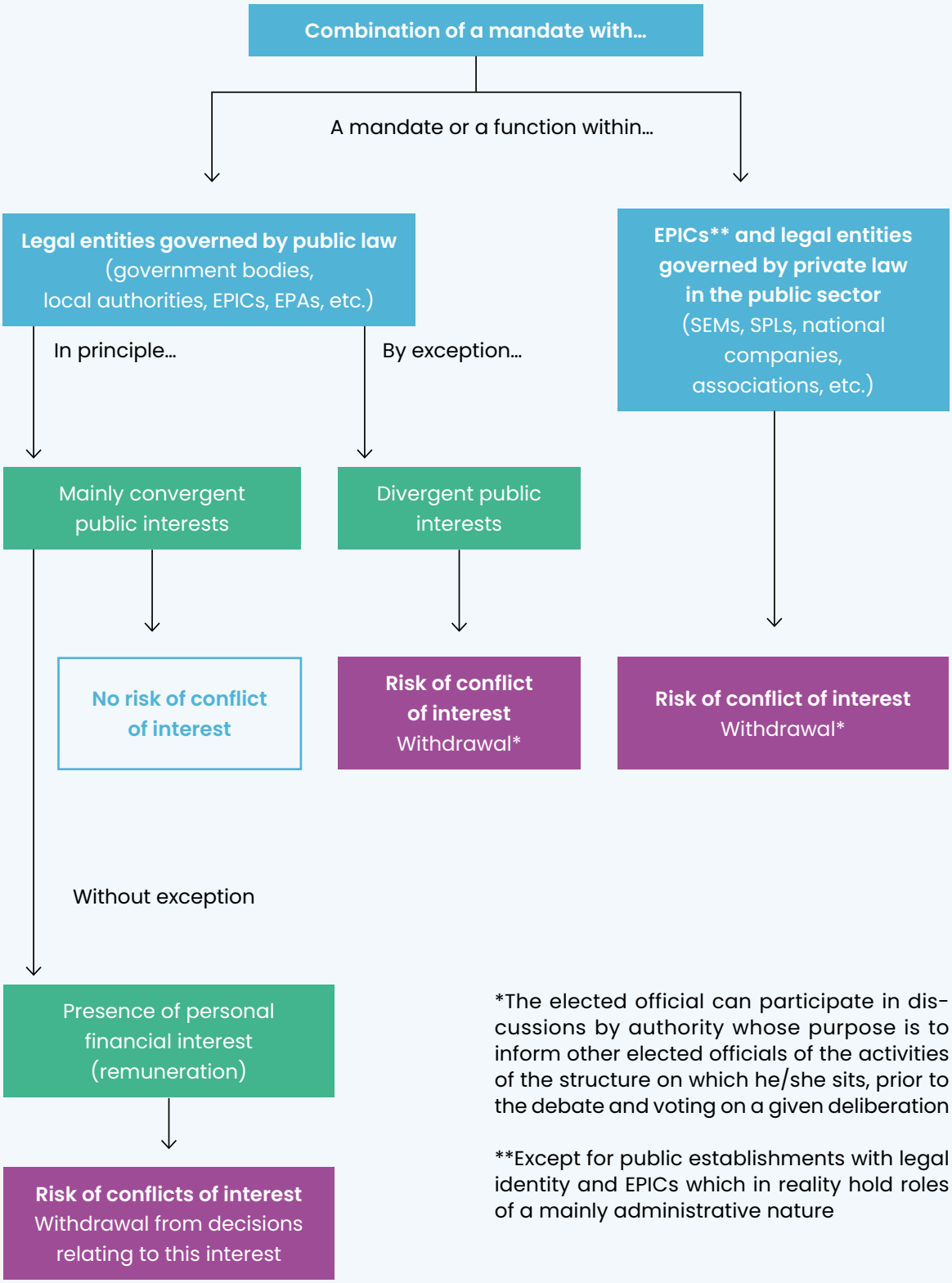
Article 2 of the Act of 11 October 2013 defines a conflict of interests as "*any situation of interference between a public interest and public or private interests that could potentially influence, or appear to influence, the independent, impartial and objective exercise of a function*".

Given the gradual reduction in examples of multiple jobholding authorized by law since the adoption of the law of 11 October 2013, situations of conflict between public interests appear to be the subject of increased attention by public officials. They apply in particular to local elected officials, because of their participation in various organisations – including public industrial and commercial establishments, associations, semi-public companies and local public companies – which revolve around communities.

The second volume of the *Ethics guide*[60], published in early 2021, has enabled the High Authority to clarify its doctrine in this area.

60. https://bit.ly/37FCRN6

RISKS OF PUBLIC-PUBLIC CONFLICTS OF INTEREST



*The elected official can participate in discussions by authority whose purpose is to inform other elected officials of the activities of the structure on which he/she sits, prior to the debate and voting on a given deliberation

**Except for public establishments with legal identity and EPICs which in reality hold roles of a mainly administrative nature

Participation in the governing bodies of a public or private body and the concept of an "ex officio mandate"

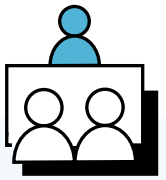
This section in the declaration of interests relates to current involvements as of the day of election or appointment and over the previous five years. All managerial functions must therefore be divulged, whether or not they have given rise to remuneration, including cases where they are exercised "ex officio" or in connection with another function, in order to prevent any risk of conflict of interest. In 2020, the High Authority was prompted to change its doctrine in relation to declarations of "ex officio" mandates.

The structures covered by this section are both public bodies (public establishments, public interest groups) and private bodies (foundations, associations, non-governmental bodies, political parties, commercial and civil companies, semi-public companies, local public companies, etc.). Members of purely consultative committees are not considered as directors. However, the following are understood as such:

— for a company: the functions of chairman or member of the board of directors, of the management board, of the supervisory board, of executive manager, managing director, deputy managing director or CEO;

— for associations: the functions of president or vice-president, secretary or assistant secretary, treasurer or assistant treasurer, member of the general committee or the board of directors.

All compensation received each year for each managerial function, regardless of the type of compensation (salaries, retainers, directors' fees, etc.), must be declared.



By way of a reminder, the **"ex officio" mandate** covers two types of situations:

— the mandate is exercised as of right in consequence of a particular function, and therefore governed by legislation or regulations. This applies, for example, to a public official who automatically chairs the board of directors of an organisation, such as a mayor who chairs the municipal social action centre;

— the mandate is exercised by the head of a public or private body by virtue of his/her function, and not of his/her person; he/she is appointed as the representative of his/her structure within another organisation.

4
Statement of controls on declarations of assets and interests

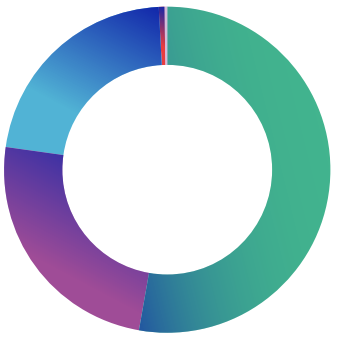
In 2020, the High Authority controlled 2,457 declarations, of which 1,279 were declarations of assets and 1,178 were declarations of interests. In general, the control of declarations has resulted in a decrease in the proportion of declarations that satisfy the requirements of accuracy, completeness and sincerity, in favour of more frequent reminders of declaration obligations. In 2019, 73% of declarations controlled were judged to be compliant, compared with 52.9% of declarations in 2020.

Once the investigation has been carried out by staff, the declarations are presented to the High Authority college (board), which deliberates on actions to be taken following the control, depending on the severity of the breaches noted.

2,457

controls **completed**

CONTROLLED DECLARATIONS FOLLOWED UP WITH ACTION

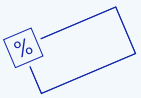


52.9%	Declarations that comply with the requirements for completeness, accuracy and fairness
24.6%	Reminders of declaration requirements
21.9%	Requested corrective declarations
0.6%	Cases submitted to the Public Prosecutor
0.1%	Assessments

NO BREACH NOTED

52.9%

Declarations that comply with the requirements for completeness, accuracy and fairness



21.9%

Requested corrective declarations

1

assessment

24.6%

Reminders of declaration requirements

10

cases sent to the courts

SERIOUSNESS OF BREACH

DEFICIENCY THAT MAY INDICATE A BREACH OF PROBITY

In cases where the college considers that a declaration of interests or assets is complete, accurate and sincere, the case is closed, indicating the declarant's compliance with his/her obligations. Depending on the declarants, the declaration may be subject to **publication "as is"** or made accessible via the prefecture.

Should the examination reveal, however, that the declaration is not complete, accurate or sincere, there are a range of measures the college can take.

If the declaration is intended to be published on the website of the High Authority or made available to the prefecture and it only contains minor breaches, the college will invite the declarant to file a **corrective declaration**[61] of the observed breaches.

With regard to declarations of interest, the High Authority may also issue recommendations intended to prevent or put an end to a potential conflict of interest. If its recommendations are not followed up with action, it can resort to its **power of injunction**, the result of which is to order a public official to put an end to a situation of conflict of interest. However, no such situations arose in 2020.

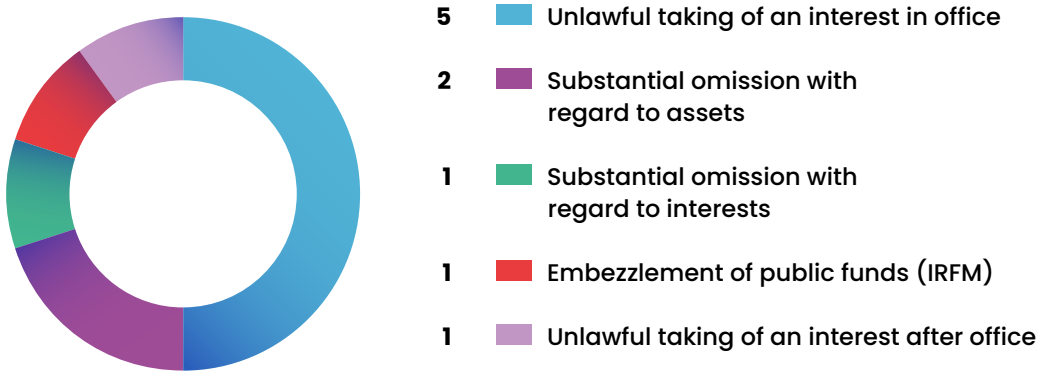
In the event that the observed breaches are of greater severity, the High Authority may, as permitted by law, provide for the publication of the declaration "*of any assessment it deems useful with regard to its completeness, [its] accuracy and [its] sincerity*"[62].

61. Amending declarations are filed at the initiative of the declarant to indicate a substantial change in their assets and/or interests. Amending declarations are filed at the request of the college of the High Authority to correct a failing in respect of the completeness, accuracy and sincerity of the declared information.
62. Article 26 of Law No 2013-907 of 11 October 2013

In cases where the declaration containing breaches is not submitted for publication (on the website of the High Authority, or via its provision at the prefecture[63]), the High Authority reminds **the public official concerned of his/her legal obligations**, while notifying him/her of the breaches it has observed.

Lastly, and regardless of the declaration's publication regime, in cases where the High Authority becomes aware of breaches likely to constitute an infringement of the penal provisions of article 26 of the Act of 11 October 2013, or a criminal infringement of probity, it will **inform the public prosecutor**, in application of article 40 of the code of criminal procedure.

REASONS FOR REFERRING CASES TO THE PUBLIC PROSECUTOR



In 2020, 10 cases were submitted on the basis of the substantive control of declarations of assets and interests. Half of them concern the unlawful taking of an interest during office – an indication of the importance of filing a declaration of interests upon taking office in order to prevent this offence from being committed. However, no cases were submitted with regard to a failure to file, which is mainly explained by the extension of the deadlines granted to declarants.

Since 2014, 112 cases have been submitted to the court by the High Authority, 80 of which are still under investigation, resulting in 32 convictions or alternative measures to prosecution (criminal fine, reminder of legal obligation).

Control of statements by members of the Government

In view of the level of responsibility implied by ministerial office, declarations of assets and interests from members of the Government are the subject of particular attention. Consequently, declarations of assets are systematically subject to in-depth control by the High Authority, and a rapporteur is appointed to examine declarations by any incoming member of Government.

63. See p. 106

Control of asset declarations

In 2020, the college examined 40 declarations of assets filed by members of the Government, 30 of which were start-of-mandate or amending declarations, and 10 were end-of-mandate declarations.

Slightly over half the examined declarations were closed without action in the absence of breaches of any kind.

Correspondingly, just under half of the declarations were the subject of a request for a corrective declaration by the High Authority college (board), in order to correct errors – e.g. of assessment – or to clarify certain information.

Only one declaration of assets was referred to the public prosecutor for reasons of substantive omission. One further criminal offence was also considered to be possible.

Lastly, the tax situation of any newly-appointed member of the Government is the subject of an in-depth investigation, conducted by the DGFiP, under the control of the High Authority[64].

In 2020, only one tax audit procedure resulted in a penalty, to the value of €970.

If, in relation to this control, the President of the High Authority finds that a member of the Government is not in compliance with the relevant fiscal obligations, he will inform the President of the Republic and the Prime Minister, without prejudice to any action that may be taken by the tax administration. No such situation occurred in 2020.

Control of declarations of interests

The college (board) also examined 40 declarations of interests from members of the Government in 2020.

While the majority of these were deemed to be compliant with the requirements of completeness, accuracy and sincerity, 12 resulted in a request for a corrective declaration, in order to counter inaccuracy or incompleteness in the information provided.

The High Authority also recommended various measures to enable members of the Government concerned to prevent risks of conflicts of interest identified upon completion of the control of their declarations.

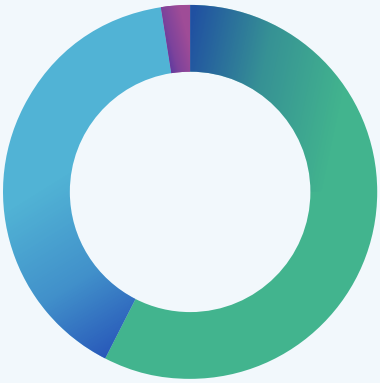
In fact, all members of the Government are required, in the event of a conflict of interest, to inform the Prime Minister, who takes, by means of a decree published in the *Journal officiel*, any required withdrawal measure to avoid this, including via a delegation authorising a third party to exercise the problematic powers[65]. A "Conflicts of Interest Prevention Register"[66] lists withdrawal decrees published in the *Journal officiel*, which currently apply to 8 members of the Government.

64. Article 9 of Act No 2013-907 of 11 October 2013

65. Decree No. 59-178 of 22 January 1959 on ministerial functions

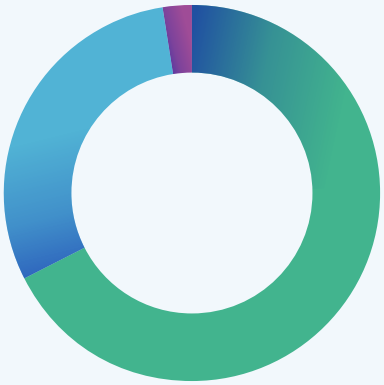
66. https://bit.ly/2NPFhlg

ACTION TAKEN FOLLOWING CONTROLS OF MEMBERS OF GOVERNMENT'S DECLARATIONS OF ASSETS



23	Declaration satisfies the requirements for completeness, accuracy and fairness
16	Corrective declaration at the request of the High Authority
1	Submission to the public prosecutor

ACTION TAKEN FOLLOWING CONTROLS OF MEMBERS OF GOVERNMENT'S DECLARATIONS OF INTERESTS



27	Declaration satisfies the requirements for completeness, accuracy and fairness
12	Corrective declaration at the request of the High Authority
1	Submission to the public prosecutor

5
Control of blind management of financial instruments

In pursuance of its mission of detecting illicit enrichment carried out within the framework of the control of asset declarations, the High Authority is responsible for the so-called "blind" management of financial instruments held by a certain number of public officials.

The various methods of blind management

The aim of blind management of financial instruments is to prevent any risk of insider trading: in other words, the use by a public official of inside information obtained in the performance of their duties, for personal benefit, through the purchase or sale of financial instruments. In addition, to the extent that a financial instrument represents a private interest of a material nature, its holding, acquisition, disposal or management by a public official may reveal a conflict of interest in relation to the public functions that they perform.

In order to prevent such situations, the Act of 11 October 2013 requires certain public officials, who have particular exposure to the risks mentioned or operate in the economic and financial sectors, to implement blind management measures, the existence and implementation of which they must demonstrate to the High Authority[67].

Public officials subject to the obligation of blind management of their financial instruments:

— members of Government;

— presidents and members of colleges (boards) and, where relevant, of sanctions commissions of independent administrative or public authorities;

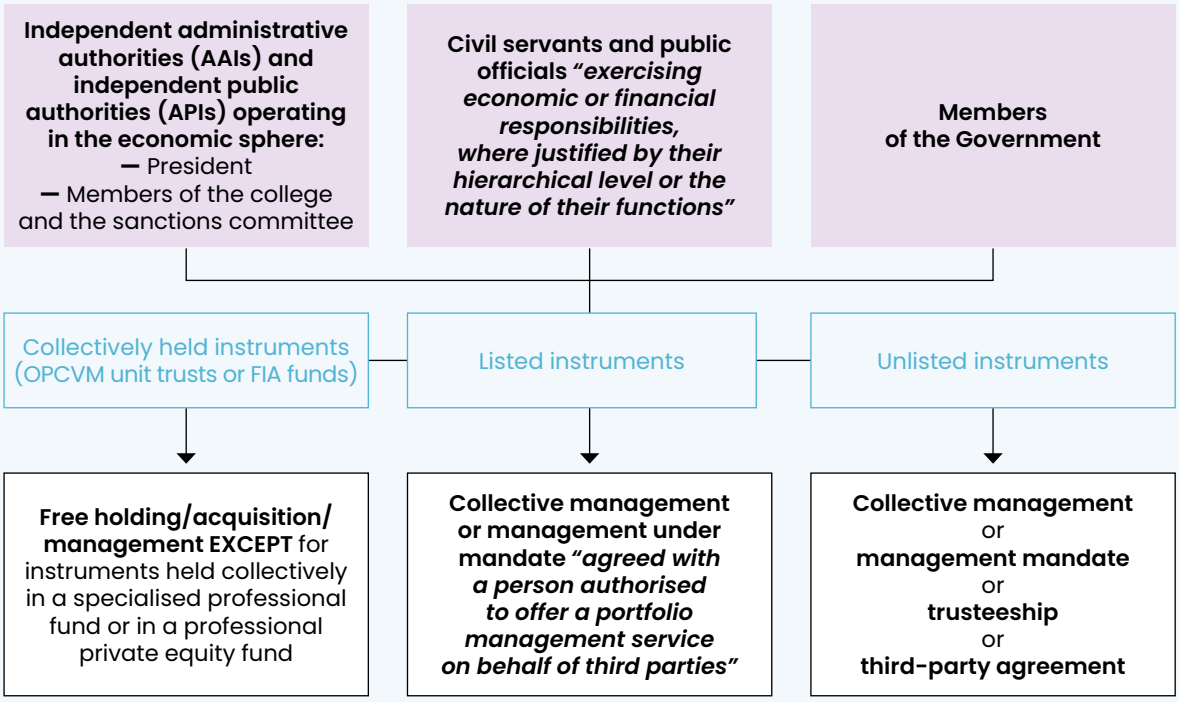
— civil servants and public officials exercising economic or financial responsibilities, where justified by their hierarchical level or the nature of their functions;

— the chief of staff of the armed forces;

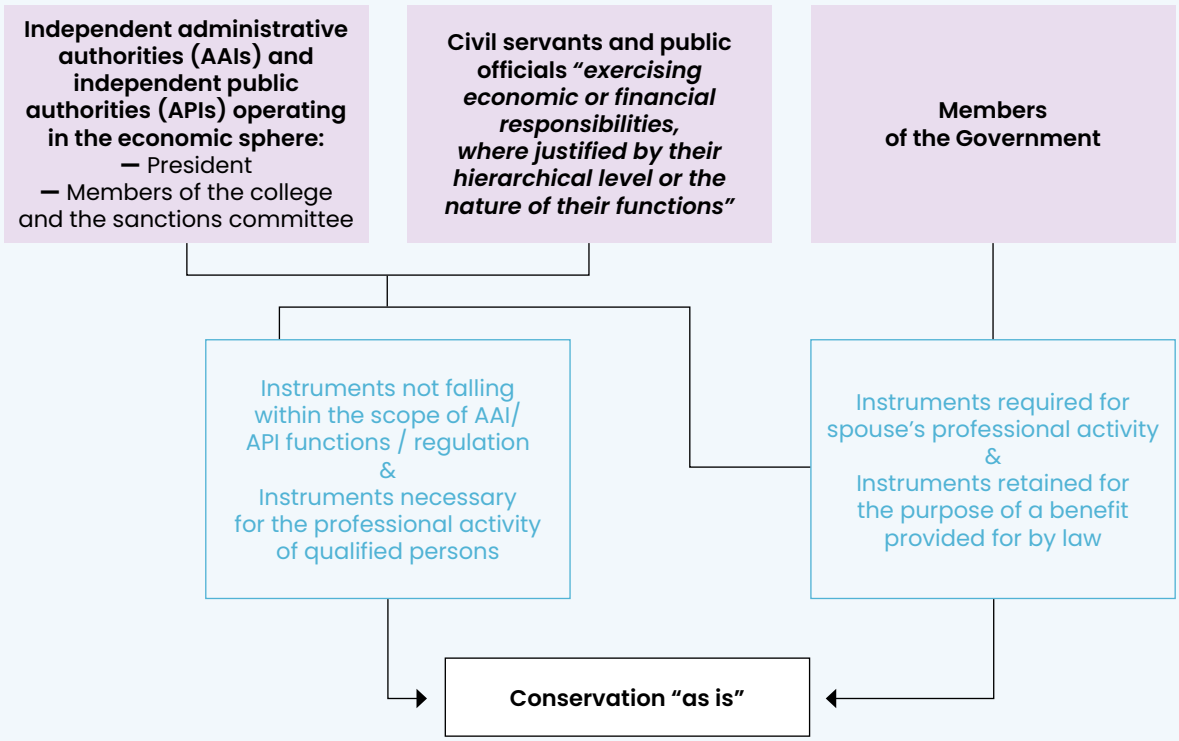
— Government commissioners appointed to companies holding armaments contracts.

