



High Authority
for transparency
in public life



2020 Activity report

Summary

Introduction



In 2020, the High Authority assumed new duties. The Act of 6 August 2019 on the transformation of civil service has made it 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.

465 opinions have been issued since the law's entry into force on 1st February 2020. 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 been reflected in the structure of training courses and the publication of a second volume of the *Ethics Guide*.

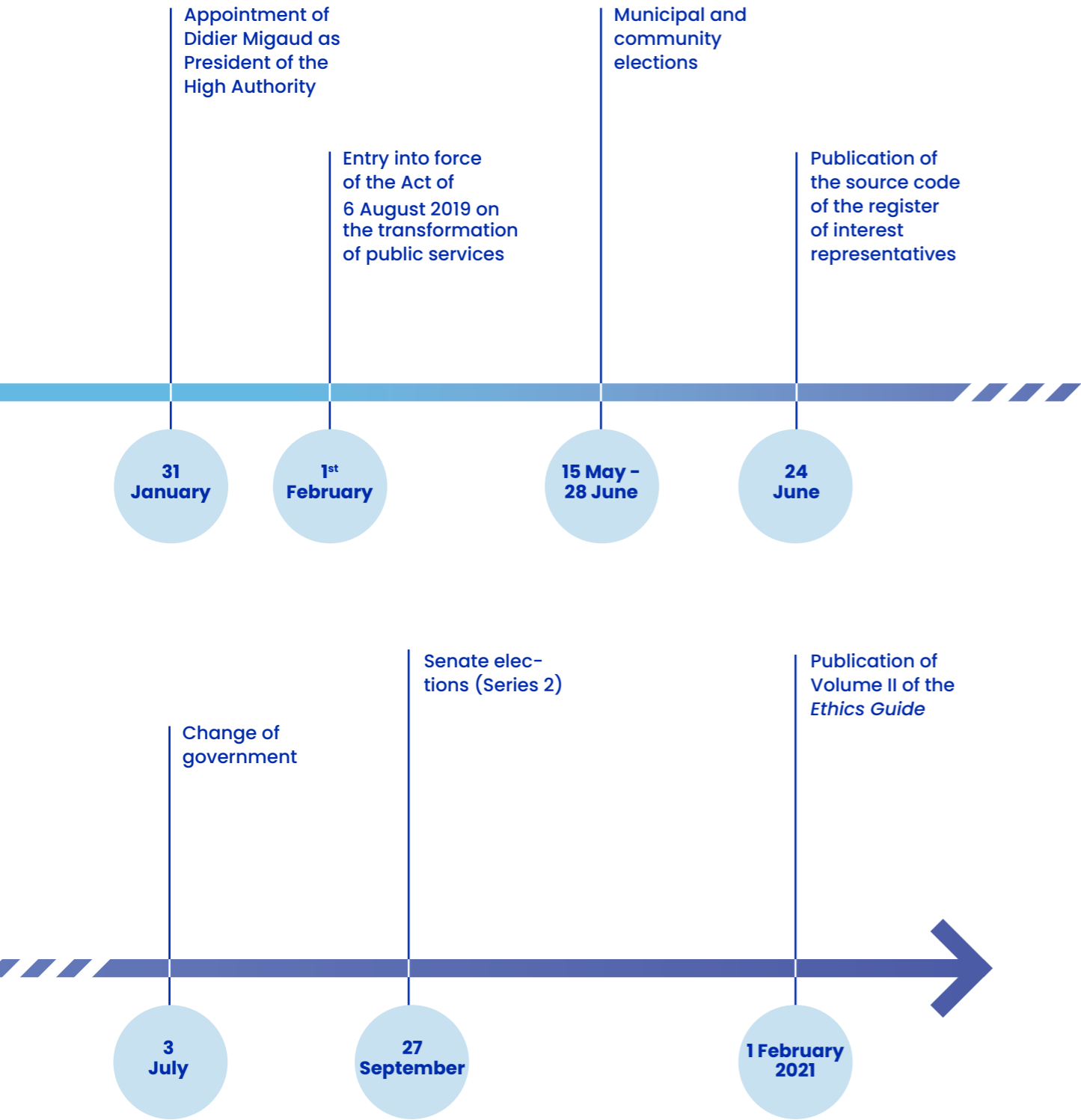
In addition to these new roles, the unusual volume of political and electoral developments has led to the receipt of more than 17,000 declarations of assets and interest, and has prompted considerable action on the part of the High Authority. Despite the extension of official filing deadlines, the initial 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 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 register 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 High Authority issues practical proposals for overcoming them.

