



High Authority
for transparency
in public life

Activity report **2021**

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 notable events in 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 revolving-door movements. All the referrals received were processed, without any tacit opinion, and the opinions on a draft appointment were issued 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 dissemination 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 revolving-door movements 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 controls 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. It is responsible for controlling 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 professional transition to the private sector. 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 directory 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 planned professional transition to the private sector 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, in this report we put forward 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.



Contents

Interview with Didier Migaud	3
Key figures for 2021	9
Notable events in 2021	12
The college and the organisation of the High Authority	14
Human and budgetary resources	23

PART 1

Controlling the assets and interests of public officials 26

1 Another busy year in terms of declarations received	29
2 Uneven compliance rates before reminders depending on the declarant	31
3 The procedure for checking declarations received	37
4 Assessment of the control of declarations of interests and assets in 2021	40
5 Blind management control of financial instruments	51
6 Publication of declarations of assets and interests	53

PART 2

Controlling revolving-door movements between the public and private sectors: preventing ethical and criminal risks 56

1 A year of stabilisation for the new ethical controls	60
2 The pre-appointment check	67
3 The multiple jobholding check for business creation or acquisition	71
4 The control of professional transition to the private sector	74
5 Monitoring of reservations and opinions of incompatibility	82

PART 3

Regulating interest representation 84

1 Assessment of the 2020 declaration year: progress made but persistent shortcomings	88
2 Difficulties related to the legal framework of the register	95
3 Consolidation of the procedures for controlling interest representatives	101
4 The challenge of using data from the directory of interest representatives	111
5 Sharing good practice at international level on lobbying	114

PART 4

Supporting, advising and raising awareness 116

- 1 | Strengthening activities to inform and support public officials and interest representatives in meeting their declaration obligations 119
- 2 | Ethics advice 125
- 3 | Disseminating the High Authority's expertise and missions 128
- 4 | Promoting the French integrity model abroad 133

PART 5

Proposals and avenues of development. Strengthening the missions of the High Authority and improving the prevention of corruption 138

- 1 | Strengthening the coherence and coordination of public probity and ethics legislation 141
- 2 | Ensuring the effectiveness of the High Authority's controls 149
- 3 | Securing and strengthening public policy in the fight against corruption and ethical violations 151

Summary of proposals of the 2021 Activity Report 153

Appendices 156

- 1 | Follow-up to the proposals of the 2020 Activity Report 158
- 2 | Table of correspondence between the provisions of the French General Civil Service Code (CGFP) relating to the obligations and ethics of public officials and those of Chapter IV of the Act of 13 July 1983 162
- 3 | Summary table of public decision-makers covered by the directory of interest representatives 168

Key figures for 2021

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

OUTCOME OF CONTROLS

(declarations of assets and interests)

32.3%
**declarations
that satisfy**
the requirements
of completeness,
accuracy and fairness

56.2%
corrective
declarations
requested

11.1%
reminder
of declaration
obligations

0.1%
assessment

0.3%
**cases
referred
to the courts**
(11 cases)

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

ETHICAL CONTROL OF CIVIL SERVANTS AND PUBLIC OFFICIALS

307 opinions issued on planned revolving-door movements

178

opinions issued on **planned professional transitions to the private sector**, including civil servants and public officials

30

opinions issued on the business creation or acquisition projects of public officials

99

opinions issued on **proposed appointments** of public officials

OUTCOME OF CONTROLS

(opinions issued on substance)

94.6%

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

5.4%

opinions of incompatibility

Planned professional transition of public officials to the private sector

90.8%

opinions of **compatibility** of which **64%** accompanied by reservations

9.2%

opinions of incompatibility

ADVICE AND SUPPORT FOR DECLARANTS

EXCHANGES WITH
PUBLIC OFFICIALS:

5,476

calls handled
by the hotline

EXCHANGES WITH
INTEREST REPRESENTATIVES:

1,356

calls handled
by the hotline

30

formal opinions
issued on
ethical issues

2,600

emails received

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 declaration period
(6.9 on average per entity)

IN-DEPTH
CHECKS
COMPLETED

92

directory
entry
checks

95

annual
declaration
checks

1

ethical
obligations
check

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)

ADMINISTRATIVE AND FINANCIAL MANAGEMENT

€7.9M
available
budget

65
permanent staff
(as at 31 December 2021)

Notable events in 2021

1

FEB.

Publication
of volume II of
the Ethics Guide

p. 132

Hearing of Didier Migaud
at the National Assembly
on the implementation of
the control of ethical rules
applicable to civil servants

4

FEB.

Visit from
Maia Sandu,
President of
the Republic
of Moldova

p. 134

3

FEB.

20 > 27
JUNE

Departmental
and regional
elections

p. 31

Launch of a digital
platform dedicated
to lobbying on the
High Authority's website

p. 111

16

SEP.

Webinar for
ministerial
advisers

p. 120

24
JUNE

29
NOV.

Hearing of Didier Migaud
at the National Assembly by
the mission to evaluate laws
for confidence in political life

Publication
of the declarations
of interests and activities
of series 2 senators

9

DEC.

**10
MAR.**

Hearing of Didier Migaud at the National Assembly by the mission to evaluate the "Sapin II" Act

**31
MAR.**

Deadline for disclosure of the 2020 actions of interest representatives

**3
JUNE**

Publication of the High Authority's 2020 Activity Report

**1
OCT.**

Visit by Emily O'Reilly, European Ombudsman
p. 75

**14
OCT.**

3rd annual meeting of ethics officers in the Senate
p. 129

**17
NOV.**

Publication of the High Authority's report on the interest representation framework
p. 95

**10
DEC.**

Annual meeting of the Network of European Lobbying Registrars
p. 60

**20
DEC.**

Appointment of the two members of the College designated by the Court of Accounts

**21
DEC.**

Deadline for filing the end-of-term declarations of assets of Members of Parliament

The College and the organisation of the High Authority



The President

Didier Migaud was appointed President of the High Authority by decree of the President of the Republic on 29 January 2020.

Member of Parliament for Isère from 1988 to 2010, Didier Migaud successively held the positions of general rapporteur of the Finance Committee (1997-2002), quaestor (2002-2007) and chair of the Finance Committee (2007-2010) in the National Assembly. He is the co-author, with Alain Lambert, of the organic law relating to the finance laws (LOLF), the new budgetary constitution of the State adopted in 2001. He has also held responsibilities as a local elected representative, as mayor of Seyssins and president of the Grenoble agglomeration community from 1995 to 2010.

Didier Migaud was First President of the Court of Accounts between 2010 and 2020. In this capacity, he also chaired the Court of Budgetary and Financial Discipline, the High Council of Public Finance and the Council of Compulsory Levies.

**Odile Piérart**

Elected in December 2017
by the General Assembly
of the Council of State

Odile Piérart was a State Councillor and President of the Inspection Mission of the Administrative Courts. She has held the positions of Secretary General of the administrative courts 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

Daniel Hochedez joined the National Assembly as an administrator in 1975. He was director of the information systems department and, until June 2013, director of the public finance department.

**Martine Provost-Lopin**

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

Martine Provost-Lopin was an adviser assigned to the third civil chamber at the Court of Cassation. She was the first examining magistrate at the Créteil Court of First Instance before becoming an adviser to the Paris Court of Appeal, then first vice-president of the Paris Court of First Instance.

**Patrick Matet**

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

Patrick Matet is an honorary adviser to the Court of Cassation, where he was the dean of the section dealing with arbitration, private international law, status of persons and family property law until 2017.



Anne Levade

**Appointed in January 2020
by the President of the Senate**

Anne Levade is a professor at the University of Paris I Panthéon-Sorbonne. She was a member of the task force and proposal committee on the modernisation and rebalancing of the institutions of the 5th Republic. She is the director of the civil service examination preparation centre Prép ENA Paris I-ENS and president of the French Association of Constitutional Law.



Frédéric Lavenir

**Appointed in January 2020
by the Government**

Frédéric Lavenir, Inspector General of Finance, has held several positions within the Ministry of Economy and Finance. He worked for the BNP Paribas Group as a subsidiary manager and then as a human resources manager. He was Director and CEO of CNP Assurances. He chairs the *Association pour le droit à l'initiative économique* (Adie).



Jacques Arrighi de Casanova

**Elected in February 2020 by the General
Assembly of the Council of State**

Jacques Arrighi de Casanova is a former Deputy Chair of the Finance Division of the Council of State. He was adviser on constitutional matters to the Secretary General of the Government, Deputy Chair of the Litigation Division of the Council of State, Presiding Judge of the Court of Conflicts, before becoming Chair of the Administration Division of the Council of State until 2019.



Sabine Lochmann

**Appointed in February 2020
by the Government**

Sabine Lochmann has been head of Vigeo Eiris since January 2020. She has previously worked as an in-house lawyer at Serete, JCDecaux and Johnson & Johnson, before joining and chairing BPI Groupe.

**Florence Ribard**

**Appointed in February 2020
by the President
of the National Assembly**

Florence Ribard joined the National Assembly as an assistant administrator in 1988. She was head of cabinet for Laurent Fabius as President of the National Assembly and then in the Ministry of the Economy, Finance and Industry.

**Pierre Steinmetz**

**Appointed in May 2020
by the President of the Senate**

Pierre Steinmetz successively held positions as prefect and in ministerial cabinets, before becoming Director General of the national gendarmerie and then director of the cabinet of Prime Minister Jean-Pierre Raffarin in 2002. He served as a State Councillor in extraordinary service before becoming a member of the Constitutional Council from 2004 to 2013.

**Dominique Dujols**

**Elected in December 2021 by the Council
Chamber of the Court of Accounts**

Dominique Dujols is Master Auditor at the Court of Accounts. She has held the positions of Head of Division at the Ministry of Culture and Director of Institutional Relations and Partnership at the *Union sociale pour l'habitat*.

**Gérard Terrien**

**Elected in December 2021 by the Council
Chamber of the Court of Accounts**

Gérard Terrien is a chamber president at the Court of Accounts, where he chairs the permanent inspection mission of regional and local chambers of accounts. In particular, he chaired the Île-de-France regional chamber of accounts from 2013, before being appointed president of the 5th chamber of the Court in 2018.

**Members whose term
of office ended in 2021:**

**Michel Braunstein
Michèle Froment-Védrine**

Collegiate and independent operation

At least one State Councillor, one Master Councillor at the Court of Accounts and one magistrate at the Court of Cassation out of the two elected by their peers must be active at the time of their election

Parity-based composition

A collegiate and independent decision-making body

Decisions adopted by the majority of members, with a casting vote by the president where necessary

A non-revocable, non-renewable six-year term: a guarantee of independence

Guaranteed budgetary autonomy with appropriations voted on each year in the finance law and independence in the organisation of its services and operations

STRONG ETHICAL GUARANTEES

Functions performed with dignity, probity and integrity

Strict compliance with the requirements of discretion and professional secrecy

Declarations of assets and interests made public

THE ADOPTION OF NEW RULES OF PROCEDURE

In March 2021, the High Authority's rules of procedure were amended by the college. In particular, they specify the measures to be put in place and the procedures to be followed in terms of preventing conflicts of interest and regulating gifts and invitations within the High Authority. They also specify the rules of procedure applicable before it.



THE DECLARATION OBLIGATIONS OF THE MEMBERS OF THE COLLEGE AND HIGH AUTHORITY STAFF

College members are subject to the declaration obligations set out in Act No. 2013-907 of 11 October 2013 on transparency in public life. When they take up their duties, they shall file a declaration of assets and interests, which shall be made public on the High Authority's website.

The Secretary General of the High Authority and his or her deputies are required to transmit a declaration of assets and interests to the President. Other officials holding a delegated power of signature must submit a declaration of interests.

All High Authority officials are obliged to inform their superiors of cases in which they may be in a conflict of interest situation.

Each member of the college, rapporteur or official must take into account, in order to assess whether an interest is likely to constitute a conflict of interest and justify a withdrawal, the intensity of the link, its nature and its effects with regard to the High Authority's missions.



The President and members of the college

Organisation chart of the High Authority



Human and budgetary resources

65

**permanent
agents**

as at 31 December 2021
(compared to 63 in 2020)

57% women

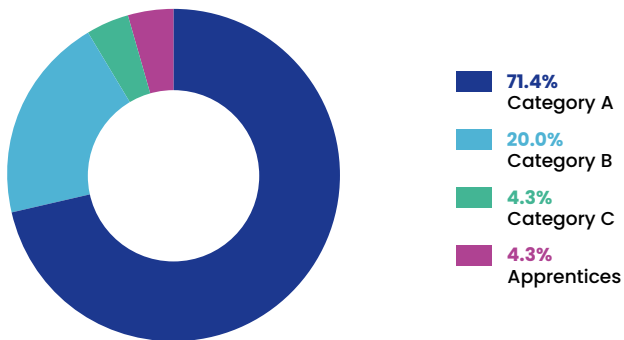
43% men

38.6

years

the **average age**
of High Authority agents
(compared to **43.6**
in the civil service)

Breakdown of High Authority agents by civil service category



Breakdown of High Authority agents by status

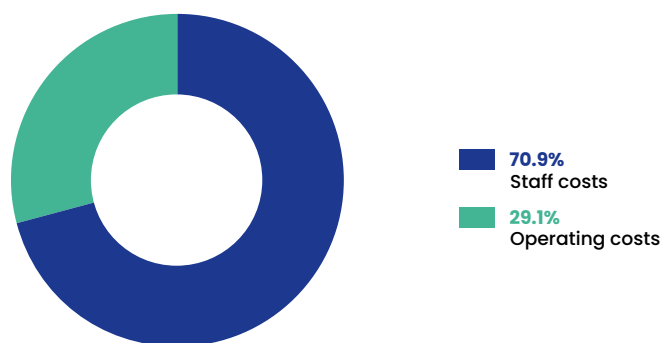


2021 budget

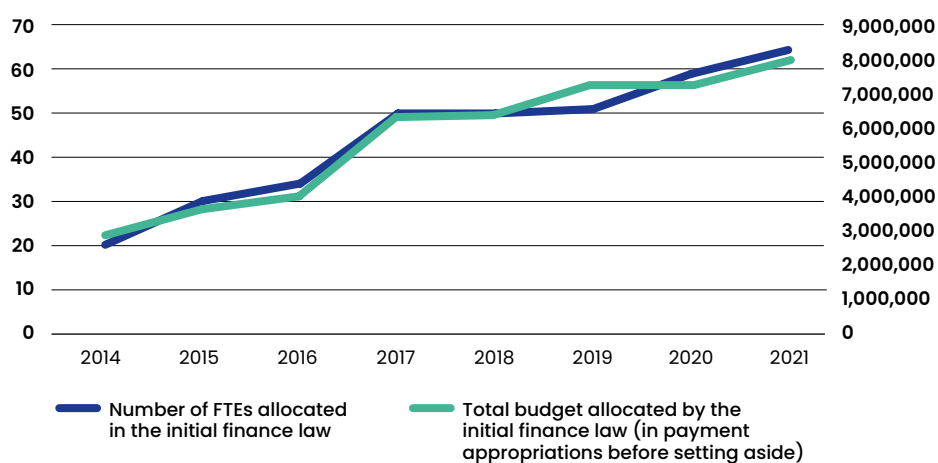
€7.9M

+10.3% compared to 2020

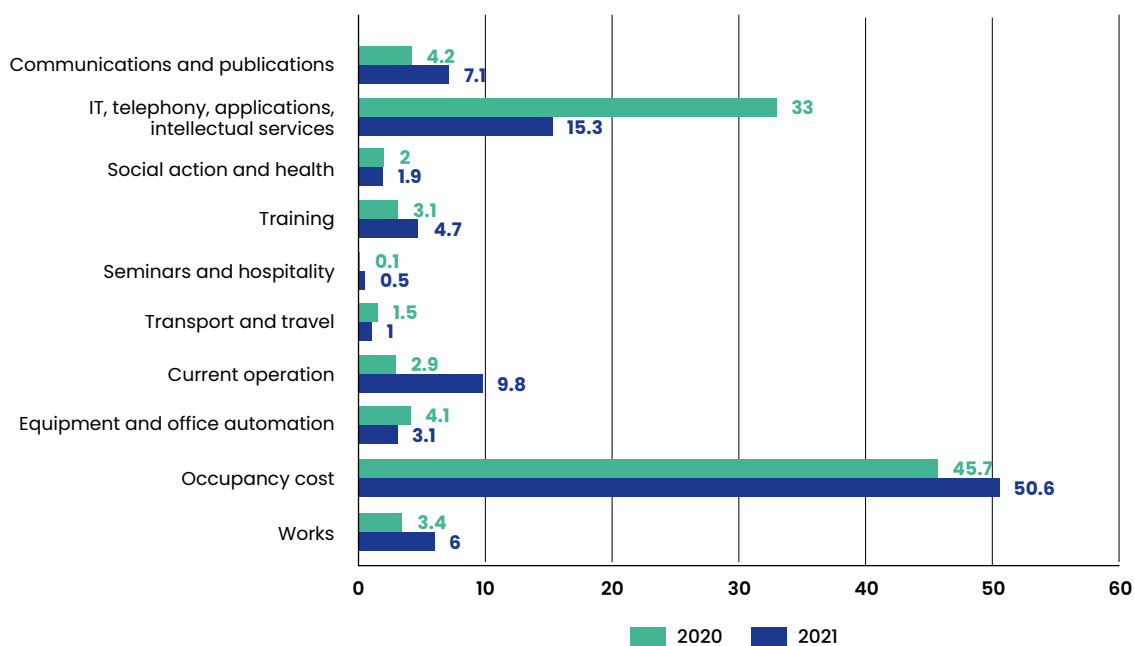
Breakdown of expenditure (in payment appropriations), 2021



Change in budget and staff, 2014-2021



Breakdown of operating expenditure (in payment appropriations), 2020-2021 (%)





1

Controlling the assets and interests of public officials

- 1 | Another busy year in terms
of declarations received
page 29
- 2 | Uneven compliance rates before
reminders depending on the declarant
page 31
- 3 | The procedure for controlling
declarations received
page 37
- 4 | Statement of controls on declarations
of interests and assets in 2021
page 40
- 5 | Control of blind management
of financial instruments
page 51
- 6 | Publication of declarations of assets
and interests
page 53



The High Authority receives, checks and, where provided for by law, publishes the declarations of assets and interests submitted by over 17,000 public officials.

The High Authority ensures that declarations are filed and issues the necessary reminders. The main focuses of the check are completeness, accuracy and sincerity. Failure to comply with any of these requirements is, in itself, a breach. The declaration can sometimes conceal a breach of probity, such as the unlawful taking of interests, corruption or bribery. When it detects acts likely to characterise such offences, the High Authority informs the public prosecutor¹. Compliance with these requirements is also an essential condition for the quality of the information made available to citizens.

In the case of declarations of assets, the High Authority also checks the variation in assets between the beginning and the end of the term of office, in order to detect unexplained variations which may be attributable to breaches of probity.

In the case of declarations of interest, their examination identifies conflict of interest situations that may arise in the exercise of duties so that measures to prevent or put an end to them can be recommended if necessary.

1 Another busy year in terms of declarations received

While 2020 was a record year in terms of the number of declarations of assets and interests received by the High Authority (17,113), 2021, a year in which a lot of elections took place, has proven to be almost as intense, with more than 15,500 declarations filed.

In particular, the High Authority has received declarations of assets and interests from departmental and regional elected representatives, with peaks in May (2,528) and August (2,102), but also, for the first time, declarations of interest from members of the Economic, Social and Environmental Council, who have been subject to these declaration obligations since the reform of the institution at the beginning of 2021².

In anticipation of the end of the term of office in 2022, MPs also filed their end-of-term declarations of assets in 2021, with the law providing for submission between the seventh and sixth months before the end of the term so

15,574
declarations
received in 2021:

6,533
declarations of interests

643
declarations of interests
and activities*

4,482
declarations
of assets

3,916
end-of-mandate
declarations
of assets

*Members of Parliament and Senators transmit a declaration "of interests and activities" that includes certain elements specific to exercise of their mandate.

1. Article 40 of the French Code of Criminal Procedure.

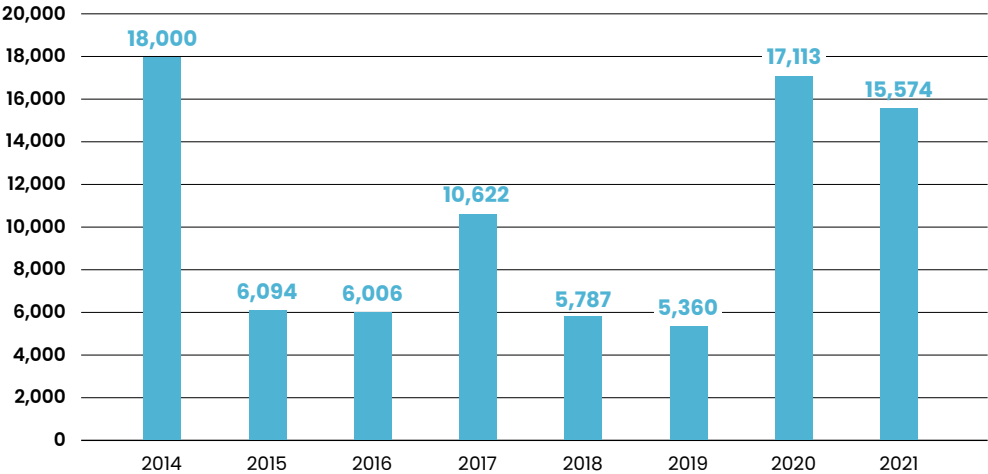
2. Article 13 of Organic Law No. 2021-27 of 15 January 2021 on the Economic, Social and Environmental Council.

that the High Authority can perform its checks before the next legislative elections.

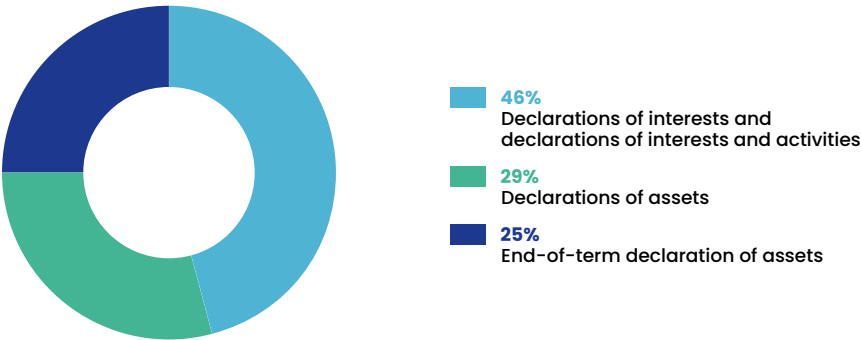
Finally, as some executives of public inter-municipal cooperative establishments (EPCIs) –

renewed in 2020 following the municipal elections – did not issue their delegation orders until 2021, the High Authority continued to receive declarations from their vice-presidents holding a delegated power of signature or office.

