High Authority
for transparency
in public life

Activity report 2021

EXECUTIVE SUMMARY

Interview
with Didier Migaud

Chairman, High Authority for Transparency in Public Life

— Eight years after the creation of the High Authority, how would you assess what it has achieved?

Didier Migaud: The High Authority is now well established in French public life, thanks in particular to the hard work of my predecessor, Jean-Louis Nadal. We are seeing positive momentum: year after year, the legislator entrusts new missions to the High Authority, a sign of the confidence it has in it.
This rise in power is a direct consequence of our status: the institution is independent and collegial, two essential factors for asserting itself in the long term as a trusted third party between public decision-makers and citizens. It also has managerial autonomy, which encourages high-level recruitment, tailored to the issues at stake and to public and private managers who are entitled to expect quality responses from the High Authority's services within shorter timeframes.
We must now consolidate these achievements and continue our efforts to give citizens the means, if not the desire, to place their trust in public leaders.

— What were the highlights of 2021?

D.M.: 2021 marked the end of a first cycle for the implementation of several pieces of legislation. Parliamentarians, like the High Authority, have used this opportunity to take stock and suggest improvements, particularly in terms of the framework for the representation of interests and the fight against corruption.
In carrying out its missions, the High Authority has endeavoured throughout the year to be responsive in order to deal with electoral deadlines and the ensuing declaration periods, or with the numerous requests for opinions on mobility projects between the public and private sectors ("revolving doors"). All the referrals received were processed, without any tacit opinion, and the opinions on a draft appointment were delivered within an average of less than ten days, below the limit provided for by law.
Finally, more favourable health conditions have allowed the gradual resumption of normal relations with integrity players, both in France and internationally. In this respect, we are particularly pleased to once again have been able to organise the annual meeting of ethics officers. A high-level conference on the subjects of ethics and transparency will be organised by the High Authority a few days after publication of this report, within the context of the French Presidency of the Council of the European Union.

— How do you view the spread of probity requirements among public decision-makers?

D.M.: With confidence. On the whole, public officials largely comply with their obligations to the High Authority even though the institution has become increasingly demanding since its creation in 2014. Few situations thus justify a referral to the public prosecutor.

We are also seeing an ethical reflex that is much more ingrained than in the past: public decision-makers are increasingly aware of high-risk situations and seek the advice of ethics officers or the High Authority, which helps to defuse many problematic situations. Gradually, declarants are also realising the benefits of checking their declarations, particularly in terms of preventing conflicts of interest: this can only improve the legitimacy of their action. Finally, we note that ethics is spreading into many areas: the law for confidence in the judicial system has renewed the ethics of certain legal professions, while the organic law on the Economic, Social and Environmental Council and the law aimed at making sport more accessible have incorporated the prevention of probity violations. This preventive aspect is fundamental in effectively combating these breaches. In this respect, the gradual establishment of ethics officers or ethics colleges often proves to be decisive: it is essential that independent bodies be created within institutions to advise public officials and civil servants, and to disseminate the probity requirements overseen by the High Authority.

— Why do you think public officials are becoming increasingly conscious of public ethics and deontology?

D.M.: Three factors seem to me to explain this increase. Firstly, the High Authority has never simply recorded the declarations received and demanded those that were missing before then checking them. The institution has always been very keen to support public decision-makers in respecting their obligations and is interested in the educational dimension of exchanges: why do these mechanisms exist? What are their aims? Over time, these efforts have paid off. In addition to these exchanges with declarants, relations with administrations, associations of elected representatives and ethics officers, as well as the awareness-raising and training actions that we carry out, have helped to disseminate ethics more widely.

The densification of the network of integrity actors also explains why public decision-makers are becoming more ethics-minded: the number of ethics officers is increasing, administrations and company management teams are showing greater sensitivity to ethical issues – whether related to public/private sector mobility or to the representation of interests – and all of this undeniably contributes to the development of a shared culture of integrity in public life.