Once again this year, despite health constraints, the High Authority has therefore 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 citizens' confidence in democratic institutions and their representatives.

Didier Migaud
Chairman, High Authority
for transparency in public life

Highlights of 2020



Key figures for 2020

Control of declarations of assets and interests



Declarations of interest and assets received



External alerts received



Declarations of interest checked



Declarations of assets checked

Intermediate checking steps



Requests for additional information from declarants



Declarations of interest 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

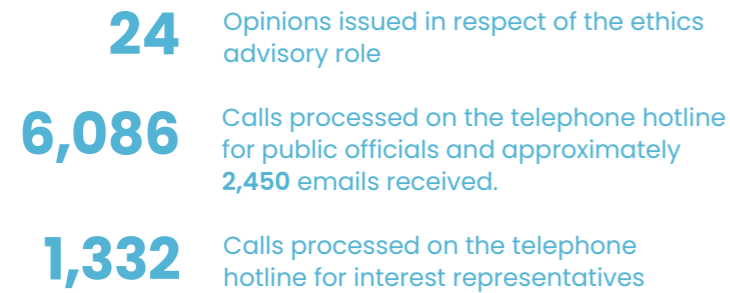
24.6%

Reminders of declaration requirements

10

Files sent to the courts

Ethical advice and support for public managers



Compliance checks of public officials and managers



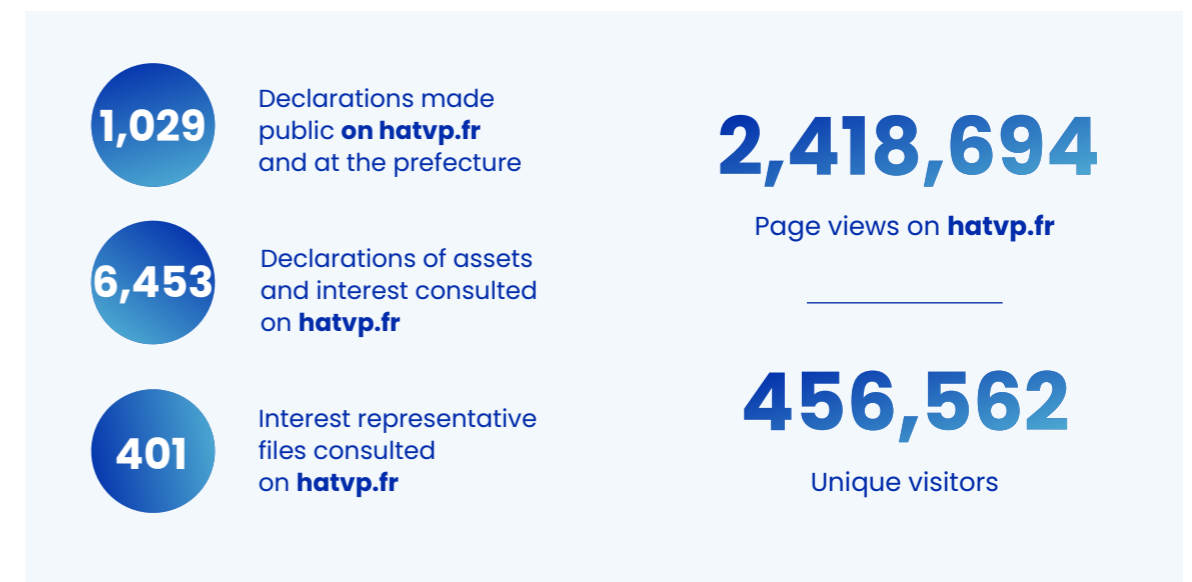
Oversight of interest representation



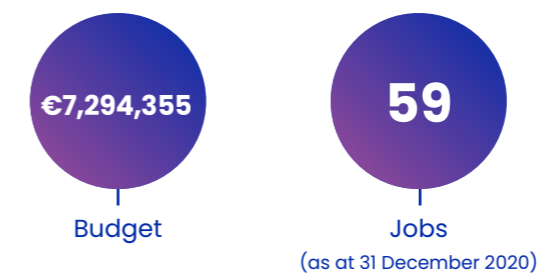
The college (board)'s activity



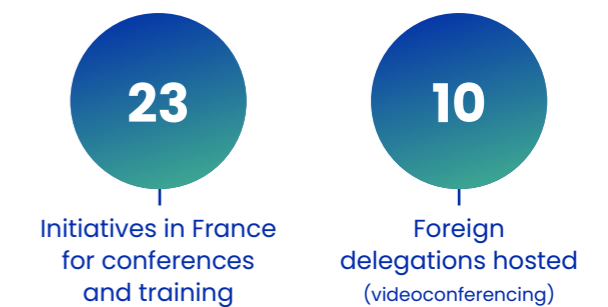
Transparency



Administrative and financial management



External representation and international relations



Part 1

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

The Act of 6 August 2019 on the transformation of public services gives the High Authority a new jurisdiction that it has exercised since 1 February 2020: controlling public servants' revolving doors between the public and private sectors. Such control is typically carried out within public bodies and by the hierarchical authorities. The High Authority intervenes only on a secondary basis, in cases where serious doubts cannot be cleared by the compliance officer. However, direct referral to it is mandatory for public servants in strategic positions.