Number of declarations of assets and interests received each year since 2014



Distribution of declarations received in 2021



2 Uneven compliance rates before reminders depending on the declarant

Despite the many training and awareness-raising initiatives carried out by the High Authority prior to the main declaration deadlines, the rates for submission of declarations within the deadlines remain uneven depending on the declarant and, in some cases, unsatisfactory.

A lot of follow-up work is needed to ensure that all public officials fulfil their legal obligations.

Timely submission rate: disparities between declarants starting and finishing their mandate

2021 was marked by the departmental and regional elections, as well as by the submission of end-of-term declarations of assets by MPs. In addition, the final installation of the community councils was extended to the beginning of 2021, also leading to submission of declarations.

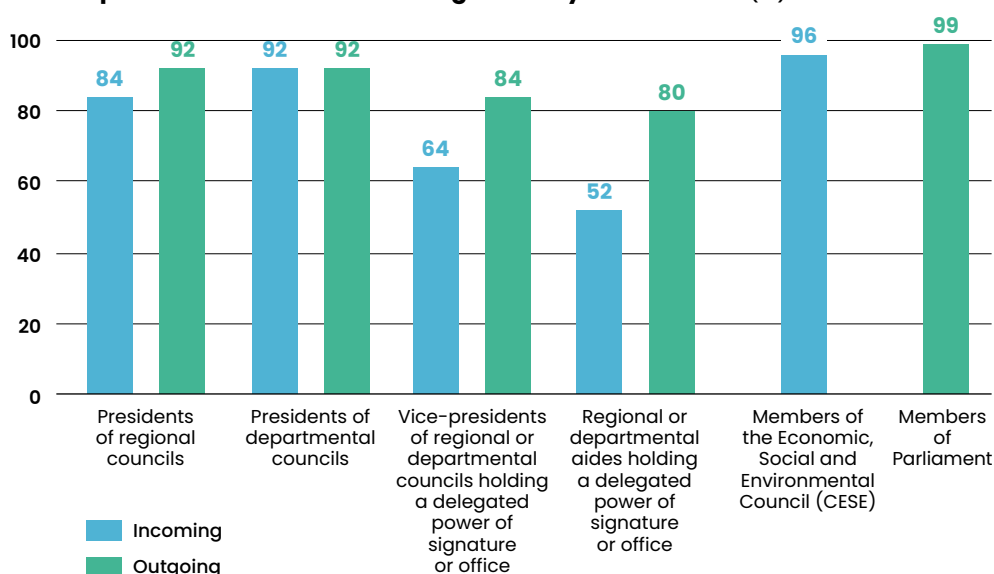
Logically more aware of their declaration obligations, elected officials who are completing their

term of office generally fulfil their obligation to file an end-of-term declaration of assets within the deadline. Eighty to ninety-nine per cent of them filed their declarations on time, which is a much higher compliance rate on average than that of elected officials just starting their mandate.

The lower rates of timely submission of declarations at the beginning of the mandate can be explained by the presence among the declarants of persons who have been elected for the first time and are less aware of their declaration obligations.

Regardless of these observations, the High Authority noted in 2020 that elected representatives tended to be better at submitting their

Rate of compliance with declaration obligations by the deadline (%)



declarations of assets than their declarations of interests, due in particular to the combined effect of several provisions³. In 2021, this trend, although less pronounced, is still observed.

3. See 2020 Activity Report, p. 67. Since the amendment of Article L52-11-1 of the French Electoral Code on 30 June 2020, the reimbursement of campaign expenses is in fact dependent on the filing, by the elected candidate, of his or her declaration of assets **within the legal deadline**. Re-elected candidates are exempt from filing a new declaration of assets if they filed one less than a year ago, at the end of their previous term of office.

The High Authority's follow-up work

For most declarants, the compliance rate improves rapidly in the weeks following the legal filing deadline. This increase can be explained by the significant follow-up work done out by the departments and the orders sent to declarants by the President of the High Authority.

In some cases, the High Authority encounters difficulties or delays in identifying the persons who need to file a declaration. Indeed, although the law provides that delegations of function or signature granted by local executives are



CONTROLS OVER THE FILING OF DECLARATIONS

In a decision of 29 December 2021⁴, the Council of State examined an appeal for abuse of power and ruled on certain aspects of the procedure for controlling the filing of declarations.

When it finds that a declaration has not been filed, the High Authority systematically sends reminders to the declarants to file the declaration. It is only if no response is received to these reminders that it uses its power of injunction against them.

The Council of State supported this choice of a graduated approach by stating that it was *"permissible to the High Authority, which is called upon to process the declarations of interests of some 16,000 people, to invite the persons concerned to regularise their situation before resorting to its power of injunction"*.

Moreover, as failure to file a declaration and failure to comply with the injunction both expose declarants to criminal sanctions, the High Authority may inform the public prosecutor of the breaches it observes. The public prosecutor will alone decide whether to prosecute.

On this point, the Council of State, applying well-established case law⁵, has ruled that the High Authority must inform the public prosecutor of acts likely to constitute a criminal offence, pursuant to Article 40 of the Code of Criminal Procedure, *"if these acts appear to it to be sufficiently well established and if it considers that they are sufficiently prejudicial to the provisions whose application it is responsible for ensuring"*⁶.

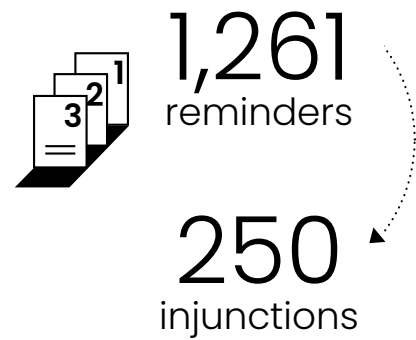
4. Council of State, 29 December 2021, No. 451015

5. Council of State, Section, 27 October 1999, No. 196306

6. Council of State, 29 December 2021, No. 451015

notified to the High Authority without delay, delays and omissions in the transmission of this information complicate and slow down the task of identifying those who are subject to declaration obligations with the High Authority and the task of issuing reminders.

In 2021, the High Authority sent 1,261 reminders and 250 orders to declarants who had not filed a declaration. These reminders are sent by email and are very often accompanied by telephone calls. During the many exchanges it has with declarants on this occasion, the High Authority endeavours, by educating, to answer their questions and to assist them in submitting their declaration.



THE MANAGERS OF PUBLIC UNDERTAKINGS COVERED BY ARTICLE 11(III) OF THE ACT OF 11 OCTOBER 2013

The Act of 11 October 2013 on transparency in public life provides that the obligation to file declarations of assets and interests applies to the “*chairpersons and chief executive officers*” of certain organisations – industrial and commercial public establishments (EPICs), companies and other legal entities in which more than half of the share capital is held directly or indirectly by public persons.

In the case of public limited companies with a board of directors or a management and supervisory board, the interpretation of this provision regularly raises questions about the persons concerned.

In the absence of a decree laying down these provisions, the High Authority considers that the following are subject to the declaration obligation:

- for a public limited company with a board of directors: as appropriate, the chairman of the board of directors and the managing director or the chief executive officer of the company;
- for a public limited company with a management board and a supervisory board: the chairman of the management board, the chairman of the supervisory board and, as appropriate, the members of the management board with the title of managing director or the sole managing director of the company.

The submission rate after reminders and possible orders from the High Authority

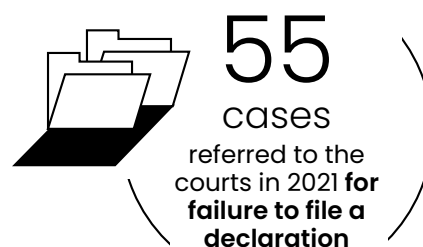
The submission rate after reminders and possible injunctions must be further improved for certain populations, in particular for elected officials starting their mandate.

In the case of elected officials completing their term of office, the compliance rate, after reminders and possible orders from the High Authority, reaches very satisfactory levels, ranging from 96% to 100%.

Some declaration failures persist despite reminders and orders being sent to the individuals concerned. The High Authority informed the public prosecutor of the failings of 55 declarants in 2021.

The number of cases referred to the public prosecutor's office, which is higher than in previous years, can be explained in part by the new populations subject to declaration obligations in 2020 and 2021, and by an improvement in the identification and reminder mechanisms implemented by the High Authority.

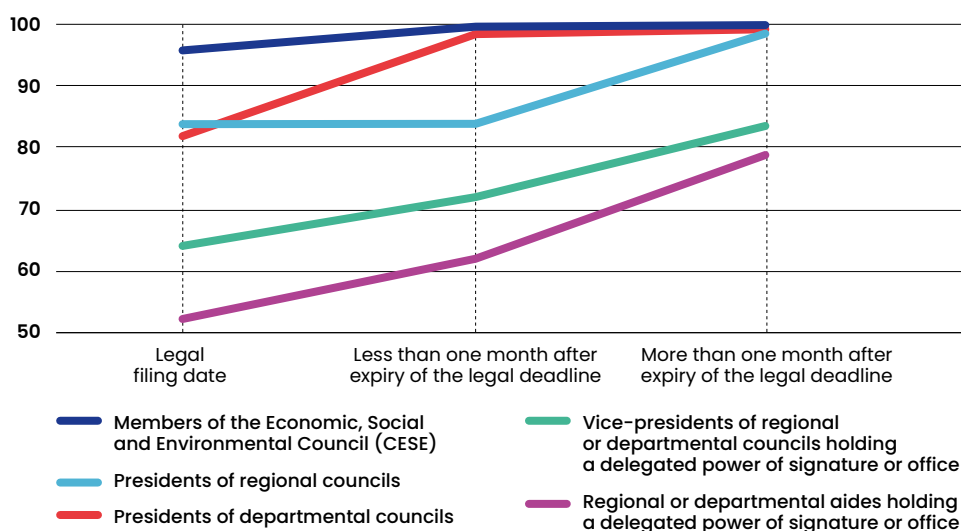
This observation illustrates the usefulness of the High Authority's own power to impose



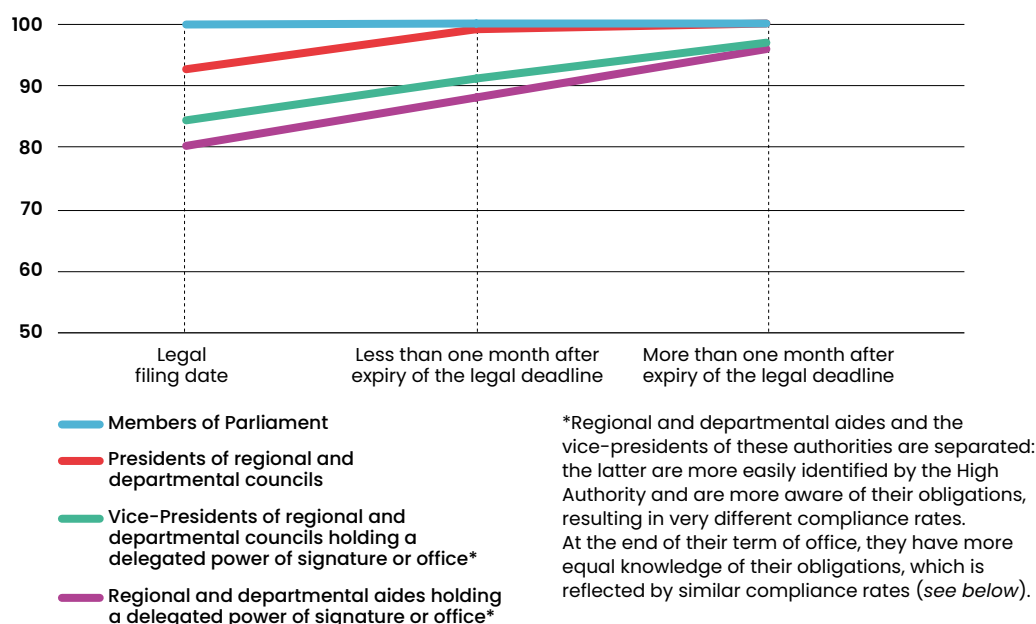
administrative sanctions in the event of non-submission. Applied more quickly, an administrative sanction would provide a more appropriate initial response to the serial and objective nature of the breaches observed, as well as to their degree of seriousness. The very existence of a sanction that can be imposed in the short term would also give the declaration obligation additional weight that would encourage higher compliance rates.

From this point of view, it should be remembered that submission of the declaration is a prerequisite for its control and that non-submission thus allows certain declarants to escape any control. For example, the nine cases referred to the courts by the High Authority in 2019 for failure to submit a declaration are still under investigation.

Compliance rate of incoming elected representatives with their obligation to file declarations of assets and interests (%)



Compliance rate of outgoing elected representatives with their obligation to file a declaration of assets at the end of their term of office (%)



Improvements to be made to the submission of declarations to the High Authority

In its previous Activity Report, the High Authority highlighted the practical difficulties that persist in the filing of declarations, particularly with regard to declarations that are wholly or partly redundant.

The law on differentiation, decentralisation, deconcentration and various measures to simplify local public action, known as the “3DS” Act⁷, took into account several recommendations made by the High Authority (see Proposal No. 4 of its previous Activity Report⁸).

By eliminating unnecessary redundancies, these legislative changes simplify and improve the readability of the declaration obligations, without changing the substance of what is declared or altering the control capabilities of the High Authority.

Now, in particular:

- no declaration of assets or interests is required for persons who have been in office for less than two months;
- where a declaration of interests was filed with the High Authority less than six months ago, the election to a new mandate or the assumption of new functions no longer leads to the filing of a new separate declaration of interests but to the updating of the first declaration, since the new interests resulting from new mandates or functions may change the perception of the conflict of interest situations in which the declarant finds himself. Declarants must, of course, ask themselves about any ethical issues that their private interests may present in relation to the new mandate;
- the scope of the exemption from filing a new declaration of assets with the High Authority when a declaration has already been filed less

7. Act No. 2022-217 of 21 February 2022 on differentiation, decentralisation, deconcentration and various measures to simplify local public action.

8. See 2020 Activity Report, p. 68.

than a year ago has been extended. Depending on the category of public officials and civil servants, it only concerned those filed in respect of certain mandates or functions; the scope of the exemption is generalised. All declarations already submitted to the High Authority are now concerned, it being specified that an amending declaration must always be filed in the event of a substantial change in assets, even within this one-year period;

— the deadline for filing the end-of-term declaration of assets of local elected representatives and French representatives in the European Parliament is now the same as that for other persons filing declarations under the Act of 11 October 2013, namely two months after the end of the term of office.



ENHANCED COOPERATION BETWEEN THE HIGH AUTHORITY, THE NATIONAL ASSEMBLY AND THE SENATE

MPs and senators are subject to more extensive declaration obligations than other public officials: in addition to sending their declarations to the High Authority, it is their responsibility to transmit them to the office of their assembly and to justify the expenses incurred in respect of the advance of mandate expenses available to them each month. Their declarations, as well as the expenses and supporting documents produced, are subject to control by the office of the assembly and by the body responsible for ethics within each assembly.

In many cases, parliamentarians who file their declarations with the High Authority do not send a copy to the office of their assembly and to the ethics body, which therefore have to chase up the parliamentarians to obtain them.

In order to facilitate the work of the Assemblies, two bilateral agreements were concluded by the High Authority with the National Assembly and the Senate. These determine the terms for the automated transmission of the declarations of interests and activities of MPs and senators, by the High Authority, to the office of their assembly, subject to the prior consent of the MPs concerned.



3 | The procedure for controlling declarations received

The control plan

The High Authority's College adopts a control plan aimed at providing citizens with reasonable assurance of the quality of the public declarations of their public officials, in view of the risks attached to certain mandates and functions. The plan sets out strategic orientations that guide the services' control activity.

In particular, it provides for a formal first-level check of the declarations to ensure that the information provided is consistent and that the main sections are complete.

In line with the two-year plan adopted in 2020, declarations of interest received increased attention due to the municipal, departmental and regional elections, so that declarants are



THE INVESTIGATION PROCEDURE BEFORE EXAMINATION BY THE COLLEGE

The control of declarations is carried out by the services of the High Authority. The President of the High Authority may, when the investigation of a declaration presents a serious difficulty, raise a new legal question or reveal the existence of breaches likely to constitute a criminal offence, or in view of the declarant's exposure, entrust it to an external rapporteur from the administrative, judicial or financial courts.

In the course of the investigation, the services and external rapporteurs use several databases maintained by the tax authorities⁹ to verify information on bank accounts and the assets declared. They may also request from the declarant any information or document relevant to their task. If the declarant refuses, the High Authority may issue an injunction. This situation occurred 7 times in 2021. In one case, the failure to respond to the injunction led the High Authority to refer the matter to the public prosecutor, as failure to comply with an injunction is a criminal offence. The rapporteur may also, if he or she considers it useful, hear the declarant.

⁹. Decree No. 2017-19 of 9 January 2017 on the procedures for appointing and authorising agents of the High Authority for Transparency in Public Life authorised to consult the automated processing called "*Estimer un bien*" (Patrim), the national bank account file (FICOBA), the capitalisation and life insurance contracts file (FICOVIE) and the automated processing of nominative information called the "*Base nationale des données patrimoniales*" (BNDP – national asset database).

able to take appropriate measures to prevent conflicts of interest from the outset of their mandate or duties.

The categories of declarants prioritised for control were senators elected in the context of the series 1 renewal, MPs who had submitted their end-of-term declaration of assets and local executives.

Valuing exchanges and adversarial appraisal with declarants

One of the strategic orientations of the 2021 control plan was to increase exchanges with declarants.

These exchanges, which can take place as early as the preliminary investigation stage, have regularly been favoured over other sources of information. While they have lengthened investigation times, they have allowed for a better understanding of the individual situations reflected in the declarations and the establishment of a pedagogical dialogue, particularly with regard to the assessment of conflict of interest situations.

The investigation is marked by a particular attachment to the principle of adversarial appraisal: at each stage of the control or on their own initiative, declarants may transmit any element or supporting document to corroborate the assessment of their declarations. The High Authority also seeks the declarant's views when it considers whether to make an assessment of the completeness, accuracy or sincerity of the declaration in connection with its publication.

Diversification of information sources

A great deal of information is required to process the declarations.

The control activity is increasingly informed by data collected on the basis of open sources. From this point of view, the gradual opening up of public data, relating for example to the

deliberations of local authorities, facilitates the search for information and ultimately the investigation of controls.

The High Authority may also contact the Directorate General of Public Finances (DGFIP) to obtain the information it holds, or to exercise its right of communication (see box).

In 2021, the number of such applications decreased. In addition to the preference given to direct exchanges with declarants, this can be explained by a lower number of controls of the declarations of members of the Government, for which the DGFIP is consulted as a matter of course, but also by the priority given that year to the control of declarations of interest, for which consultation of the DGFIP is less often relevant.

In addition, the High Authority receives reports or questions from journalists, citizens or associations approved by it, which may relate to the failure to file a declaration or to an omission.

These reports, which are systematically checked, may supplement the information available for an ongoing control or lead to a declaration investigation being opened or reopened.

945 (+21%)

requests for additional information
from declarants

291 (-34.5%)

requests for information
from the DGFIP

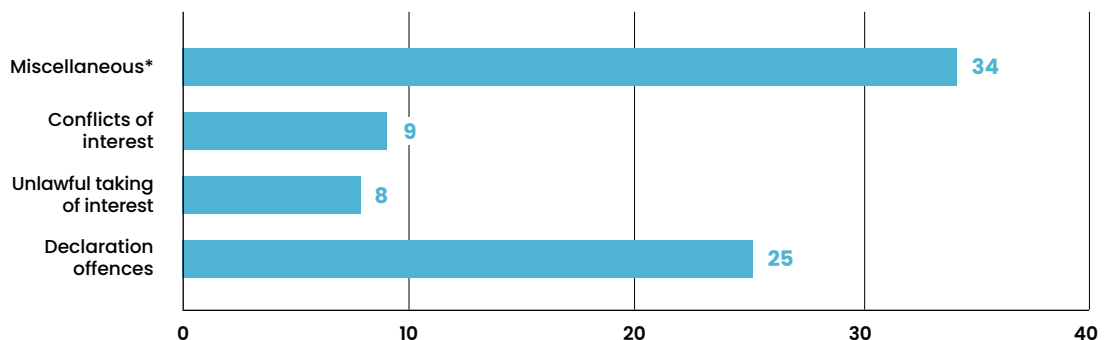


A NEW COOPERATION PROTOCOL BETWEEN THE HIGH AUTHORITY AND THE TAX ADMINISTRATION

In 2021, the High Authority and the DGFIP revised the protocol governing their relationship. Signed at the very beginning of 2022, this new protocol was an opportunity to develop relations between the two administrations: it makes exchanges more fluid for the procedure for verifying the tax situation of members of the Government¹⁰ and reorganises the communication of elements available to the DGFIP in the context of the control of declarations of interests.

¹⁰. This procedure was the subject of a specific development in the High Authority's previous Activity Report. For more information, see 2020 Activity Report, p. 35-36.

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.



Although the number of reports received in 2021 increased (+45.3%), they were on average less substantiated than in the previous year and related more to acts that did not fall within the remit of the High Authority.

Finally, the High Authority receives reports from the TRACFIN intelligence service, but also from local or national prosecutors' offices, who increasingly use data from declarations in their investigations.

4 Statement of controls on declarations of interests and assets in 2021

The High Authority's control activity increased significantly in 2021, after a 2020 that was particularly affected by the health context, as the phase for exchanges with declarants was delayed and response times were longer to take account of the situation of public officials.

Overall assessment of the control of declarations

The two-year monitoring plan adopted by the college in 2020 had focused on the control of declarations of interests. Of the 3,150 declarations checked in depth in 2021, there were 2,486 declarations of interests and 664 declarations of assets.

Of all the declarations for which the in-depth control was completed in 2021, the proportion of declarations that complied in substance with the requirements of completeness, accuracy and sincerity decreased significantly. The majority

of the declarations of assets and interests checked (67.3%) contained deficiencies. These gaps led the High Authority's College to send the declarant a request for a corrective declaration or a reminder of his or her declaration obligations, depending on whether or not his or her declaration was made public.

Seeking to anticipate similar difficulties, in 2021 the President of the High Authority sent more than 2,000 letters to public officials subject to declaration obligations with the High Authority, in order to raise their awareness of compliance with these obligations, ethics and the prevention of conflict of interest situations.