Finally, the progress observed is also the result, I believe, of an even greater sensitivity of public opinion to these issues: citizen demand for probity is rightly very strong, public decision-makers pick up on it and act accordingly. Unfortunately, sometimes it only takes one "affair" to tarnish the image of an entire administration, body or authority and significantly affect citizens' trust in public decision-makers as a whole. However, as I mentioned, the reality of the checks we carry out is, objectively, much more reassuring. This observation deserves to be better known and this activity report should contribute to this.

— What is the outlook for 2022?

D.M.: The presidential election and the constitution of new governments represent important events for the High Authority, which is responsible for checking the declarations of assets and interests of members of the government, the members of their cabinets and the President's aides, as well as their mobility between the public and private sectors. The High Authority will also receive and check the declarations of assets and interests of the MPs elected in June.
All of these individuals are, by virtue of their responsibilities, particularly exposed to risks, whether criminal or ethical, and the expectations of probity are high. The High Authority will be fully mobilised to carry out all these controls as thoroughly as possible.
The extension, on 1 July, of the register of interest representatives to actions carried out with public officials and local elected representatives, and the follow-up of reservations formulated in the context of findings on the public/private sector mobility projects of public officials and civil servants are also subjects that will particularly occupy the institution this year.
More generally, 2022 must also be a year of consolidation for the High Authority. In addition to the room for manoeuvre we have, we support in this report several proposals for legislative or regulatory changes, aiming to make the texts governing our missions consistent, to strengthen our monitoring abilities and to go further in the prevention of breaches of probity and corruption. In a way, the objective of the High Authority is to give citizens reasonable assurance about the integrity of public officials and civil servants, in order to ensure that public decision-making is always in the public interest. The college, the departments and myself are thus putting all our energy into the missions entrusted to the High Authority to help strengthen the trust between citizens and their leaders.

2021 highlights

CONTROL OF DECLARATIONS OF ASSETS AND INTERESTS

15,574
declarations of assets and interests **received**

664
declarations of assets checked

2,486
declarations of interests checked

1,550
declarations of interests leading to measures to prevent a conflict of interest (62% of the declarations of interests checked)

55
cases referred to the courts for failure to file declarations

RESULTS OF CHECKS

(declarations of assets and interests)

- **32.3%** **declarations that satisfy** the requirements of completeness, accuracy and fairness
- **56.2%** corrective declarations requested (non-substantial changes)
- **11.1%** reminders of declaration requirements
- **0.1%** assessment
- **0.3%** **cases referred to the courts** (11 cases)

2020 saw a record number of declarations received by the High Authority (17,113). 2021, in which a lot of elections took place, has proved to be almost as intense.

In particular, the High Authority received the declarations of assets and interests of departmental and regional elected representatives, but also, for the first time, the declarations of interests of members of the Economic, Social and Environmental Council. In anticipation of the end of the term of office in 2022, MPs also filed their end-of-mandate declarations of assets in 2021.

ETHICAL CONTROL OF CIVIL SERVANTS AND PUBLIC OFFICIALS

307 **opinions delivered on public/ private sector mobility projects**

178
opinions delivered on **mobility projects to the private sector,** including civil servants and public officials

30
opinions delivered on **business start-up or takeover** projects by public officials

99
opinions delivered on **appointments** of public officials

RESULTS OF THE CHECKS

(opinions delivered)

94.6%
findings of **compatibility** of which **58.2% accompanied by reservations**

5.4%
findings of **incompatibility**

Mobility projects of public officials to the private sector

90.8%
findings of **compatibility** of which **64% accompanied by reservations**

9.2%
of findings of **incompatibility**

2021 was the first year of full exercise of the new competences entrusted to the High Authority by the Law of 6 August 2019 on the transformation of the public service with regard to the ethical control of public officials.

The overall assessment shows that administrations know more about the new system and less often mistakenly refer cases to the High Authority. However, the new procedures, in particular the central role of the hierarchical authority, still need to be perfected.