— 511 cases were referred to the High Authority under its new powers to conduct three types of check: those prior to appointments to certain sensitive public jobs – in particular, positions as a member of a ministerial cabinet (235 referrals), professional transitions to the private sector (175 referrals) and business creations or acquisitions (101 referrals).

— Nearly one-third of its opinions (32.7%) are inadmissibility or lack of jurisdiction, reflecting an insufficient appropriation of the new ethical control system by government bodies and public agents.

— With regard to the opinions on merits expressed by the High Authority, 94.5% of them are compatible, just over half of which are accompanied by reservations aimed at preventing risks of ethical and criminal nature.

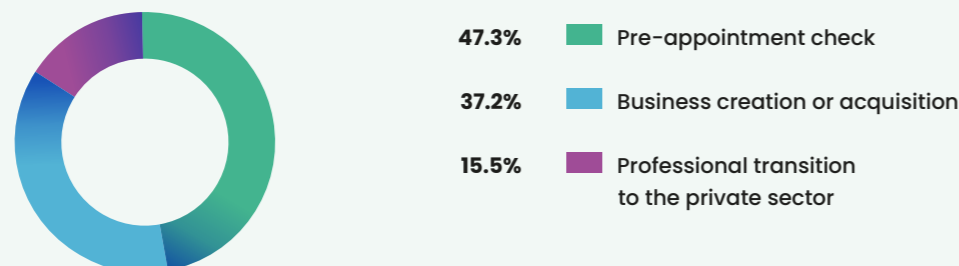
This new control is in addition to the control relating to professional transitions to the private sector of certain public officials – members of government, members of independent administrative and public authorities, locally elected representatives – a control which the High Authority has exercised since its creation under the law of 11 October 2013 on transparency in public life.

— 18 referrals have been made to the High Authority in relation to this control.

— Apart from the two opinions of lack of jurisdiction, it has issued 86% opinions of compatibility, a little more than three quarters of which have been accompanied by reservations.

The High Authority is responsible for monitoring the reservations and opinions of incompatibility that it issues for the three years following its decision. In the event of non-compliance, the public official or manager is liable to face disciplinary or criminal penalties.