This drop in compliance with the requirements can be explained in particular by the presence, within the wider population of local elected representatives audited, of new elected

Controls completed

3,150
controls completed

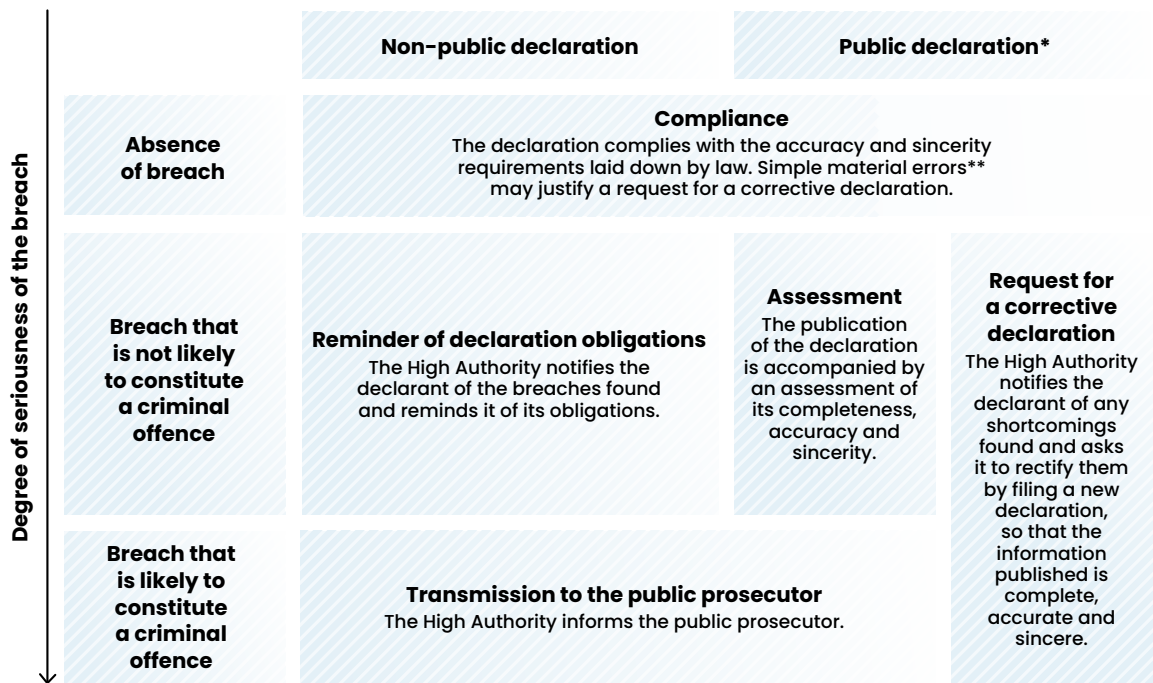
of which:
2,486
declarations of interests

664
declarations of assets



Participation in the governing bodies of a public or private organisation or company must be entered in section 4 of the declaration of interests, including, for local elected representatives, when these functions are exercised as a representative of the community.

Action taken following the controls

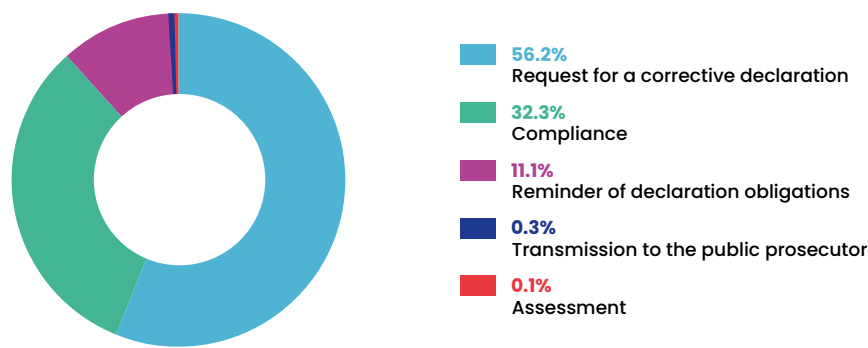


*Public declarations are those published on the High Authority's website and those made available in the prefecture.
**These are inconsequential errors, such as a reversal of sections or an extra zero in an amount.

representatives unfamiliar with these declaration obligations, and by the fact that requirements in 2021 were stricter than in 2014 and 2015. More specifically, a very large number of declarations contained omissions relating to the participation of these elected representatives in the governing bodies of local authority satellite bodies, in which they sit as representatives of their local authority.

Furthermore, requests for corrective declarations, to which the college had frequent recourse in 2021, were in many cases aimed at correcting simple material errors, as the High Authority is committed to ensuring that public declarations are as accurate and exhaustive as possible, in order to better inform citizens. With regard to declarations that are not public, the High Authority may not make a public

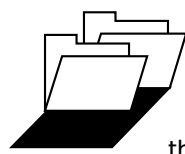
Action taken following the control of declarations



assessment when it finds that a declaration does not meet the requirements of completeness, accuracy and sincerity. Consequently, in the event of a breach that is not serious enough to warrant referral to the public prosecutor, the High Authority, which in this case has no power to impose sanctions, can only send the declarant a reminder of his or her declaration obligations.

The publication of three declarations was also accompanied by an assessment for failure to comply with the obligations of completeness, accuracy and sincerity, while 11 cases were referred to the public prosecutor's office by the High Authority, i.e. 0.3% of the total number of declarations checked in 2021.

The increase in the number of declarations of interest checked went hand in hand with the detection of a greater number of acts that could be qualified as unlawful taking of interests.



11
cases
referred to
the courts in 2021
**within the context
of the substantive
control of
declarations**

In total, if we take into account the reports referred to the public prosecutor's office in the context of controls on the content of declarations and those for failure to file a declaration, the number of cases referred to the courts by the High Authority since 2014 is 178. To the best of the High Authority's knowledge, 127 cases are still under investigation and 28 have led to convictions or alternative measures. 16 cases were closed without further action and 7 of them resulted in a reminder of the law.

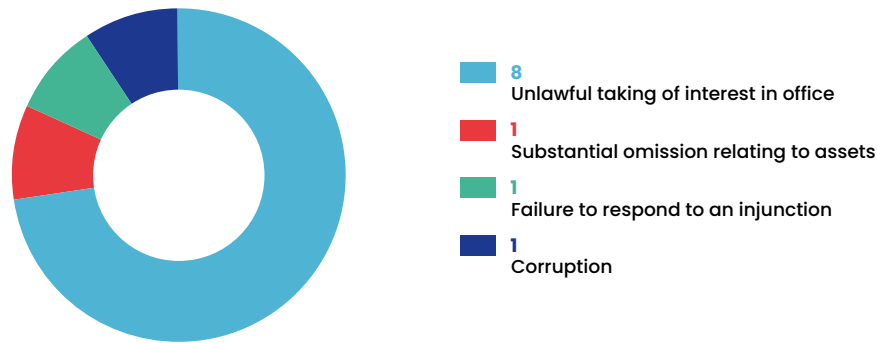


THE IMPACT OF THE PRESIDENTIAL AND LEGISLATIVE ELECTIONS ON THE ACTIVITY OF THE HIGH AUTHORITY

The presidential elections on Sunday 10 and 24 April 2022 and the legislative elections scheduled for Sunday 12 and 19 June 2022 will involve significant activity in terms of declarations for the High Authority. It will receive and check the end-of-term declarations of assets and interests of the members of the outgoing Government, as well as the declarations of assets and interests of the new members of the Government and the members of their cabinets, and those of the newly elected MPs.



Reasons for transmission to the public prosecutor’s office in the context of substantive controls of declarations



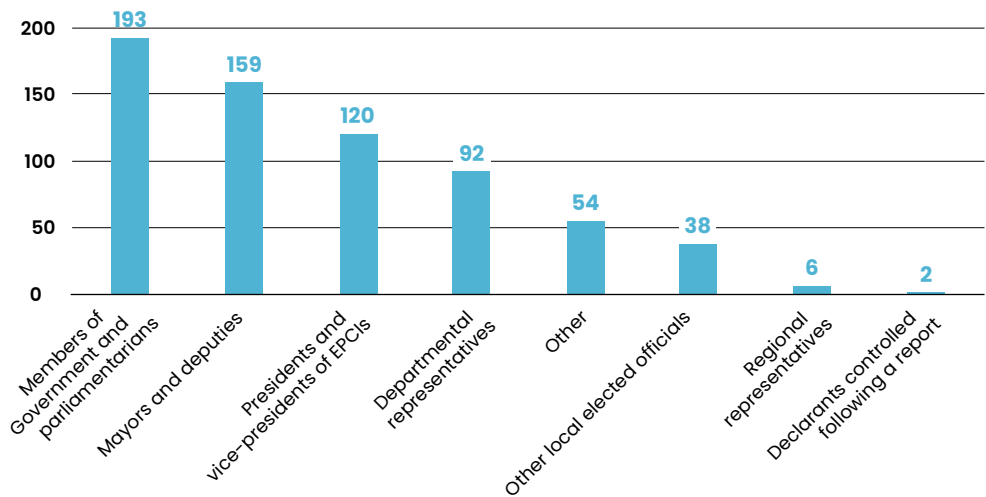
Control of asset declarations: detecting illicit enrichment during office

The historical core mission of the High Authority and, before it, the Commission for Financial Transparency in Political Life, the control of the declarations of assets of public officials aims to detect various forms of illicit enrichment during office.

Controls completed

In accordance with the strategic guidelines defined by the college on the basis of the results of previous checks, the High Authority’s control activity focused more on declarations of interests, leading to a drop in the number of declarations of assets checked. A total of 664 initial or end-of-term declarations of assets were checked in 2021.

Public officials whose initial or end-of-term declaration of assets was checked in 2021



The distribution of the controls between the different categories of public officials reflects recent electoral events: municipal, community and departmental elected representatives account for almost half of the public officials whose declarations were checked.

The declarations of assets of the senators elected at the end of 2020 also resulted in significant control activity.

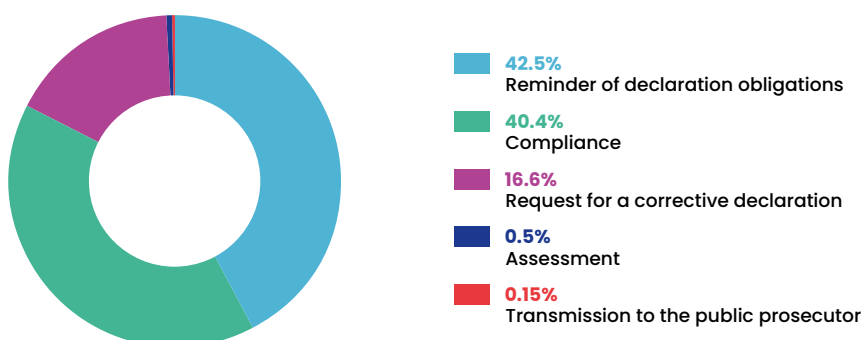
When examining end-of-term declarations of assets, the High Authority also looks at, in addition to the completeness, accuracy and sincerity of the declaration, the variation in assets over

the term of office, with a view to detecting any form of illicit personal enrichment. In 2021, 366 of these controls were completed. None of these controls revealed any breaches of probity.

Action taken following the controls

The analysis of the action taken following the controls shows that the quality of declarations of assets filed is better than that of declarations of interests: 40.4% of the declarations of assets were considered compliant by the college, compared to 30.1% of the declarations of interest checked.

Action taken following the controls of declarations of assets



THE ISSUE OF CAPPING INCOME RECEIVED

The total amount of remuneration and allowances that an elected representative can receive when holding several elective offices or when representing his or her community in external bodies is limited¹¹ by the texts. Since the adoption of the so-called "3DS" Act, remuneration and allowances received for management functions exercised in companies are also taken into account¹².

¹¹. Equivalent to one and a half times the amount of the basic parliamentary allowance.

¹². Article 219 of Act No. 2022-217 of 21 February 2022 on differentiation, decentralisation, deconcentration and various measures to simplify local public action.

Beyond the ceiling, the sums received are subject to capping: as they cannot be received by the elected representative, they are returned to the budget of the public body within which the elected representative exercised his last mandate or his last duties.

The fact that an elected representative receives a total amount of remuneration and allowances in excess of this ceiling, in disregard of the capping obligation, is likely to characterise the offence of corruption provided for in Article 432-10 of the French Criminal Code.

When checking declarations, the High Authority may detect the accumulation of remuneration and allowances exceeding the ceiling. Where appropriate, discussions may be held with the declarant to ensure that capping has taken place.

In 2021, the public prosecutor was informed of one declaration for acts that could be qualified as corruption due to the disregard of the capping rule.

The control of the declarations of assets and tax situation of the members of the Government

The declarations of members of the Government are given extra attention because of the level of responsibility they hold.

In the context of the change of Government in July 2020, 13 declarations of assets of ministers were checked in 2021. Of these, 9 were declared compliant, while 4 declarations were subject to a correction request. No declarations were assessed or resulted in referral to the public prosecutor.

With regard to this Government, in 2020 the High Authority had formulated an assessment of the declarations made by the Minister Delegate to the Minister for the Economy, Finance and Recovery, responsible for small and medium-sized enterprises. It had also forwarded

this file to the public prosecutor pursuant to the provisions of Article 26 of the Act of 11 October 2013, insofar as the shortcomings identified undermined the completeness, accuracy and sincerity of the declarations.

Controlling declarations of interests: preventing conflicts of interest

The obligation to file a declaration of interests when taking up office or at the beginning of a mandate concerns an increasing number of public officials¹³.

It establishes and formalises a period of ethical reflection allowing the person completing the declaration to consider the high-risk situations that could arise in the exercise of his or her future duties and the preventive measures to be adopted.

¹³. For example, the members of the Economic, Social and Environmental Council are now subject to this obligation by virtue of Organic Law No. 2021-27 of 15 January 2021 on the Economic, Social and Environmental Council.

During the course of their duties, all public officials and civil servants must update their declarations in the event of a substantial change in their interests. This may, where appropriate, lead to the adoption of new measures to prevent conflicts of interest.

Controls completed

The priority given by the High Authority to declarations of interests and the prevention of conflicts of interest has led to a significant increase in the number of declarations checked, from 1,178 in 2020 to 2,486 in 2021.

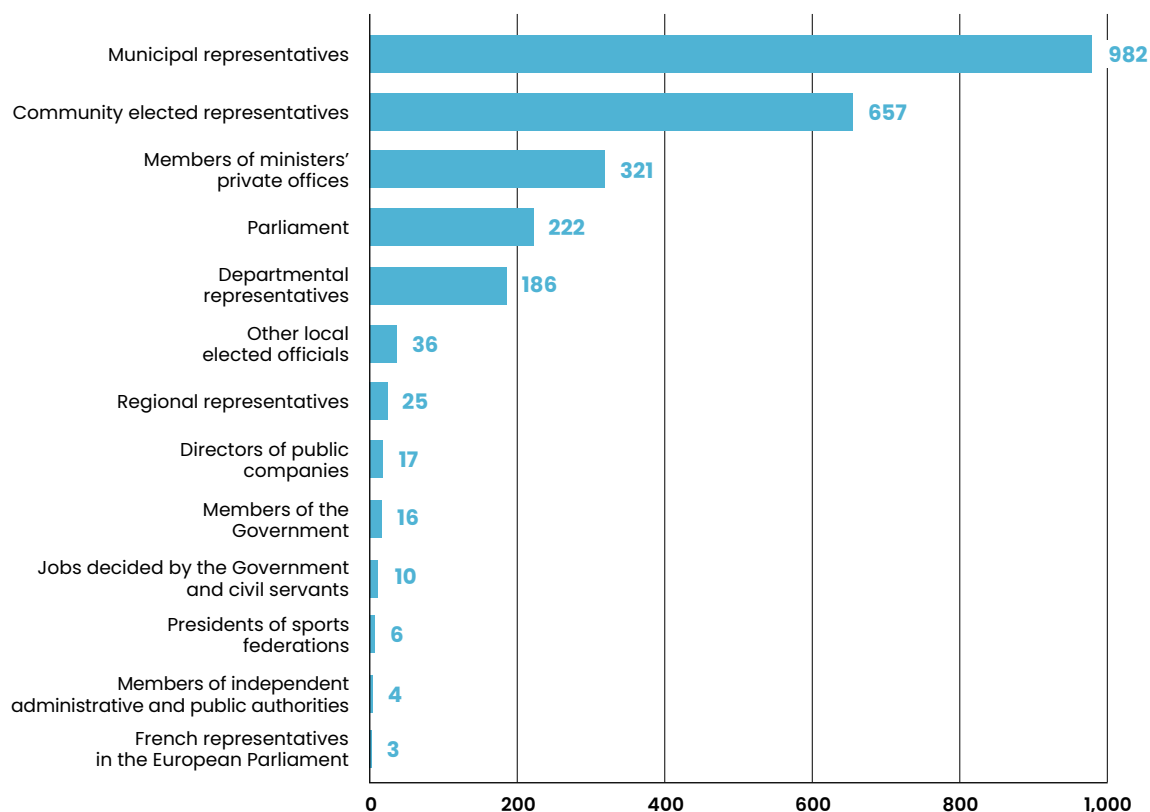
The intensification of this control activity for declarations of interests mainly focused on local elected representatives, because of the difficulties associated, at local level, with the implementation of measures to prevent conflicts of interest and with the application of criminal and administrative jurisprudence in this area.

Indeed, on the one hand, local elected representatives are likely to have various personal interests that may conflict with the public interests they defend in the context of their mandate, particularly in view of their professional or associative activities or those of their spouse. On the other hand, they often sit, because of their mandate or alongside it, on the bodies of various local public or semi-public structures, which is likely to give rise to a conflict between several public interests.

Action taken following the controls

The majority of the controls of declarations of interests closed in 2021 were concluded by the finding of minor shortcomings: 30% of all the declarations checked were considered compliant by the High Authority without any correction required by the public official.

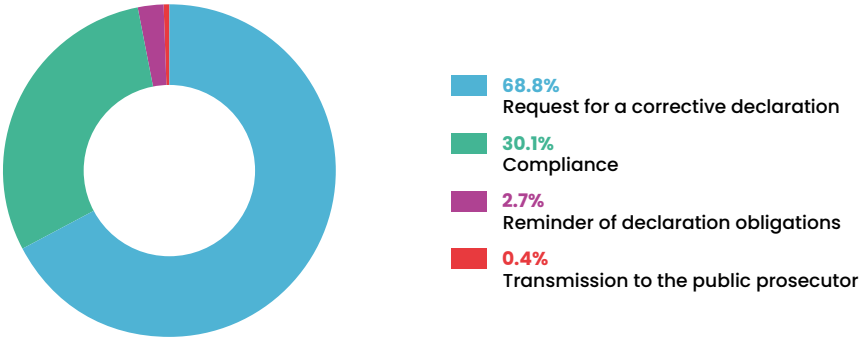
Public officials whose declaration of interests was checked in 2021



The increase in the number of declarations of interest checked, mainly concerning local elected representatives who began their term of office in 2020 and 2021, and the low rate of compliance with the requirements of completeness, accuracy and sincerity testify to the difficulties these elected representatives have in grasping their declaration obligations.

Furthermore, the fact that, for the majority of the population checked, their declarations of interests have to be published explains the predominance of requests for corrective declarations among the measures recommended in the event of a minor breach – the control of a declaration that has not been made public gives rise, for the same breach, to a reminder of the declaration obligations.

Action taken following the 2,486 declarations of interests checked



Detection and prevention of conflicts of interest

In addition to verifying the completeness, accuracy and sincerity of declarations of interests, the High Authority identifies the risks of conflicts of interest and, if necessary, recommends precautionary measures appropriate to the declarant’s situation and the nature of the interference between the interests involved¹⁴. Where discussions with the declarant are unsuccessful, the High Authority may order the declarant to cease the conflict of interest in question. As proof of the interest and effectiveness of the dialogue established by the High Authority with declarants, no injunctions were issued in 2021 on these grounds.

This control, which is done in the first few months of holding office, makes it possible in many cases to identify and prevent risks of conflict of interest, in order to increase the confidence of citizens in

public life and to protect public officials against any risk of being called to account later.

On eight occasions, the finding of situations in which the elements constituting the offence of unlawful taking of interest appeared to be sufficiently established led the High Authority to inform the public prosecutor.

In the case of municipal, community and departmental elected representatives, the control of declarations of interests concluded in about 80% of cases by identifying situations justifying the recommendation of preventive measures, thus enabling the elected representatives concerned to exercise their mandate in safer, calmer conditions.

These controls and the exchanges to which they gave rise demonstrated the difficulties of appropriating the notion of conflict between public interests, which is more specifically

¹⁴. Volume II of the Ethics Guide published in 2021 sets out the High Authority’s doctrine on conflicts of interest and the preventive measures to be implemented.

present at local level because of the many interests of elected representatives participating, by virtue of their mandate, in the governing bodies of 'satellite' organisations of local authorities. In many cases, and although these situations are part of the classic functioning of local authorities, preventive measures were necessary to enable elected representatives to protect themselves from any high-risk situation, in particular from being implicated for the illegal taking of interest.

Since the entry into force of the so-called "3DS" Act¹⁵, declarations of interest must now include a list of all functions and mandates exercised during the previous five years, and not only those exercised at the time of appointment. This additional information will shed light on the review of the entire declaration and enable the risks of interference between public interests to be better assessed.

1,550

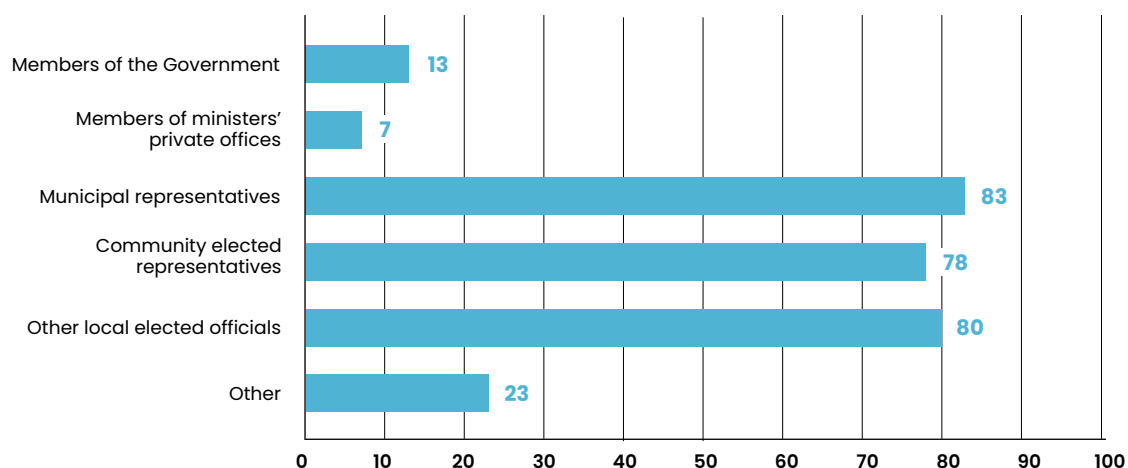
declarations

for which the control was concluded by a measure to prevent a risk of conflict of interest, or:

62%

of declarations checked

Percentage of controls of declarations of interests concluded by the recommendation of a measure to prevent a risk of conflict of interest, by category of public official (%)



¹⁵. Act No. 2022-217 of 21 February 2022 on differentiation, decentralisation, deconcentration and various measures to simplify local public action.