FRAMEWORK FOR INTEREST REPRESENTATION

2,391
entities listed in the register (as at 31 December 2021)

85%
final declaration **rate (in December 2021 after reminders)**

10,780
interest representation actions carried out during the 2021 reporting period (6.9 on average per entity)

188
in-depth checks completed

1
formal notice to comply with declaration obligations

236
notifications of non-compliance for failure to file a declaration of activities

97
entities on the list of **defaulting entities** not declaring any of the information required by law (as at 31 December 2021)

Nearly five years after the implementation of the register, the progress made in terms of transparency and restitution of the normative footprint is undeniable. However, the system remains weakened by an overly complex legislative and regulatory framework.

In October 2021, the High Authority published a study on *The framework for interest representation* in which it assesses the register and proposes several essential adjustments to ensure its durability and effectiveness, in view of its planned extension to the local level on 1 July 2022. Without changing the law, the difficulties observed at national level risk being amplified by the specific nature of regional public action, in particular the many individual decisions taken by local elected representatives.

ADVICE AND SUPPORT FOR DECLARANTS

6,832
calls handled
by the hotline

2,600
emails received
from public officials

200
answers
to legal questions

The High Authority attaches great importance to raising awareness and providing support to all those subject to ethical and reporting obligations, in close cooperation with other integrity actors.

In 2021, it took several information measures targeted at public officials ahead of the filing campaigns. In addition, it continued its efforts to raise awareness among interest representatives of their obligations and launched a digital platform dedicated to lobbying, aimed at both citizens and interest representatives.

The High Authority has also published Volume II of its ethics guide for administrations, ethics officers, civil servants and public officials. The purpose of this second section was to explain, in an educational manner, the High Authority's expertise and doctrine on the risks of conflict of interest.

ADMINISTRATIVE AND FINANCIAL MANAGEMENT

€7.9M
available
budget

65
permanent
staff (as at
31 December 2021)

TRANSPARENCY

7,263
declarations available for consultation on 31 December 2021 on hatvp.fr, including:

89
declarations of assets
(74 declarations by members of the Government and 15 declarations by members of the High Authority's college)

7,174
declarations of interests

1,934,898
page views
on hatvp.fr

11
hearings
of the President of the High Authority in Parliament

Proposals and avenues of development

Strengthening the missions of the High Authority and improving the prevention of corruption

The 2021 Activity Report is an important milestone: it gives the High Authority a chance to take stock of its missions during the past mandate and to look forward to the next one, in view of the upcoming major electoral events, namely the 2022 presidential and legislative elections.

Over the past five years, the High Authority has consolidated its mission of controlling illicit enrichment and preventing conflicts of interest, and has gradually appropriated the mission of regulating the representation of interests that was assigned to it in 2016. More recently, the legislator has given it a new task of monitoring mobility between the public and private sectors, which it started doing from 1 February 2020.

For all of these missions, the High Authority formulates proposals, some of which have already been made and others which are new, as well as certain avenues of development, with three main focuses: ensuring the consistency of the applicable texts, guaranteeing more effective controls and enhancing French policy on the prevention of ethical violations and corruption.

All of them aim to ensure the legal security of natural persons and legal entities falling within the scope of the High Authority's competence and to reinforce the effectiveness of the system as a whole.

These proposals and avenues of development are intended for the Government and Parliament to enable them to better grasp the possibilities for improving the system for preventing ethical violations. They also contribute to informing citizens about the effects of the measures implemented to ensure the integrity of public decision-making.

1 Strengthen the coherence and coordination of public probity and ethics legislation

Since the organic and ordinary laws of 11 October 2013 on transparency in public life, the scope of the High Authority's powers has been extended and modified by several texts:

— the Law of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, known as “Sapin II”, on the framework for interest representation;

— the Law of 15 September 2017 for confidence in political life, on the declaration system and introducing in particular the obligation for presidential candidates to file a declaration of interests and activities; it also formalises the possibility for the President of the Republic to approach the High Authority prior to the appointment of members of the Government;

— the Law of 6 August 2019 on the transformation of the public service, on ethical control of the mobility of public officials;

— the Law of 21 February 2022 on differentiation, decentralisation, deconcentration and various measures to simplify local public action, on the conditions for declaration and assessment of conflict of interest.

However, these successive texts have sometimes led to contradictions, even inconsistencies and legal uncertainties, which diminish the scope of certain provisions.