67. Article 8 of Act No 2013-907 of 11 October 2013

Collective management or management mandate constitute blind management methods. However, they are not mandatory for unlisted instruments, for which the legislative body has provided other more flexible management methods.



In addition, in some specific cases, the law has provided that the public official could opt for "as-is" conservation of his/her financial instruments as a blind management method.



A "questionnaire for the management of financial instruments", made available via the "ADEL" remote service, enables them to define the appropriate management methods for each instrument and to provide the corresponding supporting documents, summarized in the diagrams above.

Status of controls conducted

33 questionnaires relating to financial instruments were received by the High Authority in 2020 – a figure that has increased from the previous year. This fact is explained in particular by the inclusion in the system, at the end of 2019, of certain military posts (chief staff of the armed forces, government commissioners appointed to companies holding armaments contracts)[68].

33

questionnaires on **financial instruments** submitted in **2020**

compared to **26** *questionnaires in 2019*

PUBLIC OFFICIALS WHO SUBMITTED A QUESTIONNAIRE ON FINANCIAL INSTRUMENTS IN 2020, BY TYPE

- **9** Members of the Government
- **7** Managers in local authorities or local public establishments
- **4** Members of independent administrative and public authorities
- **3** Central administration management roles
- **3** Military personnel
- **2** Appointments chosen by the Government
- **2** Executive managers in decentralised State departments
- **2** Other civil servants
- **1** Executive managers in the public hospital service

68. Decree No. 2019-1285 of 3 December 2019 regarding the management of financial instruments held by certain military personnel

A mechanism requiring certain adjustments

Presidents and members of independent administrative or public authorities who hold listed instruments that fall within their institution's scope of regulation, as well as members of the Government and civil servants exercising responsibilities in economic and financial matters who hold listed instruments, must opt for the mandate for managing their financial instruments, in cases where they are individually held.

However, as the High Authority has emphasised in its previous activity reports, several practical obstacles arise regarding the completion of a management mandate in the case of financial instruments of low value. Once again, it therefore recommends that the option of keeping financial instruments unchanged – subject to a maximum value threshold beyond which other blind management methods are required – be extended to certain officials, and that the law provides for the option that persons subject to this requirement may transfer their financial instruments, upon taking up office, to the control of the High Authority.

Where applicable, it would be useful for the law to provide for an obligation for the public officials concerned to notify the High Authority, within a short mandatory period, of the option chosen as regards the mode of blind management of their financial instruments.

PROPOSAL NO. 5

Develop the legal framework for controlling financial instruments applicable to certain public officials in order to allow, in addition to the use of the management mandate:

— financial instruments below a certain threshold to be left unaffected in the statement of financial instruments;

— the sale of financial instruments, after their appointment, within two months and under the control of the High Authority.

This change could be accompanied by an obligation to notify the High Authority, within a mandatory period, of the option chosen as to the choice of "blind" management method excluding any right of scrutiny, or any breach that may be subject to an administrative sanction.

6
Publication of declarations of assets and interests

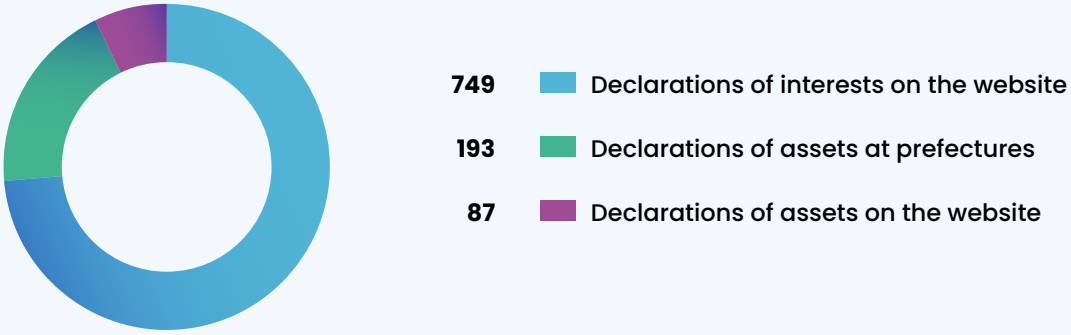
In accordance with its mission to promote transparency, the High Authority is responsible for publishing certain declarations of assets and interests. For this reason, nearly 5,600 declarations were available for consultation as of 31 December 2020, on its website (4,306) or at prefectures (1,328).

A dual publication regime

In 2020, 836 declarations were published, as open data, on the High Authority's website. 91% of them were initial or amending declarations of interests. In total, 4,306 declarations were available for consultation on the High Authority's website as of 31 December 2020.

836
declarations **published** on the High Authority's website

DECLARATIONS PUBLISHED IN 2020



Public officials	Declaration of assets	Declaration of interests
Members of the Government	On the High Authority's website	
Members of parliament and senators	At prefectures	On the High Authority's website
French representatives at the European Parliament		
Local executives	Not public	On the High Authority's website
Members of the High Authority's college (board)	On the High Authority's website	
Other declarants	Not public	

Not all public officials' declarations are subject to the same level of publicity, which is informed by a search for a necessary balance between the level of responsibilities of the functions performed, respect for the privacy of those who exercise such functions, and a requirement of transparency with the aim of contributing to the provision of public-interest information.

As a result, the publication of declarations of assets, which contain more information relating to the private life of the public official, is restricted: the law provides that only declarations by members of Government will be published on the High Authority's website. In the interests of setting an example, declarations by the members of the High Authority's college (board) are published on the High Authority's website[69]. As of 31 December 2020, 83 declarations of assets were available online for consultation.

The specific case of members of parliament and French representatives at the European Parliament

Since the adoption of the laws of 11 October 2013, declarations of assets from members of parliament, senators and French representatives at the European Parliament are subject to a special publicity regime: they are not published on the website of the High Authority, but are made available to voters registered on the electoral rolls at the prefecture, for consultation purposes only.

As matters currently stand, the consultation procedure provided for in the legislation, which is fairly obscure to the general public, appears to be excessively restrictive and particularly dissuasive: consultations can only be made by appointment, in the presence of officials from the prefecture, and no notes or reproduction are permitted; in addition, any disclosure of information contained in these statements – including in the press – by a natural or legal person is deemed to be an invasion of the privacy of others[70] and punishable as such by a fine of 45,000 euros.

69. Section IV of Article 19 of the Act of 11 October 2013

70. Article 26 of Act No 2013-907 of 11 October 2013 and Article 226-1 of the Criminal Code

In 2020, the High Authority submitted 128 end-of-mandate declarations of assets and 65 amending declarations of assets to the prefectures for consultation. The number of times this procedure was used decreased compared to 2019: 18 requests for consultation, regarding 161 declarations of assets, were issued.

A major step forward in terms of transparency would be to make these declarations available on the High Authority's website.

In its most recent report on France's compliance with the 4th assessment cycle, "Prevention of corruption for members of parliament, judges and prosecutors", adopted in September 2020, the Group of States against Corruption (GRECO), expressed its "*regret, once again, that no measure has been taken by the two assemblies [...] Along with the HATVP, [GRECO] calls for an alignment of the regime for the publication of declarations of assets of members of parliament with the regime applicable to ministers*"[71].

In its previous reports, the High Authority has indeed recommended the publication, on its website, of declarations of the assets of members of parliament, senators and French representatives to the European Parliament.

71. GRECO, *Fourth assessment cycle. Prevention of corruption among members of parliament, judges and prosecutors. Interim compliance report for France, 1 October* 2020, p. 13

Part 4

Regulating interest representation (lobbying)

Since the introduction of Act No. 2016-2691 of 9 December 2016 relating to transparency, the fight against corruption and the modernisation of economic life (known as "Sapin II"), the High Authority for the transparency in public life has been exercising an additional mission, as an extension of its other transparency missions: to manage a register of interest representatives, published online on its website, and to control their compliance with their reporting and ethical obligations.

Although the legitimacy of the expertise of civil society, and its participation in public decision-making, were not in question, relations between interest representatives and public officials needed to be better supervised in order to strengthen the traceability of the standards development process.

2,183

entities entered onto the interest representatives' register as of **31 December 2020**

+11.6%
compared to 2019

Who needs to register with the directory of interest representatives?

Legal entities in which **1 executive manager, 1 employee or 1 member** carries out an interest representation (lobbying) activity

OR

A **natural person**, within the context of a professional activity

→ Legal entities governed by private law, public establishments exercising an industrial and commercial activity, chambers of commerce and industry and chambers of trades and crafts

... conducting lobbying as:

Main activity: more than half of their time over a 6-month period

OR

Regular activity: at least 10 communications initiated over the last 12 months

... taking the initiative to contact a public official to influence a public decision

The following are not interest representatives by reason of the law or their status:

- elected officials exercising their mandate
- political parties and groups
- trade unions of employees and professional organisations of employers *(within the framework of the negotiation provided for in Article L. 1 of the French Labour Code)* and civil servants' trade unions
- religious associations
- representative associations of elected officials
- foreign states
- citizens' requests to their representatives
- chambers of agriculture

1

Relatively positive results for the 2019 reporting year despite shortcomings

Each year, within three months of the end of their financial year, the interest representatives entered in the register must supply to the High Authority certain information relating to lobbying activities carried out with public officials, a declaration obligation which applied to 1,734 entities this year.

General trends for the 2019 reporting year (published in November 2020)

In view of the health crisis, interest representatives whose financial year ended on 31 December 2019 were granted an exceptional additional period[72] to make their annual declaration of activities. Although normally set for 31 March, this deadline has been extended to 24 August 2020. 1,734 entities recorded in the register were affected by this declaration obligation.

1,734

entities required to declare their interest representation activities in **2019**

After major follow-up work carried out by the agents of the High Authority, 1,567 interest representatives had published their declaration of activities at the time of the publication of the report for the declaration year, in November 2020. In addition, 383 entities availed themselves of the option of filing a null declaration for a year, i.e. 22.1% of the entities required to declare (compared to 315 entities for the 2018 declaration year). This system, which was implemented by the High Authority in 2019, takes into account the fluctuation of lobbying activities – which are closely linked to current political events – by allowing entities not to declare interest representation actions for one year, without being required to unsubscribe from the register. As a result, many entities have signed up to the register in anticipation of the extension of the system to local authorities from 1 July 2022[73].

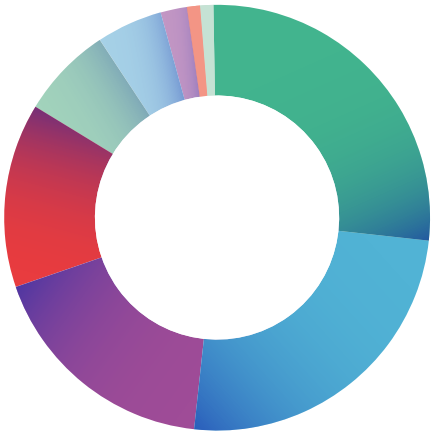
The register of interest representatives also reflects the wide variety of entities carrying out lobbying activities with public officials. While companies and professional organisations combined account for more than half of registrants, associations and non-governmental organisations constitute 19.5% of the entities that have published an activity declaration – the only entities whose total share in the register has increased since 2018 (+1.5%).

72. Order No. 2020-306 of 25 March 2020 on the extension of deadlines expiring during the health crisis period and the adaptation of procedures during this same period, amended by Order No. 2020-560 of 13 May 2020 establishing deadlines applicable to various procedures during the health crisis period.

73. See p. 125

BREAKDOWN OF REGISTRANTS WHO HAVE PUBLISHED
A DECLARATION OF ACTIVITIES, BY ORGANISATION TYPE

() change, in percentage points, compared to 2018



27% (≈)	Companies
25% (≈)	Professional organisations
19.5% (+1,5)	Associations & NGOs
13.5% (-1)	Unions
6.5% (-0.5)	Consulting firms & independent consultants
5% (≈)	Consular chambers
2% (≈)	Other organisations
1% (≈)	Public bodies exercising an industrial and commercial activity
0.5% (≈)	Law firms & independent lawyers

The total number of lobbying activities declared amounted to 12,909, an increase of more than 50% compared to the 2018 declaration year, reflecting better-informed use of the system.

While the average number of actions declared per entity increased in 2019 to 8.29 (compared to 6.24 in 2018), an analysis of the declarations shows a very strong disparity in the intensity of the lobbying activities carried out, as well as in the human and budgetary resources used. This average number of actions rises to 17 for consulting firms, independent consultants and professional organisations, compared to just over 6 for associations and NGOs and 3 for law firms.

12,909

lobbying activities declared

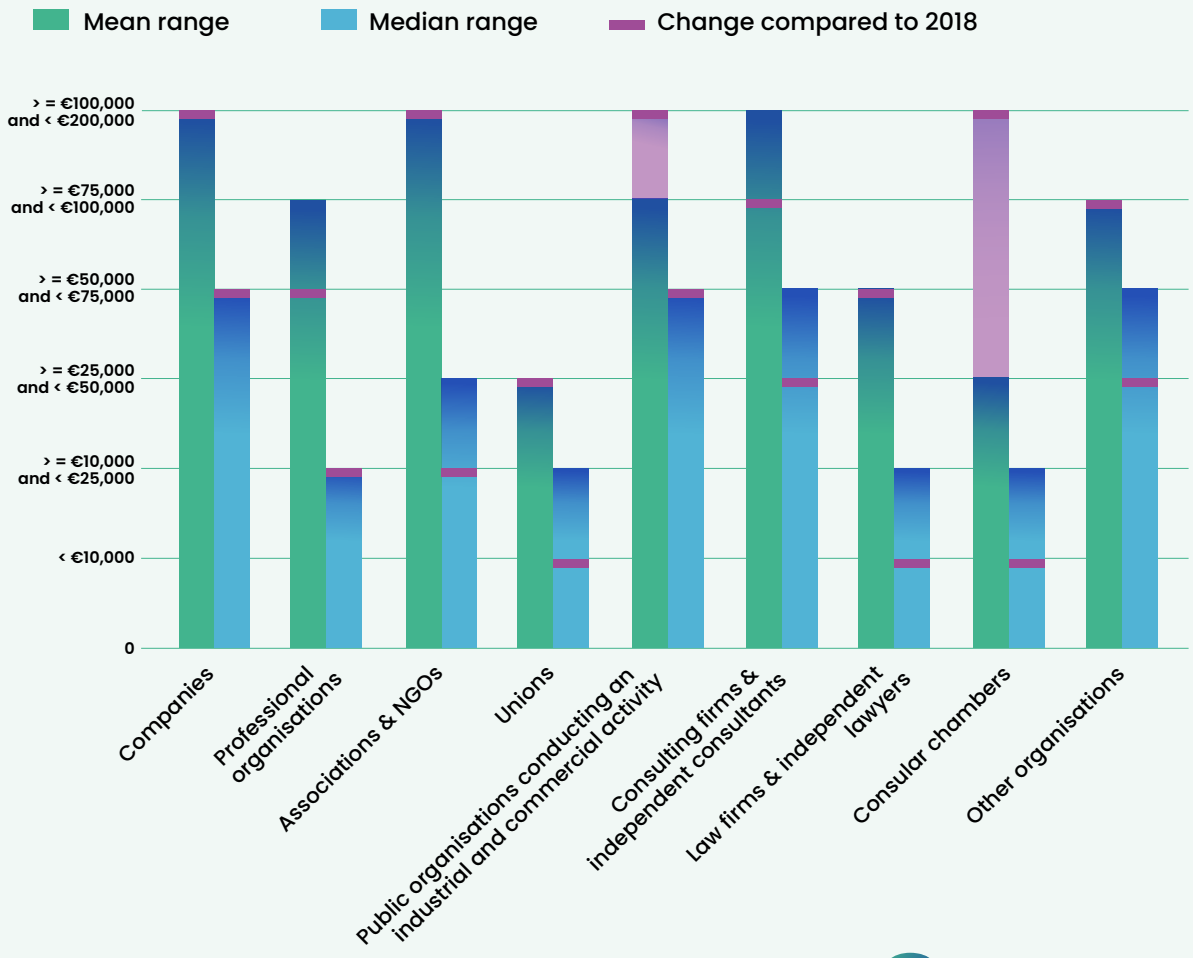
+54.6%
compared to 2018

8.29

The **average number of activities** declared by interest representatives

Key figures

MEAN RANGE AND MEDIAN RANGE OF EXPENDITURE, BY ORGANISATION TYPE



In **one third** of lobbying activities, **the law** is the only type of public decision influenced

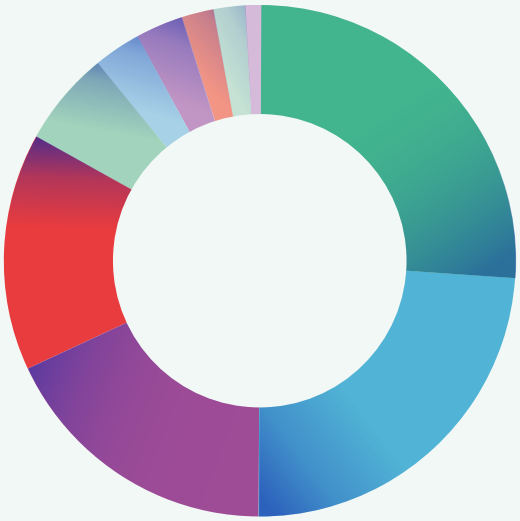
2

ministerial departments in **2019** were the focus of more than a third of lobbying activities:

- Economy and Finances **(20%)**
- Environment, Energy and Seas **(14%)**

BREAKDOWN OF REGISTRANTS WHO HAVE PUBLISHED
A DECLARATION OF ACTIVITIES, BY ORGANISATION TYPE

() change, in percentage points, compared to 2018



27.5% (+3.5) Providing public decision-makers with information and expertise with the aim of influencing decisions

26% (+0.5) Organising informal discussions or one-to-one meetings

20.5% (+2.5) Submitting suggestions in order to influence the drafting of a public decision

12% (-2.5) Establishing regular correspondence (by email, post, etc.)

4.5% (-1.5) Inviting guests to or organising events, meetings or promotional activities

3% (-0.5) Arranging for an interview with the public office holder for a third party

2.5% (-1) Holding hearings, formal consultations on legislative acts or other open consultations

1.5% (-0.5) Sending petitions, open letters, leaflets

1% (≈) Other

1% (-1) Organising public debates, marches, strategies for influence on the internet

The most declared areas of intervention among the 117 proposed by the High Authority are the ones most often associated with current political events. In 2019, nearly 20% of lobbying activities were related to the health and medical/social system, in connection with the adoption in July 2019 of the Act on the organisation and transformation of the health system[74], and with the initial parliamentary debates, starting in October 2019, on the bill on bioethics.