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



Part 2

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

More than 16,000 public officials must file declarations with the High Authority in order to ensure the transparency and prevention of conflicts of interest provided for by law. 2020 was a record year, with 17,113 declarations filed – up nearly 220 percent compared to 2019 (without a major election) and by more than 60% compared to 2017 (presidential, legislative and Senate elections).

— This development is explained by a particularly busy election year with the renewal of local executives in the municipal bloc and the partial renewal of Senate representatives. The change in government in summer 2020 also led to a number of movements in ministerial offices.

— The filings are of three types: declarations of interest (6,833), declarations of initial assets (5,597) and declarations of assets at the end of the term of office or function (4,683).

These numbers are the result of a major effort from the High Authority's services to follow-up with declarants, in particular local elected officials who are not sufficiently aware of their declaration requirements.

— For example, only 33% of the Chairs of public inter-municipal cooperation establishments filed their declarations before the legal deadline – initially scheduled for 24 March and extended to 24 August 2020 due to the health crisis.

— The High Authority issued 1,538 friendly reminders to public officials in default, allowing 77.3% of them to comply with their declaration requirements; 349 injunctions were issued to those still in default.

— Failure to file a late declaration of interest, or late filing, exposes the party in question to a risk of conflict of interest or unlawful taking of an interest that could result in heavy criminal penalties. Furthermore, since 30 June 2020, the reimbursement of campaign expenses

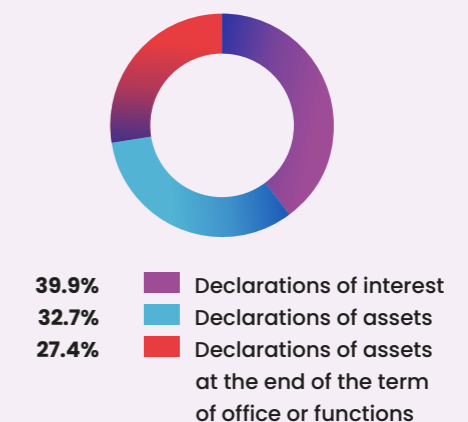
of an elected official subject to declaration responsibilities is conditional upon the filing, within the legal deadlines, of his/her declaration of assets.

The High Authority provides support to public officials and, more broadly, all stakeholders concerned by public integrity and ethics, with a view to promoting a culture of exemplarity within the public sphere.

— Public officials and agents subject to declaration requirements may contact the High Authority to obtain an opinion on any ethical issues encountered during their term of office or duties. In 2020, 30 cases were referred to the High Authority, which issued 24 opinions on various issues.

— The departments of the High Authority also carry out significant editorial work by producing guides (Guide to the Declarant, Volume 2 of the Ethics Guide on the Control and Prevention of Conflicts of Interest), brochures for specific audiences (local elected officials, cabinet employees, managers of local public companies), legal contributions in specialised journals, and even monitoring and intelligence work.

BREAKDOWN OF DECLARATION TYPE RECEIVED IN 2020



Part 3

Control the compliance of declarations of assets and interest by public officials

The High Authority's control of declarations makes it possible to detect unexplained variations in assets, which may be attributed to a breach of ethical duties, and to prevent situations of conflicts of interest that could compromise the independent, impartial and objective exercise of the public functions carried out.

— In order to carry out its checks, the High Authority relies on specific investigative prerogatives: requests for additional information, right of notification to the tax authorities, injunctions that may be subject to criminal proceedings in the event of non-compliance.

— In 2020, 3,525 checks were undertaken, 2,577 concerning declarations of interest and 948 declarations of assets, while 2,457 checks were completed, 1,178 in respect of declarations of interest and 1,279 in respect of declarations of assets.

— The average length of an inspection is 186 days.

In comparison with 2019, the High Authority notes a decrease in the rate of declarations deemed to be in compliance with the legal requirements for the completeness, accuracy and fairness of the data contained therein, from 73% to 52.9%.