Clarify the scope of civil servants and public officials subject to the control of declarations of interests and assets

Since 2013, the scope of civil servants and public officials required to file a declaration of assets or interests with the High Authority has been gradually extended.

The legislator has thus included:

— the members of the Supreme Judicial Council (2016[1]);

— the presidents (2017[2]), vice-presidents, treasurers and general secretaries (2022[3]) of public service sports federations and professional leagues;

— the presidents (2017[4]), vice-presidents, treasurers and general secretaries (2022) of the French National Olympic and Sports Committee and the French Paralympic and Sports Committee;

— the legal representatives of organisations responsible for organising international sporting competitions awarded as part of a selection by an international committee, of a level at least equivalent to a European championship, organised exceptionally on French territory and having obtained letters of appointment from the State (2017);

— the delegates of signature or power of attorney of these legal representatives, where these delegates have the authority to commit, on behalf of these bodies, an expenditure equal to or greater than €50,000 (2017);

— the members of the independent administrative authorities of New Caledonia and French Polynesia (2018[5]);

— the President, the Chief Executive Officer and the Head of High Performance of the National Sports Agency (2019[6]);

— the members of the Economic, Social and Environmental Council (2021[7]).

The High Authority may need to draw the attention of the legislator when proposals to extend the scope of the 2013 Law lead to the introduction of mandates or functions without their own executive or administrative powers. For example, the first version of the bill aimed at making sport more accessible in France proposed subjecting "*all elected members of the governing bodies*" of professional federations and leagues to the obligation to declare their assets and interests, an extensive provision in the drafting of which the High Authority was not involved and on which it expressed its reservations regarding the very broad scope initially proposed.

The High Authority observes, however, that certain public officials exercising sensitive executive functions are still not subject to the obligation to file declarations of assets and interests with the High Authority.

This is the case, for example, of the 34 mayors of the *arrondissements* of Paris, Lyon and Marseille, even though they enjoy important prerogatives at local level.

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1. Organic Law No. 2016-1090 of 8 August 2016 on statutory guarantees, ethical obligations and the recruitment of magistrates, as well as the Supreme Judicial Council.
2. Law No. 2017-261 of 1 March 2017 aimed at preserving the ethics of sport, strengthening the regulation and transparency of professional sport and improving the competitiveness of clubs.
3. Law No. 2022-296 of 2 March 2022 aimed at making sport accessible in France.
4. Law No. 2018-202 of 26 March 2018 on the organisation of the 2024 Olympic and Paralympic Games.
5. Law No. 2018-643 of 23 July 2018 on competition controls and sanctions in French Polynesia and New Caledonia.
6. Law 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.
7. Organic Law No. 2021-27 of 15 January 2021 on the Economic, Social and Environmental Council.

PROPOSAL NO. 1

Subject the mayors of the *arrondissements* of Paris, Lyon and Marseilles to an obligation to declare their assets and interests to the High Authority.

This is also the case for the chairpersons and chief executive officers of certain subsidiaries of the *Caisse des dépôts et consignations* (CDC). With regard to the special status of the CDC, which is recognised as a special establishment[8], its subsidiaries do not fall within any of the cases provided for in Article 11(III) of the 2013 Law. This is clearly an oversight, as the legislator clearly intended to impose the obligation to file a declaration of assets and interests on the heads of national and local public companies.

It seems inconsistent to ask the CEO of a semi-public company with a turnover of €750,000 to comply with these obligations, but not the managers of Bpifrance[9] or La Poste[10], for example.

In the case of La Poste, its managers were covered by the reporting obligations until it was integrated into the scope of the *Caisse des Dépôts*.

The High Authority therefore invites the legislator to consider extending declaration obligations to the directors of certain companies in which the *Caisse des Dépôts* is the reference shareholder, in particular those operating in the financial sector such as Bpifrance, or in the network sector such as La Poste, RTE or GRT Gaz. The latter companies are qualified as contracting entities and are therefore subject to the rules defined for these structures by the French Public Procurement Code.

PROPOSAL NO. 2

Review the criteria establishing the scope of declaration obligations to include companies that are controlled by the *Caisse des dépôts et consignations* alone or jointly with the State or a company controlled by the State and that participate in the public policies pursued by the State, in particular companies that qualify as contracting entities or institutions that manage public funds such as Bpifrance.