Late filing deadlines and significant follow-up work

Following the state of health emergency declared on 23 March 2020, the expiry date for the submission of declarations of interest representatives' activities was extended to 24 August 2019. A communication campaign was therefore launched, individually for interest representatives entered in the register, and more generally on the website of the High Authority.

However, the day after the legal submission deadline, the initial compliance rate was only 34%, a sharp drop compared to the 2018 reporting year (51%). The health crisis and its impact on the activities of the entities listed in the register may have been significant factors in their late compliance. By the end of November 2020, 1,567 interest representatives had finally published their declaration of activities, out of the 1,734 entities required to do so. This submission rate of 90.4% could only be obtained at the cost of very significant follow-up work carried out by High Authority agents over several months.

2

most commonly declared areas of intervention out of 117:

- Health and medical/social system **(19%)**
- Agriculture **(6%)**

Compliance rate of

34%

with the obligation to declare activities by the **end of the legal filing deadline in August 2020**

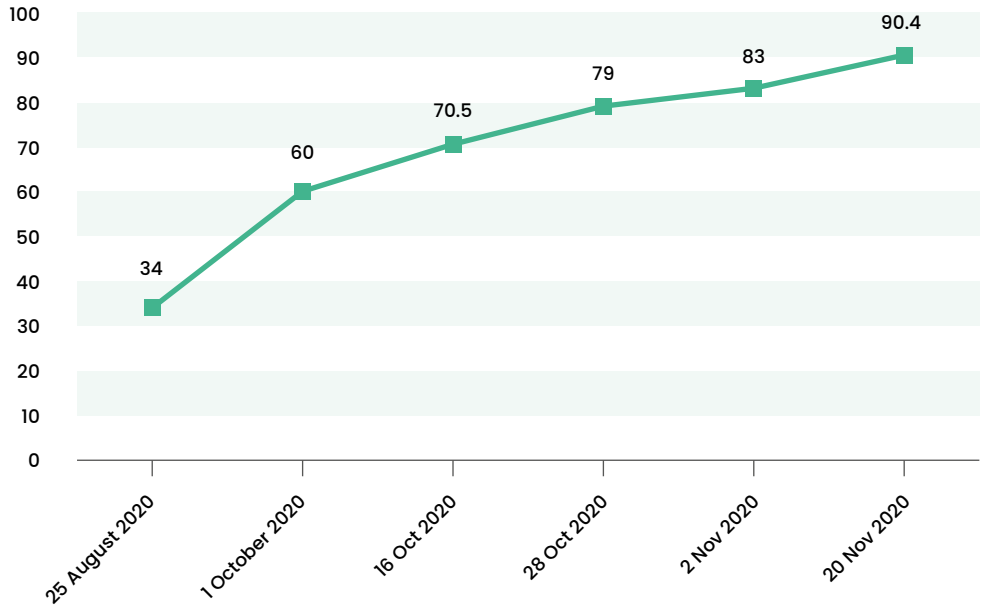
Compliance rate of

94.4%

in November 2020 after follow-up actions by the High Authority

74. Act No. 2019-774 of 24 July 2019 on the organisation and transformation of the health system

COMPLIANCE RATE WITH THE OBLIGATION TO SUBMIT ACTIVITY DECLARATIONS (in %)



A qualitative improvement in activity declarations and information provided

In line with the findings for the 2018 activity declarations, the High Authority notes a growing improvement in the information provided, particularly regarding the title of the "subject" of each form for which declarants have carried out lobbying activities *(see inset below)*. According to the algorithm developed by the High Authority[75], intended to assess the quality of the "subjects" provided, 70% comply with the minimum readability requirements, compared to 61% in 2018, reflecting a better understanding, by interest representatives, of their reporting obligations and the expectations of the High Authority.

70%

of **subjects** of activity forms are compliant with **readability requirements**

75. See 2019 Activity Report, p. 89-90.

SPOTLIGHT ON THE CONCEPT OF "SUBJECT" OF ACTIVITY FORMS: HIGH AUTHORITY RECOMMENDATIONS

In the interests of readability and comprehension for citizens, the "subject" of each activity form must be sufficiently precise to describe the issue with which the lobbying activity was concerned, the expected results, and the public decisions affected by the activities concerned.

— The subject must therefore be understood to mean a "pursued goal" and not a "subject being discussed". The High Authority therefore recommends describing the subject by using an action verb.

— It is recommended that the "subject" should state the public decision in question, allowing the lobbying activity to be put into context and made more intelligible, particularly in cases where it concerns legislation known to the general public.

— The "observations" box can be used if it appears difficult to formulate a "subject" that clearly describes the intended objective, or for adding additional information.

However, the "observations" section, which contains space for supplying additional details or explanations beyond the legally required information (e.g. indicating the function of the public official contacted), was only used in 2,917 activity actions published in 2019; i.e. 22.5% of activity declarations. This section should be used more by interest representatives to add to their declarations of activities because it provides an explanation of a lobbying action and thus facilitates the comprehension of the lobbying activity by citizens, and any subsequent exchanges with the High Authority, where applicable.

Only

22.5%

of activity declarations used the **"observations" section**

*(**-3,5%** compared to the 2018 declaration year)*

2
Persistent difficulties related to the legal framework of the register

After three years of declarations of activities by interest representatives, the persistent difficulties with the mechanism observed by the High Authority, related to its particularly complex legal framework resulting in part from the decree of 9 May 2017, were confirmed in 2020. In order to improve the readability and efficiency of the register, it would therefore seem necessary to make several legislative and regulatory changes.

Legal limits already identified, making legislative and regulatory changes necessary

The initiative criterion

The first issue concerns the definition of a lobbying activity. This definition is particularly restrictive since the interaction with the public official must be initiated by the interest representative (lobbyist). This therefore excludes all hearings and consultations carried out at the request of a public official, yet such initiations of communication form a major part of lobbying activities. This initiative criterion also creates a distortion in the declarations of activities on the register since the major players, who are often consulted by public decision-makers, are not required to declare such actions or the resources devoted to them – unlike small entities, which must directly approach public officials. Lastly, this criterion is an element which is difficult to identify in relation to the checks carried out by the High Authority, and is sometimes difficult to implement for the interest representatives themselves.

Criteria for identifying the interest representative

For a natural person or legal entity to be described as an interest representative, they must conduct an interest representation (lobbying) activity on a "main or regular" basis. With regard to lobbying activities exercised on a regular basis, the decree of 9 May 2017 provides that this criterion is met when, within a legal person, a natural person "*makes contact at least ten times in the last twelve months*" with a public official. Such an interpretation therefore results in an obligation to register an entity in which at least one employee carries out ten actions, but excludes one in which several employees each carry out nine actions.

It would therefore be appropriate to modify the definition of a "regular activity" of interest representation by allowing the minimum threshold of ten shares to be assessed at the level of the legal entity, that is to say by adding together all the actions carried out by the natural persons associated with it. This change in the system would also have the effect of simplifying the conditions for registration with the directory, since each lobbying action carried out by a natural person would be recorded.

THE NEED FOR A CONSOLIDATED DECLARATION FROM GROUPS OF COMPANIES

The current system implies that the description of "interest representative" must be applied to each legal entity satisfying the criteria provided for by law. Both the parent company and its subsidiaries must therefore account for their interest representation actions, so as to establish whether they must register individually with the directory.

These registration and declaration procedures for groups of companies raise several difficulties, the first of which relates to the identification of legal entities subject to a registration obligation. Many entities can in fact be attached to each group, and are sometimes complex to identify. This therefore results in a registration that is split between several entities and scattered declarations, without giving an overview of the group's lobbying interests. A failure to consolidate declarations also hampers an overview of the budgetary and human resources allocated to interest representation by the group of companies.

All of these facts undermine the readability and intelligibility of the directory by the public, and serve to dilute the objective of transparency in public decision-making intended by the legislating body. The companies themselves, including large groups in particular, experience difficulties in properly completing their declarations, since the same person sometimes carries out lobbying activities for the benefit of several subsidiaries of the group.

The legal certainty of groups of companies and the readability of the register would be better achieved if a single company in the group were to declare the lobbying activities, indicating for which company, if any, a given action was intended to benefit.

For the purposes of comparison, the European transparency register has opted for "single registration" in order *"to avoid multiple registrations and reduce administrative load"*, with the registration *"generally being […] in practice the responsibility of the branch or office representing the entity's interests to the EU institutions*[76]*"*. However, exemptions are provided for in cases where a subsidiary or related company acts in its own name independently of the group. In addition, legal status is not an element taken into account for entry into the register, just as no minimum criteria for activities are required for the registration of an entity.

76. General Secretariat of the European Transparency Register, *Guidelines for the implementation of the transparency register*, 20 June 2020, p. 10

Other difficulties surround the identification of certain interest representatives, such as groups of companies and think tanks *(see insets)*.

"THINK TANKS" AND LOBBYING

Think tanks first appeared in the United States at the end of the 19th century, but it was not until the 1980s that they rose to prominence in Europe, with a growing involvement in the process of shaping public decision-making. The term "think tanks" covers a variety of realities (both in terms of legal status and funding methods), but they can be defined as organisations that conduct research and produce innovative ideas in relation to public policies, to stimulate debate and enlighten public decision-makers.

As French law currently stands, think tanks are not legally excluded from the list of entities liable to conduct lobbying activities regarding public officials, with a view to influencing public decision-making. Some "generalist" think tanks engage in research that does not necessarily aim to defend specific interests. On the other hand, the activity of influencing public decision-making is a central one for some think tanks, which use methods such as the dissemination and promotion of reports and strategic notes with the aim of convincing, in order to defend specific interests. In cases where a think tank satisfies the criteria defined by law, the entity must register with the High Authority's directory and declare its lobbying actions every year; at the present time, this is true of around twenty such organisations.

A case-by-case analysis of the various think tanks is therefore required, in order to check whether they meet the registration and declaration criteria.

Clarification of the public decisions covered by the register

As in its 2018 and 2019 activity reports, the High Authority expresses its disappointment that the list of public decisions covered by the mechanism, established by the decree, is not precise enough, in particular with regard to reference to "other public decisions". The High Authority has provided certain clarifications regarding this very broad category; for example, by excluding certain communications relating to individual decisions, an interpretation which should be formalised by adding an appendix to the decree.

More precise declarations

The decree stipulates that the "type of public decision" targeted by the lobbying activity must be completed, as well as the "category of public officials met". This choice limits the scope of the register and does not address the legislator's desire to make this mechanism a system capable of tracing the legislative footprint. These categories, which are quite broad and imprecise, in fact offer little information on the lobbying actions actually being carried out. In addition, although interest representatives have the opportunity to provide details in the "observations" section, the 2019 declaration year has again shown that it is not being used often enough[77]. For example, interest representatives could be requested to directly state the function of the public official with whom they entered into communication (for example "Minister of Agriculture" in the place of "member of the Government or member of ministerial cabinet") as well as the public decision concerned in cases where this is identified, which is already being done by a number of interest representatives.

The declaration frequency

Finally, a semi-annual (instead of the existing annual) reporting rate would be more suitable in order to ensure a shorter time period between the information contained in the register and the date of the interest representation actions actually carried out. Other countries have made this choice, such as Australia, Canada and Scotland.

Extension of the lobbyists' register to local authorities

By way of a reminder, the scope of public officials covered by the register is for the moment limited to decision-makers exercising national responsibilities. However, the law provides for a future extension of the system to cover holders of certain local executive functions and other central administration officials, including certain office managers and deputy directors in particular. This more comprehensive meaning would make the directory one of the most extensive in the world, being eventually expected to cover around 19,000 people[78] *(see table)*.

Initially scheduled for 1 July 2018, the extension of the directory of local public officials has been postponed twice, most recently in June 2020: first to 1 July 2021[79] and then to 1 July 2022[80].

These extensions are in response to several risks associated with the extension of the directory to local authorities, already identified by the High Authority in its latest activity reports:

— poorer readability of the information declared in the register;

— occasionally disproportionate obligations that will have an impact on some entities, including small and medium-sized enterprises and local associations in particular. These often do not conduct any lobbying activity at the national level, but can regularly come into contact with elected officials and officials in their local regions. However, once the system has entered into force, they will be required to implement the same systems as the large entities already registered in the register;

— a dispersion of the High Authority's support, advice and control resources for interest representatives.

77. See p. 120

78. Senate, bill for a state that promotes a trusted society, 1st reading, No. COM-226, sub-amendment No. 259

79. Article 65 of Act No. 2018-727 of 10 August 2018 for a state that promotes a trusted society

80. Article 26 of Act No. 2020-734 of 17 June 2020 on various provisions related to the health crisis, and other urgent measures as well as the withdrawal of the United Kingdom from the European Union

PROPOSAL NO. 6

Develop the legal framework for managing interest representatives:

— remove the initiative criterion;

— simplify the thresholds for triggering a registration requirement, assessing the minimum threshold of ten shares at the legal entity level;

— specify the information to be declared regarding the function of the public officials met, and also the public decision concerned, where this has been identified;

– clarify the scope of the targeted public decisions;

— switch from an annual rate to a half-yearly rate of declaration of activities;

— modify the extension of the directory to be applicable to local authorities (specific study currently being drafted on this point).

2021 TIMEFRAME

THE PUBLICATION OF A STUDY ON THE EXTENSION OF THE REGISTER TO LOCAL AUTHORITIES

The President of the High Authority decided to submit to Parliament in the summer of 2021 a study conducting an initial assessment of the introduction of the directory of interest representatives at national level and its effectiveness, while at the same time assessing the impact of extending the system to local authorities. The High Authority has contacted several local authorities (with a sample reflecting an institutional, geographical and political balance) to obtain a more accurate view of the reality of lobbying within them, and thus adapt its proposals for the changes to the legal framework.

These recommendations may therefore, where applicable, relate to:

— a refocusing of the public officials referred to in article 18-2 of the law of 11 October 2013, which would mainly take the form of an increase in the population thresholds for local authorities;

— an ad hoc delimitation of decisions covered by a lobbying activity;

— an identification of the sectors of activity most at risk at the local level and with a greater chance of being targeted by lobbying activities.

SUMMARY TABLE OF PUBLIC DECISION-MAKERS COVERED
BY THE DIRECTORY OF INTEREST REPRESENTATIVES

Government bodies, institutions and local authorities
Since 2017
Presidency of France
Government
Parliament
Independent administrative authorities and independent public authorities
Central administration
From 1 July 2022
Central administration
Regional
Departmental
Overseas authority
City of Paris
Municipality of more than 20,000 inhabitants
Municipality of more than 100,000 inhabitants
Municipality of more than 150,000 inhabitants
Public inter-municipal cooperative establishment with its own tax system, serving a population of more than 20,000 inhabitants, or with a total operating revenue in excess of 5 million euros
Public inter-municipal cooperative establishment with its own tax system, serving a population of more than 100,000 inhabitants
Public inter-municipal cooperative establishment with its own tax system, serving a population of more than 150,000 inhabitants
National Centre for Local Civil Service
Interdepartmental centre for the management of the regional public service for the inner and outer suburbs of the Île-de-France area
Centre for the management of the regional public service equivalent to a municipality of more than 150,000 inhabitants

	Public decision-makers concerned
	Office of the President of the Republic
	Members of the Government and their cabinets
	Members of parliament, offices of the presidents of the two chambers, parliamentary assistants, assembly officials
	Directors-General, Secretaries-General and their deputies, members of boards and sanctions commissions
	Officials appointed to the Council of Ministers
	Officials whose hierarchical level or the nature of their functions justify it, appointed by Council of State decree (e.g.: heads of department)
	President of the regional council, chief of staff, deputy chief of staff and head of staff, regional advisers holding a delegated power of office or signature, director general of services
	President of the regional council, chief of staff, deputy chief of staff and head of staff, departmental advisers holding a delegated power of office or signature, director general of services
	Elected presidents of the executive and territorial assembly, and their directors, deputy directors and chiefs of staff
	Mayor, chief of staff, deputy director and head of staff, deputies to the mayor holding a delegated power of office or signature, members of the Council of Paris holding a delegation of office or signature, director general of services, secretary general, deputy secretary general, director-general and director
	Mayor, chief of staff, deputy director and head of staff
	Mayor, chief of staff, deputy director and head of staff, mayoral deputies holding a delegated power of office or signature
	Mayor, chief of staff, deputy director and head of staff, deputies to the mayor holding a delegated power of office or signature, director general of services, director-general and director of municipal credit union services
	President, chief of staff, deputy director and head of staff
	President, chief of staff, deputy director and head of staff
	President, chief of staff, deputy director and head of staff, mayoral deputies holding a delegated power of office or signature
	Director General or Director of Services
	Director General or Director of Services
	Director General or Director of Services

3
A stabilised but limited control procedure

In order to guarantee the credibility and efficiency of the register of representatives by ensuring that the information made available to the public is exhaustive, accurate and reliable, the High Authority is endowed with legal powers of control[81]. This control concerns both the declarative and ethical obligations of interest representatives[82].

The health crisis has had a strong impact on the activity of controlling interest representatives: as the deadline for filing activity declarations for the year 2019 was postponed to 24 August 2020, the related controls were logically postponed.

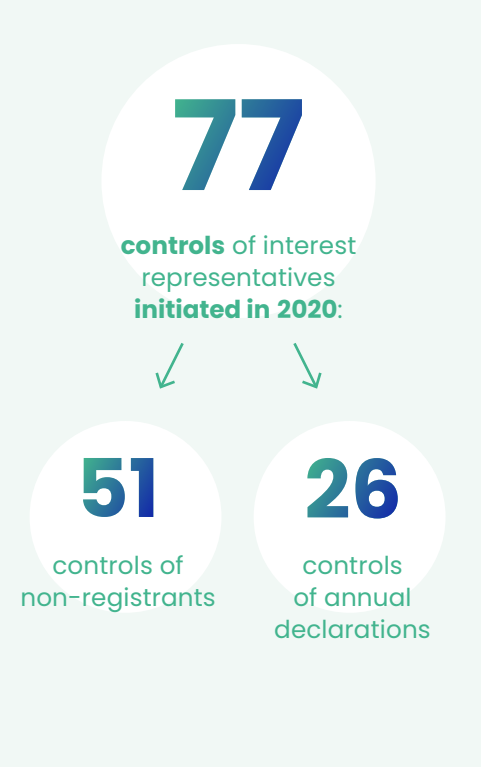
General report and key figures in the control of interest representatives in 2020

Three types of controls on interest representatives are carried out:

— control of non-registrants: this involves verifying that interest representatives fulfilling the criteria defined by law are registered with the directory;

— control of annual activity declarations with a first control for the filing of the declaration after the legal deadline, followed by automatic reminders by e-mail, supplemented by an in-depth control aimed at verifying the accuracy and completeness of the information declared;

— control of ethical obligations: only one control was carried out in 2020.



81. Article 18-6 of Act No. 2013-907 of 11 October 2013 on transparency in public life
82. See 2019 Activity Report, pp. 96-99

INTEREST REPRESENTATION DURING THE HEALTH CRISIS

The unprecedented health measures implemented by the public authorities in March 2020 to try to stem the epidemic had very significant economic and social consequences, certain sectors of activity having been shut down for several months. In this very uncertain situation, private and public actors naturally took action to defend their interests (requests for economic aid, stimulus proposals, etc.), consequently stepping up their lobbying activities.

Several observations can be drawn from this crisis and its impact on interest representation (lobbying):

— the influencing activities of interest representatives related mainly to economic sectors affected in the first instance: transport (due to the closure of land and air borders as well as imposed travel restrictions), health (financing of innovative Covid-19 treatments, availability of vaccines, social security financing law), but also the environment and energy;

— the use of virtual communications between public officials and interest representatives, in particular via digital platforms such as "Zoom" or "Telegram", has increased as a result of the limitation of physical meetings, and this type of "*e-lobbying*" is set to become a regular fixture;

— with the crisis having accentuated the need to speak with a single voice in order to exert more influence, the organisations to which they belong (e.g. professional federations) have become favoured points of contact in a philosophy of consultation with public officials, prompting a rationalisation of the stakeholders involved.

The outcome of the control is proportional to the degree of seriousness of the breach observed. 77 controls were carried out in 2020 and 46 controls were still in progress as of 31 December 2020 (including the controls initiated in 2019).

The response rate from entities receiving the control letters is satisfactory, provided that they then move on quickly to an entry in the register, to a modification of their declaration or to the provision of the requested supporting documents.

This finding seems to constitute evidence that the register is well accepted by interest representatives.