DEFINITION OF CONFLICT OF INTEREST IN THE EU INSTITUTIONS

For the debates on the possible creation of a European ethics body, the High Authority published, in 2021, a comparative table of the definitions of conflict of interest in force within the European institutions and certain countries neighbouring France¹⁶.

Conflict of interest is in most cases a matter for the code of conduct of an institution or body and its definition has only a “soft law” value. Two definitions of conflict of interest, in the Regulation laying down the Staff Regulations of Officials of the European Union and the Regulation on the financial rules applicable to the general budget of the EU respectively, are nevertheless binding.

While the consideration of situations of conflict between public interests generally appears to be specific to France, the definition of conflict of interest provided by the Regulation on the financial rules includes a similar dimension. The Regulation considers the national affinity of a European public official as an interest which may call into question the impartial and objective exercise of his duties.

16. Comparative table of conflict of interest definitions: <https://bit.ly/33mV576>

In addition, the declaration of voluntary functions “*likely to give rise to a conflict of interest*” exercised by public officials continues to present difficulties. Public officials are not always in a position to assess the interference between their mandate or duties and a voluntary activity that they carry out at the same time, which may lead to over- or under-declaration, thus limiting the identification by the High Authority of conflict of interest situations.

Withdrawal measures to be adopted in the event of a conflict between public interests

The specific nature of local public action, which leads local elected representatives to represent their community in numerous external bodies, poses significant difficulties in terms of assessing

conflicts of interest, in particular between two public interests, and the risk of illegal taking of interest within the meaning of Article 432-12 of the French Criminal Code.

In light of this observation, the High Authority, anxious to prevent breaches of probity while avoiding the creation of obstacles that could penalise the proper functioning of the institutions, had formulated several proposals in its 2020 activity report, which the legislator took into account.

The Act of 22 December 2021 on confidence in the judiciary thus amended Article 432-12 of the French Criminal Code to replace the notion of interest “*that is threatening to the impartiality, independence or objectivity*” with one of interest “*of whatsoever kind*”.

In the same vein, the Act of 21 February 2022, known as the “3DS” Act, which will be debated throughout 2021, has amended the French General Local Authorities Code to secure the situation of local elected representatives.

The new Article L.1111-6 of the French General Local Authorities Code states that *“the representatives of a regional authority or a group of regional authorities appointed to participate in the decision-making bodies of another legal entity governed by public law or a legal entity governed by private law pursuant to the law shall not be considered, by the mere fact of this appointment, as having an interest, within the meaning of Article L.2131-11 of this Code, Article 432-12 of the French Criminal Code or Article 2(1) of Act No. 2013-907 of 11 October 2013 on transparency in public life, when the authority or group of authorities deliberates on a matter of interest to the legal entity concerned or when the decision-making body of the legal entity concerned decides on a matter of interest to the local authority or group represented”*.

However, this Article states that the elected representatives in question must not participate

in decisions concerning a public procurement contract, a loan guarantee or financial aid, nor in deliberations concerning their appointment or remuneration within the legal entity concerned.

It also specifies that these withdrawal obligations do not apply to elected representatives of local authorities or their groupings when they are deliberating on another group of authorities on which they sit, thus eliminating any possibility of risk with regard to inter-municipalities.

Specific provisions, with similar rules, are provided for in Article L.1524-5 of the same code with regard to the specific case of semi-public companies and local public companies.

These new provisions are likely to secure the situation of local elected representatives within the context of inter-municipal cooperation. They also clearly identify areas of risk (public procurement, subsidies, remuneration) relating to other public or private bodies, justifying the implementation of withdrawals. However, consideration could be given to the need to withdraw for deliberations on appointments to satellite bodies where they do not set remuneration.

5 Control of blind management of financial instruments

Members of the Government, members of independent administrative and public authorities operating in the economic and financial field and certain public and military officials are subject to an obligation to manage the financial instruments they hold “under conditions that exclude any right of inspection on their part during their term of office”.

The main objective of this provision is to prevent the risk of “insider trading” or, more broadly, the risk that the person concerned, who holds important public functions in the economic

and financial fields, might benefit from privileged information which he or she could use for personal gain.



The High Authority shall provide those concerned by the obligation of blind management of their financial instruments with a **questionnaire** recommending, for each type of instrument held, **the measures to be taken and the relevant supporting documentation** to be provided to the High Authority.

The holding, acquisition and management of financial instruments can also lead to a conflict of interest insofar as the securities held reveal a particular interest, distinct from the general interest that the public official is supposed to defend.

The High Authority once again points out certain shortcomings of the financial instruments framework, which imposes measures that do not take into account the reality of business life, and reiterates the recommendations made in 2020, in particular the extension of the possibility of leaving financial instruments unaffected¹⁷.

17. 2020 Activity Report, p. 105.





EXAMPLES OF OPINIONS ISSUED BY THE COLLEGE

The High Authority's college also responded to questions from members of the colleges or sanction commissions of independent administrative authorities working in the economic sphere about the blind management of their financial instruments.

The two formal opinions issued in this context were an opportunity for the High Authority to point out that the obligations regarding the management of financial instruments must be reconciled with certain principles of constitutional value. In particular, these obligations cannot justify an excessive and manifestly disproportionate infringement of the property rights of taxpayers, which the Constitution guarantees.

On the other hand, the High Authority has no basis for authorising, as it is sometimes asked to do by taxpayers, sales or acquisitions of securities, since these are individually held financial instruments that must be kept as is or managed without any right of inspection.

6 | Publication of declarations of assets and interests

An increase in the number of declarations published as a result of the increase in the number of local elected representatives controlled

Once controlled by the High Authority, certain declarations of assets and interests are published, in a form determined by the legislator that takes into account the level of responsibility of the functions exercised by the declarant in question and the necessary protection of privacy.

5,337 declarations were made public in 2021 on the High Authority's website. These are mainly declarations of interests.

Specifically, this substantial increase in the volume of declarations made public (836 in 2020) is explained by the publication of declarations for which control was completed in 2020 and by the large backlog of controlled declarations of interests of persons holding local executive functions.

Public official	Declaration of assets	Declaration of interests
Members of the Government	On the High Authority's website	
Members of Parliament and Senators	At the prefecture	On the High Authority's website
French representatives in the European Parliament		
Local executives	Not public	On the High Authority's website
Members of the High Authority's College	On the High Authority's website	
Other declarants	Not public	



DIFFERENT PUBLICATION REGIMES FOR DIFFERENT DECLARANTS

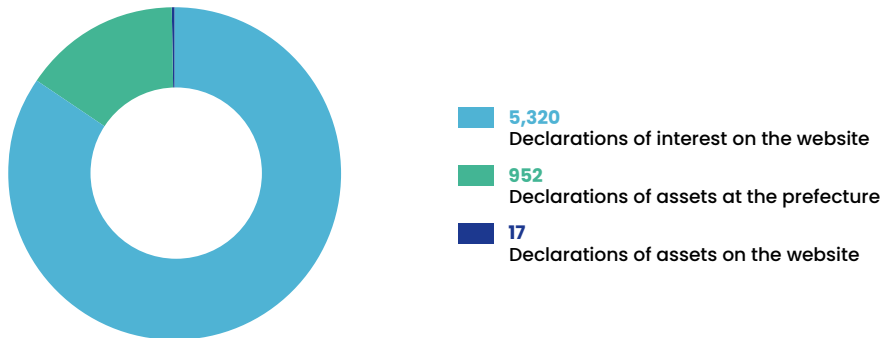
The publication of declarations of assets, which contain personal information, concerns only a few public officials: only the declarations of assets of members of the Government and the High Authority's College are posted on the High Authority's website, while those of MPs and senators and French representatives in the European Parliament are made available for consultation at the prefecture.

With regard to declarations of interest, the Constitutional Council considered in 2013 that the publication of declarations by persons exercising administrative responsibilities was a disproportionate infringement of the right to respect for privacy, in view of the objective of preventing conflicts of interest, which the High Authority's control of these same declarations was sufficient to guarantee¹⁸.

As appropriate, a declaration may therefore simply be kept, put online on the High Authority's website or made available, for consultation only, at the prefecture.

¹⁸. Constitutional Council, 9 October 2013, Dec. No. 2013-676 DC, *Law on transparency in public life*.

Declarations made public in 2021



A total of 9,373 declarations of assets and interests were available for consultation, on the High Authority's website or at the prefecture, as at 31 December 2021.

There were almost one million consultations (945,715).

The special case of French parliamentarians and representatives in the European Parliament

The High Authority notes that the procedure for consulting the declarations of assets of MPs and senators and French representatives in the European Parliament at the prefecture results in a very low number of consultations of the declarations – although this has increased slightly in 2021.

19 consultation requests at the prefecture

In 12 departments

For a total of 67 (-30.9%) declarations of assets

Concerning 27 French parliamentarians and representatives in the European Parliament

At the same time as these declarations are made available at the prefecture, the High Authority publishes communiqués providing

information about the quality of the declarations checked with regard to the requirements of accuracy, completeness and sincerity.



THE ROLE OF THE HIGH AUTHORITY IN THE PRESIDENTIAL ELECTION

The Organic Law of 15 September 2017 on confidence in political life strengthened the transparency and probity requirements for the President of the Republic and presidential candidates.

At the end of his term of office, the President of the Republic shall submit to the Constitutional Council an end-of-term declaration of assets.

The Constitutional Council forwards this declaration to the High Authority, which publishes it in the Official Gazette, together with an opinion on the changes in the President of the Republic's assets between the beginning and end of his term of office.

This opinion is issued in light of the declaration submitted by the President of the Republic as a candidate and the declaration drawn up at the end of his term of office, and after having sought the views of the President of the Republic. This control mechanism, implemented for the first time in 2021, aims to detect any unexplained enrichment during the term of office.

The declaration of Emmanuel Macron, President of the Republic, was published by the High Authority in the *Official Journal* on 9 December 2021. The High Authority then published its Deliberation No. 2021-230 of 14 December 2021, in which it considered that the variation in the assets of the President of the Republic was not abnormal and did not call for any comment.

The High Authority also publishes declarations of assets and, for the first time in 2022, declarations of interests and activities of presidential candidates. These declarations are not subject to any pre-publication control.

Candidates' declarations remain public until the official results of each round of voting are announced by the Constitutional Council. After the first round of voting, only the declarations of candidates entitled to participate in a possible second round remain accessible; then, the day after the final election results are announced, only the declarations of assets and declarations of interests and activities of the candidate elected President of the Republic are kept online on the High Authority's website.

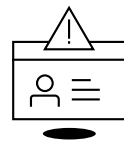
2

Controlling revolving-door movements between the public and private sectors: preventing ethical and criminal risks

- 1 : A year of stabilisation for
the new ethical controls
page 60
- 2 : The pre-appointment check
page 67
- 3 : The multiple jobholding check
for business creation or acquisition
page 71
- 4 : The control of professional transition
to the private sector
page 74
- 5 : Monitoring of reservations and opinions
of incompatibility
page 82

Since its creation, the High Authority has been responsible for monitoring the departure to the private sector, at the end of their functions, of members of the Government, certain local executives and members of independent administrative and public authorities.

Act No. 2019-828 of 6 August 2019 (the Civil Service Transformation Act) gave it new prerogatives in the area of ethical controls on public officials.



331
referrals
in 2021
(all ethical
controls
combined)

326
cases
processed
in 2021

307
opinions
issued

19
withdrawn
referrals*

*Withdrawn referrals
may be due to
referral errors or to
agents abandoning
their plans.

Since 1 February 2020, the High Authority has been responsible for:

- the pre-appointment check for certain public posts if the person to be appointed has worked in the private sector in the previous three years;
- checking the plans of agents wishing to work part-time to create or acquire a business;
- checking any revolving-door movements planned by public agents.

2021 is the first full year of exercise of these new powers. The overall assessment shows that administrations know more about the new system and less often mistakenly refer cases to the High Authority. Nevertheless, an in-depth analysis of each control shows

that appropriation of the new procedures, in particular the central role of the hierarchical authority, still needs a great deal of work.



THE ENTRY INTO FORCE OF THE FRENCH GENERAL CIVIL SERVICE CODE

The legislative part of the French General Civil Service Code, resulting from an ordinance of 24 November 2021, entered into force on 1 March 2022.

This new code brings together the four former statutory civil service laws: the Act of 13 July 1983 on the rights and obligations of civil servants and the Acts of 11 January 1984, 26 January 1984 and 9 January 1986 on the statutory provisions relating to the State civil service, the local civil service and the hospital civil service respectively.

As this is a new codification on the basis of established law, and for the sake of simplicity for the reader, this Activity Report uses the new legal references.

A table of correspondence between the provisions of the French General Civil Service Code relating to the obligations and ethics of public officials and those of Chapter IV of the Act of 13 July 1983 is appended to this report¹⁹.

¹⁹. See Appendix 2 p. 162.

1 A year of stabilisation for the new ethical controls

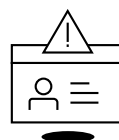
The reform of 6 August 2019 has radically altered the framework for the ethical control of the multiple jobholding and professional transition to the private sector of public officials, by entrusting it, in principle, to the hierarchical authorities. In addition, it introduced a control prior to appointments to certain public posts.

The High Authority is only competent for professional transition to the private sector and part-time work for the purpose of business creation or acquisition, as well as for the newly created pre-appointment check.

There are two separate procedures. The ordinary law procedure includes a mechanism for subsidiary referral to the High Authority, which means that the matter is only referred in the event of serious doubt on the part of

the hierarchical authority, which the opinion of the ethics officer could not dispel. However, for certain strategic posts, referral to the High Authority is mandatory.

2020 was characterised by a large number of unjustified referrals, relating to areas for which the High Authority is not competent or to agents covered by the subsidiary referral procedure, when no particular doubts had been expressed and the ethics officer had not been approached. Nearly one in three referrals resulted in an opinion of inadmissibility or lack of jurisdiction. 2021 was marked by a clear reduction in these unjustified referrals (11% compared to 33%), which largely contributed to the drop in the number of cases handled by the High Authority.



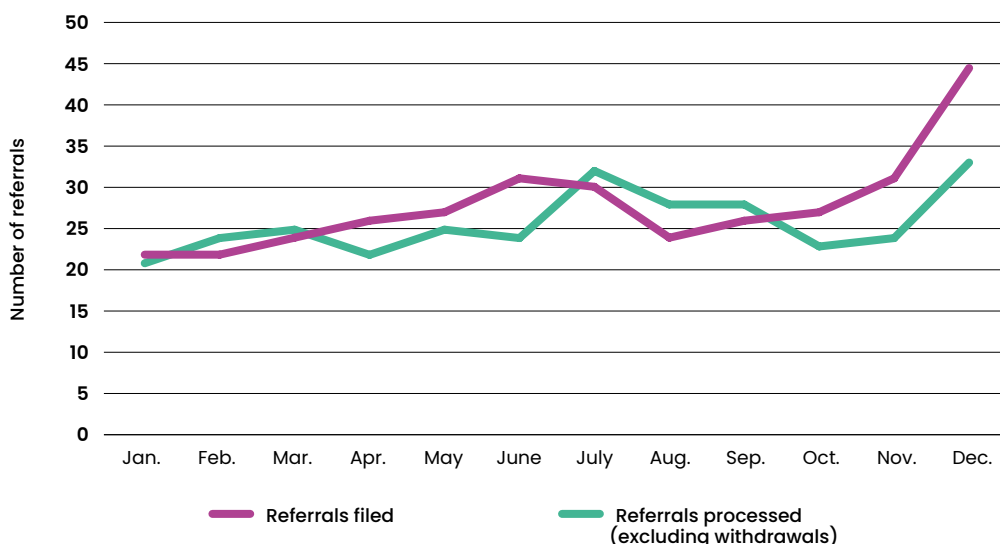
319
referrals

recorded in 2021 concerning ethical controls on the revolving-door movements of public officials

295*
opinions
issued
in 2021

*The difference is explained both by withdrawn referrals and by referrals received at the end of 2021 and processed in early 2022.

Number of referrals on plans for professional transition to the private sector filed and processed per month in 2021 (all types of transition combined)



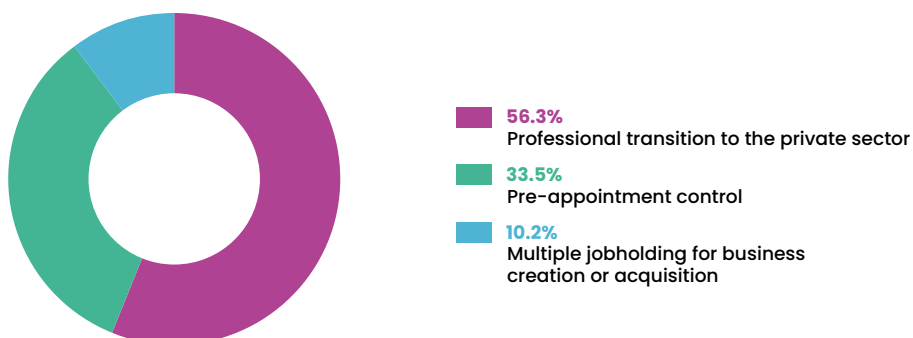
Number of referrals recorded in 2021



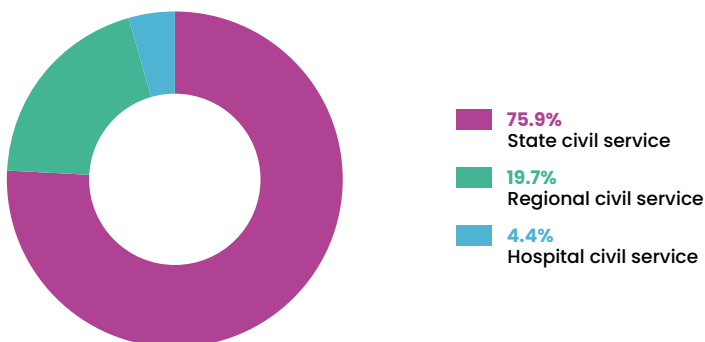
- 55.3%** Professional transition of public agents to the private sector
- 31.4%** Pre-appointment control
- 9.7%** Multiple jobholding for business creation or acquisition
- 3.2%** Professional transition of former members of Government, former heads of local governments and former members of independent administrative or public authorities to the private sector

Ethical opinions issued by the High Authority, by type

(controls under Article L124-10 of the French General Civil Service Code)

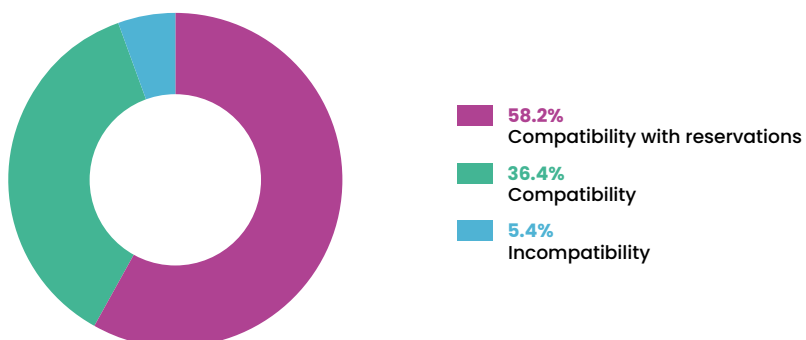


Public agents affected by the referrals, by type

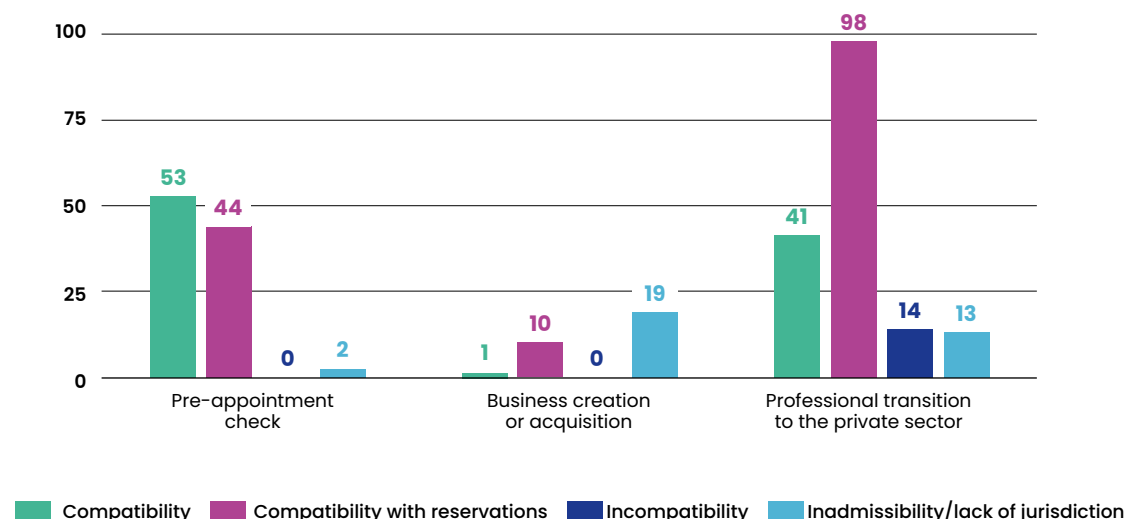


Ethical opinions issued by the High Authority in 2021

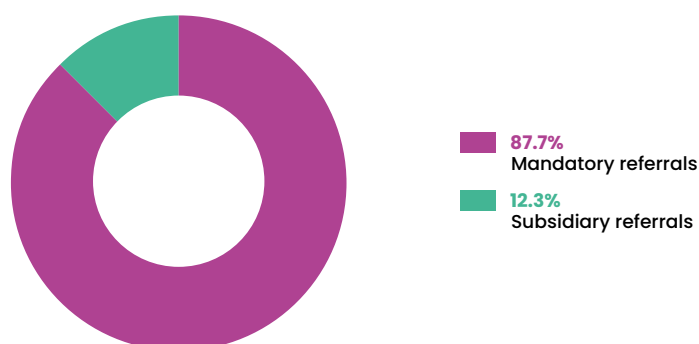
(excluding opinions of inadmissibility and lack of jurisdiction)



Outcome of opinions issued by the High Authority, by type of referral (excluding opinions of inadmissibility and lack of jurisdiction)



Share of mandatory and subsidiary referrals among the ethical opinions issued by the High Authority in 2021 (excluding opinions of lack of jurisdiction)



A decrease in the number of referrals, linked to better knowledge of the new system and less political activity

In 2021, the High Authority registered 319 referrals concerning ethical controls on public officials and issued 295 opinions. These figures are significantly lower than in 2020. This is due to a decrease in unjustified referrals and to less political activity, which led to a decrease in the number of pre-appointment referrals.