Unify and strengthen the ethical control of public/private sector mobility

Two texts, which are sources of disparity, provide a framework for the ethical control of the mobility to the private sector of civil servants and public officials:

— Article 23 of the Law of 11 October 2013, for former members of the Government, former heads of local executives and former members of independent administrative and public authorities;

8. Law of 28 April 1816, incorporated in Article L. 518-2 of the French Monetary and Financial Code.
9. €1.5 billion in turnover.
10. €35 billion in turnover.

— Article L. 124-4 of the French General Civil Service Code, for public employees.

These differences are illustrated in particular in the scope of the activities controlled, which consist, in particular, of:

— for the public officials referred to in Article 23 of the Law of 11 October 2013: in any paid activity within a company, a public establishment whose activity is of an industrial and commercial nature or a public interest grouping whose activity is of an industrial and commercial nature;

— for the public officials referred to in Article L. 124-4 of the French General Civil Service Code: in any gainful activity, whether salaried or not, in a private law body or private company (a private company is defined as "*any body or company carrying out its activity in a competitive sector in accordance with the rules of private law*").

These semantic differences, which do not necessarily translate into differences in how cases are handled, are detrimental to the clarity of the texts and the legal certainty of the persons concerned.

Furthermore, the sanctions provided for in the two texts differ, without this being based on a justification linked to the functions performed. Article L. 124-10 of the French General Civil Service Code provides that in the event of failure to comply with findings of incompatibility or reservations, or in the event of failure to refer cases to the authority:

— the public official may be subject to disciplinary proceedings;

— the retired civil servant may be subject to a pension withholding, up to a limit of 20% of the amount of the pension paid, for three years after leaving the service;

— the administration may not recruit the member of contract staff concerned for three years following the date of notification of the opinion delivered by the High Authority;

— the contract held by the staff member shall be terminated on the date of notification of the opinion delivered by the High Authority, without notice and without compensation for termination.

For its part, Article 23 of the Law of 11 October 2013 stipulates that, in the event of such breaches, the High Authority shall publish a special report in the *Official Journal* before forwarding the file to the public prosecutor, which does not constitute a real sanction. Furthermore, if the breach relates to ethical issues, the referral to the prosecutor's office has no consequences, in the absence of a criminal offence.

PROPOSAL NO. 3

Harmonise the sanctions provided for in the event of non-compliance with the opinions delivered by the High Authority prior to mobility between the public and private sectors, on the one hand, on the basis of the Law of 11 October 2013, applicable to former members of the Government, heads of local executives and members of independent administrative and public authorities, and, on the other hand, on the basis of the French General Civil Service Code, applicable to public officials.

The High Authority also observes that the sanction mechanism provided for in the French General Civil Service Code in the event of disregard for the opinions delivered by the High Authority in the field of public/private sector mobility is difficult to apply:

— as it stands, the sanctions provided for can only be imposed once a case has been referred to the High Authority, which appears to be in contradiction with the objective of internalising control within the administrations;

— based on the status of the person and not on the nature of the control carried out, the sanctioning system is relatively unreadable;

— there are difficulties interpreting some sanctions, such as pension withholdings (determination of the rate of deduction, the duration of application and the date of execution in particular).

Extend the scope of the control of public/private sector mobility to certain categories of strategic public officials

With regard to the scope of public officials whose mobility to the private sector must be controlled under Article 23 of the Law of 11 October 2013, it appears that some local public officials, although not heads of the executive, exercise important functions justifying application of this control designed to prevent any risk of a criminal or ethical nature.

Finally, the High Authority has emphasised since 2020 the challenge of controlling the mobility to the private sector of officials, regardless of their status, from industrial and commercial public establishments (EPICs) and certain special public establishments. In particular, these agents fall within the scope of Article 432-13 of the French Penal Code, which punishes the taking of illegal interests after the end of the functions exercised within these public establishments, without any ad hoc prior control being organised. Such a control would protect both the official and the institution from being challenged later.