RESULT OF THE CONTROL

Compliance: classification

- **Notification of breaches**
- **Observations**
- **Formal public notice**

Criminal offence: referral to the public prosecutor

Control of non-registrants

51 controls of non-registrants were carried out in 2020, with 22 controls still in progress as of 31 December 2020 (including those initiated in 2019). These controls resulted in 41 entries in the register.

51

controls of non-registrants initiated in 2020

41

entries into the register following controls initiated in 2019 and 2020

ENTITIES THAT HAVE BEEN CONTROLLED FOR NON-REGISTRATION WITH THE DIRECTORY IN 2020

37% Commercial companies
35% Associations and NGOs
22% Professional organisations/unions
6% Consulting firms/independent consultants

Control of annual declarations

As of 31 December 2020, despite numerous reminders from the High Authority, 137 interest representatives entered on the register had not provided all, or any, of the information required by law. This list is published on the website of the High Authority and is regularly updated, to encourage interest representatives to register themselves.

In the event of disregard of reporting and/or ethical obligations, and following unanswered reminders, the High Authority has the option of sending interest representatives a notification of their breaches; they have one month to submit their observations and/or enter into dialogue with the High Authority. The High Authority used this power 32 times in 2020. If this joint phase is unsuccessful in securing the entity's compliance, it is followed by a formal notice that can be published – a mechanism which has never yet been used. Finally, after this last step, the case may be forwarded to the public prosecutor if the entity has not corrected the discrepancy.

In addition, 26 annual declaration controls were initiated in 2020, and 11 completed.

137

entities recorded as of 31 December 2020 **on the list of interest representatives failing to submit some or all of the information** required by law

32

notifications of **breaches sent for non-filing** of declarations of activities

11

audits completed in 2020

10

of which resulted in changes to declarations concerning:

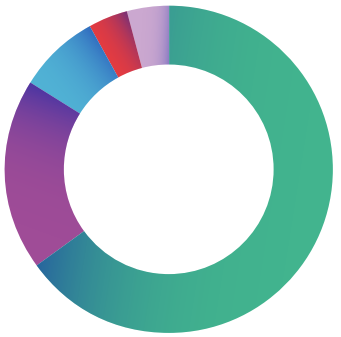
- information regarding the identity of the persons responsible for interest representation (6)
- activity forms (8)
- allocated resources (6)*

1

classification of "no further action" due to judicial liquidation of the controlled entity

*Some controls have resulted in changes to several different information categories

ENTITIES WHOSE ANNUAL DECLARATIONS OF ACTIVITIES HAVE BEEN CONTROLLED IN 2020, BY TYPE



65%	Commercial companies
19%	Professional organisations/unions
8%	Associations and NGOs
4%	Consulting firms/independent consultants
4%	Other

Control mechanisms

Controls by the High Authority, concerning both non-registered persons and annual activity declarations, are initiated following:

— monitoring work by the High Authority, via the specialist press and a themed analysis by sector of activity;

— current political developments, via mapping of the actors involved in a project or a proposed law, for example;

— whistle-blowing reports: 3 were received in 2020 (a sharp drop compared to 2019 but understandable given the health situation); these reports were all thoroughly checked.

Internal reporting mechanisms and indicators have also been improved in preparation for year-on-year controls, and to make them more effective.

Specific work has been carried out on the control of the resources allocated to interest representatives' activities *(see inset)*.

REMINDER OF THE OBLIGATION TO DECLARE RESOURCES ALLOCATED TO THE ACTIONS OF INTEREST REPRESENTATIVES

In this regard, the Decree of 9 May 2017 specifies that "*the following constitute expenditure devoted to interest representation (lobbying) actions (…) all human, material and financial resources employed by the interest representative*", in carrying out its interest representation activities. This expenditure must be specified in the form of a list of price brackets, established by order of the Ministry of the Economy following a proposal from the High Authority[83], broken down as follows:

— from €0 to €10,000;

— from €10,000 to €25,000;

— in tranches of €25,000 from €25,000 to €100,000;

— in tranches of €100,000 from €100,000 to €1,000,000;

— in tranches of €250,000 from €1,000,000 to €10,000,000;

— over €10,000,000.

83. Order of 4 July 2017 establishing the list of price brackets provided for in section 6 of article 3 of decree No. 2017-867 of 9 May 2017 on the digital directory of interest representatives

As part of this control, the High Authority endeavours to verify the truthfulness not only of the portion of expenditure declared by each interest representative, but also the number of employees dedicated to these activities and its turnover[84] *(see table)*.

Resources allocated to interest representation (lobbying) activities	Details
Value of expenditure related to interest representation activities during the period in question	Expenses for the compensation of persons responsible for interest representation: • total annual compensation • bonuses • employee and employer contributions • reimbursement of business expenses (transport, accommodation and catering expenses) Final amount obtained by increasing this benchmark compensation by a percentage related to the activity of the person responsible for the lobbying work
	Costs related to event organisation
	Expert fees
	Gifts and advantages (presents and invitations) granted to public officials, of a value greater than €50 including tax
	Purchases of services from consulting companies or law firms
	Subscriptions to associations, unions and professional federations: • in proportion to the portion allocated to expenditure on interest representation
Number of persons employed in interest representation activities	Persons satisfying the criteria set by law
Turnover achieved in France during the period in question	Value of overall turnover in France

84. For further information, see the High Authority guidelines: https://bit.ly/33Vdrc3

Several difficulties were, however, encountered in controlling these resources, such as the calculation of contributions to associations, unions and professional federations, and the assessment of the final percentage to be retained from the remuneration of the persons responsible for the interest representation within the entity. Indeed, the latter can vary greatly, from at least 50% (if the person's main activity is interest representation) to a case-by-case calculation depending on the time spent carrying out interest representation actions (in the case of regular activity).

The High Authority also noted, during its controls, a majority trend, among people exercising an interest representation activity as their main role, to place themselves in the low bracket, opting for the minimum percentage of 50%, without going beyond this. Those exercising a regular activity are also in a better position to calculate the costs on an "action by action" basis, which poses a problem, not least for consulting firms, whose missions are not exclusively focused on lobbying, and therefore declare very few resources. The development of a more exhaustive and clear reading grid would provide a better assessment of the percentage to be used, including in cases where the person is conducting their activity of interest representation on a main or regular basis.

Finally, grey areas have been identified, such as the delegation of interest representation activities by consulting firms to a service provider on behalf of a client.

Limited investigative powers that would benefit from being extended

Regarding the control of interest representatives[85], the High Authority has:

— a power of documentary control, which implies the supply of any information or document that is useful and necessary for the exercise of its mission;

— for the most serious breaches, a power of on-site control, with the authorisation of the liberty and custody judge, which has never yet been implemented.

These investigative powers, like those assigned to the control of public officials, would benefit from being clarified and extended[86] by:

— specifying the on-site control procedure, provided for in article 18-6 of the Act of 11 October 2013 and in article 9 of the decree of 9 May 2017, in order to ensure greater legal certainty for the controlled entities and follow-up to the control by providing in particular for the presence of a judicial police officer;

— introducing a sanction for cases of obstruction[87] to the High Authority's work in relation to powers of documentary and on-site control.

Lastly, the system could be supplemented by the introduction of an administrative sanction regime for certain simple breaches, such as the failure to submit a declaration of activities after reminders or failure to respond to requests from the High Authority. A criminal sanction is not necessarily the most appropriate response in such cases.

85. Powers of control regarding interest representatives are detailed on p. 146

86. For details, see p. 149

87. See p. 151

4
Continuous support maintained for interest representatives

In order to best support interest representatives in complying with their reporting and ethical obligations and thus ensure better ownership of the register, the High Authority has stepped up its educational and awareness-raising actions. This fundamental mission, which is at the heart of the High Authority's identity, has proved to be all the more necessary as the exceptional measures linked to the health crisis have led to a postponement of the deadline for the submission of activity declarations by interest representatives, initially provided for 31 March, until 24 August 2020.

Response to legal questions from interest representatives

The High Authority's staff have been working hard to continue discussions with interest representatives and deliver legal expertise tailored to the issues they face. Questions from declarants can relate both to issues understanding a lobbying activity and declarations of the resources allocated.

Much use was made of telephone assistance, with nearly 1,332 calls handled (despite a one-month closure for technical reasons in April 2020 following lockdown measures), or an average of 121 calls per month and an average call time of 7 minutes 17 seconds. A peak of calls was reached in September 2020 *(see graph)*, corresponding to the end of the reporting year. Interactions also take place via email at the address: **repertoire@hatvp.fr.**

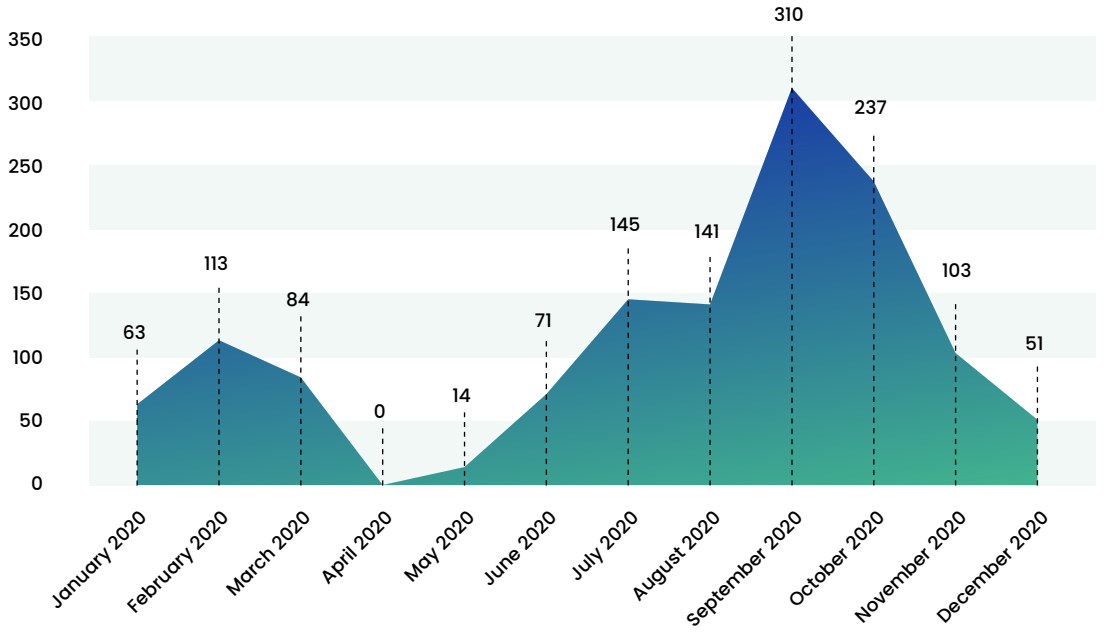
1,332

calls processed in **2020** on the telephone hotline for interest representatives

Aware of the legal complexity of the system, the High Authority has provided centralised access to a full set of documentary resources and practical tools on interest representation (lobbying) on its website, directly accessible from the home page. To provide support for interest representatives in their declarations of activities, a document has been put online identifying the list of public officials appointed to the Council of Ministers in respect of whom a communication may constitute interest representation[88].

88. https://bit.ly/3a9dkO2

NUMBER OF CALLS PROCESSED ON THE TELEPHONE HOTLINE FOR INTEREST REPRESENTATIVES



Raising awareness and training

On 6 February 2020, following on from the first information day held in February 2019 for interest representatives, the High Authority held a new *"Info Day"* dedicated to the voluntary sector, which in fact accounts for 23.5% of the entities registered with the directory. Associations sometimes lack information on the directory; they often do not see themselves as interest representatives, but nevertheless fulfil the legal criteria that trigger an obligation to register.

After a reminder of the legal obligations applicable to associations carrying out lobbying actions, a presentation of the practical methods of registration and declaration was made, including an online registration and declaration simulation. The different types of controls were then presented to the participants with a particular emphasis on the reporting procedures to be implemented internally to provide evidence of the organisation's compliance with legal obligations. This information morning ended with a round table combining three associations entered onto the register: WWF France, Transparency International France and the *Mouvement associatif*.

The High Authority also participated in two conferences organised by professionals in this sphere, including the 7th annual "Director of public affairs" conference in January, centred on a round-table event entitled "Can transparency and influencing strategy co-exist?". The High Authority's agents have also been involved on two occasions in continuing education certification courses (the Master in Compliance Expertise from Paris-Dauphine PSL University and the Public Affairs, Strategy and Influence Certificate from Sciences-Po Paris).

Updates to the online declaration service

The ability to directly unsubscribe an entity using the "AGORA" teleservice has been developed. In future, an interest representative who has ceased their activities can request to be removed from the directory, in accordance with legislative and regulatory provisions[89].

This option is open to entities that no longer meet the definition of an interest representative on a permanent basis:

— either because the entity has ceased its activities (judicial liquidation, merger/acquisition, etc.);

— or because it has ceased its interest representation activities (change of corporate purpose, restructuring, total outsourcing of interest representation activities) and that no employee, manager or member any longer meets the "main or regular activity" criterion determining whether a legal entity is an interest representative.

In the absence of an established abandonment of the status of interest representative, i.e. when an entity temporarily no longer carries out interest representation activities, the High Authority recommends that declarations be made to state an absence of any interest representation actions during that period.

The unsubscription procedure is handled by High Authority staff. A certificate from the legal representative of the organisation must be provided, stating the reason for unsubscribing and the effective date of termination.

Once the request has been approved, the entity is deemed to have unsubscribed and a note is made on the entity's public file in the directory of interest representatives, along with the date of termination and the reason. The entity must declare interest representation activities and the resources allocated to them up until the effective date of termination.

The information published in the directory remains public for a period of five years, excluding the identity of the natural persons mentioned by the entity, which is deleted.

89. With regard to Article 6 of Decree No. 2017-867 of 9 May 2017 and Article 7 of Deliberation No. 2017-236 of 20 December 2017 establishing the AGORA teleservice

5

Promoting the use of the digital directory of interest representatives

The directory of interest representatives provides citizens with a wealth of data to strengthen the transparency of the legislative process and the development of public decision-making. However, it remains mostly unused, which led the High Authority, in 2020, to introduce several initiatives intended to encourage its use.

250,000

visits to the directory of interest representatives in **2020**

5 times fewer visits than the number of declarations by public officials

401

entities registered with the directory have had their file viewed at least once **in 2020**

Key figures on directory views

The viewing data from the directory of interest representatives shows that this system, designed to promote transparency in public decision-making, is still obscure to the public. In fact, the directory was viewed 250,000 times in 2020, compared to 1,200,000 views for the published declarations of interests and assets by officials, i.e. five times fewer views. Only 18.3% of registered entities have had their file viewed at least once.

Publication of the source code of the directory of interest representatives

As part of its involvement in the Open Government Partnership[90], the High Authority has undertaken to deliver greater transparency in interest representation (lobbying) activities. To this end, in June 2020, it published the source code for the directory of interest representatives (the "AGORA" source code[91]). The interest representatives are required to make an annual declaration of a variety of information concerning their lobbying work: their identity, the purpose of their actions, the relevant officials, etc. To do this, they use a web application called AGORA, designed as a teleservice for interest representatives. The aim of putting the source code online is to promote the use and reappropriation of this data by civil society (journalists, associations, citizens).

90. See p. 175
91. https://bit.ly/3oGuqqc

Putting digital educational tools online

The High Authority's mission of overseeing interest representation activities remains obscure to the general public, as evidenced by the low number of views of the digital directory, even though it contains a great deal of data, which may prove invaluable for citizens wishing to know more about public decision-making processes.

In 2018, the High Authority joined forces with the Latitudes association[92] to create a dashboard offering an overview of the data in the directory of interest representatives and offering useful statistics to the public. By this summer, it will provide access via its website to data visualisations produced in real time from this dashboard. Members of the public will be able to view the data declared by interest representatives in the form of infographics and obtain information on the profiles of interest representatives in France, the type of actions they carry out, the profile of the public officials targeted by their actions, the resources they devote to the representation of interests and the type of public decisions in question.

2021 TIMEFRAME

A DIGITAL PLATFORM DEDICATED TO LOBBYING

In 2021, continuing the work it started in 2020, the High Authority will also create an online digital platform for educational purposes, dedicated to lobbying and intended to fulfil several objectives:

— to publish educational content on lobbying (a reminder of the legal and ethical framework; diversity of actors, etc.);

— to make the data in the directory more readable and thus ensure the transparency of public decision-making, by means of data visualisation tools and frequent publications (articles, themed notes);

— to promote the High Authority's proposals for interest representation;

— to continue the commitment made by the High Authority under the 2018-2020 Open Government Partnership plan.

92. See Activity Report 2018, p. 82

Strengthening the transparency obligations of public officials

While the directory of interest representatives is a valuable tool for greater transparency in terms of the legislative footprint, other initiatives are to be encouraged in order to complete the mechanism, such as the publication in open data format, by public officials, of their meetings with representatives of interests. Although French public officials are already voluntarily publishing the list of such meetings in open (and therefore easily reusable) formats[93], this practice is still too rare. The obligation to publish meetings with interest representatives is not intended to apply to all public officials, but to those occupying strategic positions (members of the Government, members of parliament drafting legislation, chairpersons of committees within the two assemblies), mirroring what is already being applied at European level (members of the European Commission and their collaborators; committee chairman, rapporteur and referent for each parliamentary group in Parliament). Such publication is particularly justified in the case of members of parliament, in cases where a legislative text or provision can be precisely identified.

PROPOSAL NO. 7

Encourage, in stages, *open data* notification of meetings with public officials (in particular members of the Government, MPs, rapporteurs on a text, chairpersons of committees in both assemblies) with interest representatives to make their relations more transparent.

93. See 2019 Activity Report, pp. 106-107

Part 5

The High Authority's powers of control and investigative resources

Since the introduction of the Acts of 11 October, 2013, the legislating body has regularly entrusted new missions to the High Authority, while ensuring that it is supplied with adequate resources. In certain areas, strengthening these powers would guarantee significantly more effective action in the prevention of breaches of probity. It appears all the more justifiable to grant additional powers of investigation and control, in proportion to the aims pursued, given that the High Authority often finds itself lagging behind other independent administrative authorities, in particular in matters of administrative sanctions or communication rights.

1

The High Authority's current investigative resources

In its work of controlling the declarative and ethical obligations of public officials and interest representatives (lobbyists), the High Authority is invested with certain investigative powers by law.

The extent to which it exercises these powers is proportionate to the intended goal: the various requests for documentation or information are thus subject to a "need-only" requirement. Access to certain databases is also subject to authorisation for High Authority agents.[94]

The extent of the investigative powers available to the High Authority also varies according to the stakeholders involved. For example, the control regime for declaration requirements is proportionate to the risks to which the functions concerned are exposed: the High Authority has more investigative powers with regard to public officials falling within the scope of the Act of 11 October, 2013 than for public officials subject to an obligation to submit a declaration of assets or interests under the Act of 13 July, 1983, which can be explained by the need to ensure that those with the greatest exposure set a stronger example because of the responsibilities they exercise.

In 2020, the High Authority carried out significant work among the member states of the European Union, mapping authorities operating within the same scope in terms of public integrity and of their respective and their respective prerogatives. The results of this research will be made available on the High Authority's website.

94. Article R135 ZG-1 of the *Livre des procédures fiscales* tax procedures handbook

The table below provides an overview of the powers and resources devolved to the High Authority, given the current state of the law, for fulfilling its various missions relating to the control of the integrity of officials and public officials, as well as the regulation of interest representation (lobbying).

Control of compliance with declaration requirements for public officials (under Act No. 2013-907 of 11 October, 2013)	Control of compliance with declaration requirements for public agents (under Act No. 83-634 of 13 July, 1983)	Ethics opinions issued to public officials (under Act No. 2013-907 of 11 October, 2013)	Ethics opinions issued to public agents (under Act No. 83-634 of 13 July, 1983)	Control of ethical and declaration requirements for interest representatives
Request any necessary explanations and documentation	Request any necessary explanations	Request any necessary explanations and documentation	Request any necessary information or documentation from the civil servant or the authority to which he/she reports	Obtain any necessary information or documentation for documentary checks
Interview or consult anyone whose assistance would be useful		Interview or consult anyone whose assistance would be useful	Interview or consult anyone whose assistance would be useful	Carry out on-site checks
Ask the declarant for their income tax declaration, and possibly also their spouse's	Ask the declarant for their income tax declaration, and possibly also their spouse's		Collect all relevant information from public and private persons	
Ask the DGFiP to exercise its right of communication with regard to third-party administrations (for declarations of assets only)	Ask the DGFiP to exercise its right of communication with regard to third-party administrations (for declarations of assets only)		Request all relevant explanations or documentation demonstrating compliance with an opinion within a period of 3 years	
Request information from the DGFiP (for declarations of assets only)	Request information from the DGFiP (for declarations of assets only)			
Access Patrim, FICOBA, FICOVIE and BNDP databases (for declarations of assets only)*	Access Patrim, FICOBA, FICOVIE and BNDP databases (for declarations of assets only)*			

* The databases to which the High Authority has direct access are: the national asset data base (BNDP); PATRIM, which provides estimated real estate values; FICOBA, an application supplied by banking establishments which provides information on accounts held by the declarant; and FICOVIE, an application equivalent to FICOBA but covering life insurance contracts.