The decrease in the number of referrals did not result in less control activity. Indeed, opinions

of lack of jurisdiction and inadmissibility do not give rise to an investigation on the merits. Similarly, pre-appointment opinions, which have to be issued within two weeks and which do not prejudice the subsequent control of declarations of interest, involve a lighter workload than professional transition files. Thus, the cases handled in 2021 involved, on average, a heavier workload than those handled in 2020. The referrals recorded contained more complex substantive issues or raised new legal challenges, requiring the support of an external rapporteur on eleven occasions.

Of the 295 opinions issued, more than half (56.3%) relate to the control of professional transition to the private sector. As a result, excluding opinions of lack of jurisdiction and inadmissibility, 153 opinions on professional transition to the private sector were issued in 2021, compared with only 108 in 2020.

Conversely, in 2020, the pre-appointment check dominated as a result of the change of government in July 2020, with the jobs of aide to the President of the Republic and member of ministerial cabinets among those subject to mandatory prior referral to the High Authority when the prospective candidate has

exercised an activity in the private sector in the last three years.

For all types of referrals, the High Authority issued only 11.4% opinions of inadmissibility or lack of jurisdiction, compared with 32.7% in 2020, the year the system came into force.

This trend reflects better knowledge of the reform by the administrations, resulting in particular from the support provided by the High Authority, despite certain legal difficulties.

However, this significant improvement is uneven across public entities. Although State



THE ISSUE OF SECONDED CIVIL SERVANTS

The High Authority was contacted on several occasions in 2021 to determine whether the home or host administration of a seconded civil servant was competent to rule on proposals for professional transition to the private sector, a question that was neither anticipated by the legislative texts nor settled by administrative case law.

However, it follows from the general rules applicable to secondment that, while the host administration has functional authority over the agent and, in a residual manner, where a text so provides, specific prerogatives such as the power of appraisal, it is in principle up to the home administration, which is vested with the power of appointment, to take decisions relating to the agent's situation with regard to the Staff Regulations, including those consisting in deciding on a request for leave of absence.

In the specific case of monitoring movements to the private sector, in practice the host administration has information useful for assessing the compatibility of this activity with the duties actually performed by the agent and for identifying reservations capable of neutralising any criminal or ethical risks. Therefore, the proper functioning of the system implies, at the very least, a form of cooperation between the two administrations, even if the texts in force do not require the home administration to seek the opinion of the host administration.

administrations and regional authorities are now more aware of these new controls, establishments employing hospital civil servants, especially small ones, are still the source of the majority of opinions of inadmissibility and lack of jurisdiction, some of which have not yet appointed an ethics officer.

Furthermore, the part-time work system for business creation or acquisition remains a source of many referral errors. In addition, an in-depth analysis of each type of procedure shows that the administrations still do not take sufficient ownership of ethical controls (*see below*).

A large proportion of opinions of compatibility with reservations

In 2021, for all checks on public officials, the breakdown between opinions of compatibility, opinions of compatibility with reservations and opinions of incompatibility is comparable to that observed in 2020.

In order to be as close as possible to reality, while preserving the public interest in this type of transition, the control exercised by the High Authority is based on an *in concreto* assessment of each situation. Indeed, the purpose of this ethical control is neither to prevent public officials from acquiring experience in the private sector – which can be useful to them and to the administration when they return to it – nor, conversely, to prevent a person from the private

sector from giving the administration the benefit of their skills. It does not hinder public action but safeguards it by preventing the official from committing the offence of illegal taking of interest or from being in a conflict of interest situation, and by avoiding the finger being pointed at the administration because of the activities of its officials and former officials.

The High Authority thus endeavours to issue opinions containing measures that are proportionate and appropriate to the ethical or criminal risks detected, following a thorough investigation procedure.

For all types of controls combined, 94.6% of the opinions issued (excluding opinions of inadmissibility and lack of jurisdiction) are opinions of compatibility, with almost 60% of them being accompanied by reservations. The percentage of opinions of incompatibility is exactly the same as in 2020 (5.4%). It corresponds to 14 opinions, all of which concerned professional transition to the private sector. These opinions of incompatibility are only issued when the risk of illegal taking of interest is proven or when no measure seems likely to neutralise a substantial ethical risk.

11.4%
opinions of inadmissibility and lack of jurisdiction
out of all opinions issued

-65.1%
compared to 2020

5.4%
opinions of incompatibility

or
14
opinions issued

94.6%

opinions of compatibility

(excluding opinions of inadmissibility and lack of jurisdiction):

58.2%

opinions of compatibility with reservations

A mission to accompany and provide legal support to the hierarchical authorities and ethics officers

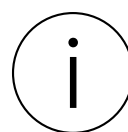
In 2021, education and support were once again at the heart of the High Authority's action to reinforce appropriation of the system by hierarchical authorities and ethics officers.

A constant dialogue is maintained with these key players in the process of ethical control of the professional transition of public agents, especially before referrals are made, which contributes to the low rate of opinions of inadmissibility and lack of jurisdiction issued this year. More than 200 legal questions were dealt with by the

35

deliberations

regarding ethical controls published in **2021** (as summaries or *in full*)



More than

200

answers

to legal questions from administrations and ethics officers

departments, and numerous meetings were organised with administrations (e.g. with the Ministry of the Armed Forces, the *Agence des participations de l'État*, the *Office français de protection des réfugiés et des apatrides* and the *Agence nationale de sécurité du médicament et des produits de santé*).

The dissemination of the High Authority's expertise is also achieved through the publication of documentary resources, such as the second volume of the ethics guide²⁰, and the organisation of events for ethics officers, such as the annual meeting of ethics officers²¹.

Finally, although, by virtue of Article L.311-5 of the French Code of Relations between the Public and the Administration, documents drawn up or held by the High Authority in the exercise of its missions may not be communicated²², the High Authority may decide, pursuant to Article L.124-16 of the French General Civil Service Code, to publish its opinions.

The ethics opinions published, in summary form or *in full*, on its website²³ are in particular those that are of particular doctrinal interest. They make it possible to disseminate the High Authority's doctrine to administrations, public officials and civil servants, and ethics officers. They thus contribute to better ownership of these controls.

²⁰. See p. 132.

²¹. See p. 129.

²². *Commission d'accès aux documents administratifs* (CADA), Council No. 20204549 of 19 November 2020. See 2020 Activity Report, p. 30.

²³. Ethical opinions published on the High Authority's website: <https://bit.ly/3JnhUq6>

2 The pre-appointment check

Introduced by the Civil Service Transformation Act of 6 August 2019, the pre-appointment check concerns the return of civil servants after professional transition or the recruitment of contract workers if the person concerned has carried out one or more lucrative private activities during the three years preceding the appointment.



104
referrals
for pre-
appointment
checks

99*
opinions
issued
in 2021

79 days
average
processing time
referrals for
pre-appointment
checks (reminder:
regulatory deadline
of 15 days)



2
opinion
of lack of jurisdiction

*The difference is explained both by withdrawn referrals and by referrals received at the end of 2021 and processed in early 2022.



THE APPLICATION OF THE PRE-APPOINTMENT CHECK TO ADDITIONAL ACTIVITIES CARRIED OUT BY A PUBLIC OFFICIAL IN THE PRIVATE SECTOR²⁴

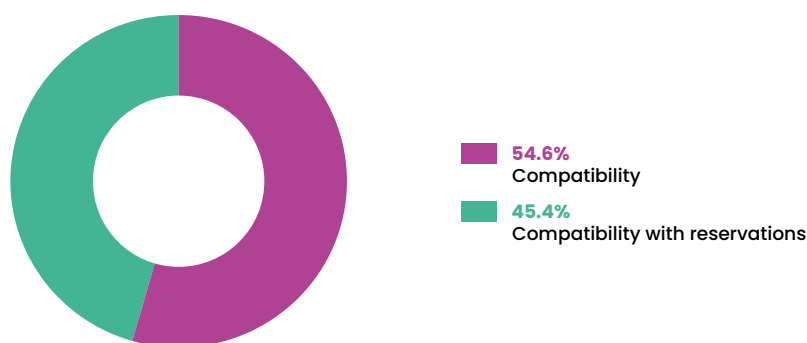
According to the provisions of paragraph 3 of Article L.124-10 of the French General Civil Service Code, "the High Authority shall issue an opinion [...] in the event of the reinstatement of a civil servant or the recruitment of a contract agent pursuant to Articles L.124-7 and L.124-8". Article L.124-8 stipulates that the High Authority shall be consulted when it is envisaged to appoint "a person who carries out or has carried out a lucrative private activity in the past three years".

It follows from these provisions that the pre-appointment check they institute applies only if the prospective appointee has, during the three years preceding the appointment, carried out his or her main professional activity in the private sector, as defined in Article L.124-8.

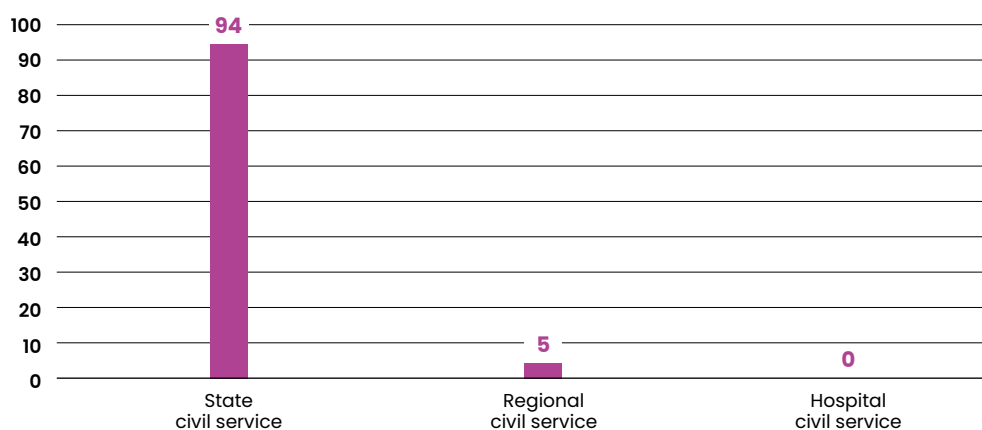
This prior control by the High Authority does not therefore apply when the person whose appointment is being considered has only held public office during the last three years, even if he or she has carried out a lucrative activity in the private sector in addition to his or her public office (such a situation may arise when public officials are authorised to carry out ancillary activities).

24. Deliberation No. 2021-216 of 30 November 2021.

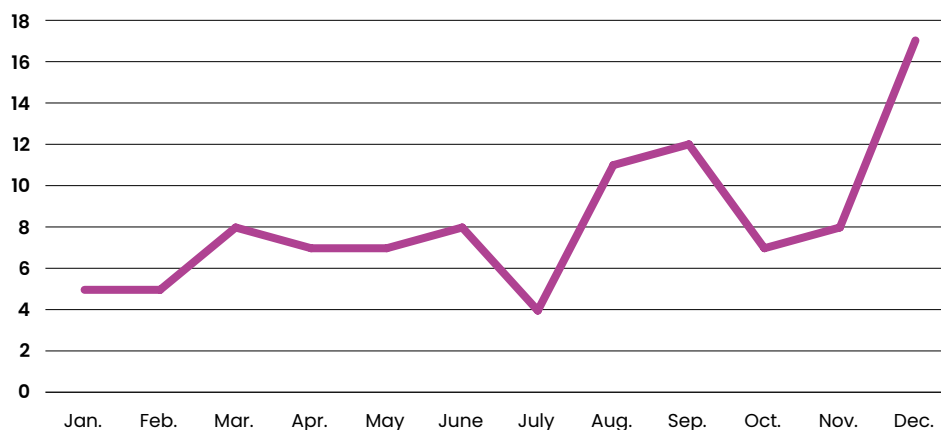
Ethical opinions issued by the High Authority on planned appointments (excluding opinions of inadmissibility and lack of jurisdiction)



Public agents affected by opinions issued on proposed appointments



Number of opinions issued on proposed appointments per month in 2021



Referrals mainly concerning jobs as aides to the President of the Republic and members of ministerial cabinets

In 2021, the High Authority issued 99 opinions for pre-appointment checks, a figure down from 2020, which was marked by the change of government in the summer (220 opinions issued in 2020).

Almost all of these opinions are the result of mandatory prior referrals (see box on p. 70).

Once again this year, the vast majority of referrals for pre-appointment checks concerned aides to the President of the Republic and members of ministerial cabinets (87.5%), compared with only five opinions relating to posts of director-general of services (three from departments and two from public inter-municipal cooperative establishments).

On average, opinions were issued in 7.9 days, so less than the 15-day period set by the Decree of 30 January 2020 on ethics checks in the civil service.

99%

of the opinions
for the pre-appointment check **in 2021** fell under the High Authority's mandatory referral procedure

87.5%

of the referrals
for the pre-appointment check **in 2021** concerned **aides to the President of the Republic and ministerial advisers**

The virtual absence of subsidiary referrals (only one in 2021) is particularly worrying, given that a large number of jobs – around 20,000 – are affected by the subsidiary pre-appointment check²⁵. Discussions with ethics officers also reveal that they are rarely consulted

in this area. All of this suggests that many administrations have not taken on board this new pre-appointment check, which is necessary for the strategic and exposed public functions concerned.



POSTS SUBJECT TO MANDATORY CONTROL BY THE HIGH AUTHORITY

In terms of pre-appointment checks, the opinion of the High Authority is mandatory for the posts of:

- aide to the President of the Republic and member of ministers' private offices;
- director of a central administration or head of a State public institution appointed by the Council of Ministers;
- director-general of the services of the regions, departments and municipalities and public inter-municipal cooperative establishments with more than 40,000 inhabitants;
- director of public hospitals with a budget of more than €200 million.

25. These are all the posts mentioned in Article 2 of Decree No. 2020-69.

3 Controlling multiple jobholding plans for business creation or acquisition

The High Authority is competent to rule on requests from public officials to work part-time in order to create or acquire a business, as well as on certain projects of research staff to hold multiple jobs.



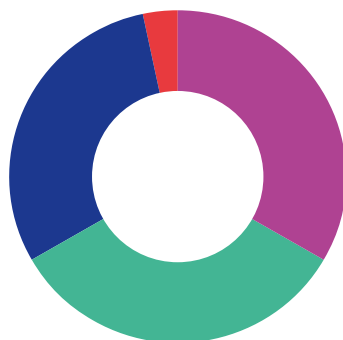
32 referrals for business creation or acquisition

29,6 days average processing time referrals for business creation or acquisition (reminder: legal deadline of 2 months)

30* opinions issued in 2021

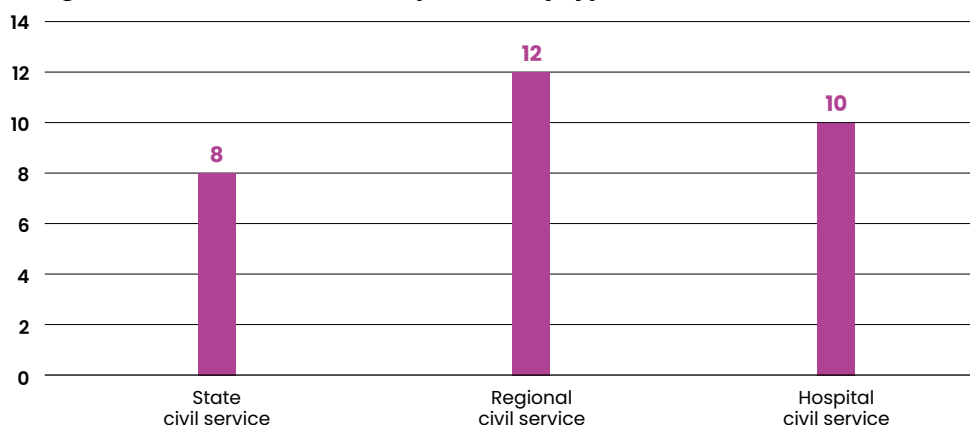
*The difference is explained both by withdrawn referrals and by referrals received at the end of 2021 and processed in early 2022.

Outcome of ethical opinions issued by the High Authority concerning referrals for multiple jobholding for business creation or acquisition

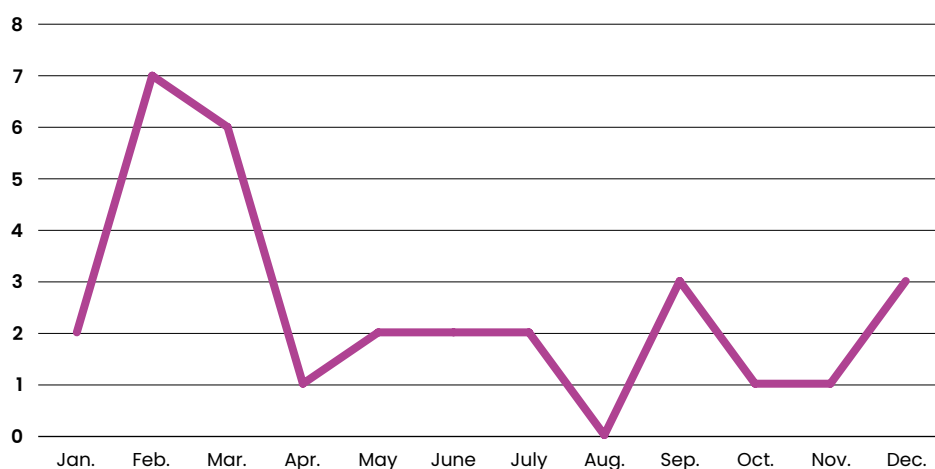


- 33.3% Compatibility with reservations
- 33.3% Lack of jurisdiction
- 30.0% Inadmissibility
- 3.4% Compatibility

Public officials affected by the opinions issued on referrals for multiple jobholding for business creation or acquisition, by type



Number of opinions issued on multiple jobholding plans for business creation or acquisition, per month, in 2021



A legal framework that is still insufficiently understood

Public officials must devote their entire professional activity to the tasks entrusted to them. However, the legislator's desire to preserve the appeal of the civil service and to encourage professional transition to the private sector has led to several adjustments to this principle.

The French General Civil Service Code distinguishes between: free activities, activities subject to prior declaration to the hierarchical authority and activities subject to authorisation.



Use of the part-time work system for business creation or acquisition, as provided for in Article L.123-8 of the French General Civil Service Code, is subject to authorisation. This is the only system for multiple jobholding in the context of which the High Authority is likely to be consulted for an opinion, either on a subsidiary or mandatory basis, depending on the post held by the official.

There is often confusion between the different systems for multiple jobholding, in particular between the exercise of an ancillary activity²⁶ and part-time work for business creation or acquisition.

In 2021, almost two-thirds of referrals resulted in opinions of lack of jurisdiction and inadmissibility, divided equally between the regional and hospital civil services.

26. Ancillary activities are listed in Article 11 of Decree No. 2020-69 of 30 January 2020 on ethical controls in the civil service.

63.3%

opinions of lack of jurisdiction or inadmissibility

on referrals for business creation or acquisition

75%

of opinions

for business creation or acquisition **in 2021** were covered by the High Authority's **subsidiary referral procedure** (excluding opinions of lack of jurisdiction)



ETHICAL CONTROL OF TEACHERS-RESEARCHERS

Civil service research staff are given the opportunity to participate in business creation or in the activities of existing companies in order to add value to research work. Four specific schemes are provided for in the French Research Code²⁷.

The hierarchical authority, when it receives a request under one of these mechanisms, may refer the matter to the High Authority for an opinion. In 2021, however, the High Authority did not receive any referrals on this basis.

27. Articles L.531-1 et seq. of the French Research Code.

4 The control of professional transition to the private sector

The scope of the control of professional transition to the private sector exercised by the High Authority was the subject of an important reform implemented on 1 February 2020.

Already competent for certain public officials, it now exercises these prerogatives with regard to public agents with a twofold objective: to assess the risk of illegal taking of interest²⁸ and to prevent the ethical risks associated with revolving-door movements. In 2021, 178 opinions on planned transitions to the private sector were

issued, 12 concerning public officials (members of the Government, members of independent administrative or public authorities) and 166 concerning public agents.

28. Article 432-13 of the French Criminal Code.



THE CONTROL OF PROFESSIONAL TRANSITION OF PUBLIC OFFICIALS TO THE PRIVATE SECTOR: A EUROPEAN ISSUE

Pursuant to Article 16 of the European Staff Regulations, a civil servant who wishes to take up a new professional activity within two years of leaving office is required to declare this to the institution to which he/she belongs. For former senior management staff (Directors-General, Deputies, Heads of Cabinet, etc.), they are prohibited for twelve months after leaving office from undertaking any interest representation activity with their former institution.

Despite these procedures, the intensity of the control of professional transition projects by the European institutions is regularly questioned. A report published by *Corporate Europe Observatory*²⁹ noted that of the 951 departures to the private sector of officials and contract workers from the Commission and its agencies in 2019, only six were refused.

In the wake of the debate on the creation of a European ethics body³⁰, the European Ombudsman, Emily O'Reilly, took up the issue of controlling the professional transition of EU officials to the private sector in 2019. A wide-ranging enquiry was opened in spring 2021 into the professional transition of European Commission staff, with the Ombudsman's services checking nearly one hundred cases of staff in Directorates-General, Commissioners' offices and the Secretariat-General wishing to move to the private sector.

Other investigations into this phenomenon are also underway within the European Defence Agency, the European Banking Authority and the European Investment Bank.

In September 2021, the President of the High Authority received the European Ombudsman, Emily O'Reilly, in order to discuss, among other things, the control of the revolving-door movements of French and European public officials and civil servants.

A working meeting was also organised on this topic between the Legal and Ethics Division of the High Authority and the European Commission's ethics services in March 2021. Based on the analysis of individual situations, the aim of this meeting was to share good practices in working and investigation methods. In particular, the various reservations that could be made in order to provide a framework for professional projects and the resources needed to monitor these reservations were discussed.

29. Corporate Europe Observatory, "From Facebook friends to lobby consultants. EU revolving door rules fit for purpose" 22 October 2020.