PROPOSAL NO. 4

Extend the scope of public officials subject to control by the High Authority with regard to their mobility to the private sector, under Article 23 of the Law of 11 October 2013, to holders of the local executive offices referred to in Article 11 paragraph I(3) of the Law, in particular:

— vice-presidents and councillors holding a delegation of signature or function of regional and departmental councils and of public establishments of inter-municipal cooperation with separate tax status with more than 100,000 inhabitants;
— deputy mayors of municipalities with more than 100,000 inhabitants who have delegation of signature or function.

PROPOSAL NO. 5

Set up control of mobility to the private sector for employees, regardless of their status, of certain State EPICs such as UGAP or Solideo, special public establishments such as the *Caisse des dépôts et consignations* and public establishments attached to local authorities such as public housing agencies.

Clarify the assessment of the risk of conflict of interest, interest in the case and illegal taking of interests for elected representatives sitting in external bodies

The new Article L. 1111-6 of the French General Code of Local Authorities, introduced by the "3DS" Law, excludes, as a matter of principle, the risk of conflict of interest and illegal taking of interests when an elected representative participates, as a member of the deliberative body of a local authority or a grouping of local authorities, in a deliberation concerning an external body on which he or she sits as a representative of this local authority or grouping. However, this article specifies that it only applies when the elected representative has been appointed "*pursuant to the law*".

Interpretation of this condition is likely to be difficult. It is necessary to determine whether the legislator intended Article L. 1111-6 to apply only in cases where a legislative text expressly provides that the local authority must appoint a representative to the external body in question, or whether it also applies in cases where the participation of an elected representative can be deduced from the applicable texts.

In many cases, including in the case of personalised agencies[11], the law merely provides that a local authority may, in order to carry out certain tasks, set up a body governed by public law or even a body governed by private law[12], without expressly mentioning that it will be represented in its decision-making bodies by one of its elected representatives.

This difficulty of interpretation is compounded by the large number of external bodies, provided for in various texts, on which local elected representatives are called upon to sit.

It is therefore not easy for a local elected representative to determine whether he or she has been appointed to an external body in accordance with the law.

In light of this difficulty, consideration could be given to the need to defer deliberations on appointments to satellite bodies where they do not set remuneration. Separate deliberations on these two points would seem desirable.

PROPOSAL NO. 6

Define criteria for determining the bodies for which elected representatives are not obliged to stand aside, even though they represent their local authority in that capacity, in accordance with the provisions of Article L. 1111-6 of the French General Code of Local Authorities.

Improve the consistency and legibility of the legal framework of the register of interest representatives

The register of interest representatives, which is far from perfect, has already been the subject of numerous recommendations for improvement by the High Authority, both in its activity reports and in the report on the framework for interest representation that it published in October 2021.

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11. See Article L. 2221-10 of the French General Code of Local Authorities. Article R. 2221-4 stipulates that the statutes of the public utility, adopted by the municipal council, must in particular determine, with regard to the members of the board of directors, "*the categories of persons from which those who do not belong to the municipal council are chosen*". This clarification suggests that, as a matter of principle, the members of the board of directors belong to the municipal council, although there is no explicit provision for this.

12. For example, Article L. 5314-1 of the French Labour Code states: "*Local missions for the professional and social integration of young people may be set up between the State, local authorities, public establishments, professional and trade union organisations and associations. They take the form of an association or a public interest grouping. (…)*". Although there is no provision for the local authority to be represented in the association or public interest grouping that it may set up under these provisions by a member of its deliberative body, such representation can be inferred from the law, which authorises local authorities to set up local missions in either of these forms.

PROPOSAL NO. 7

ADAPT THE LOBBYING REGULATION SYSTEM TO MAKE IT MORE EFFECTIVE

Overall framework for the regulation of interest representation

— Provide in the law that the status of interest representative is to be assessed in light of all the activities of the legal entity concerned.

— For groups of companies, defined by reference to the notion of control set out in the French Commercial Code:
- assess the interest representation activity at group level;
- introduce an aggregate declaration obligation.

— Clarify that the obligation to declare the interest representative applies when the influencing action is initiated by the latter, but also when communication is initiated by the public official.