The High Authority also has the capacity to carry out on-the-spot checks, at the professional premises of interest representatives, with the authorisation of the liberty and custody judge. It ensures the confidentiality of documents and information to which it becomes party in this respect[95]. The High Authority's powers of control are limited in comparison to those of other independent administrative authorities. Likewise, it does not have any power of sanction of its own which would enable it to issue its own sanctions in cases where it becomes aware of breaches.

Investigative powers – Comparison with other independent French administrative and public authorities

Independent administrative authority	Power to take copies	Power of seizure	Electronic search	Ability to affix seals	Ability to carry out on-site interviews	Power of administrative sanction
Regulatory authority for electronic communications, postal and print media	✓	✓	✓	✓*	✓	✓
CNIL data protection agency	✓	✗	✓	✗	✓**	✓
Transport regulatory authority	✓	✓	✓	✓*	✓	✓
High Authority for transparency in public life	✗	✗	✗	✗	✗	✗

*Under certain exceptional conditions
**Only with prior notice

95. Article 18-6 of Act No. 2013-907 of 11 October, 2013

2
Strengthening the High Authority's investigative powers

The High Authority's investigative resources have evolved over the years: since 2017, for example, some agents have gained access to a number of assets databases which have enabled them to conduct enhanced controls in this area[96]. Further progress is possible to enable the High Authority to accomplish its missions more effectively.

By granting an independent right of communication

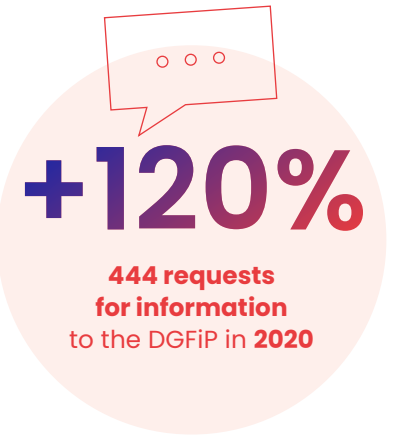
The control activity conducted by the High Authority's departments goes hand in hand with constant interactions with declarants, in compliance with the adversarial principle: this is why declarants have the ability, at all stages of the control, to supply missing information.

At the same time, in cases where control requirements involve gathering information held by other entities – banking or financial establishments, administrations, etc. – the High Authority may, by virtue of Article 6 of the Act of 11 October, 2013, ask the tax administration to exercise on its behalf the right of communication it enjoys. The General Directorate of Public Finances (DGFiP), to which such requests are addressed, has sixty days to provide the High Authority with the information obtained from third-party government bodies or private stakeholders. This option is used within the framework of control of declarations of assets, in order to verify the declared information.

The High Authority has for several years in its activity reports been advocating all the advantages of obtaining an independent right of communication, which it would no longer need to apply to the tax authorities to exercise. Such a power, whose exercise would no longer be limited to the sole control of declarations of assets but extended to all of its declaration control missions, would allow it to directly issue requests for information to various stakeholders: banking and financial institutions, insurance companies, state and local government administrations, and public establishments.

96. Decree No. 2017-19 of 9 January, 2017 relating to designation and authorisation methods for agents of the High Authority for the transparency in public life authorised to consult the "Asset Estimation" (Patrim) automated processing system, the national bank accounts record (FICOBA), the capitalisation and life insurance contracts record (FICOVIE) and the automated processing system for named data known as the "National Asset Database" (BNDP), modifying article R. 135 ZG-1 of the tax procedures handbook

This use of an intermediary leads to a significant lengthening of control timescales for the High Authority. In 2020, the number of information requests sent to the DGFiP increased considerably (+120%)[97], and will inevitably have had an impact on staff's work, both within the High Authority and within the DGFiP.



RIGHTS OF COMMUNICATION FOR OTHER INDEPENDENT ADMINISTRATIVE AUTHORITIES

A certain number of administrative authorities already have an independent right of communication, with a more or less extended scope.

For example, agents of France's Competition Authority can "*access any document or piece of information held by State departments and establishments and other public authorities*"[98]; as well as the Tracfin service, in charge of the fight against tax fraud, money laundering and the financing of terrorism, to an even greater extent[99]. France's Defender of Rights citizens' rights authority can, for its part, "*gather any information that appears necessary regarding acts that are brought to its attention*"[100], subject to compliance with certain types of secrecy (medical, national defence, etc.).

97. See p. 88

98. Article L. 450-7 of the Code of Commerce

99. Article L. 561-27 of the Monetary and Financial Code

100. Article 20 of the organic law No. 2011-333 of 29 March, 2011 on the Defender of Human Rights

As regards the High Authority, an extended right of communication would be justified by the very nature of its work: unlike most independent administrative authorities, it is primarily responsible for establishing the situations of individuals, whether elected officials, public officials or civil servants. However, these individuals are mobile, working in turn in the public and private sectors, and the information regarding them is by essence disseminated.

Lastly, there is no impediment to obtaining such a power, given that Parliament had already made provision for it to be granted within the framework of the Act of 15 September, 2017 on confidence in political life. At that time, members of parliament emphasised the extent to which the such a right of communication would serve to strengthen the independence of the High Authority in conducting its missions.

Although the Constitutional Council declared Article 9 of the Act to be incompatible with the Constitution[101], this declaration was founded not on the constitutionality of this right itself, but on the material scope of its exercise[102]: the Constitutional Council considered that under the system's current definition, the High Authority could obtain connection data held by telecommunications operators without this option having been accompanied by sufficient guarantees in terms of the protection of privacy. However, as already stated by the High Authority in 2017[103], such information is of no use to it in the context of its control missions. A precise delimitation of third parties to whom this right of communication could be exercised – strictly justified in line with the need for control, and therefore excluding telecommunications operators – would be likely to address the concerns expressed by the Constitutional Council. In addition, the exercise of this right would be under the control of the administrative judge.

PROPOSAL NO. 8

Allow the High Authority to directly exercise a right of communication with banking or financial institutions, insurance or reinsurance undertakings, administrations, local authorities and any person in charge of a public service mission for all of its control duties.

Via the introduction of a sanction aimed at interest representatives' obstructions of control actions by agents of the High Authority

The Act of 9 December, 2016, known as "Sapin II", in its creation of a digital directory intended to bring interactions between public officials and interest representatives (lobbyists) to the attention of the general public, made these lobbyists subject to a set of declarative and ethical obligations. If they meet the criteria defined by law, interest representatives are required to register with the directory and declare their lobbying actions in that directory on an annual basis. They are also required to comply with the ethical obligations that govern their profession[104].

101. By abolishing the requirement for mediation with the tax authorities, the DGFiP granted the High Authority a *de facto* independent right of communication.

102. Cons. const., 8 September, 2017, dec, No. 2017-752 DC.

103. See Activity Report 2017, pp. 68 and 69.

104. Article 18-5 of Act No. 2013-907 of 11 October, 2013

In order to ensure that they comply with these obligations, the High Authority is empowered to carry out documentary checks, obtaining "*any information or document necessary for the performance of its mission*" from the interest representatives concerned, and may conduct "*on-site verifications at the business premises of interest representatives*"[105]. This second type of control is subject to the authorization of the liberty and custody judge of the judicial tribunal of Paris, and takes place under the conditions provided for by the decree of 9 March, 2017[106].

In addition to the lack of details on how to carry out these on-the-spot verifications, highlighted in previous activity reports[107], the High Authority notes that the checks it is able to carry out are not supported by a mandatory mechanism. Indeed, no sanction is provided for in the event of obstruction of the controls carried out by the agents of the High Authority, in the form of documentary or on-site verifications: in other words, there is nothing to sanction a refusal, by an interests representative under investigation, to send the requested documents to the High Authority, or allow it access to their premises. Despite this fact, in an opinion on the draft of the future Sapin II law, issued on 24 March, 2016, the Council of State had been supportive of the creation of an offence of obstruction[108] *(see inset)*.

OPINION OF THE COUNCIL OF STATE, ISSUED ON 24 MARCH, 2016

"Lastly, the Council of State considered it necessary to make provision in the bill for an offence of obstructing the control of the High Authority with regard to persons required to register with the directory because of their activity as an interest representative. In the absence of such an offence, the authority's power of documentary and on-site control would be liable to be regarded as conferring coercive power on the agents of the control authority, and therefore liable to infringe upon the freedoms proclaimed in article 2 of the Declaration of the Rights of Man and of the Citizen of 1789, which implies the right to respect for private life and, in particular, to the inviolability of the home."

105. Article 18-6 of Act No. 2013-907 of 11 October, 2013
106. Articles 9 et seq. of Decree No. 2017-867 of 9 May, 2017
107. See Activity Report 2019, pp. 103-104
108. Council of State, opinion No. 391.262 of 24 March, 2016

This situation – a source of legal uncertainty – continues to stand as an exception amid a landscape of independent administrative authorities vested with powers of investigation and control. For the majority of such authorities, obstruction of controls constitutes a criminal offence punishable by imprisonment and a fine. In some cases, an administrative sanction chosen by the administrative authority itself replaces, or is added to, the offence of obstruction.

PROPOSAL NO. 9

As part of the process of controlling declaration requirements and ethical obligations of interest representatives, introduce an administrative sanction covering interference with the duties of officers of the High Authority.

Existence of an administrative or criminal sanction in the event of obstruction of agent controls and investigations – Comparison with other independent French administrative and public authorities

Financial Markets Authority	Regulatory authority for electronic communications, postal and print media	CNIL data protection agency	Competition authority	Transport regulatory authority	National gaming authority
✓	✓	✓	✓	✓	✓
Criminal sanction 2 years' imprisonment and a fine of 300,000 euros **Administrative sanction** Non-financial (reprimand, warning, etc.) or financial (up to 100 million euros in some cases)	**Criminal sanction** Three months' imprisonment and/or a fine of 30,000 euros in the event of unjustified obstruction or refusal to produce or supply the requested documents*	**Criminal sanction** One year's imprisonment and a fine of 15,000 euros	**Criminal sanction** 2 years' imprisonment and a fine of 300,000 euros **Administrative sanction** Non-financial (reprimand, warning, etc.) or financial (up to 100 million euros in some cases)	**Administrative sanction** Non-financial (temporary ban on access to the network) or financial (up to 3% of turnover excluding taxes or a ceiling of 150,000 euros)	**Administrative sanction** Financial sanction in an amount not to exceed 100,000 euros

Furthermore, an administrative sanction appears to be the most effective regime with regard to the nature of the obstruction and the large number of entities carrying out lobbying work – stakeholders in associations, consulting firms and professional organisations of various sizes. If, as is proposed below, the High Authority is given access to such a system, it could be usefully harmonised and thus make it possible to penalise other breaches (lack of response to control letters, non-registration with the directory).

* But see decision n ° 2021-892 QPC, on the combination of administrative and penal sanctions, issued by the Constitutional Council on 26 March, 2021.

3

Endowing the High Authority with an administrative power of sanction to enable more effective decision-making

Neither the Acts of 11 October, 2013, nor those which followed, provided for the High Authority's right to exercise a power of administrative sanction consisting of the ability to impose, via a unilateral decision, "*a penalty for an infringement of laws and regulations*"[109].

Such a penal sanction is sometimes unsuited to the breaches it is applied to

For several years, the High Authority has been proposing that it be granted its own power of sanction, which would enable it to ensure better compliance of public officials and interest representatives (lobbyists) with their reporting obligations.

Other independent administrative authorities, such as the Competition Authority, the National Gaming Authority and the Energy Regulatory Commission, have the power to impose administrative sanctions.

Alternatively, the law of 11 October, 2013 provides for several criminal sanctions to punish non-compliance with the obligations incumbent on public officials and interest representatives: complete, accurate and sincere declarations of interests and financial situation, declarations of activities in the directory of interest representatives, ethical obligations of interest representatives, and deference to injunctions issued by the High Authority.

However, the very nature of some of these breaches renders a criminal sanction partially inappropriate. Among these, failure to comply with reporting obligations would be particularly well suited to a modified penalty response.

109. EC, study, *Powers of sanction in government bodies*, 1995

Penal sanctions applicable in the event of non-compliance with the obligation to submit a declaration of interests, assets or lobbying activities.

Public officials	
Breach	**Applicable sanction**
Failure to file a declaration of interests or assets	3 years' imprisonment Fine of 45,000 euros As an additional penalty, prohibition of civic rights and the exercise of public office
Interest representatives (lobbyists)	
Breach	**Criminal sanction**
Non-registration and non-declaration in the digital directory	1 year's imprisonment Fine of 15,000 euros

In practice, in cases where the High Authority finds that a public official or an interest representative has not submitted his/her declaration – of interests or assets, under article 4 of the Act of 11 October, 2013, or lobbying activities, under article 18-3 of the same law – it initiates discussions to ensure that the party in question fulfils their obligation. It may also, for some declarants in particular, issue an injunction that it can choose to make public[110]. Only upon completion of this phase of exchanges and potentially injunction, and in cases where the breach persists, does it submit the file to the office of the competent public prosecutor, who then determines the appropriate follow-up measures to be taken.

In the case of the High Authority, however, the penal sanctions are often unsuited to the acts which they punish: for example, a failure to submit a declaration calls for a rapid response in order to put the High Authority in a position to fulfil its general-interest mission of transparency and control of probity, and the "serial" nature of this type of breach places a disproportionate burden on the judicial authority. In addition, although the penalties may appear severe for natural persons, they may be seen as insufficiently dissuasive for legal entities.

Conversely, an administrative penalty – more proportionate to the nature of the breach – could be issued within shortened deadlines capable of reinforcing its power of dissuasion. Failure to comply with the declaration obligation is easier to assess because the materiality of the facts is established simply by noting that the required declaration has not been filed. Consequently, the High Authority would be in a position itself to impose a sanction on declarants who, at the end of a period of unsuccessful reminders and discussions, have not submitted their declarations. Publication of the sanction, which could accompany the sanction itself where applicable, would strengthen its effectiveness. Finally, the very existence of a sanction that could be imposed in the medium term would have the consequence of improving initial filing rates, implying in return a reduction in the recovery work carried out by the agents of the High Authority and, consequently, a significant saving in human resources.

110. Paragraph V of Article 4 of Act No. 2013-907 of 11 October, 2013

The exercise of a power of administrative sanction

The exercise of an administrative sanctioning power by the independent administrative authorities is subject to a strict legal regime, co-constructed by constitutional and administrative case law and ensuring the preservation, for the benefit of persons liable to be subject to an administrative sanction of a number of legal guarantees deriving in particular from the right to a fair trial.

Compliance with these guarantees would require significant structural changes for the High Authority. Most prominently, respect for the principles of independence and impartiality throughout the sanctioning procedure would call for institutional arrangements to ensure the separation of the various constituent functions of this procedure, from the initiation of proceedings to the issuing of the sanction, and including the joint investigation of the case.

Several organisational methods are possible, and can be seen in use in other independent French administrative authorities. The first method is to assign each function – prosecution, investigation and sanction – to organically distinct entities. This therefore assumes the creation of a third body – a committee or commission – vested with the power of sanction (the Financial Markets Authority and the National Gaming Authority are structured in this way).

The second method consists of a so-called separation of functions, which enables the same bodies to perform multiple functions. Such a structure can involve a partition of the authority's college (board) and the creation of two restricted entities, to which the functions of prosecution and sanction are respectively assigned (such a system is used by CNIL and ARCEP, for example). It can also be achieved by a distribution of functions between the investigation services, placed under the authority of an independent general rapporteur, and the authority's college, invested with the function of sanction (the system used by the Competition Authority and the CSA): in such a configuration, the exercise of a self-referral option, where applicable, is shared by the two bodies.

Given its current structure, the High Authority could be given a sanctions commission that was separate and organically independent from its college. The president of the High Authority would be vested with the ability to make referrals to the sanctions commission and, as a result, the ability to initiating proceedings. This commission – which, to avoid becoming cumbersome, could be composed of three members – would be assisted in its missions by external rapporteurs, in charge of the joint investigation of cases. Such an organic separation of functions, in accordance with both administrative and constitutional case law, would ensure a clear, efficient and secure system.

This power would be exercised under the same philosophy of interaction and support that guides the High Authority's other work.

PROPOSAL NO. 10

Provide the High Authority with its own authority to impose administrative sanctions in situations of non-filing of a declaration by a public official or a declaration of activities by an interest representative.

UNDER WHAT CIRCUMSTANCES COULD THE HIGH AUTHORITY EXERCISE THE POWER OF ADMINISTRATIVE SANCTION?

Which declarants would it cover?

— Elected or unelected public officials subject to an obligation to declare assets and/or interests under Articles 4 and 11 of the Act of 11 October, 2013, with the exception of French representatives in the European Parliament and Members of Parliament and French senators, in consequence of the principle of separation of powers.

— Interest representatives registered with the directory and subject to an annual declaration obligation for their lobbying activities, under article 18-3 of the Act of 11 October, 2013.

Which procedure would be used?

The plan could be for a progressive procedure, during which declarants would at any time have the ability to bring themselves into conformity and to interact with High Authority staff. An initial formal reminder of declaration obligations would first be sent to those failing to file a declaration. In cases where this reminder failed to result in compliance, the President of the High Authority could issue a formal notice to file the required declaration within a given time limit. Only on completion of these two preliminary phases, and in the event of continued failure to make a declaration, could the President of the High Authority refer the matter to the Sanctions Commission, which, at the end of the joint investigation carried out by a rapporteur, would decide whether or not to impose a sanction, as well as the content of that sanction.

What would the sanctions be?

— Given that public officials are sanctioned on a personal basis, a financial penalty of a maximum amount set by the legislator – the imposition of which could be made public – would significantly improve compliance with reporting obligations. It would be the responsibility of the Sanctions Commission to adjust the scale of the sanction in accordance with the seriousness of the breach, the declarant's situation and any circumstances that may have arisen in the case that could account for the breach.

— Given that interest representatives (lobbyists) can be legal entities as well as natural persons, with fundamentally different financial situations, the legislating body's definition of the content of the sanction will need to find a middle way that ensures fair treatment of the various stakeholders who may be subject to a sanction.

Part 6

Sharing the expertise of the High Authority abroad: international relations

Although the health crisis has had a major impact on the High Authority's international work, it has responded to the major challenge of disseminating a culture of integrity on the international scene; for example, by sharing its expertise and participating in the exchange of best practice within international organisations and networks.

Participation in

7

international conferences

482

subscribers to the **High Authority's** international newsletter

10

foreign delegations

Publication of

2

international studies on lobbying and open data in matters of public integrity

1
Action with a resolute focus on the European Union: the ethical body project

In 2020, the High Authority has endeavoured to continue exchanges with European institutions and countries in order to share its expertise in the sphere of public integrity, amid a context of reform of the European ethical framework.

Background

Following the European elections which took place in May 2019, the disputed appointments of European commissioners and the risk of conflicts of interest for some MEPs have sparked considerable debate. In particular, this has brought to light the disparity and weakness of the mechanisms in place to prevent conflicts of interest within each organisation[111].

Since then, there have been discussions over the creation of an independent body dedicated to compliance with ethical rules for all European institutions. Such an independent authority has been advocated by the President of the European Commission, Ursula von der Leyen, and is supported by several European political groups, as well as by President Macron of France, who declared himself in favour of the creation "*of a High Authority for the transparency of European public life*".