30. See p. 133.

Control of the planned professional transition of public officials to the private sector (Articles L.124-4 and L.124-5 of the French General Civil Service Code)

29.7 days

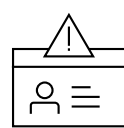
average processing time

for referrals for the professional transition of public officials to the private sector (reminder: legal deadline of two months)

88.1%

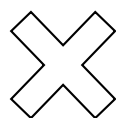
of opinions

for professional transition to the private sector **in 2021** came under the High Authority's **mandatory referral procedure** (excluding opinions of lack of jurisdiction)



183

referrals for planned professional transition to the private sector (Articles L.124-4 and L.124-5 of the French General Civil Service Code)



13

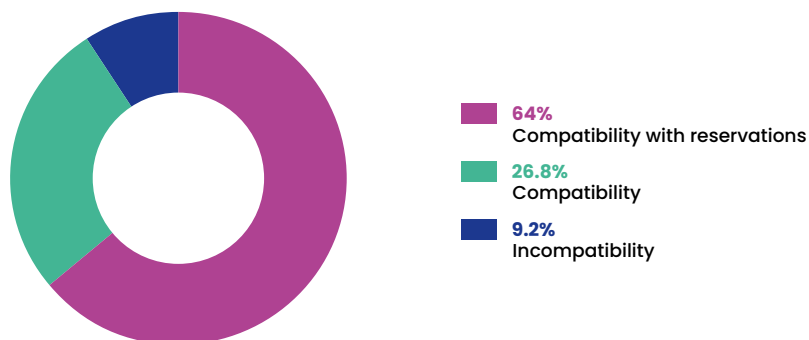
opinions of inadmissibility and lack of jurisdiction

166*

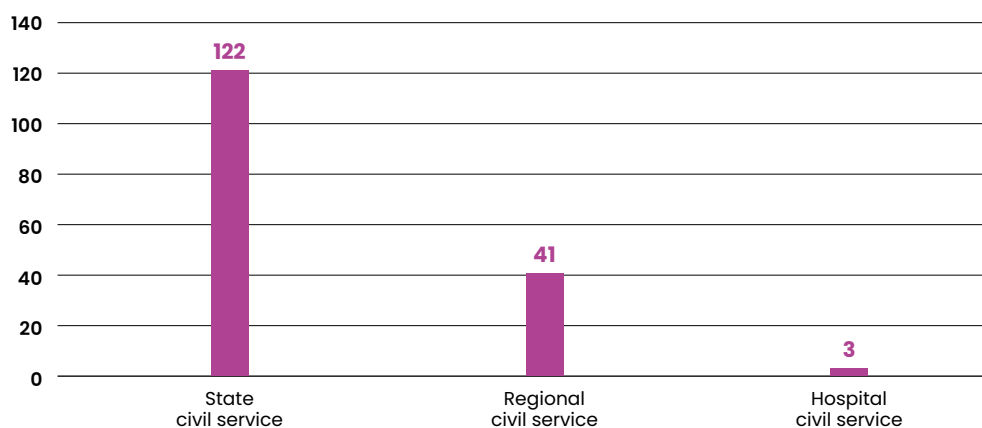
opinions issued in 2021

*The difference is explained both by withdrawn referrals and by referrals received at the end of 2021 and processed in early 2022.

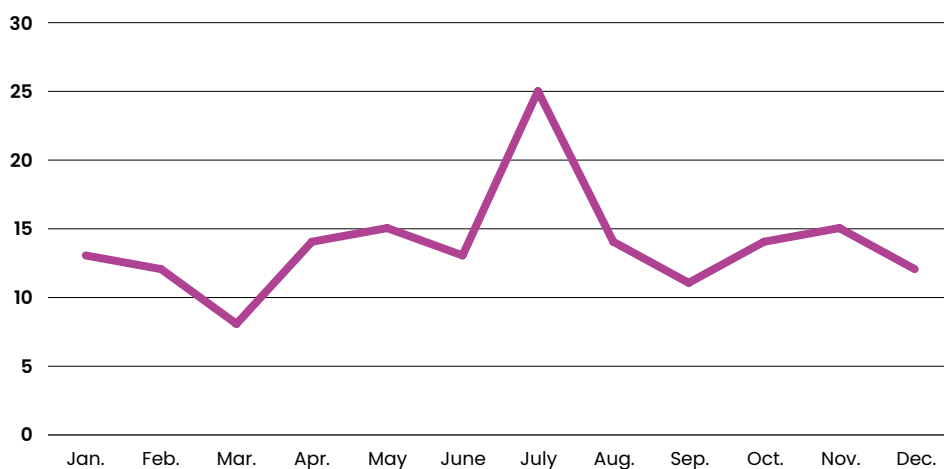
Ethics opinions issued by the High Authority on projects for the professional transition of public agents to the private sector
(excluding opinions of inadmissibility and lack of jurisdiction)



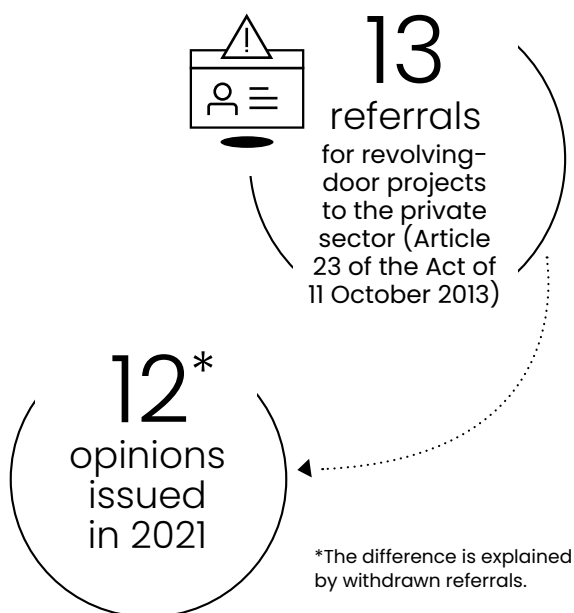
Public agents concerned by the opinions issued on professional transition projects to the private sector, by type



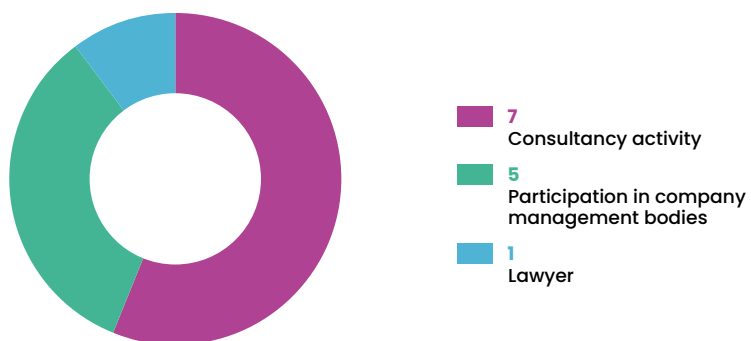
Number of opinions issued on the professional transition plans of public officials to the private sector, per month, in 2021



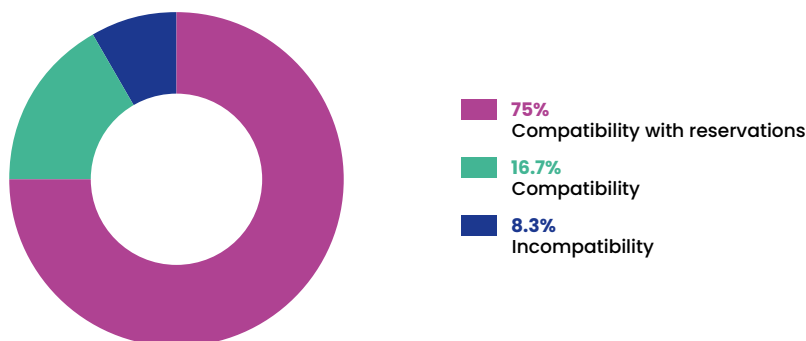
The control of the professional transition projects to the private sector of former members of the Government, former members of independent administrative or public authorities and former heads of a local executive (Article 23 of the Act of 11 October 2013)



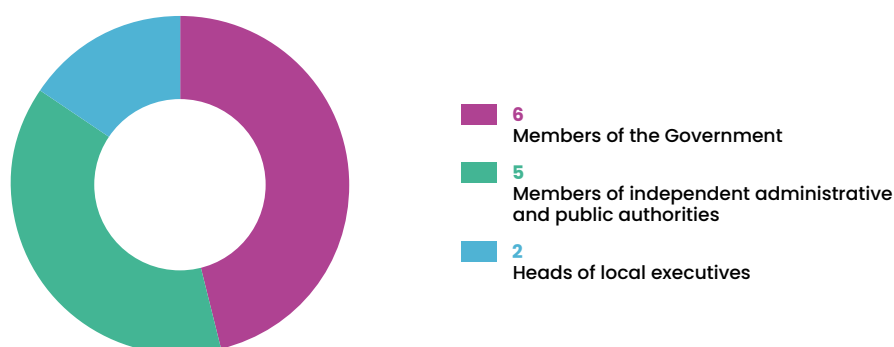
Nature of the activity envisaged after leaving office



Ethics opinions issued by the High Authority on projects for the professional transition of public officials to the private sector
(excluding opinions of inadmissibility and lack of jurisdiction)



Public officials referring for professional transition to the private sector, by type



A scope of control that could usefully be extended to other public officials and civil servants

During the three years following the end of their duties, former members of the Government, former heads of local executives and former members of independent administrative and public authorities must contact the High Authority before taking up any professional activity in the private sector.

This check, intended to prevent any risk of a criminal or ethical nature, only concerns, among local elected officials, the heads of executives subject to declaration obligations with the High Authority³¹.

However, in light of several moves to the private sector with particular difficulties, it has become apparent that some local public officials, although not heads of the executive, exercise important functions that justify their being subject to control of professional transition. This concerns in particular vice-presidents and councillors of regional and departmental councils and public inter-municipal cooperative establishments with more than 100,000 inhabitants, deputy mayors of municipalities with more than 100,000 inhabitants and, more generally, all persons holding local executive functions subject to declaration obligations with the High Authority under Article 11(1)(3) of the Act of 11 October 2013.

³¹. Article 11(1)(2) of the Act of 11 October 2013.

The High Authority reiterates that Article 432-13 of the French Criminal Code, which punishes unlawful taking of interest for up to three years after leaving office, applies to any person “*holding a local executive office*”, which does not only include executive heads.

In its 2020 Activity Report, the High Authority had already identified the challenge of controlling the professional transition to the private sector of officials, regardless of their status, from industrial and commercial public establishments (EPICs) and certain special public establishments. The High Authority again notes the difficulties associated with these establishments and refers, in the main, to its previous report³².

The specific case of the *Caisse des dépôts et consignations* illustrates these difficulties perfectly and is worth discussing in greater detail. Indeed, the staff of this special public establishment is composed of both civil servants and contract workers under public law and employees under private law. While the former are subject to all the ethical obligations applicable to public agents, and must therefore undergo a control of professional transition provided for in the French General Civil Service Code when they leave the *Caisse des Dépôts*, this is not the case for private-law agents.

This situation creates legal uncertainty for private law agents because, although they are not subject to control of professional transition to the private sector, as employees of a public institution, they fall within the scope of persons likely to be accused of the offence of unlawful taking of interest provided for in Article 432-13 of the French Criminal Code. It is also a source of insecurity for the *Caisse* itself, given the risks of the finger being pointed at it as a result of its staff moving to the private sector.

These difficulties are all the more important as the *Caisse des Dépôts* Group, which is headed by the public institution, includes subsidiaries that operate in the competitive sector and are therefore likely to be qualified as private companies within the meaning of both the

French General Civil Service Code and Article 432-13 of the French Criminal Code.

It is therefore incumbent on the director-general of the *Caisse des dépôts et consignations* to ensure, prior to the appointment of an employee under private law of the institution in a subsidiary of the group or in an entity outside the group operating in the competitive sector, that the latter is not likely to disregard the provisions of Article 432-13 of the French Criminal Code.

The need to make administrations accountable

The responsibility for authorising the revolving-door movements and the multiple jobholding of public officials lies with the hierarchical authority.

The control of planned professional transition to the private sector of public employees is no exception to this general principle. While it is true that the High Authority may be called upon to adjudicate in certain cases, the fact remains that its intervention constitutes only an opinion, in a procedure conducted by the hierarchical authority and which must be concluded by a decision of the hierarchical authority.

Persistent referral failures

The High Authority notes first and foremost that there are still too many failures to refer cases to the Authority prior to the exercise of a professional activity in the private sector. It is also noted that these referral failures are more significant in some administrations, which suggests that some hierarchical authorities are not playing their role sufficiently in terms of professional transition to the private sector.

Thus, when a public official temporarily or permanently leaves office, their hierarchical authority must ensure that they are informed of the obligations to which they are subject for three years. The High Authority noted that

32. See 2020 Activity Report, p. 47 to 49.

contract workers leaving their administration are not informed of their obligations and that civil servants are sometimes given leave without the administration even inquiring about the professional prospects of the person concerned or, even if it is informed that the person concerned is working in the private sector, it does not exercise any ethical control.

The High Authority may, as part of its supervisory prerogatives, refer cases to itself in the event of failure to make a prior referral³³, but this self-referral can, by definition, only concern cases of mandatory referral.

Through its monitoring work, carried out mainly through open source research based on access to a wide variety of information sources (general, specialised and regional press, social networks), the High Authority has identified some twenty cases in 2021 that should have been referred to it. In such cases, the Authority first of all acts as a mediator by asking the hierarchical authority and the person concerned to regularise the situation as soon as possible by referring the matter to it. While these approaches are usually successful, the High Authority has needed to self-refer on two occasions in 2021.

Referral files still too often incomplete or unclear

The High Authority notes that referral files are too often incomplete or vague, particularly in the context of controlling transitions to the private sector.

Even though it is up to the administration to compile the referral file for the High Authority, too many files do not contain the documents required and necessary for examining³⁴ the employee's plans, or contain documents that are not sufficiently precise to enable the compatibility of these plans with the public duties performed over the last three years to be assessed. This situation means that the High Authority's departments have to make numerous requests for information from administrations and officials, which lengthens the time required for investigation.

In particular, the texts expressly provide that the referral file must include a detailed description of the agent's links, in the context of the duties he or she has performed over the previous three years, with the company he or she wishes to join or any company in the same group, in order to



It is important to remember that failure to refer a case to the High Authority can have significant consequences for both the administration and the agent. As the potential ethical and criminal risks associated with his transition were not assessed **beforehand**, the agent may find himself committing the offence of unlawful taking of interest provided for in Article 432-13 of the French Criminal Code.

³³. Article L121-11 of the French General Civil Service Code.

³⁴. The list of supporting documents to be provided is set out in the Order of 4 February 2020 on ethical controls in the civil service.



be able to assess potential ethical or criminal risks. The file must also include an assessment by the hierarchical authority of the risks that may result from the agent's plans. In most cases, these elements are either missing or insufficient.

Cases in which the hierarchical authority refrains from issuing its decision after the opinion of the High Authority

Lastly, the High Authority noted that, in some cases, the administration did not return a decision on the agent's plans after notification of the High Authority's opinion, considering, in the case of opinions of compatibility, with or without reservations, that this was sufficient to authorise the agent's transition.

The High Authority reiterates that, in the absence of a decision by the administration within fifteen days of notification of the opinion, it is deemed to be opposed to the agent's plans³⁵.

In addition to this legal difficulty, the absence of a decision by the hierarchical authority after the opinion of the High Authority demonstrates a lack of ownership of the ethical controls, even though the administration can issue a decision that is more restrictive than the opinion of the High Authority.

Finally, insofar as the opinions issued by the High Authority on professional transition to the private sector are subject to appeal³⁶, the High Authority has acknowledged the admissibility of an informal appeal by the official concerned requesting further deliberation on his situation. The agent's hierarchical authority may request a second deliberation by the High Authority pursuant to Article L124-17 of the French General Civil Service Code. The High Authority will then issue a new opinion within two months of receiving the request. This procedure was used only twice in 2021, after which the previously issued opinions of incompatibility were confirmed.

³⁵. Articles 20 and 21 of Decree No. 2020-69 of 30 January 2020 on ethical controls in the civil service.

³⁶. Council of State, 04 November 2020, No. 440963

5 Monitoring of reservations and opinions of incompatibility

Opinions of incompatibility and any reservations attached to opinions of compatibility are binding on the administration and on the public official³⁷.

Article L124–20 of the French General Civil Service Code provides for several types of sanctions in the event of failure to comply with the High Authority’s opinions. Only the agent’s hierarchical authority, or former hierarchical authority, has the power to implement such sanctions.

Nevertheless, the High Authority regularly follows up on its opinions in order to monitor their effectiveness and to be able to inform administrations of any disregard for them by their agents or former agents.

Priority control of certain public officials and civil servants

The High Authority regularly monitors compliance with reservations or opinions of incompatibility. To this end, it may request “*any explanation or document*³⁸”.

In view of its resources, which do not allow it to follow up on all the opinions issued, the High Authority gives priority to following up on opinions of incompatibility as well as opinions



IN THE EVENT OF A BREACH OF AN OPINION OF THE HIGH AUTHORITY

In the context of the control of professional transition to the private sector of former members of the Government, former presidents of a local executive and former members of independent administrative or public authorities, all acts concluded in violation of an opinion of the High Authority shall cease to have effect if the matter is referred to it by the public official, or shall become null and void by operation of law in the event of self-referral.

When the High Authority “is aware of the exercise [...] of an activity carried out in breach of an opinion of incompatibility or an activity carried out in breach of the reservations provided for in an opinion of compatibility, and after the person concerned has been given the opportunity to provide explanations, it shall publish in the Official Journal a special report containing the opinion issued and the written observations of the person concerned³⁹”. The High Authority has only used this provision once, in December 2018⁴⁰.

³⁹. Article 23(IV) of Act No. 2013-907 of 11 October 2013 on transparency in public life.

⁴⁰. Deliberation No. 2018-178 of 21 November 2018 on the special report on the situation of Fleur Pellerin, Official Journal of the French Republic (OJFR) No. 0293 of 19 December 2018.

³⁷. Article L124–15 of the French General Civil Service Code.

³⁸. Article L124–14 of the French General Civil Service Code.

of compatibility with reservations for particularly exposed public officials and civil servants or those holding sensitive functions. In addition to the information and documents requested from the person concerned by the monitoring, extensive research is carried out in open sources

(press, social networks, etc.), which sometimes reveals breaches of the reservations expressed or the resumption of a new professional activity without prior referral to the High Authority (see box).



EXAMPLES OF FOLLOW-UP ACTION BY THE HIGH AUTHORITY

— Following an opinion of incompatibility concerning a proposed revolving-door movement by a deputy director-general of services of a local authority, a search on a professional social network revealed that the person concerned had started a new lucrative private activity, without the mandatory prior referral to his hierarchical authority and to the High Authority. The case of this agent was presented to the college of the High Authority at the beginning of 2022: reservations were formulated to regulate his activity and a report was sent to the public prosecutor's office, due to the potential for unlawful taking of interest.

— Similarly, when approached by a public official wishing to work as a lawyer in private practice, the High Authority issued an opinion of compatibility with reservations, in view of the criminal and ethical risks associated with his plans. It emerged from the monitoring of the reservations that the person concerned had indeed started working as a lawyer, but within a law firm, which should have been the subject of a new referral to the High Authority. The person concerned and his administration were asked to regularise the situation, which they did.

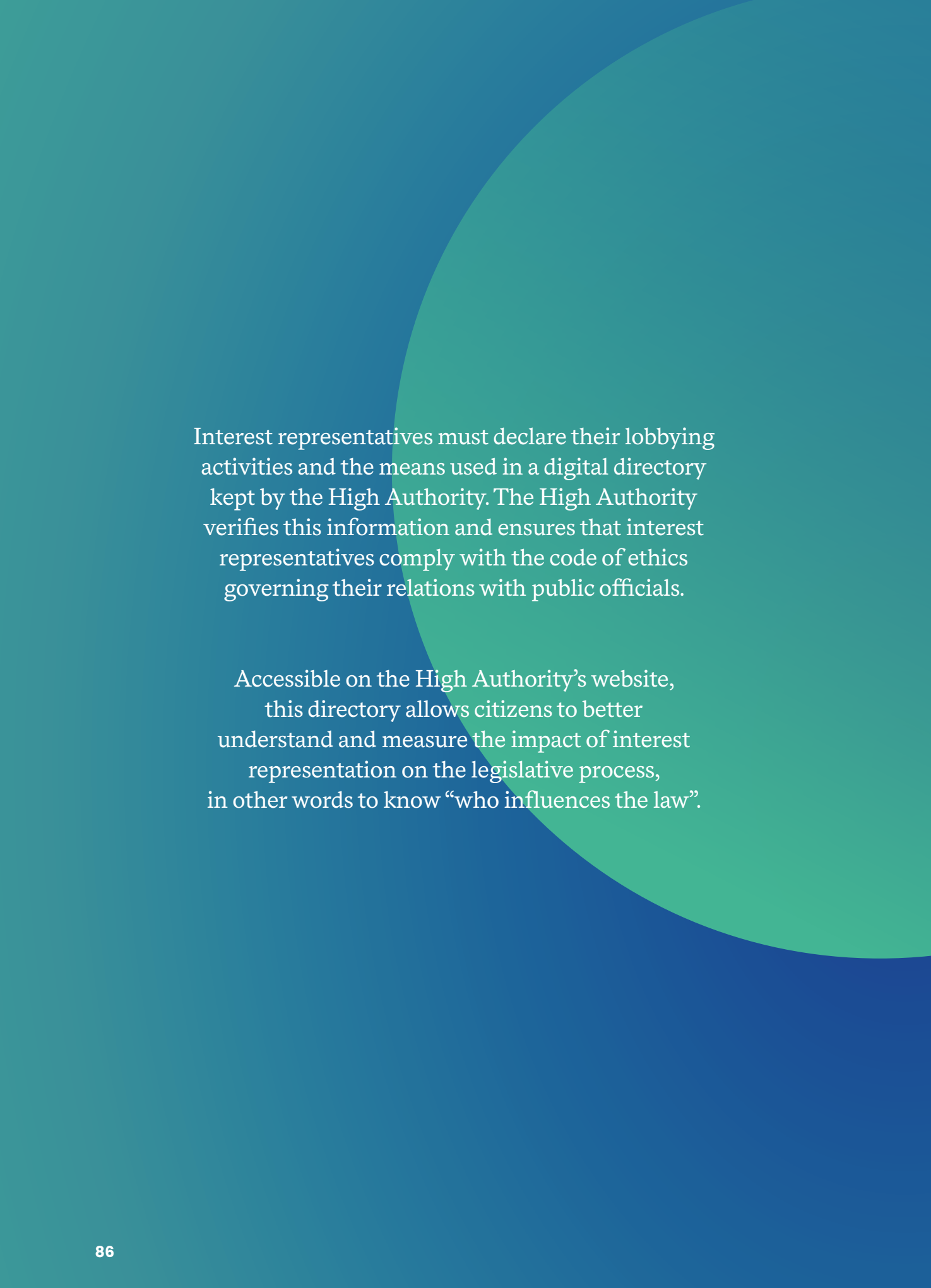
— A former ministerial cabinet member's move to the private sector to take up a management position in a professional association related to the ministry in which he worked was issued with an opinion of compatibility with reservations. However, press articles and research on social networks revealed that interest representation activities had been carried out with public officials with whom he had professional relations in the context of his former duties, in disregard of the reservations formulated by the High Authority. His hierarchical authority was informed and a letter was sent to him asking him to refrain from such behaviour in the future.