— Specify in the texts the criteria for public decision-making falling within the scope of the regulation of interest representation, according to their importance, because of their nature or their effects.

— Where representation activities are carried out on behalf of third parties, introduce an obligation to declare the turnover resulting from this interest representation activity for third parties during the previous year.

— Specify the information requested in the declarations of activity of interest representatives: the public decision targeted by the interest representation action; the precise functions of the public official(s) with whom the interest representation action was carried out.

— Move from annual submission of activity declarations to half-yearly submission.

Means of control of interest representatives

— Provide the High Authority's officials, in the context of on-site checks, with the power to copy documents and any information medium.

— Provide for the presence of judicial police officers during on-site checks carried out by the High Authority's officials on the declaration and ethical obligations of interest representatives.

A reasoned extension of the system

The Law of 9 December 2016 establishing the register of interest representatives provided for the extension of this legal framework from 1 July 2022 to the lobbying of local executives and certain public officials of state administrations, local authorities, their groupings and establishments, and public health establishments. However, identifying the public officials concerned by the extension of the system is particularly complex, given the way in which Article 18-2 of the Law of 11 October 2013 is drafted: this article includes references to other texts, which themselves refer to others, are specified by numerous ministerial decrees or require access to administrative data that is not readily available. Such a system creates a great deal of legal uncertainty for interest representatives.

— Simplify the identification of public officials likely to be targeted by interest representation actions by revising the orders issued by the ministries, on the basis of Decree No. 2016-1968 of 28 December 2016 on the obligation to submit a declaration of assets.

Moreover, the specific nature of local public action will unavoidably make it more difficult to apply the system, notably because of the particular relationship between local authorities and their interlocutors. The growing development of local public companies (semi-public companies, single-operating semi-public companies, local public companies), particularly in the field of development, is one example of this. In such a context, the managers of these companies, who are potentially interest representatives within the meaning of the law, may at the same time be the public decision-makers (mayor or president of an EPCI, for example) with whom the company carries out influence actions.

— Adapt the framework to the specific relationship between local and regional authorities and satellite entities.

2 Ensuring the effectiveness of the High Authority's controls

In order to carry out its missions, the High Authority must have access to control means appropriate for the objectives pursued and for the persons in respect of whom they may be used.

As it stands, its means of control, which are very limited compared with those of other independent administrative or public authorities, are not up to the job entrusted to it.

Improving them is a decisive way of improving the quality and quantity of the checks carried out by the High Authority.

Exercise a direct right of communication

The control of declarations (of assets or interests for public officials; of activities for interest representatives) is intrinsically conditional on obtaining information from third parties that corroborates or invalidates the information provided by the persons concerned. Although its investigative resources have evolved in recent years, the High Authority remains dependent on the DGFiP to exercise its right of communication with third parties.

Exercising such a prerogative directly would free the High Authority from the need to rely on the intermediation of the tax authorities. In addition to ensuring full independence in the conduct of its controls, this prospect would automatically reduce investigation times and increase the control capacities of the High Authority.

PROPOSAL NO. 8

Enable the High Authority to exercise a direct right of communication with banking or financial institutions, insurance or reinsurance companies, administrations, local authorities and any person entrusted with a public service mission for all its control missions.

Sanction obstruction of the missions of High Authority staff carrying out controls

No sanction, whether administrative or criminal, is provided for in the event that a person refuses to submit to a control by the High Authority, and the controls conducted are therefore based solely on the diligence of the persons subject to them.

PROPOSAL NO. 9

Introduce, within the context of controlling declaration and ethical obligations, an administrative sanction for obstructing the duties of High Authority staff.

Once again, the High Authority notes that this situation is uncommon among independent administrative authorities, some of which may themselves impose an administrative sanction for obstructing control operations.

The introduction of a sanction mechanism would fully guarantee the effectiveness of the controls carried out by the High Authority, as the Council of State had emphasised with regard to the control of interest representatives[13].

Introduce an administrative sanction for failure to file a declaration

For several years now, the High Authority has noted the inadequacy of the criminal sanctions for failing to file a declaration, whether it be a declaration of assets or interests by public officials or a declaration of means or activities by interest representatives.