Numerous exchanges between the High Authority and European institutions

Following on from the debates initiated in 2019 on the European integrity framework, the High Authority has continued its strategic cooperation with European institutions, and has received regular requests for study visits. It is an illustration of the "French model" of control over the probity of public officials, and shares its expertise in ethical matters:

— two working seminars were organised in January and June 2020 with the European Commission, attended by representatives of the General Secretariat and of the "Ethics, Good Administration and Relations with the Ombudsman" unit, and examining the various mechanisms for prevention of conflicts of interest applicable in France and within the Commission, in particular with regard to professional transition to the private sector;

— the High Authority has also met on several occasions with a French representative at the European Parliament, Stéphane Séjourné, a draftsman of the opinion of the Committee on Legal Affairs on the establishment of a European ethical body, as well as with the staff of German MEP Daniel Freund, a rapporteur of the Committee on Constitutional Affairs in charge of the proposal *(see inset)*.

On 19 November, 2020, during a debate on the European ethical body combining the Legal Affairs and Constitutional Affairs Committees, the High Authority was regularly cited as an example by attending parliamentary representatives.

111. See Activity Report 2019, pp. 126-127.

THE PRESENTATION TO THE EUROPEAN PARLIAMENT OF SEVERAL REPORTS ON THE REFORM OF THE EUROPEAN ETHICAL FRAMEWORK

Based on a shared observation – the fragmentation of the applicable ethical controls within European institutions – the reports by MEP Daniel Freund and by the professor of European law Alberto Alemanno recommend the establishment, on the basis of an interinstitutional agreement, of an independent ethical body responsible for ensuring compliance with standards and obligations for preventing conflicts of interest, monitoring professional retraining in the private sector, and also regulating lobbying.

Regarding the composition of this new structure, Daniel Freund has proposed the establishment of a college of nine members – three chosen by Parliament, three by the Commission and three former mediators or presidents of the Court of Justice and the Court of Auditors.

The report argues for the granting of real powers of investigation, through the collection and examination of declarations of financial interests, and powers of sanctions. Daniel Freund states, however, that decisions relating to the declarations of interests of the European Commissioners-designate would remain a power held by the Parliament's Legal Affairs Committee.

This position is shared by Stéphane Séjourné; who is, however, more in favour of a purely consultative body, favouring support and advice over control and sanction.

2
Advanced deliberations at international level over lobbying frameworks

The growing oversight of relations between public officials and interest representatives, through declarative and ethical obligations, responds to the emergence of a new democratic requirement, common to many countries: that of strengthening transparency on the law-making process and the development of public decision-making in order to restore citizens' confidence in their institutions.

Publication of a comparative study of lobbying frameworks

In October 2020, in order to highlight the variety of public integrity and transparency policies at global and European level, the High Authority published a list of lobbying frameworks in nearly 41 jurisdictions[112]. This study covers all the Member States of the European Union, countries such as Canada, Chile and the United States, and local initiatives in areas such as Catalonia, or the existing system within European institutions.

The study is based on several criteria in order to analyse the legal control framework for lobbying:

— the existence of a law governing interest representation;

— the requirement that interest representatives must join a register, the categories of interest representatives required to register and the accessibility of the register;

— the public officials concerned by interest representation activities and their obligations;

— what information should be reported by interest representatives and how often it should be updated;

— the ethical obligations to which interest representatives are subject;

— the sanctions regime applicable to interest representatives in the event of breaches of their declarative and/or ethical obligations;

— the means of control and investigation implemented by the structure in charge of ensuring compliance with the declarative and/or ethical obligations of interest representatives.

This mapping paves the way for bilateral exchanges with institutions that share the High Authority's mission of monitoring interest representatives, providing a deeper understanding of their systems and enabling stakeholders to draw inspiration from best practices in this area.

112. See appendix, p.192. The table is available in French and English on the High Authority's website: https://bit.ly/3bRZTmT

RESULTS OF THE COMPARATIVE STUDY OF LOBBYING FRAMEWORK MECHANISMS

For the first time, this comparative table provides an overview of the various lobbying frameworks and a better understanding, among other things, of the diversity of definitions of "interest representation", the scope of the public officials concerned, and the means of control provided for by the various countries mentioned above:

Several conclusions can be drawn:

— half of the systems under consideration have a law governing interest representation, Lithuania and Peru being the most recent countries to have adopted a legal framework in this area;

— nearly 90% of the jurisdictions in question have introduced an obligation to join a register; which is, however, accessible as open data only in half of the cases;

— the public decision-makers targeted by lobbying frameworks are mainly elected officials, with members of the executive and civil servants as very common additions. In Germany, members of the Bundestag, federal government and the highest public officials in ministries are included, while Catalonia includes all of its administrative entities;

— around 75% of legislations impose a "cooling-off" period; i.e. a period during which public decision-makers cannot participate in lobbying work from the time they leave their post. This can be up to five years, as is the case in Canada;

— nearly a third have established binding ethical obligations in law, while a quarter have favoured flexible legislation and self-regulation of interest representatives through codes of good conduct, as is the case in Italy and the Netherlands;

— the choice of an independent institution vested with investigative and sanctioning powers – as is the case, for example, in France, Ireland and Lithuania – remains in the minority.

The European Lobbying Registrars' Network

On 9 September, 2020, the third annual reunion of the European Lobbying Registrars' Network was held – an event held for the first time by videoconference due to the pandemic.

Representatives for the Catalan, Scottish, French, Irish, Lithuanian registers, and for the joint secretariat of the European Union transparency register, shared their approach to the Covid-19 crisis and discussed the impact of the health situation on their mission of oversight of lobbying activities. Several members noted a clear increase in activities intended to influence public officials during this pivotal period, as well as an increasing use of online means of communication.

Two new members have joined the Network: Finland, where a bill currently provides for the establishment of a transparency register by 2023, and Slovenia, which already has lobbying regulation mechanisms currently in the process of being amended. A fourth meeting of the Network, dependent on Covid-19 developments, is scheduled for 2021 in Scotland.

As of 1 April, 2021, the High Authority is now heading the European Lobbying Registrars' Network and acting as its secretariat, taking over from Ireland in this role.

Continued participation in conferences, promoting the exchange of best practice

Despite the health crisis, the High Authority has continued its remote participation in several international conferences in order to present its lobbying control work and engage in discussion with other countries and civil society stakeholders.

One such case was Transparency International's 19th International Anti-Corruption Conference. The theme of this event, held online on 4 December, 2020, and bringing together the main players in the fight against corruption worldwide, was "Truth, trust and transparency". Joining an interest representation panel attended by representatives of the OECD, *Transparency International EU* and the Irish Standards in Public Office Commission, the High Authority was able to engage in discussion on issues such as lobbying regulation and the consequences of Covid-19 on lobbying activities.

The presentation of *Transparency International EU's "Debugging Democracy: Open Data for Political Integrity in Europe"* report, in November 2020, also provided an opportunity to defend the French model of lobbying oversight and the policy of access to data declared by interest representatives each year in the digital directory.

3
Continuing exchanges of best practice

International cooperation in matters of integrity and the fight against corruption is vitally important today, as it allows the High Authority to publicise its work and benefit from shared best practices, within networks or through bilateral discussions.

The Network for Integrity

Created in 2016 at the initiative of the High Authority, the Network for Integrity now brings together 14 institutions[113] and two observer countries[114] with a single purpose: to develop and promote an international culture of integrity, transparency and ethics in the public sphere.

The presidency and the secretariat of the Network, which had been provided by the High Authority since December 2018, ended at a plenary meeting held on 11 February, 2021, following which the Romanian National Integrity Agency (ANI) took over the presidency of the Network.

Prior to the handover, 2020 was an opportunity for the High Authority to continue its close collaboration with ANI, which at that time held the vice-presidency of the Network. Three training sessions were held for its agents in order to make them aware of the French system and to allow more detailed discussions of the control of declarations of interests and assets, as well as the prevention of conflicts of interest.

In December 2020, the Network published a study entitled *Developing digital tools to promote transparency in public life*[115], contributing to the exchange of information and best practices between its members (see inset).

The Francophone Network for Parliamentary Ethics and Professional Conduct

Réseau francophone d'éthique et de déontologie parlementaires

The Francophone Network for Parliamentary Ethics and Professional Conduct, founded in October 2019, held its annual general meeting on 16 and 17 November, 2020. Bringing together twenty-one public institutions from the French-speaking world[116] exercising functions in the field of parliamentary ethics and professional conduct, including the High Authority, the Network promotes the exchange of experience and best practice and aims to disseminate the various standards adopted in this sphere by its members; and, in so doing, to assist and support parliaments wishing to equip themselves with a similar legal framework.

While the first day provided an opportunity to take stock of the Network's first year of existence and adopt its future action plan, the second day was a time of discussion on the different concepts of ethics and conflicts of interest and comparison of parliamentary incompatibility mechanisms implemented in each country.

113. Armenia, Ivory Coast, Croatia, France, Georgia, Greece, Latvia, Mexico, Peru, Republic of Korea, Moldova, Romania, Ukraine and Senegal

114. Ireland and El Salvador

115. https://bit.ly/390W7FI

116. Members include institutions and ethical and professional conduct bodies from Belgium, Burundi, Cambodia, Canada, Ivory Coast, France, Mauritius, Madagascar, Senegal and Switzerland.

THE 2020 NETWORK FOR INTEGRITY PUBLICATION: DEVELOPING DIGITAL TOOLS TO PROMOTE TRANSPARENCY IN PUBLIC LIFE

The result of several months of work, this study presents the various strategic mechanisms designed and implemented by the members of the Network to ensure the collection, management, verification and publication of data relating to the integrity of public officials and to registers of interest representatives.

This international comparison generally confirms that there is currently no generic universal software that can be used by different countries to manage financial reporting systems, lobbying oversight tools or public decision-making processes.

The first part of this report discusses the different types of solutions used by the Network's member countries to collect information on public integrity, whether by means of a paper reporting system, like Côte d'Ivoire and Senegal, or a digital system, like France and Ukraine.

The second part is devoted to data management and verification tools. Some countries have implemented measures not only to increase the rate of compliance with the reporting obligations applicable to public officials and/or representatives of interests, but also at the same time to improve the quality of the data collected, in particular through the increasing use of artificial intelligence. The data can then be used to detect breaches of integrity standards, spot inconsistencies and anticipate the risk of conflict of interest, as is the case with the Prevent system in Romania.

Finally, the strategies for publishing the collected data are presented, mainly in the form of open data, in order to facilitate their reuse and increase transparency in matters of public integrity. This section reveals the strong disparity of systems chosen by the member countries, concerning both the categories of public officials whose declarations are subject to an obligation of publication and the deadlines for publishing information online. In Georgia and Romania, for example, declarations are published immediately before being checked. A common principle emerges, however: the constant search for a balance between transparency, accountability and respect for privacy.

Consolidation of its bilateral activity: hosting delegations and training specialist target groups

Now a familiar figure in the international institutional landscape and regularly called upon to share its expertise in matters of public integrity, the High Authority continued its bilateral activity by welcoming ten foreign delegations.

This figure, down sharply compared to previous years, is explained by the global health crisis which led to a suspension of intervention work for several months: three delegations had been received prior to March, the rest of the presentations having been carried out by videoconference. Two foreign personalities, from Chile and Romania, were received at the High Authority as part of the invitation program for personalities of the future (PIPA) of the Ministry for Europe and Foreign Affairs. Two days of training were also organized with the Inspectorate of the Government of Vietnam *(see inset)*.

These exchanges, which are conducted mainly within the context of projects to reform integrity systems, are an opportunity for the High Authority to introduce its organisational structure, powers of control, and the mechanisms for preventing breaches of integrity and conflicts of interest. For example, in January 2020, the High Authority received a Haitian delegation made up of magistrates, officials and representatives of the Anti-Corruption Unit (ULCC) committed to reforming the national legal framework for the control of the probity of public officials.

AN EXAMPLE OF INTERNATIONAL PARTNERSHIP: RELATIONS BETWEEN THE HIGH AUTHORITY AND VIETNAM

On 14 October and 3 November, 2020, the High Authority participated in bilateral online discussions with the Government Inspectorate of Vietnam (GIV), organised by the French Embassy in Hanoi. These exchanges came as part of a sustained cooperation initiative with Vietnam, following a seminar on declarations of assets in August 2018 and the hosting of a Vietnamese delegation in September 2019.

The Government Inspectorate of Vietnam is a government agency responsible for inspecting government bodies, handling complaints and reports from citizens and fighting corruption. It has extensive powers to prevent breaches of probity, both at central level and in the provinces.

Background to the fight against corruption in Vietnam

According to the Corruption Perceptions Index developed by Transparency International, Vietnam fell in 2020 to 104th place out of 180 countries and territories, despite the efforts made in recent years by the government to fight against endemic corruption affecting the country.

Following a conclusion that an initial anti-corruption law, adopted in 2005, had not fulfilled its objectives, in particular with regard to the declaration of assets of public officials, a new law on the prevention and fight against corruption entered into force in 2019.

Nearly a million public officials are now subject to an obligation to declare income and changes in their assets, which is then published: elected officials, key public and administrative officials, police and army officers, and officials of public enterprises. However, the effectiveness of these provisions is weakened by the lack of coordination between the various authorities responsible for monitoring declarations (also operating under the supervision of several institutions), and by insufficient investigative resources.

Two webinars held in 2020

With the drafting of a decree on the control of the income and assets of public officials currently under way, the Government Inspectorate of Vietnam has shown a real interest in the French model of control of the probity of public officials.

Two webinars were held:

— the first, centred on the organisation and functioning of the High Authority, introduced its powers in terms of asset control and prevention of conflicts of interest, the participants being particularly interested in the collaboration between the High Authority and other French administrations, through the training of officials responsible for checking declarations or through their confidentiality obligations;

— the second made use of the technical expertise of the High Authority, in particular on the identification of public officials subject to declarations, on the computer security of declarations and on the adaptation of methods of control for handling a large number of declarants.

4
Sustained multilateral activity despite the health situation

Despite the health crisis, the High Authority consolidated its multilateral activity through participation in a number of working groups of international organisations intended to strengthen the dissemination of a culture of integrity in France.

Close cooperation with the OECD

A key partner of the OECD in the promotion of best practice in spreading a culture of integrity in the public sphere, the High Authority contributes to OECD doctrine in this area. It is regularly consulted on proposed publications. This was, for example, the case with the *Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises* publication. Its main commitment, however, is through the Working Party of Senior Public Integrity Officials *(see inset)*. In 2020, the High Authority made multiple contributions to monitoring the implementation of the *OECD Principles for Transparency and Integrity in Lobbying*, a study to be published in May 2021.

The Working Party of Senior Public Integrity Officials (SPIO) promotes, within the OECD, the design and implementation of integrity and anti-corruption policies, with particular attention paid to the prevention of conflicts of interest and to the oversight of lobbying. More specifically, the SPIO monitors the *OECD Recommendation on Public Integrity* (2017) and the *Public Integrity Handbook* (2020), which provides guidance to governments and comments on the 13 principles of the Recommendation.

THE HIGH AUTHORITY'S COMMITMENT TO THE WORKING PARTY OF SENIOR PUBLIC INTEGRITY OFFICIALS (SPIO): THE DEVELOPMENT OF PUBLIC INTEGRITY INDICATORS

Since 2019, the SPIO has been working on the development of public integrity indicators, intended to measure the effectiveness and implementation of the *OECD Recommendation on Public Integrity*. A dedicated working party was therefore created, which the High Authority joined.

These indicators are ultimately liable to constitute an international assessment tool and be taken into account for other French assessments, including the OECD's economic studies. In addition, the final version of the indicators is intended for publication, and therefore to constitute a means of assessment, or even classification, of France by civil society. This work, which provides a means of capitalising on France's efforts to provide its public stakeholders with effective mechanisms to promote integrity, is therefore of key importance.

The testing phase for these indicators began in March 2020 and the High Authority volunteered to pilot principle 13 of the Recommendation relating to "transparency and the involvement of stakeholders at all stages of the political process to serve the purposes of accountability and the general interest." This principle specifically covers matters relating to the openness of the administration, access to public data, the prevention of conflicts of interest, and transparency in lobbying activities and in the financing of political parties.

The test phase consisted of simulating a response from France to the online questionnaire drawn up by the OECD, providing data for public integrity indicators. The object of the exercise was to assess the relevance of the proposed indicators, the workload induced by responses to the questionnaire and the efficiency of the collection tools.

The High Authority thus carried out numerous consultations within the framework of the pilot project between March and July 2020 through discussions with several administrations, such as the Commission for Access to Administrative Documents, the National Commission for Campaign Accounts and Political Funding, the National Commission for Public Debate and the National Assembly for questions relating to parliamentary activity. At the end of this first exercise, modifications were made to these indicators.

Data collection for the Principle 13 indicators began in early 2021 for all OECD countries. The work already carried out by the High Authority on the pilot project will serve as a basis for this collection. At the same time, on 22 September, 2020, the OECD launched the data collection relating to principle 4, "Strategy for public integrity".

France's assessment cycles by the Group of States against Corruption

The Group of States against Corruption (GRECO) is a body created by the Council of Europe in 1999, bringing together 50 States, and responsible for assessing the legal framework and mechanisms deployed by each State in the fight against corruption and promotion of integrity in the public sphere. At the end of each themed assessment cycle, carried out among peers, recommendations on possible institutional, legal or practical reforms are issued, followed by compliance procedures to verify the implementation of these proposals. The High Authority is regularly approached for assistance with each assessment and compliance report, responding to questionnaires on its missions and its powers of control, as was the case in 2020 for the 4th and 5th assessment cycles.

The 4th assessment cycle, launched in 2014, focuses on the prevention of corruption among members of parliament, judges and prosecutors, and in particular on the applicable ethical principles, the mechanisms for preventing conflicts of interest and multiple jobholding, their declarative obligations and, finally, awareness-raising actions.

In its Second Compliance Report, adopted in June 2018, GRECO concluded that France's level of compliance was "generally insufficient", France having implemented only four of the eleven recommendations of the initial evaluation report. France had therefore been requested, in application of Rule 32 of GRECO's Rules of Procedure, to provide a report on its progress in implementing the recommendations which remained pending.

The *Interim Compliance Report* for France, adopted on 25 September, 2020, notes, concerning members of parliament, "*some progress*", in particular with regard to the control of senators' mandate fees, mechanisms for preventing conflicts of interest and the oversight of gifts and hospitality. However, several recommendations have not been implemented according to GRECO, such as that of "*making declarations by Members of Parliament and Senators easily accessible to the general public*". It therefore calls for an alignment of the regime for the publication of declarations by MPs with the regime applicable to members of the Government, i.e. by posting the information on the High Authority's website[117].

At the same time, the High Authority was also involved this year in discussions on France's implementation of the recommendations of the 5th assessment cycle on the prevention of corruption and the promotion of integrity in senior executive and law enforcement positions[118].

The International Partnership against Corruption in Sport

IPACS
INTERNATIONAL PARTNERSHIP AGAINST CORRUPTION IN SPORT

The International Partnership Against Corruption in Sport (IPACS) was launched in February 2017 at the International Forum on Sports Integrity organised by the International Olympic Committee. Bringing together international sports organisations, governments and international organisations, this network aims to coordinate the actions of its members to fight corruption in the governance of sport and promote a culture of integrity.

117. See p. 109
118. See Activity Report 2019, p. 124

Four working groups were set up, with specific objectives:

1— to reduce the risk of corruption in procurement related to infrastructure and sporting events;

2— to ensure integrity in the selection of major sporting events, with emphasis on the prevention of conflicts of interest;

3— to optimise compliance processes in order to align them with the principles of good governance;

4— to strengthen cooperation between police and justice authorities and sports organisations.

France, with regard to the hosting of the Olympic and Paralympic Games in 2024, plays a leading role in the implementation of best practice. The High Authority was therefore asked to join Task Force 2 alongside eleven sports federations, the Organising Committee for the 2024 Games and the International Olympic Committee.

On 6 November, 2020, Task Force 2 published a *Compendium of good practice examples for managing conflicts of interest in sport organisations*, listing all the mechanisms implemented for each recommendation by each member of the group. The High Authority has therefore highlighted the declarative obligations imposed on the various public officials in the sport sector, as well as the applicable penalties in the event of non-compliance.

Since 2017[119] and 2018[120], the following are subject to an obligation to declare their assets and interests to the High Authority:

— presidents of title-awarding public-service sports federations and professional leagues;

— presidents of the French National Olympic and Sports Committee and of the French Paralympic and Sports Committee;

— the legal representatives of bodies responsible for the organisation of an international sports competition awarded as part of a selection by an international committee, of a level at least equivalent to a European championship, held on an exceptional basis on French territory and having obtained letters of commitment from the State;

— the delegates of these legal representatives holding power of signature or authority, in cases where these delegates are authorized to incur, on behalf of these bodies, expenditure greater than or equal to €50,000;

— the president, the director general and the head of high performance at the National Sports Agency[121].