3

Regulating interest representation

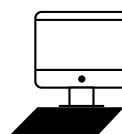
- 1 | Assessment of the 2020 declaration year:
progress made but persistent shortcomings
page 88
- 2 | Difficulties related to the legal framework
of the register
page 95
- 3 | Consolidating procedures for monitoring
interest representatives
page 101
- 4 | The challenge of using data from the directory
of interest representatives
page 111
- 5 | Sharing good practice at international
level on lobbying
page 114



Interest representatives must declare their lobbying activities and the means used in a digital directory kept by the High Authority. The High Authority verifies this information and ensures that interest representatives comply with the code of ethics governing their relations with public officials.

Accessible on the High Authority's website, this directory allows citizens to better understand and measure the impact of interest representation on the legislative process, in other words to know “who influences the law”.

Who should be registered in the interest representatives directory?



2,391
entities
on the register
of interest
representatives
as at
31 December 2021
(+9.5% compared
to 2020)

A legal entity for which 1 officer, 1 employee or 1 member carries out an interest representation activity



Legal entities governed by private law, public establishments carrying out industrial and commercial activities, consular chambers

OR

A natural person, in the context of a professional activity

... conducting interest representation as its:

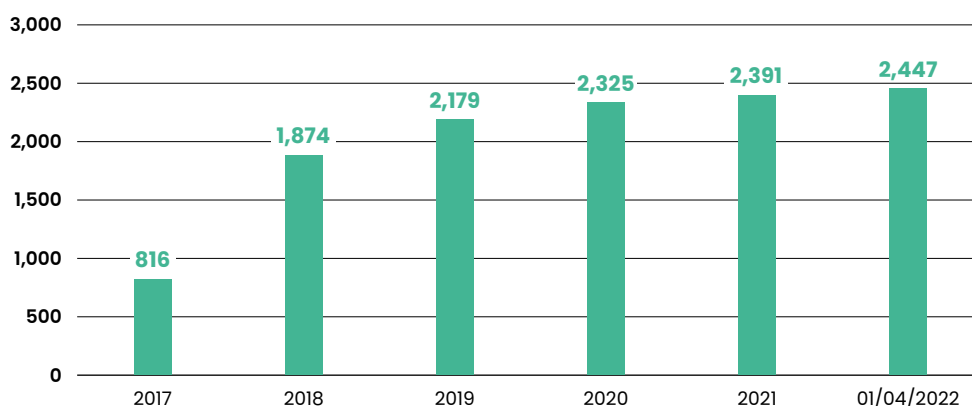
Main activity: more than half of its time over 6 months

OR

Regular activity: at least 10 communications in the last 12 months

... who takes the initiative to contact a public official to influence a public decision

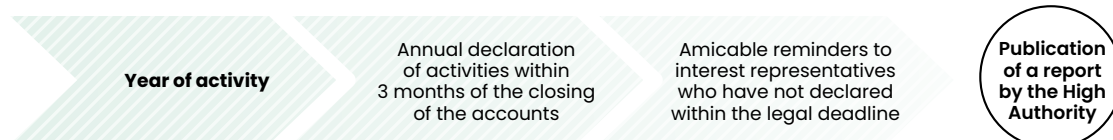
Number of interest representatives entered in the directory since 2017



1 Assessment of the 2020 declaration year: progress made but persistent shortcomings

As soon as an entity or individual meets the legal criteria for qualification as an interest representative, it must register and communicate to the High Authority, each year, within three months of the end of its financial year, a certain amount of information in order to make known the influence actions carried out with public officials and the resources it has devoted to them. 2,027 registered interest representatives had to comply with this declaration obligation for 2020.

The annual declaration of activities



General trends in the 2020 declaration year (published in June 2021)

Interest representatives with a financial year ending on 31 December 2020 had until 31 March 2021 to make their annual declaration of activities. 1,849 entities were affected.

After extensive follow-up work by the High Authority's services, 1,570 interest representatives had published their declaration of activities and means at the time the report on the declaration year was published in June 2021⁴¹. 279 of these entities, or 15.2% of the total number of declarants, filed a declaration of non-activity, indicating that they had not carried out any interest representation activities in 2020 (compared with 383 for the 2019 declaration year). This possibility, which has been in place since 2019, enables account to be taken of variations in interest representation activities, which are often dependent on current

legislation, and thus avoids the need for entities to deregister (see box). Indeed, some interest representatives join the register as a result of a one-off mobilisation linked to a particular legislative event; their interest representation activity diminishes, or even ceases, once the text has been adopted.

1,849
interest
representatives
required to declare
their 2020 lobbying
activities by 31 March 2021

41. 2020 report on the declarations of activities of interest representatives: <https://bit.ly/35P8WUR>

In addition, the list of interest representatives not declaring any of the information required by law for the 2020 financial year was published on the High Authority's website on 24 June 2021. This list, which initially included 279 entities⁴², was subsequently updated in the event of a declaration, a deregistration request or a report of cessation of activity.

The directory highlights the significant heterogeneity of the entities carrying out interest representation activities. In line with previous

declaration years, commercial companies and professional organisations account for more than half of the declarants (54%), followed by associations and non-governmental organisations (18.5%) and trade unions (11.5%).

The number of interest representation activities declared for the 2020 declaration year decreased to 10,780 (-16.5% compared to 2019). This trend, which is unprecedented since the directory was set up, does not necessarily reflect a decline in the intensity of lobbying activities,



THE PROCEDURE FOR DEREGISTRATION FROM THE DIRECTORY

The request for deregistration of an entity from the directory of interest representatives is assessed in light of Article 6 of Decree No. 2017-867 of 9 May 2017⁴³ and Article 7 of Deliberation No. 2017-236 of 20 December 2017 creating the "AGORA" teleservice⁴⁴.

There are several situations that may lead to deregistration at the initiative of the entity or the High Authority:

- the entity is not an interest representative and therefore should not have registered;
- the entity has ceased its interest representation activity, either because it has ceased all activity (e.g. in the event of judicial liquidation) or because it no longer meets the legal criteria on a permanent basis.

A form for this purpose is available on the "AGORA" teleservice. Once the deregistration procedure has been validated, the registration and declarations of the interest representative remain visible on the register for a period of five years.

43. "[...] When a person listed in the directory ceases his/her interest representation activities, he/she shall inform the High Authority, via the teleservice mentioned in Article 5, which shall mention this information in the published directory."

44. "When an interest representative no longer meets the conditions set out in Article 18-2 of the aforementioned Act of 11 October 2013, he/she shall inform the High Authority by sending it a request using the template appended to this deliberation. [...]"

42. The correspondence between the number of defaulting entities and the number of interest representatives who made a declaration of non-activity (279) is purely coincidental.

Distribution of declarants who made a declaration by type of organisation declared



which are reported by “subject matter” and not by communication. The drop in the number of declared activities can thus be explained, in whole or in part, by a concentration of the subjects defended by interest representatives, notably because of the health crisis, and by changes in declaration behaviour. A similar trend is observed for the average number of activities declared per interest representative: 6.9 versus 8.3 in 2019.

The analysis of the declarations reveals heterogeneous levels of activity and financial and human resources depending on the entity:

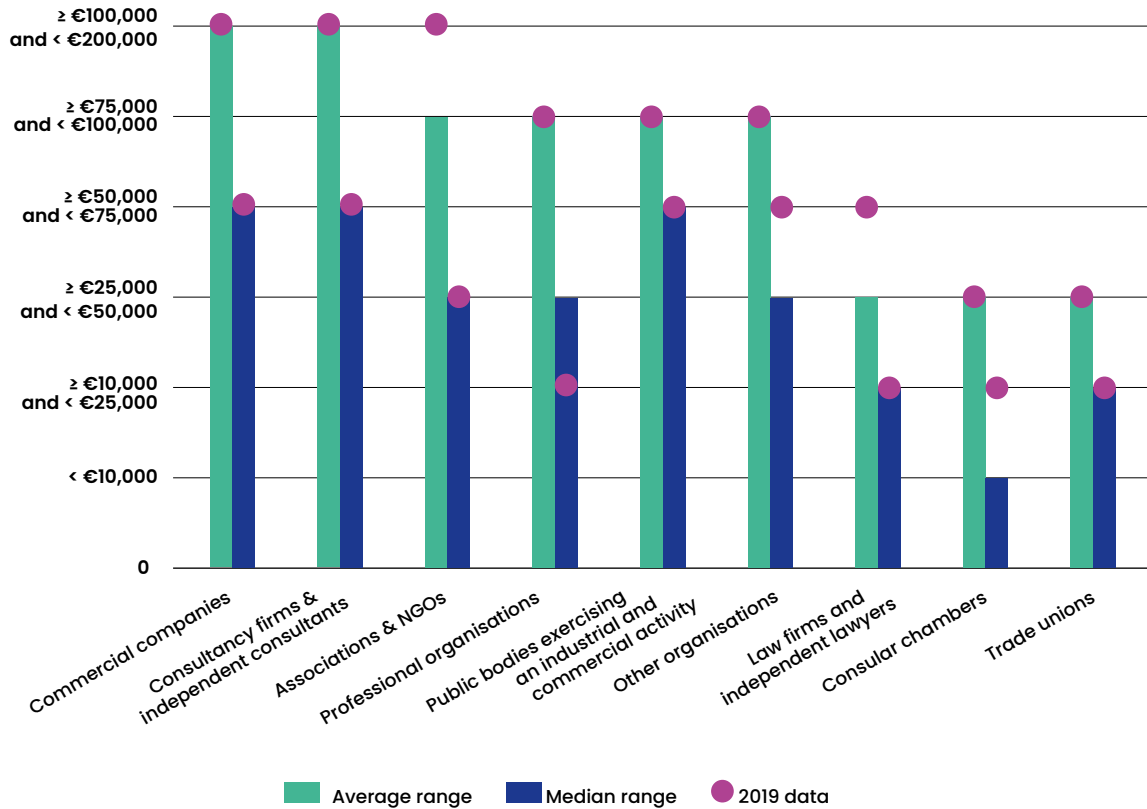
- The average number of activities reported is 18 for consultancy firms and independent consultants, compared to 6 for associations and non-governmental organisations, and just under 2 for law firms;
- The entity that reported the most – a professional organisation – submitted 276 activity forms;
- in the 2020 declaration year, only consultancy firms (18) and trade unions (7) increased their average number of activities;

— Commercial companies and consultancy firms declare the highest expenditure on interest representation, with an average range of between €100,000 and €200,000.

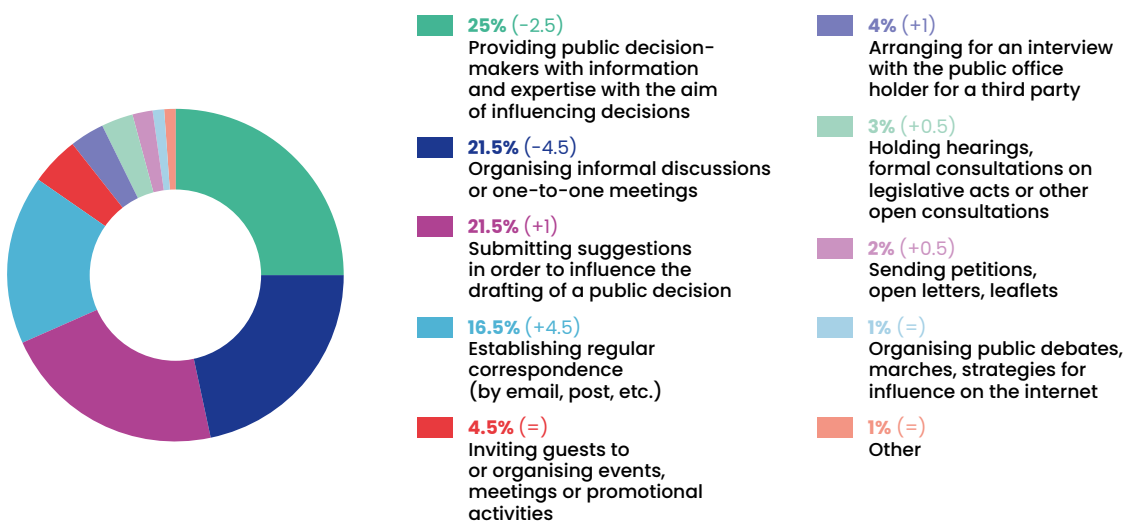
10,780
interest
representation
activities
declared
(-16.5% compared
to 2019)

6.9
average number
of activities
declared per interest
representative
(compared to 8.3 in 2019)

Average and median range of expenditure by type of organisation



Breakdown by type of action taken by interest representatives



() change compared to 2019



60%
of interest
representation
actions relate
to **development
of the law**

The areas of intervention as well as the ministries most targeted by influencing actions are strongly linked to current events. Within the framework of the sanitary measures put in place by the public authorities from March 2020 to deal with the Covid-19 epidemic, private actors have mobilised to defend their interests, particularly with regard to applications for economic aid. This partly explains why the economic and financial ministries were the most targeted by lobbying actions (23%). In addition, the adoption of successive laws relating to the state of health emergency and the organisation of the *Ségur de la santé* consultation explain why health was the most declared field in 2020 (15.4%), followed by agriculture (6%), due in particular to the drafting of the June 2020 Act on the transparency of information on agricultural and food products.

Parliament is involved in **62.5%** of interest representation activities and the Government **58%**

(Note: a single interest representation activity may concern several categories of public officials)

3

ministries

account for almost **half** of the interest representation actions in **2020**:

23%

Economy and Finance

13%

Prime Minister

12.5%

Environment,
energy and sea

3

**areas of
intervention**

most declared
out of 117 in **2020**:

15.4%

Health

6%

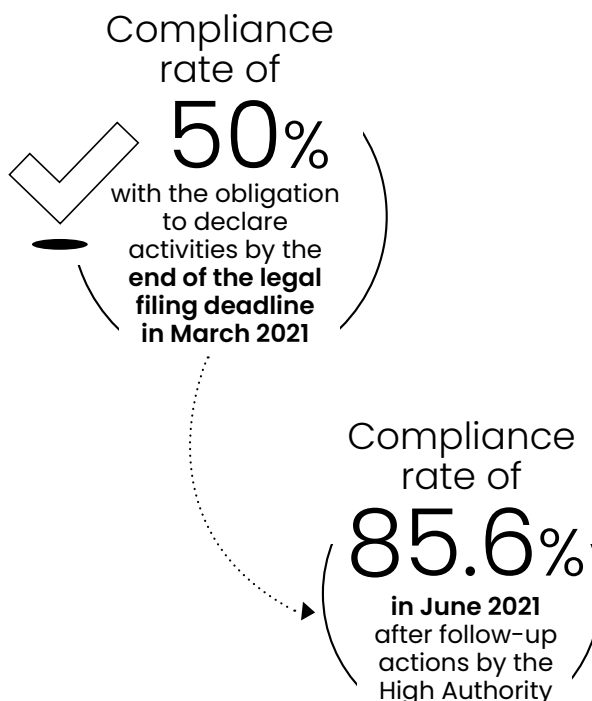
Agriculture

4.2%

Transport

Filing deadlines still late despite progress

By 31 March 2021, half of the entities subject to the obligation to declare their activities by that date had done so, compared with 34% in 2020. The High Authority's services issued amicable reminders for a month in order to alert the defaulting entities. At the end of this period, 80% of the entities had declared all or part of the information relating to their interest representation activity in the directory. By the time the declaration year was reviewed in June 2021, this rate had risen to 85.6%, compared to 90% at the same time in 2020.



A qualitative improvement in declarations of activities

According to the algorithm developed in 2017 by the High Authority to assess the quality of the “subjects”⁴⁵ provided, 69% of the “subjects” declared comply with the minimum readability requirements laid down by the High Authority.

This figure is by nature only an indication, but it shows an improvement in appropriation of the scheme by interest representatives compared to 2017 and 2018. However, this rate is still not high enough and its stability over the past two years tends to show that there is room for improvement, despite the continuous efforts of the High Authority to educate and raise awareness. Work is also underway to improve the relevance of the algorithm and its ability to improve the quality of the declarations.

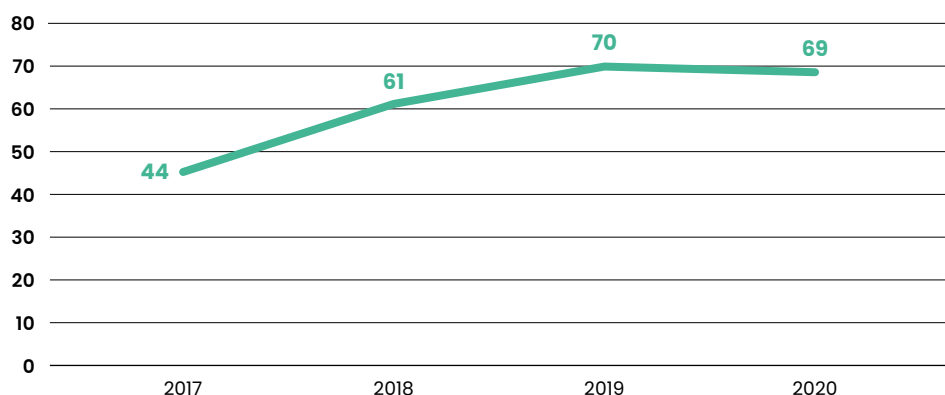


Despite a slight increase, use of the “observations” section remains insufficient, as it is only completed in one out of five declarations of activity. This possibility offered to interest representatives is nevertheless very useful for providing details or additional information, beyond the information required by law. It significantly improves the transparency of the public decision-making process.

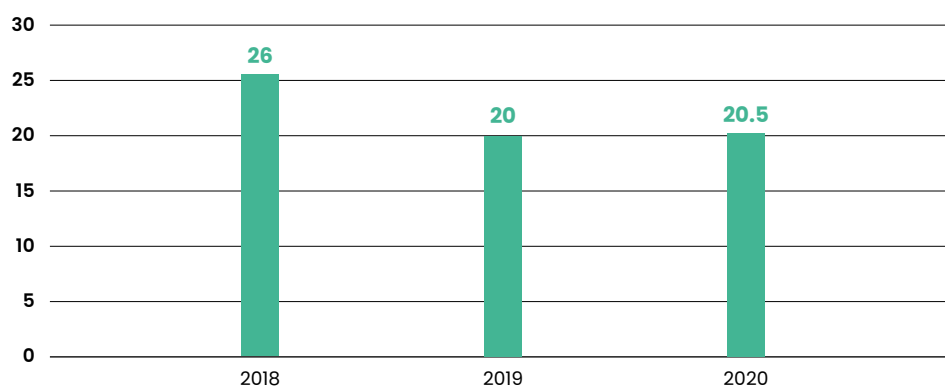
Only **20.5%** of activity declarations used the **“observations” section (+2.5%** compared to the 2019 declaration year)

⁴⁵. See 2020 Activity Report, p. 120.

Compliance rate of subjects of interest representation activity forms with minimum readability requirements (%)



Number of activity declarations that used the “observations” section (%)



2021 DECLARATION YEAR: ENCOURAGING PRELIMINARY FIGURES

2,178 registered interest representatives whose financial year ended on 31 December 2021 had until 31 March 2022 to declare their interest representation activities carried out in 2021, as well as the resources allocated to these actions.

59% filed their declaration by the legal deadline, a result that can still be improved upon, but which is up on previous years (50% for 2020, 34% for 2019).

The High Authority will publish a full review of this declaration year in June 2022.

2 Difficulties related to the legal framework of the register

Nearly five years after implementation of the directory and the introduction, for the first time in France, of declaration and ethical obligations common to all interest representatives, the progress made in terms of transparency and the reporting of the legislative footprint is undeniable.

Although the system opens up promising prospects, it remains weakened by a legislative and regulatory framework that is overly complex, particularly for the interest representatives themselves.

Publication of a study on the interest representation framework

In order to disseminate this observation, which it has already been made on several occasions in its activity reports, the High Authority published a study in October 2021 entitled *L'encadrement*

*de la représentation d'intérêts. Bilan, enjeux de l'extension à l'échelon local et propositions*⁴⁶. This report, which was drawn up on the basis of interviews with associations of elected representatives, local authorities and interest representatives, reviews the directory and, on the basis of this analysis, proposes several changes to the system, changes that are essential to ensure its durability and effectiveness, particularly in view of its extension to local authorities scheduled for 1 July 2022⁴⁷. Indeed, on the basis of established law, the difficulties observed at national level will not only be encountered at local level, but will be amplified by the specific nature of regional public action.



An overly complex legislative and regulatory framework that limits the scope of the directory and makes it difficult to appropriate

The persistent shortcomings and legal limitations of the directory, already identified and noted by the High Authority since the system was implemented, are detrimental to its readability and effectiveness.

An ineffective “main activity/regular activity” criterion

The texts state that an interest representative is any person who carries out an interest representation activity as his/her “main” activity, i.e. more than half of his/her time over the last six months, or as his/her “regular” activity,

⁴⁶. This study is available online on the High Authority's website: <https://bit.ly/3BaaFiR>.

⁴⁷. See p. 98–99.

by entering into at least ten communications over the last twelve months. For legal entities, the main activity and regular activity criteria are assessed not at entity level, but for each individual carrying out interest representation activities within the entity. As a result, for the same level of interest representation activity between two different entities, one may be qualified as an interest representative and the other not, depending on whether this activity is done by one individual or divided between several individuals.

In order to better reflect the reality of interest representation, to simplify the identification of entities that must be entered in the register for both the interest representatives themselves and the High Authority, and to avoid circumvention practices, the thresholds triggering an obligation to register should be assessed by considering all the activities of the legal entity concerned.

An irrelevant initiative criterion

Only communications initiated by the interest representative are considered as influencing actions, excluding *de facto* all actions carried out in response to requests from public officials. This criterion has several limitations:

- inequality between large interest representation players, who are more easily identified and consulted by the public authorities,

and small entities, which must more often solicit them (and therefore declare more influence actions in the directory);

- controls that are more difficult for the High Authority, as it is sometimes difficult to determine who initiated a meeting or exchange, particularly in the context of ongoing relationships.