The serial nature of these breaches tends to clog up the criminal justice system, even though the objectivity and nature of the facts, which are easily ascertainable and of low intensity, argue in favour of a simpler, more flexible and more rapid administrative sanction, which the High Authority could itself impose.

The prospect of a more reactive punitive mechanism would undoubtedly have dissuasive effects that would alleviate the significant follow-up work carried out by the High Authority to collect declarations from defaulting individuals. The criminal sanction should be retained in case of repeat offending or failure to comply after an administrative sanction.

PROPOSAL NO. 10

Provide the High Authority with its own power to impose administrative sanctions in the event of failure to comply with the obligation to file a declaration of interests or assets by a public official or a declaration of means or activities by an interest representative, with the sanction being proportionate to the seriousness of the breach and the situation of the person being prosecuted.

13. Council of State, Opinion No. 391.262 of 24 March 2016 on a draft law on transparency, the fight against corruption and the modernisation of economic life.

3 Securing and strengthening public policy in the fight against corruption and ethical violations

Since the High Authority was created in 2013, several laws have been adopted in favour of transparency, the prevention of conflicts of interest and the fight against corruption and ethical violations. Among them, the Law of 9 December 2016, known as the Sapin II Law, represented a significant step.

However, momentum has been lost: French public policy to fight corruption sometimes appears to be poorly identified and not always sufficiently supported by the public authorities. The many different people involved in the prevention, detection and penalisation of breaches has led to an increasing interpenetration of their activities, which is sometimes a source of confusion and dispersion of resources, resources which are moreover constrained.

These observations, made by the rapporteurs of the Sapin II Law evaluation mission, conducted in the National Assembly in the first half of 2021[14], call for a new impetus to strengthen the role of the High Authority. The two rapporteurs, MPs Raphaël Gauvain and Olivier Marleix, whose work was informed by more than 70 hearings, proposed in particular a clarification of the institutional organisation of anti-corruption policy in France.

The High Authority is aware of the observations made and the resulting proposals: the system designed by the legislator, based on two supervisory authorities, one of which – the High Authority – is an independent and collegiate administrative authority and the other – the French Anti-Corruption Agency (AFA) – is a department with national competence placed under the dual supervision of the Ministry of the Economy and Finance and the Ministry of Justice, creates frequent overlaps, particularly in the public sector.

The apparent complementary nature of their missions is misleading: because corruption always involves a corrupter and a bribee, and because it is part of a structuring institutional environment as well as individual practices, a global approach appears useful.

According to the rapporteurs of the evaluation mission, by transferring the control and advisory missions with regard to public and private players carried out by the AFA to the High Authority, a single, collegiate and fully independent overseer could be created, capable of taking into consideration the complexity and the different aspects of the phenomenon of corruption, and of controlling and advising individuals as well as structures, both private and public.

At the same time, the AFA would be strengthened in its administrative coordination and support role in defining anti-corruption policy. It would also continue to monitor judicial public interest agreements in support of the judicial authority.

14. National Assembly, information report on the evaluation of the impact of Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, known as the "Sapin 2 Law", 7 July 2021.

However, these institutional developments alone would not be sufficient. The fight against corruption should also be constituted as a public policy in its own right and benefit from real impetus from the executive, with its action in this field being evaluated by Parliament.

The development of this public policy would also require a strengthening of inter-ministerial cooperation, so that the AFA could fully act as a service responsible for coordinating the resources allocated to the prevention of corruption.

Finally, the rapporteurs of the evaluation mission believe that the public sector cannot remain the forgotten sector of anti-corruption policies any longer, given the existing risks: a streamlining of the existing measures seems necessary to them and should be supported by the creation of an anti-corruption reference framework adapted to the specificities of public action, and not only by referring to the rules applicable to private companies. The legal security of public persons and companies would thus imply a revival of the corruption prevention policy.

For its part, the High Authority is ready to share its experience acquired over eight years of carrying out the missions entrusted to it by the legislator with the discussions that may be undertaken by the public authorities on this subject.

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