119. Act No. 2017-261 of 1st March 2017 on preserving the ethics of sport, strengthening the regulation and transparency of professional sport and improving the competitiveness of clubs

120. Act No. 2018-202 of 26 March, 2018 on the organisation of the 2024 Olympic and Paralympic Games

121. Act No. 2019-812 of 1 August, 2019 on the creation of the National Sports Agency and various provisions relating to the organisation of the 2024 Olympic and Paralympic Games

5
"Open Government Partnership" commitments

As a platform for the exchange and dissemination of good practices, the "Open Government Partnership" promotes the culture of open government and aims to advance the transparency of public actions and their openness to new forms of consultation, participation and collaboration with civil society, in particular through the release of open data.

Introduction

The Open Government Partnership (OGP) is a multilateral initiative joined by France in April 2014 which now unites 78 member countries, as well as NGOs and representatives from civil society.

The founding principles of the OGP are set out in each member country through a national action plan comprising commitments, over a two-year period, relating to the various characteristics of open government.

Review of 2018-2020 commitments

As an extension of its contribution to the first 2015-2017 action plan, the High Authority took part in the development of the second plan (2018-2020) through two commitments, intended (a) to improve access to public information relating to elected officials and public officials, and (b) to ensure greater transparency of interest representation activities.

Amid a situation of strong transparency and accountability requirements, open data paves the way for the development of innovative tools. Faced with the challenges linked to citizens' appropriation of the information contained in the declarations and in the directory of interest representatives, the High Authority's aim was to enrich the published data and stimulate and encourage their use.

In 2018, the High Authority hosted the second "Open d'État" forum, dedicated to opening and reusing data from the directory, co-organized with *Etalab, Datactivist* and the *Vraiment Vraiment* agency. As a result of the discussions and proposals formulated during this event, a project to exploit the data in the directory was subsequently launched by the High Authority with the *Latitudes* association[122]. The objective was to create a dashboard providing an overview of the data in the directory and to offer useful statistics to the general public; this project is currently being finalised.

In 2020, the High Authority published the source code of the directory[123], and all the data it contains are accessible in .JSON format, allowing members of the public to use them. For example, the *Integrity Watch* tool from *Transparency International France* – an association approved by the High Authority with which it maintains regular exchanges – is produced using data in the directory. Various tables are also accessible in .CSV format in order to give a wider range of options to reusers; these files are updated every night.

In addition, the High Authority produces an annual report of the activity declarations of interest representatives, in the form of an educational file, the content of which is used by journalists, highlighting the key figures and the "major trends" from the directory.

With regard to declarations of assets and interests, the High Authority openly releases the list of published declarations and assessments, in .CSV format, and the content of the declarations published as open data, in .XML format. Data visualization tools have also been provided online, such as the declarations with the most views each week and graphic representations of the published declarations.

Publication of the self-assessment report of France's 2018-2020 action plan "Towards transparent and collaborative public action"

In December 2020, the interministerial directorate of public transformation published the self-assessment report from the Open Government Partnership's 2018-2020 action plan.

By way of a reminder, this action plan includes 21 commitments made by thirteen ministries, three government agencies, the Court of Auditors and the High Authority for the transparency in public life. These commitments are centred around five areas:

— transparency in public life;

— open digital resources, citizen contribution and open innovation;

— enhanced participatory approaches;

— open government serving the global challenges of our century: development, environment and science;

— open courts and independent administrative authorities.

122. See Activity Report 2018, p. 82.
123. https://bit.ly/3oGuqqc

The self-assessment carried out by the administration on the implementation of commitments *"shows, for the majority of commitments, substantial achievement at 76% and a respectable compliance with the participation standards of the Open Government Partnership".*

Commitment No. 20, which consists of ensuring greater transparency in the activities of interest representatives, steered by the High Authority, was thus deemed to have been completed with regard to all the actions implemented since 2018. Progress of Commitment No. 21 concerning public information relating to elected officials and public officials, meanwhile, is substantial, with two projects under way or already completed in 2021 to better satisfy transparency requirements: the publication of the opinions delivered by the High Authority relating to the ethical controls of public officials resulting from the Act of 6 August, 2019 on the transformation of the public service, and the clear identification of public officials who have not complied with their declaration obligation.

The High Authority's human and budgetary resources

1. Human resources: general report for 2020

As of 31 December, 2020, the High Authority had made use of all of the job support that had been allocated to it: it employed 65 agents, equivalent to 59 full-time jobs, known as "FTEs", a figure increasing by 16% per year compared to 2019. This change is due to a projected increase in the number of employees and to the new missions entrusted to the High Authority by the Act of 6 August 2019 on the transformation of civil service in terms of ethical control, with the allocation of 4 posts previously assigned to the French civil service ethics commission.

The jobs ceiling was raised to 63 FTEs in the 2021 finance law, then 2 additional job authorisations were allocated to the High Authority at the start of management in 2021 in order to absorb the additional activity generated by the new ethics controls for agents and to reinforce the missions of providing advice, information and support to government bodies and declarants.

The increasing representation of women among High Authority staff continued in 2020 (+1.1% over a year), in common with the rest of the civil service[124]. Meanwhile, the profile of agents remains relatively stable in terms of status (0.5% of the share of contracted agents) and average age – six years less than the rest of the civil service.

The year 2020 has also followed the trend of pursuing a dynamic human resources policy, with in particular the development of training initiatives with a view to supporting the development of professions and the acquisition of new skills. In this regard, 225 training initiatives[125] were provided to High Authority agents in 2020. Because of the health crisis, two-thirds of these training sessions were given by videoconference, like the reception day for newcomers to introduce all the departments, with contributions from 25 agents, and also more themed training on the activity of the Court of Auditors or criminal breaches of probity.

65

agents as at 31 December, 2020
(+16% compared to 2019)

↙ **60%** women

↘ **40%** men

37.5 years

the average age of High Authority agents (compared to **43.5** in the civil service)

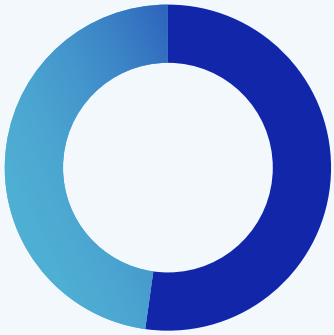
225

training initiatives delivered to High Authority agents in **2020**

124. *Annual report on the state of the civil service*, 2020 edition

125. All High Authority agents were able to follow several training courses over the year.

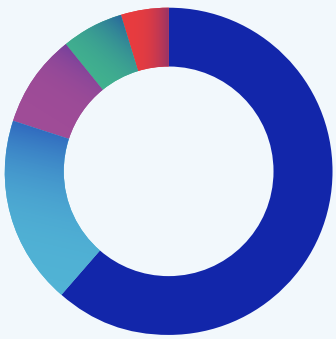
BREAKDOWN OF HIGH AUTHORITY AGENTS
BY TYPE OF STATUS



52.3% Civil servants

47.7% Contract workers

BREAK DOWN OF HIGH AUTHORITY AGENTS BY CIVIL SERVICE CATEGORY



61.5% Category A

18.5% Category B

9.2% Category A+

6.2% Category C

4.6% Apprentice

2. Teleworking and staff representation

The implementation of teleworking

In response to the coronavirus crisis, the High Authority has introduced remote working in order to prevent the risks of infection and transmission by limiting the movements and density of agents within the premises.

The establishment of staff representative bodies

By decision of the president dated 11 September, 2020, a local technical committee was created. The committee is a joint consultation body that will be consulted on any question relating to the organisation and the operation of its departments. It will include four representatives of the administration and four staff members appointed as staff representatives. The first elections for employee representatives were held on 8 April, 2021.

3. An enhanced "social responsibility of the State as an employer" strategy

In 2020, the High Authority sought to engage in a more voluntary approach to promote sustainable development. This desire took the form of several practical actions: the implementation of selective waste sorting, the installation of water fountains, the elimination of plastic glasses, a recycling mechanism for discarded equipment, and the universal use of recycled paper.

4. Risk management within the High Authority

Enhanced security for financial procedures

In 2020, the High Authority embarked on a formalised process of internal financial control, covering both the accounting aspect and the budgetary sphere. On this occasion, all the financial processes were listed and documented in an exhaustive manner through organisation charts showing appointments and functions. This approach will be continued in 2021 through the development of a control plan to make financial procedures more reliable and secure.

New obligations in terms of human resources management arising from the Act of 6 August, 2019 on the transformation of civil service

The Act of 6 August, 2019 on the transformation of civil service introduced the obligation for public employers to issue management guidelines. Management guidelines are flexible legal tools that "*determine the multi-year human resources management strategy for each government body and public institution, particularly with regard to the forward planning of jobs and skills*"[126]. High Authority staff have therefore worked on the implementation of these management guidelines, which will be finalised in 2021.

126. Article 18 of Act No. 84-16 of 11 January, 1984 on statutory provisions relating to State civil service

In addition, the Act of 6 August, 2019 also established from 1 May, 2020 the requirement for public employers to implement "*a reporting system whose aim is to collect reports from agents who consider themselves to have been victims of an act of violence, discrimination, moral or sexual harassment or sexist acts, and to direct them to the competent authorities in matters of victim assistance, support and protection and processing of the reported acts*[127]". This mechanism includes two procedures implemented within the High Authority:

— an internal procedure for collecting reports;

— a procedure for referral to professionals in order to obtain psychological support, through a listening and support unit available 24 hours a day, 7 days a week.

Prevention of occupational risks

Public and private employers are required to implement a single occupational risk assessment document (DUERP) as part of a general prevention strategy with regard to their staff.

In a co-construction process, the agents of the High Authority were fully involved throughout the last quarter of 2020 in the development of this document through a questionnaire, followed by the participation of volunteer agents in working groups.

This work resulted in the creation of an exhaustive map of the risks linked to work structures and to the various positions occupied (mechanical, physical, chemical, biological and psychological risks) and the establishment an action plan to implement all the necessary prevention and improvement measures. This document will be updated at least once a year and made available to agents.

The appointment of a new ethics and alert officer

By decision of the President, Odile Piérart, a member of the High Authority's college (board), was appointed as of 30 September, 2020 as ethics and "alerts" officer. She succeeded Marie-Thérèse Feydeau, whose mandate as a member of the college has ended. No "alert" report was made to the ethics officer in 2020.

All agents can make referrals to it to obtain relevant advice on the practical application of ethical obligations to personal choices or situations; for example, the existence of a potential conflict of interest linked to the profession of a spouse, employment within an association, or the opportunity for a professional transition. With regard to alerts, officers can inform the officer of acts that may constitute a criminal offence. Correspondence is confidential, and two encrypted email addresses have been created specifically for this purpose.

127. Article 6 *quater* A of Act No. 83-634 of 13 July, 1983 on the rights and obligations of civil servants

5. Key budget figures

The budget of the High Authority is voted on each year by the Parliament in the finance law, within program 308 of the "Direction of Government actions" mission.

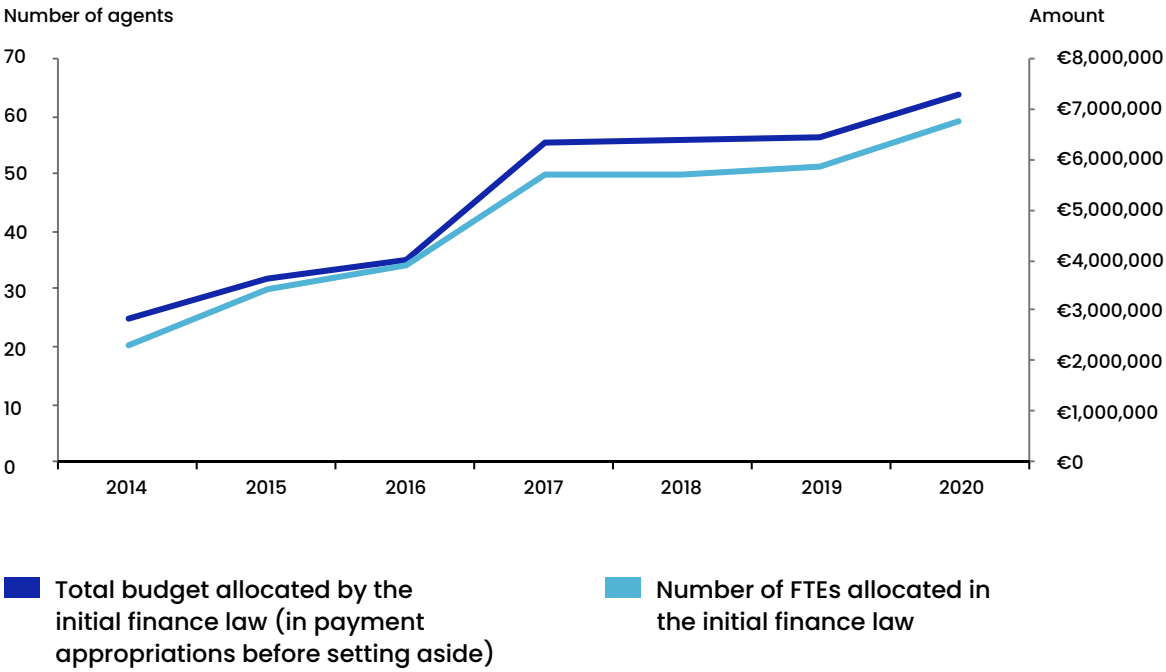
7.1 million euros

The budget allocated in **2020** (after setting aside)

*(**+18.9%** compared to 2019)*

The 2020 budget implementation once again emphasises the ability of the High Authority to fully mobilise the resources allocated to it in the finance law. The High Authority's payroll continues to occupy the major part of its expenses in 2020, with a significant increase in implementation (4.83 million euros, an increase of 18.9% compared to 2019). The transfer of new powers starting on 1 February, 2020 resulted in the allocation of additional budgetary and human resources, which were fully utilised. In addition to staff costs, the execution of operating expenditure votes is once again characterised in 2020 by a particularly high consumption rate: with regard to the resources effectively delegated to the High Authority, this rate stands at 100% in commitment authorities and over 98% in payment appropriations.

CHANGE IN BUDGET AND STAFF, 2014-2020

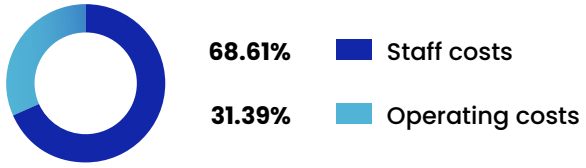


The leading item of current operating expenditure this year remains occupancy costs: indeed, they represent almost half of the expenditure excluding payroll – a rise following the leasing of new spaces at the end of 2019. IT also represents nearly 40% of the High Authority's total operating expenses in 2020. This is explained by the High Authority's need to regularly update and secure the digital tools it uses in its missions and its exchanges with public officials and interest representatives, in particular through online declaration platforms.

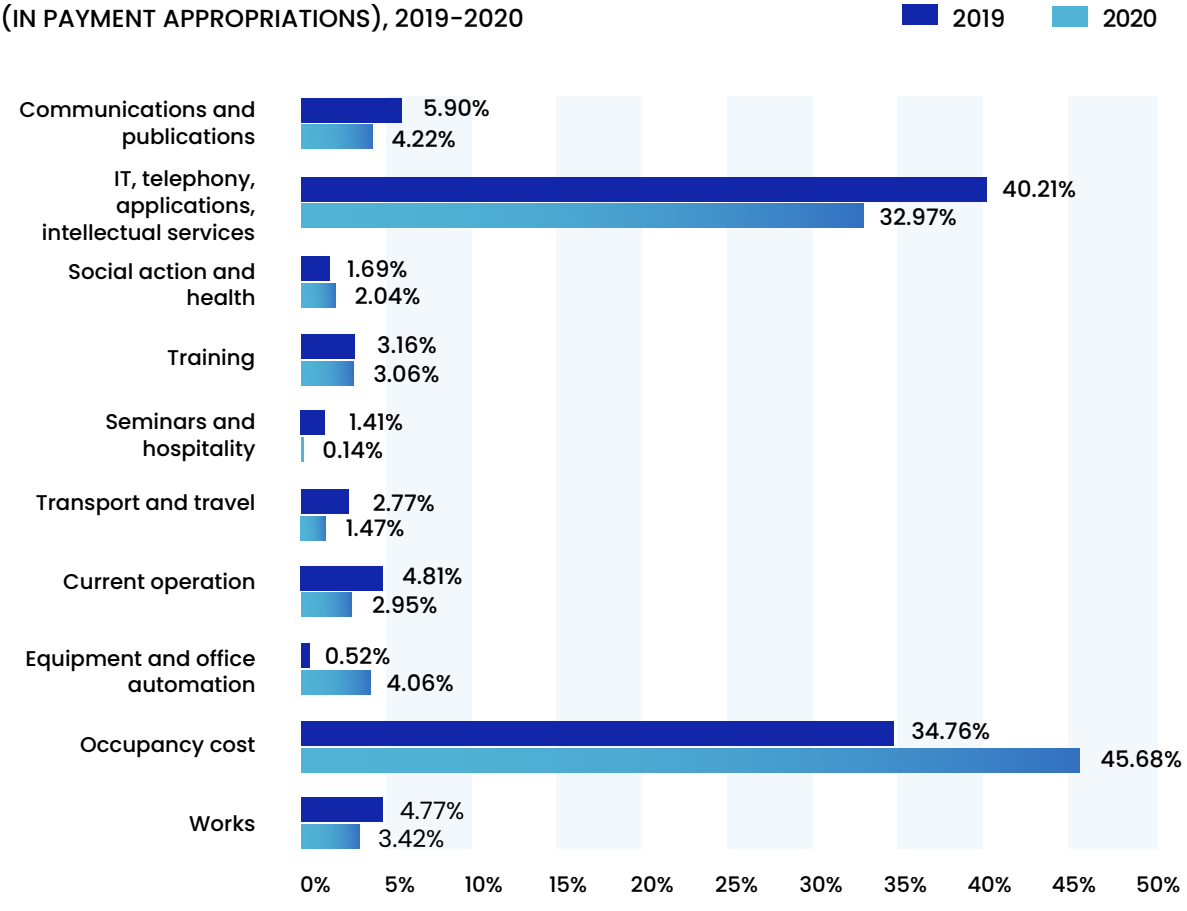
The 2021 finance law has once again bolstered the resources of the High Authority, with a budget of around 8 million euros.

Despite the health crisis, the High Authority reduced its overall payment period to 9.1 days (compared to less than 15 days in 2019). The paperless processing rate in the expenditure process increased by 6% compared to 2019, stabilising at 98.7%.

BREAKDOWN OF EXPENDITURE (IN PAYMENT APPROPRIATIONS) IN 2020



BREAKDOWN OF OPERATING EXPENDITURE (IN PAYMENT APPROPRIATIONS), 2019-2020



CONTINUITY OF SERVICE FOR THE HIGH AUTHORITY DURING THE HEALTH CRISIS

From the announcement of the first containment measures on 17 March, 2020, and until 11 May, the High Authority implemented its business continuity plan (BCP) to guarantee the continuity of its essential activities of control and consultancy.

The implementation of the business continuity plan was only possible thanks to the significant mobilisation of support services: the acquisition and distribution of equipment for remote work, the implementation of security protocols for access to encrypted computer files, the overhaul of security infrastructures, the acquisition of protective equipment (masks, hand sanitiser gel, plexiglass), the implementation of on-site health and safety protocols, attendance scheduling via on-site rotation, workforce health status monitoring, and internal crisis communication.

The meetings of the college (board), held every fortnight, took place by videoconference, enabling the adoption of 41 deliberations between mid-March and the end of May. 1,509 declarations of assets and interests were received over the same period, with control activity remaining strong.

However, the health crisis had an impact on the legal obligations of public officials and interest representatives, since the deadlines for submitting declarations of assets and interests, and declarations of 2019 activities, have been pushed back to 24 August[128]. Several communications intended to clarify and explain the exceptional measures planned by Parliament and the Government were published on the website of the High Authority. In addition, the High Authority continued to provide assistance to public officials and representatives of interests.

External assistance work and training for elected officials, public officials and students have mostly been postponed until September 2020, as have international conferences.

Numerous remote training actions have been put in place, and meetings bringing together all the agents have been regularly organised by videoconference in order to maintain the cohesion of the teams.