— When it finds an irregularity, the college may adopt various measures, which can be combined between them: reminder of declaration requirements (24.6%), submission of an amending declaration (21.9%), assessment made public when the declaration is published on the High Authority's website (1 case).

— For the most serious breaches, it sends the file to the court in accordance with Article 40 of the Code of Criminal Procedure (10 cases in 2020). Although the reasons for transmission remain varied, 5 cases have been for the offence of illegal taking of interests during the course of the mandate.

— 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).

The High Authority also controls management without any right to examine the financial instruments of certain public officials in order to avoid a number of risks of an ethical and criminal nature, including insider trading.

Finally, in accordance with its mission to promote transparency, the High Authority publishes certain declarations of assets and interest.

— The system for publicising declarations depends on several factors, including the type of declaration (assets or interest) and the status of the public officials concerned (member of government, elected officials, public officials).

— In 2020, the High Authority published 825 declarations on its website, bringing the total number of declarations available for free consultation to 4,306.

— It also sent 193 declarations of assets completed by MPs to the prefectures, bringing their total number to 1,328. However, only 14 requests for on-site consultations were made by citizens, requiring a review of the procedure established by the texts.

Part 4

Regulating representations of interests (lobbying)

2020 saw a marked improvement in the registration of interest representatives on the register managed by the High Authority: they represented 2,183 entities, up 11.6% compared to the previous year.

— 1,734 interest representatives were required to join the register before 24 August 2020, with the deadline initially set for 31 March having been postponed due to the health crisis.

— By the legal deadline, only 34% of them had complied with their registration obligation; and, following a major campaign of reminders carried out by the High Authority, this rate reached 90.4% in November.

— Among the entities still in default, the High Authority launched 51 checks, which led 41 to rectify their situation.

Entry onto the register calls for compliance with declarative and ethical obligations, although the health crisis had a significant impact on the control activity by the High Authority's departments.

— As at 31 December 2020, 137 interest representatives entered onto the register were not in compliance with their declaration requirements, prompting the High Authority to send 32 notifications of non-compliance. However, it has not yet had to send a formal notice or refer a case to the court.

— To offset a limited number of inspections, the High Authority provides sustained support to interest representatives, whether by telephone assistance or through its training and awareness-raising initiatives (Info Day, participation in conferences organised by sector professionals, ongoing training).

The register of interest representatives provides a precise snapshot of lobbying in France, thus providing citizens with information on the traceability of the process of developing standards.

— While companies, professional organisations and independent lobbying consultants and consulting firms account for nearly 60% of registered entities, there is a significant rate of non-governmental organizations and associations (19.5%), unions (13.5%) and, to a lesser extent, chambers of commerce (5%).

— 12,909 activities of interest representation were declared, an increase of 54.6% compared to 2018. They are in step with current events; 20% of those that took place this year had a link to the health and medicinal-social sectors. In the vast majority of cases, the aim is the transmission of information or expertise with a goal of convincing (27.5%), organising informal meetings (26%) or sending suggestions to influence the drafting of a public decision (20.5%).

— The register recorded 250,000 visits during 2020, five times fewer than the number of visits relating to public officials' declarations. To promote its data and boost its use, the High Authority has engaged in several initiatives (publication of the AGORA source code, uploading real-time data visualisations) and will soon provide the public with a digital platform dedicated to lobbying.

PROPOSAL NO. 1

To create a control over professional transition for agents, regardless of their status, of certain state EPICs (public industrial and commercial establishments) 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, when they leave to join the private sector.

PROPOSAL NO. 3

Harmonise the texts relating, on one hand, to the supervision 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, on the other hand, to the supervision of the professional transition of public servants (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 penalties incurred in the event of non-compliance with the opinion of the High Authority and, for public servants, the decision of the supervising authority.

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 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 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.

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 management method excluding any right of control, or any breach that may be subject to an administrative sanction.

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 register to be applicable to local authorities (specific study currently being drafted on this point).

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.

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

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.

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.

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