128. Order No. 2020-306 of 25 March, 2020 on the extension of deadlines expiring during the health crisis period and the adaptation of procedures during this same period, last amended by Order No. 2020-560 of 13 May, 2020 establishing deadlines applicable to various procedures during the health crisis period

List of proposals for 2020

PROPOSAL NO. 1

P. 49

Create a professional transition control for agents (regardless of their status) of some State EPICs such as UGAP or SOLIDEO, special public institutions such as the *Caisse des dépôts et consignations* investment fund and public establishments associated with local authorities such as public housing offices, at the point when they leave to join the private sector.

PROPOSAL NO. 2

P. 53

– Specify, in Article 432-12 of the Criminal Code, that the acquisition of an "*interest of whatsoever kind*" is not punishable, but the acquisition of an interest "*that is threatening to the impartiality, independence or objectivity*" of the person is punishable.

– By adding a paragraph, provide for an exemption from the provisions of Article 432-12 of the French Criminal Code, so that the elected representative, as representative of its community, the governing bodies of an industrial and commercial public institution, a mixed-economy company or a local public company, may participate in the decisions of its community concerning this body, with the exception of decisions giving it a direct or indirect personal advantage in respect of decisions to award grants and decisions relating to public contracts and public service delegations, in accordance with Article L. 1524-5 of the French General Code of Local Authorities.

PROPOSAL NO. 3

P. 57

Harmonise the texts relating (a) to the control of the professional transition of members of the Government, certain local executives and members of the administrative authorities and independent public authorities (Article 23 of the Act of 11 October 2013) and (b) to the control of the professional transition of public officials (Article 25 *octies* of the Act of 13 July 1983), in particular with regard to the definition of private activities falling within the scope of the control and the sanctions incurred in the event of non-compliance with the opinion of the High Authority and, for public agents, the decision of the hierarchical authority.

PROPOSAL NO. 4

P. 68

— Clarify the time limit within which the declaration of assets for the end of the term of office of local elected officials must be filed, using the next election day (or the 1st polling round in the case of two-round elections) as the date from which the filing period must be calculated.

— In the event that multiple mandates or functions are held by a single person, provide for the filing of a single declaration of interest.

— No longer require the filing of a declaration of assets and interests for public officials and agents who remain in office less than two months, in the event that these declarations have not already been filed.

PROPOSAL NO. 5

P. 105

Develop the legal framework for controlling financial instruments applicable to certain public officials in order to allow, in addition to the use of the management mandate:

— financial instruments below a certain threshold to be left unaffected in the statement of financial instruments;

— the sale of financial instruments, after their appointment, within two months and under the control of the High Authority.

This change could be accompanied by an obligation to notify the High Authority, within a mandatory period, of the option chosen as to the choice of "blind" management method excluding any right of scrutiny, or any breach that may be subject to an administrative sanction.

PROPOSAL NO. 6

P. 125

Develop the legal framework for managing interest representatives:

— remove the initiative criterion;

— simplify the thresholds for triggering a registration requirement, assessing the minimum threshold of ten shares at the legal entity level;

— specify the information to be declared regarding the function of the public officials met, and also the public decision concerned, where this has been identified;

— clarify the scope of the targeted public decisions;

— switch from an annual rate to a half-yearly rate of declaration of activities;

— modify the extension of the directory to be applicable to local authorities (specific study currently being drafted on this point).

PROPOSAL NO. 7

P. 141

Encourage, in stages, *open data* notification of meetings with public officials (in particular members of the Government, MPs, rapporteurs on a text, chairpersons of committees in both assemblies) with interest representatives to make their relations more transparent.

PROPOSAL NO. 8

P. 151

Allow the High Authority to directly exercise a right of communication with banking or financial institutions, insurance or reinsurance undertakings, administrations, local authorities and any person in charge of a public service mission for all of its control duties

PROPOSAL NO. 9

P. 153

As part of the process of controlling declaration requirements and ethical obligations of interest representatives, introduce an administrative sanction covering interference with the duties of officers of the High Authority.

PROPOSAL NO. 10

P. 156

Provide the High Authority with its own authority to impose administrative sanctions in situations of non-filing of a declaration by a public official or a declaration of activities by an interest representative.

Appendices

Appendix 1
Table taken from the comparative study of lobbying frameworks

Geographical area	Date and amendments to the lobbying law	Organisation responsible for the register	Definition of "Lobbying activity"	Definition of "Lobbyist"
Austria	2013	Ministry of Justice	All activities via which a direct influence is exerted on the legislator or the government body via structured and organised contacts	All companies, institutions and associations asserting the individual interests of persons or companies, or the collective interests of several persons or companies, before public authorities
Canada	1989, 1995, 2003, 2008	Lobbying Commission	Any communication or request for a meeting with a "public office holder" about certain public policies	Consultant lobbyist and salaried lobbyist acting in a paid capacity
Catalonia	2014, 2016, 2017	Department of Justice of the Generalitat de Catalunya and General Directorate of Law and Legal Entities	All activities conducted with the aim of directly or indirectly influencing the processes of preparing or applying policies and decision-making, regardless of the means or methods used	A natural or legal person in private law who carries out active preparation work in public policies or decision-making processes in Catalonia with the aim of influencing the direction of these policies in alignment with their own interests or those of third parties, or the general interest
Scotland	2016	Scottish Parliament	Communication with a member of the Scottish Parliament, a member of the Scottish Government, a subordinate Scottish minister, a special adviser or the permanent secretary	Any person or organisation that engages in face-to-face communication with a defined public official, if they are discussing governmental or parliamentary functions and acting in a paid capacity

This table is taken from the comparative study of lobbying frameworks around the world published by the High Authority in October 2020. It includes the members of the European Lobbying Registrars' Network, namely Austria, Catalonia, Scotland, France, Ireland, Lithuania, the United Kingdom, Slovenia and the European Union, as well as Canada and the United States, which report good practices in this area. Note that the term "lobbying" is used in this table instead of "interest representation" for the sake of consistency with regard to the vocabulary used in each country.

Number of registered lobbyists	Content of declarations	Frequency of declarations	Sanctions for breach of reporting or ethical obligations	Control methods	Link to the register
364	Purpose and value of spending on lobbying activities	Annual	Administrative penalties up to EUR 60,000 Removal from register	Unspecified	lobbyreg.justiz.gv.at
4,762	Identity of the public officials contacted; public institution targeted; client data initiated by lobbying activities; subject and purpose of lobbying activities; type of public decision in question.	Re-registration every six months If contact with a public official, monthly communication report	Fine (up to CAD 200,000) Maximum prison sentence of two years Two-year lobbying ban	Preliminary assessments Investigations: may assign and ensure the presence of an individual, and require the production of documents In the case of a violation of the Act or Code, notifies a competent justice official 16 investigation reports since 2011	lobbycanada.gc.ca
3,633	Identity of clients initiating lobbying activities; value of expenditure, type and purpose of lobbying activities	According to the code of conduct of each organisation	Temporary suspension of registration in the register. In the event of a serious breach, removal from the register	Unspecified	justicia.gencat.cat
1,283	Identity of public officials contacted; identity of clients initiating lobbying activities; type and purpose of lobbying activities	Every six months	Report to Parliament	The Registrar may issue notices to request information	lobbying.scot

Geographical area	Date and amendments to the lobbying law	Organisation responsible for the register	Definition of "Lobbying activity"	Definition of "Lobbyist"
United States	1946, 1995, 2007	Office of the House of Representatives Senate Office	Any oral, written or electronic communication addressed to certain defined public officials concerning a public policy	Any person employed by a client for financial gain whose services include more than one lobbying contract and whose lobbying activities account for more than 20% of their time; or any salaried lobbyist
France	2016	High Authority for transparency in public life	Any communication initiated by the interest representative to certain public officials with regard to certain public decisions with a view to influencing such decisions	Natural person within the framework of a professional activity, or legal entity in which an executive manager, an employee or a member conducts interest representation work as their main or regular activity.
Ireland	2015	Standards in Public Office (SIPO) Commission	Any communication with a designated public officer that relates to a "relevant matter"	Legal entity with at least 10 employees carrying out lobbying activities; or any professional lobbyist paid to communicate on behalf of a client
Lithuania	2001, 2017, 2020	Chief official ethics commission	Action taken by a natural person with the aim of exerting influence over defined public officials, in the interest of a client, for the adoption or annulment of legislative deeds or administrative decisions	Physical person exercising lobbying activities on behalf of clients. Excludes salaried lobbyists and non-profit organisations

Number of registered lobbyists	Content of declarations	Frequency of declarations	Sanctions for breach of reporting or ethical obligations	Control methods	Link to the register
11,524	Public institution in question; data on clients initiating lobbying activities; type of public decision in question; value of expenditure, type and purpose of lobbying activities	Quarterly	Fine (between $US50,000 and $US200,000) Maximum prison sentence of five years	4,220 cases of potential breaches of the *Lobbying Disclosure Act* sent to the prosecutor between 2009 and 2019	disclosurespreview.house.gov
2,301	Type of public official contacted; value of expenditure, type and purpose of interest representation; type of public decision in question; link to professional organisations	Annual	Fine (EUR 15,000) Maximum prison sentence of one year	Power of on-site documentary control, without recourse to the defence of professional secrecy 50 controls carried out in 2020	hatvp.fr
2,146	Identity of public officials contacted; data on clients initiating lobbying activities; type, subject and purpose of lobbying activities	Every four months	Automatic penalty (200 EUR) for sending late declarations Maximum fine of EUR 25,000 Maximum prison sentence of two years	May require anyone to supply information and produce documents May enter and search premises, inspect and take copies of any document In 2019, 10 investigations for failure to declare activities or register	lobbying.ie
189	Identity of public officials contacted; identity of clients initiating lobbying activities; subject of lobbying activities; public institution in question; type of public decision in question	In the seven days following the lobbying activity	Suspension from the register (and thus from rights of access to meetings and consultations that are conditional upon membership of the register)	Power of on-site documentary control, without recourse to the defence of professional secrecy	skaidris.vtek.lt

Geographical area	Date and amendments to the lobbying law	Organisation responsible for the register	Definition of "Lobbying activity"	Definition of "Lobbyist"
United Kingdom	2014	Register of lobbyists-consultants	Any oral, written or electronic communication made directly to a Minister of the Crown, a current permanent secretary (or equivalent), known as "government officials", with a view to influencing public decision-making	The statutory register only covers "consultant lobbyists" representing third-party clients. This is a small proportion of the total number of people working as lobbyists.
Slovenia	2010, 2011	Republic of Slovenia Commission for the Prevention of Corruption	Any non-public contact established between a natural person and a defined public official with the aim of influencing the content or the adoption procedure of public decisions	Any person engaged in lobbying activities
European Union	2011, 2014, 2020	Joint Transparency Register Secretariat	All activities carried out with the aim of influencing decision-making processes and policies for the Union's instruments	All organisations and persons acting independently, regardless of their legal status, exercising lobbying activities

Number of registered lobbyists	Content of declarations	Frequency of declarations	Sanctions for breach of reporting or ethical obligations	Control methods	Link to the register
173	Identify of clients initiating lobbying activities	Every four months	Fine (up to EUR 8,500)	Unspecified	registerof consultant lobbyists. force.com
81	Identity of public officials contacted; data on clients initiating lobbying activities; value of expenditure, type, subject and purpose of lobbying activities	Annual	Written warning Prohibition on lobbying activities for a defined period or on a specific subject Permanent suspension from the register Fines between EUR 400 and 100,000	Unspecified	kpk-rs.si
12,506	Value of expenditure and purpose of lobbying activities; link with professional organisations; names of European Parliament-accredited individuals; list of meetings with the European Commission	Annual	Suspension from the register for a period of one to two years	Quality controls on declarations. 4 investigations at the Secretariat's own initiative in 2019	ec.europa.eu

Appendix 2
List of the High Authority's publications in 2020

Worksheet No. 4390 – Control of professional transition of civil servants and public agents,
Lexis 360, March 2020

Worksheet No. 4315 – Control of professional transition of public officials,
Lexis 360, March 2020 update

Worksheet No. 4487 – Control of multiple jobholding by public officials and agents, *Lexis 360*, March 2020

Worksheet No. 4484 – Pre-appointment control of public officials and agents, *Lexis 360*, March 2020

Jean-Louis Nadal, "Interest representatives and the High Authority for transparency in public life",
in Jean-François Kerléo (dir.), *Influence, control and legitimacy of interest representatives*, LGDJ, July 2020

Didier Migaud, "The Exemplary State",
The ENA outside the walls, 2020/4, No. 500,
October 2020

HATVP, "The tools of ethics", in Alexis Zarca (dir.), *Tools for use in ethics. Different perspectives in public service and the corporate world*, Éditions Dalloz, October 2020

Didier Migaud, "An efficient implementation of ethical mechanisms within a local authority requires the association of everyone, elected officials and public agents", *La Semaine Juridique – Government bodies and local authorities*, No 47, November 2020

HATVP, "Scalable mechanisms for the prevention of corruption", *Revue française d'administration publique*, 2020/3, No. 175, December 2020

Jeanne Dominjon, Philippe Blachèr, "France", in Jean-Philippe Derosier (dir.), *Political ethics*, coll. The ForInCIP journal, vol. 5, LexisNexis, December 2020

HATVP, Comparative study of lobbying frameworks, October 2020

Network for integrity (chaired by the HATVP), *Developing digital tools to promote transparency in public life*, December 2020

Appendix 3
List of proposals from previous activity reports

Proposal No. 1: Allow the High Authority to obtain direct communication, from banking and financial establishments, insurance companies, national government bodies, local authorities, public establishments and from any person entrusted with a public service mission, of the information it requires to exercise its duties of control, in compliance with the guarantees required by the Constitutional Council.

Proposal No. 2: Endow the High Authority with an administrative power of sanction for certain breaches of declarative and ethical obligations.

Proposal No. 3: Publish the asset declarations of members of parliament, senators and French representatives at the European Parliament on the High Authority's website.

Proposal No. 4: Develop the legal framework for controlling financial instruments applicable to certain public officials in order to allow:
– financial instruments below a certain threshold to be left unaffected in the statement of financial instruments;
– or the disposal of the financial instruments following the appointment;
accompanied by an obligation to notify the High Authority, within a mandatory period, of the option chosen as to the choice of "blind" management method excluding any right of scrutiny.

Proposal No. 5: In the appendix to the decree of 9 May 2017, specify the list of individual decisions that do not fall within the scope of the register of interest representatives.

Proposal No. 6: Simplify the legal framework for the register of interest representatives in force by:
– removing the initiative criterion and the "main or regular activity" criterion as a description of an interest representation activity;
– expanding and specifying the information to be declared by interest representatives in activity sheets;
– switching from an annual rate to a half-yearly rate of declaration of activities.

Proposal No. 7: A two-year postponement of the extension of the directory to cover relations with local authorities, scheduled for 2021; or alternatively, set more appropriate thresholds in terms of inhabitants, public officials concerned and public decisions targeted.

Proposal No. 8: As part of the control of interest representatives, provide for an offence of obstructing the work of High Authority agents, accompanied by criminal sanctions.

Proposal No. 9: Encourage the staged open data publication of meetings between public officials and interest representatives (lobbyists) to make their relations more transparent.

Proposal No. 1: Publish the declarations of assets made by members of Parliament and French representatives at the European Parliament on the High Authority's website, and extent the deadline for publication of end-of-mandate declarations to one year.

Proposal No. 2: Issue a decree specifying the list of public companies and establishments which fall within the scope of competence of the High Authority and, within them, a list of the managerial functions covered by the declaration requirements.

Proposal No. 3: Make the submission of records of decisions to appoint public-sector executives falling within the scope of the High Authority compulsory.

Proposal No. 4: Harmonise the applicable sanctions regime in the event of non-filing of a declaration with the High Authority: replace the sanction of resignation from office by members of parliament and public-sector executives with the criminal offence applicable to all other declarants.

Proposal No. 5: Allow the High Authority to obtain direct communication, from professionals and government bodies, of the information it requires to exercise its duties of control, in compliance with the guarantees required by the Constitutional Council.

Proposal No. 6: Extend the scope of referral to the High Authority, prior to any resumption of private activity, to members of presidential and ministerial cabinets, in application of Article 23 of the Act of 11 October, 2013.

Proposal No. 7: Refocus the register of interest representatives on its primary objective: to obtain the regulatory target scope and create transparency regarding the drafting of legislation and regulations.

Proposal No. 8: In the event of failure to join the register or breaches of reporting and ethical obligations, switch from a criminal sanctions regime to an administrative sanctions regime.

Proposal No. 9: Publish the decree in the Council of State, specifying the ethical obligations of interest representatives.

Proposal No. 10: As with the national civil service, record the ethics officer in the directories of State public and hospital functions, in order to define the required skills and the resources to be assigned to this new public function.

Proposal No. 11: Create a training programme for ethics officers.

Proposal No. 1: Replace the sanction of resignation of office by members of parliament in the event of non-filing of their declarations with the criminal offence applicable to all declarants.

Proposal No. 2: Publish account statements detailing members of parliament's expenses as open data.

Proposal No. 3: Publish the declarations of assets made by members of Parliament and French representatives at the European Parliament on the High Authority's website and extent the deadline for publication of end-of-mandate declarations to one year.

Proposal No. 4: Issue a decree specifying the list of public companies and establishments which fall within the scope of competence of the High Authority and, within them, a list of the managerial functions covered by the declaration requirements.

Proposal No. 5: Allow the High Authority to obtain direct communication, from professionals and government bodies, of the information it requires to exercise its duties of control, in compliance with the guarantees required by the Constitutional Council.

Proposal No. 6: In Act No. 2013-907 of 11 October 2013 on transparency in public life, change the definition of conflict of interest in order to remove the possibility of conflict of interest between two public interests.

Proposal No. 7: Refocus the register of interest representatives on its primary objective: to obtain the regulatory target scope and create transparency regarding the drafting of legislation and regulations.

Proposal No. 8: Encourage public officials within the scope of the register to publish their diaries as open data and to link the acceptance of an appointment to compliance with ethical and declaration requirements by the interest representative.

Proposal No. 9: Provide for a certification mechanism, by the High Authority, of the ethical mechanisms implemented in public institutions.

Proposal No. 10: Initiate a study on the reframing of the offence provided for in Article 432-13 of the criminal code, in particular by devising a regime to sanction failures to make referrals to the competent authority to authorise departures, and failures to take account of reservations issued.

Proposal No. 11: Share best practice among ethics officers via the creation of a network of ethics officers.

Proposal No. 1: Extend the period during which a declarant is exempt from submitting a new declaration of assets to the High Authority to one year.

Proposal No. 2: Publish the asset declarations of members of parliament and French representatives at the European Parliament on the High Authority's website.

Proposal No. 3: Clarify the regulations applicable to the various categories of employees of political leaders (advisers in ministerial offices and employees of local elected officials).

Proposal No. 4: Issue a decree specifying the list of public companies and establishments which fall within the scope of competence of the High Authority and, within them, a list of the managerial functions covered by the declaration requirements.

Proposal No. 5: Improve transparency in the use of IRFM compensation.

Proposal No. 6: Allow the High Authority to obtain direct communication, from professionals and government bodies, of the information it requires to exercise its duties of control.

Proposal No. 7: Extend the obligation to produce a pre-appointment declaration of interests to cover appointments chosen by the government and positions within the meaning of paragraph 5 of Article 13 of the Constitution.

Proposal No. 8: Provide for a certification mechanism, by the High Authority, of the ethical mechanisms implemented in public institutions.

Proposal No. 9: Bring forward the deadline for submitting members of parliament's end-of-mandate declarations and extend the deadlines set by law for the High Authority to control the declarations of assets that it is required to publish.

Proposal No. 1: Provide for an implementing decree for Section III of Article 11 of Act No. 2013-907 of 11 October 2013 on transparency in public life.

Proposal No. 2: Review exemption deadlines to ensure, for example, that no new declaration is required within one year, except in the event of a substantial change.

Proposal No. 3: Issue a circular as a reminder that the tax audit procedure for Government members has been placed under the sole control of the High Authority.

Proposal No. 4: Allow the President of the Republic and the Prime Minister to be fully information in the event of an issue with the situation of a member of the Government or of a person who has been approached to hold such a position.

Proposal No. 5: Make electronic declaration compulsory and, consequently, simplify and improve the list of information requested.

Proposal No. 6: Provide the High Authority with its own right of communication and give it access to tax administration applications enabling it to carry out its controls.

Proposal No. 7: Modify Article 23 of Act No. 2013-907 of 11 October 2013, extending the period within which the High Authority must issue its opinions on the basis of this article to two months.

Proposal No. 8: Authorise the High Authority to publish the opinions it issues on the basis of Article 23 of Act No. 2013-907 of 11 October 2013.

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