In order to ensure better reporting of the influence of interest representation on public decision-making, the declaration obligation should be imposed when communication is initiated by the interest representative, but also when it is initiated by the public official.

Public decisions targeted by interest representation actions not precise enough

Decree No. 2017-867 of 9 May 2017 on the digital directory of interest representatives listed the public decisions that may be affected by influence actions. However, this scope appears to be too broad and indeterminate, particularly because of the “*other public decisions*” category. These provisions create legal uncertainty for interest representatives, especially in view of the extension of the system to the local level. Indeed, if left unchanged, the “*other public decisions*” category will lead to an extremely high volume of declarations from small local actors for whom interest representation is only an incidental dimension of their activity.





REVISION OF THE INTEREST REPRESENTATIVES FRAMEWORK: AN ISSUE TAKEN UP BY PARLIAMENTARIANS IN 2021

2021 saw major reflection in Parliament on the framework for interest representatives, reflecting the growing awareness of these issues among MPs and senators.

The report by MP Sylvain Waserman⁴⁸, published in January 2021, presented a series of proposals “for more responsible, more transparent lobbying”, some of which were adopted by the office of the National Assembly. The President of the National Assembly can now ban interest representatives from the Assembly’s premises in the event of a breach of the code of conduct and can make this decision public. The report also proposes, among other things, making transparency of agendas mandatory for text rapporteurs and changing the definition of interest representatives to include a wider range of players. With regard to the High Authority, the report stresses the need to introduce administrative sanctions in the event that lobbies fail to comply with their declaration and ethical obligations.

In addition, the information report by MPs Raphaël Gauvain and Olivier Marleix on the evaluation of the “Sapin 2” Act, published on 7 July 2021⁴⁹ made several recommendations concerning the supervision of interest representatives. In addition to granting the High Authority the power to impose administrative sanctions, it recommends drawing up a code of ethics and adapting the declaration obligations for interest representatives working in the local sphere, for example by limiting them to public decisions with a real financial impact.

Bill No. 4586 to strengthen the fight against corruption, tabled on 19 October 2021⁵⁰ by Raphaël Gauvain, takes up some of the proposals of this information report. In particular, it is proposed to assess the minimum threshold of ten shares triggering a registration obligation at the level of the legal entity. In addition, the declaration of activities should be done on a six-monthly rather than an annual basis and the information declared should be more accurate. Lastly, interest representation activities carried out for the President of the Republic and members of the Constitutional Council and the Council of State would be included in the scope of the directory.

48. Report submitted by Sylvain Waserman, Vice-President of the National Assembly, Chairman of the Bureau’s delegation on interest representatives and study groups, “*Propositions pour un lobbying plus responsable et transparent*”, January 2021.

49. National Assembly, information report No. 4325 on the evaluation of the impact of Act No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, known as the “Sapin 2 Act”, 7 July 2021.

50. National Assembly, Bill No. 4586 intended to strengthen the fight against corruption, 19 October 2021.

Thought should be put into specifying, in the texts, the criteria for public decision-making falling within the scope of interest representation, in particular according to their importance or because of their nature or their effects.

Level of detail of the information declared insufficient to ensure reporting of the legislative footprint

The data provided by the interest representatives, in particular concerning the public decisions concerned and the public officials met with, must be sufficiently precise to satisfy the objective of transparency of the public decision-making process. However, the lists retained by the Decree contain very general categories, excessively restricting the scope of the system, such as this one: *"a member of parliament, a senator, an aide to the President of the National Assembly or the President of the Senate, to a member of parliament, to a senator or to a parliamentary group, as well as with the staff of the parliamentary assemblies"*. For example, the specific functions of public officials in respect of whom interest representation has been carried out should be specified.

Furthermore, this information should be declared more frequently, as the current annual declaration rate weakens reporting of the legislative footprint, especially as the actions declared on the register do not specify the exact date on which they were carried out.

A common ethical framework to be clarified

Article 18-5 of the Act of 11 October 2013 defines the ethical framework applicable to interest representatives. However, some of the obligations in this Article are not clear:

- Interest representatives should not offer or give to public officials *"gifts, donations or benefits of any significant value"*;
- the obligations laid down in Article 18-5 must be respected *"in dealings with the immediate circle of public officials"*.

The final paragraph of Article 18-5 provides that a decree in the Council of State, issued after the public opinion of the High Authority, may clarify these provisions. No decree has been issued, even though such a text would provide better protection for public officials and interest representatives, particularly in the context of control by the High Authority.

Extension of the scheme to local authorities and other central and decentralised government employees from 1 July 2022

The Act of 9 December 2016 establishing the directory of interest representatives provides for the extension of this legal framework to the lobbying of local executives and certain public officials of State administrations, local authorities, their groupings and establishments, and public health establishments.

This extension, initially scheduled for 1 July 2018, has been postponed twice and is now scheduled to apply from 1 July 2022. These successive postponements were intended to:

- gradually roll out the directory and draw up an initial assessment of its various uses;
- encourage better ownership of the system by interest representatives;
- provide the High Authority with sufficient human and budgetary resources to enable it to cope with the significant additional flow of registrations and declarations of activities, and to carry out effective controls.

Extension of the directory to the local level raised fears of a huge increase in the number of public officials affected. The increase in the population threshold of the municipalities and EPCIs concerned from 20,000 to 100,000 under the so-called "3DS" Act (see box on p. 100) means that approximately 450 mayors and 600 presidents of EPCIs are no longer covered by the system⁵¹. Despite this, the extension of the directory will bring the number of public officials concerned to over 18,000, making the French system one of the most extensive in the world.

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 Act of 11 October 2013 is drafted. This Article includes references to other texts, which themselves refer to others that 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.

Thus, Article 18-2(7) provides that communication in relation to *"a public official occupying a post mentioned in the decree of the Council of State provided for in Article 25(1) quinquies of Act No. 83-634 of 13 July 1983 on the rights and obligations of civil servants"* constitutes an interest representation action.

This decree⁵² sets out categories of posts, some of which must be specified by decree, while others require detailed knowledge of the administration, a legal qualification operation, or even access to data that is not readily available.

With regard to the posts to be listed by decree, the High Authority notes that, of the fifteen or so existing orders, some are not regularly updated, so that the posts they list do not correspond to those that exist within the administrations concerned.

For other posts, the determination of which posts are covered can be very complex. For example, for *"the posts of head of the purchasing function" of "State administrative public establishments (...) with a provisional budget of more than €200 million"*, the interest representative determines whether the public establishment in question is of an administrative nature, finds out about its budget and assesses whether the functions performed by the person with whom he is dealing should lead to his being described as *"head of the purchasing function"*.

Similarly, for *"the posts of Managing Director (...) [of] public-private entities made up exclusively of local authorities and groups of authorities assimilated to a municipality of more than 150,000 inhabitants"*, the interest representative will have to analyse the entity's articles of association to determine whether it is, within the meaning of the French General Local Authorities Code, a public-private entity made up exclusively of local authorities and groups of authorities and then, pursuant to Article 1 of the Decree of 22 September 2000 on the rules for assimilating local public establishments to regional authorities for the creation of certain grades of regional civil servants, assess whether the entity must, in view of its competences, the size of its budget and the number and qualifications of the officials to be managed, be assimilated to a municipality of more than 150,000 inhabitants.

⁵¹. See Appendix 2 p. 162.

⁵². Decree No. 2016-1968 of 28 December 2016 on the obligation to transmit a declaration of assets provided for in Article 25 quinquies of Act No. 83-634 of 13 July 1983 on the rights and obligations of civil servants.



Act No. 22-217 of 21 February 2022 on differentiation, decentralisation, deconcentration and various measures to simplify local public action (known as the “3DS” Law) modifies Article 18-2 of the Act of 11 October 2013 on transparency in public life, thus implementing two proposals made by the High Authority in the context of its study on the framework for the representation of interests:

- **the network of chambers of agriculture** is now included in the definition of interest representatives, thus completing the system that already included the chambers of commerce and industry and the chambers of trade and crafts;
- **the threshold for municipalities and public inter-municipal cooperative establishments (EPCIs)** concerned by the extension of the directory to the local level, initially fixed at 20,000 inhabitants, is raised to **100,000 inhabitants**. 42 municipalities and 130 EPCIs with their own tax status are now concerned, compared with 490 municipalities and 741 EPCIs with their own tax status previously.

3 Consolidation of the procedures for controlling interest representatives

Since 1 July 2017, interest representatives have been subject to declaration obligations with the High Authority – they must register and communicate, each year, information on the influence actions they carry out and the means they devote to them – as well as ethical obligations.



Three types of controls are carried out with regard to interest representatives:

- the control of non-registered persons, in order to check whether the natural persons or legal entities meeting the criteria defined by the law are actually registered in the directory;
- the control of annual declarations of activities, which is split into a formal control of compliance with the filing obligation and a substantive control to verify the accuracy and completeness of the information declared;
- control of ethical obligations.

In order to guarantee the credibility and effectiveness of the system, the High Authority has the prerogative to carry out documentary and on-site checks.

General overview and key figures on the control of interest representatives in 2021

In 2020, the health crisis had had a significant impact on the control activity of the High Authority, which had treated entities on the register with benevolence. In 2021, 228 controls were launched and 186 controls were completed. In addition, all entities for which controls were launched in 2020 have regularised their situation.

186
controls
of interest
representatives
closed in **2021**
(of which **72%**
of controls
launched in 2021)

228

interest representative
controls
launched in **2021**
(**+196% compared to 2020**), including:

108

controls of
non-registered persons

118

controls of annual
declarations

2

controls of ethical
obligations

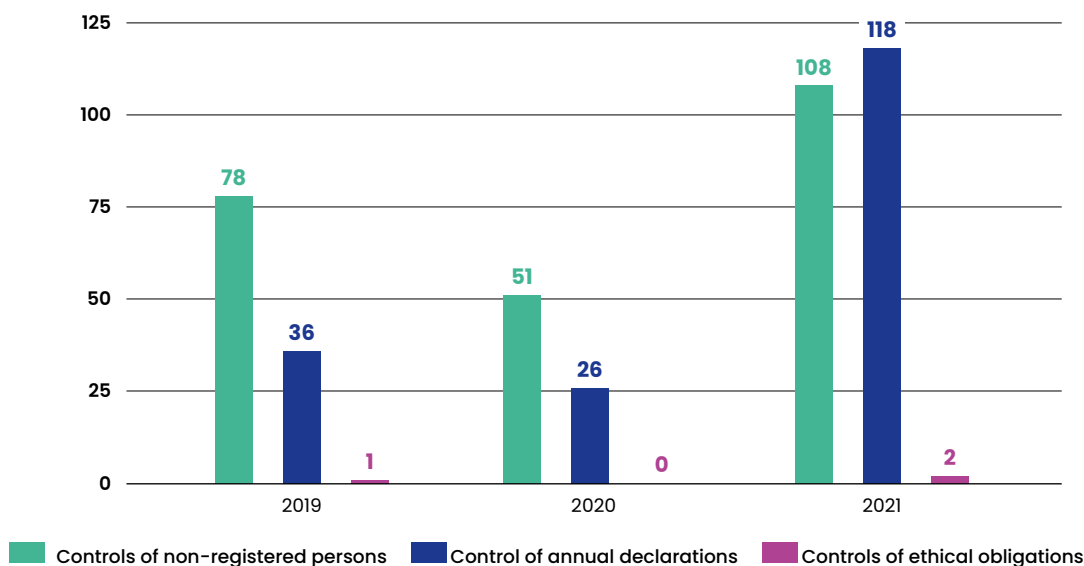


ACTIVITY SECTORS CONTROLLED

In 2021, the High Authority focused its controls on several activity sectors considered strategic due to the current political and legislative situation:

- environment, energy and agri-food;
- health;
- digital and audiovisual;
- real estate, construction and public works.

Evolution and distribution of interest representative controls launched since 2019



INTEREST REPRESENTATION OF FOREIGN STATES

In its latest report, “Lobbying in the 21st Century: Transparency, Integrity and Access”, the OECD calls on Member States to take better account of the influence of foreign governments in their regulation of interest representation, pointing out in particular the risks that such influence poses for democratic processes and their lack of traceability.

These ever-changing influence actions have three main objectives:

- to influence key democratic processes in the country;
- to influence a country’s foreign policy positions, including its positions on international negotiations (e.g. on climate, taxation, trade or data protection);
- to influence the perception of a country by the Government, the media and the citizens of another country.

The supervision of direct or indirect actions of influence or interference by foreign states is therefore a major issue that France has taken up:

– July 2021 saw the creation of Viginum⁵³, a technical and operational service responsible for vigilance and protection against foreign digital interference, attached to the Prime Minister and placed under the General Secretariat for Defence and National Security;

– on 11 October 2021, the Prime Minister issued a circular on the reinforcement of the transparency of foreign influence actions conducted with public officials⁵⁴. This circular is intended to raise awareness among public officials by reminding them of their ethical obligations and presenting the tools and resources available to them, the most important of which is the directory of interest representatives kept by the High Authority.

In France, several vectors of foreign influence can be identified, including the diplomatic network, the capture of political elites, the press, public or private companies, cultural programmes, university cooperation, parliamentary friendship groups and consultancy firms.

However, only those meeting the criteria defined by Article 18-2 of the Act of 11 October 2013 are subject to registration and declaration obligations. Foreign states as such do not fall within the scope of the definition, so they do not have to be included in the directory. On the other hand, private or public companies, associations and foundations and consultancy firms representing the interests of these entities are likely to qualify as interest representatives.

In the United States, the *Foreign Agents Registration Act*, adopted in 1938, provides for the registration of “agents acting on behalf of foreign principals” and imposes an obligation on these agents to declare all activities and communications established with public officials. A similar scheme was adopted by Australia in 2018. For several months now, the High Authority has been in regular contact with the US Department of Justice in order to initiate cooperation on this issue.

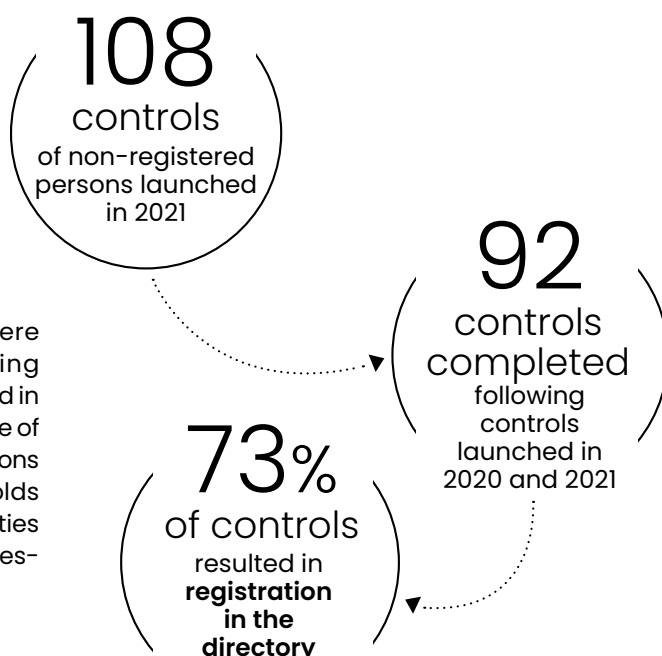
The EU transparency register includes, since its revision on 1 July 2021, lobbying on behalf of foreign governments. The new register thus provides that it applies to activities carried out by “public authorities of third countries” but only “where such authorities are represented by legal entities, offices or networks without diplomatic status or are represented by an intermediary”.

53. Prime Minister, Decree No. 2021-922 of 13 July 2021 creating, under the authority of the Secretary General for Defence and National Security, a service with national competence called the “service of vigilance and protection against foreign digital interference”.

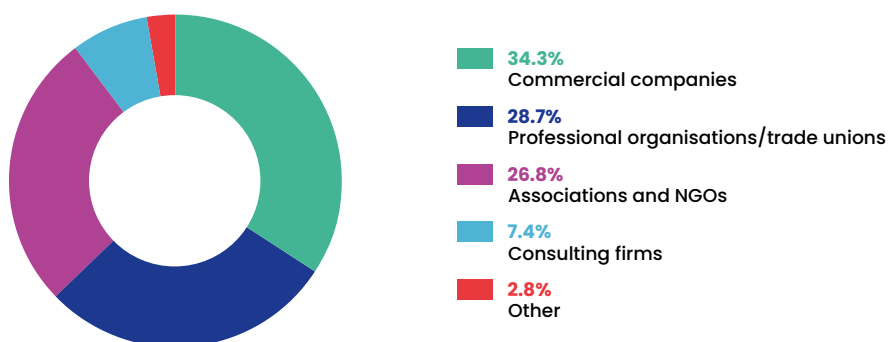
54. Prime Minister, Circular No. 6306/SG of 11 October 2021.

Control of non-registered persons

92 controls of non-registered persons were completed in 2021 while 40 are still being processed. Of the 92 cases closed, 67 resulted in registration (73%). For the others, the absence of registration most often corresponds to situations in which the entities are below the thresholds or entrust their interest representation activities to other bodies such as associations or professional federations.



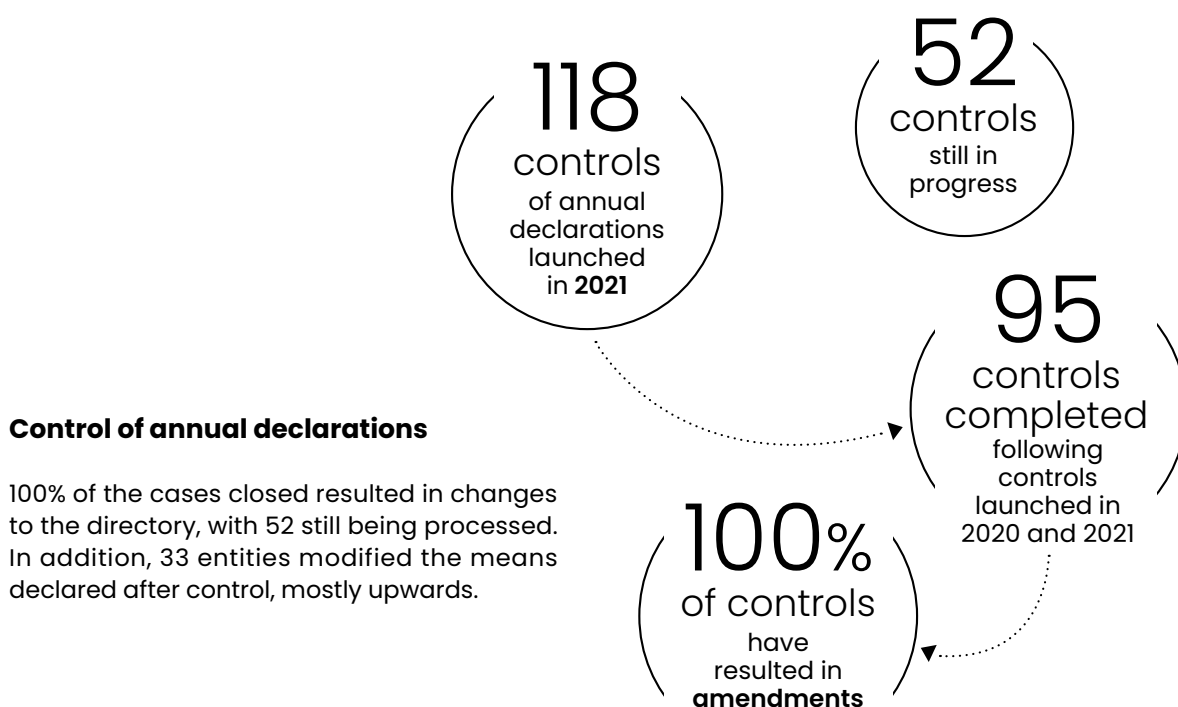
Entities checked for non-registration in the directory in 2021, by type



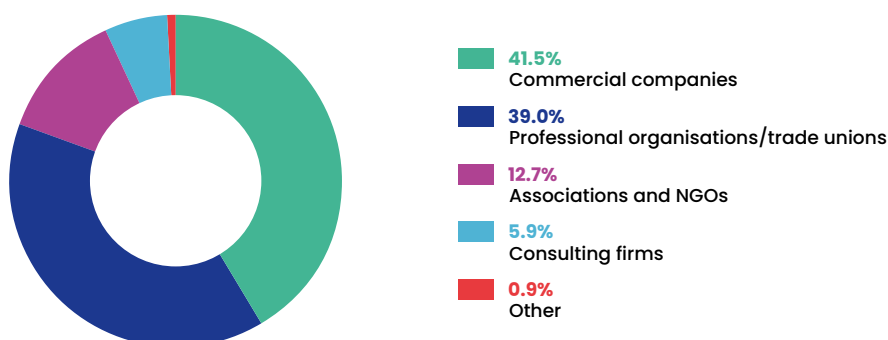
EXAMPLE OF CONTROLS OF NON-REGISTERED PERSONS LAUNCHED AND COMPLETED IN 2021

Real estate, construction and public works are considered to be priority sectors and account for about 10% of the activity forms declared in the directory. They have been the subject of heightened political and legislative activity, in view of the recovery plan linked to the health crisis and the reforms undertaken in the field of energy renovation.

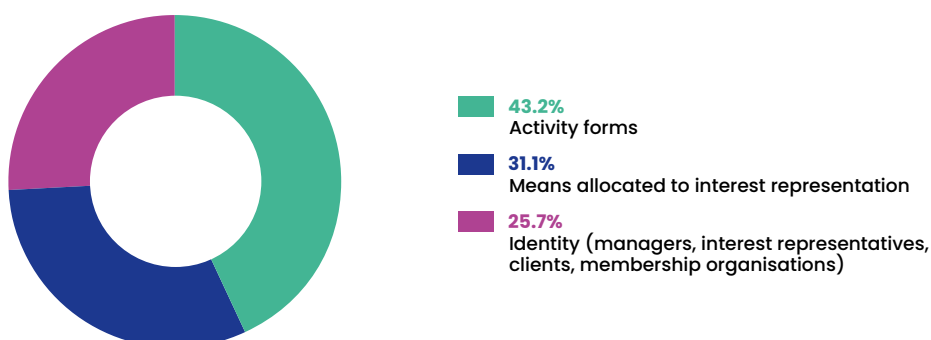
As a result of its monitoring work, the High Authority obtained the registration of 13 entities in these sectors, including several professional organisations and commercial companies.



Entities subject to control of annual declaration of activities in 2021, by type



Reasons for controls of annual declarations of activities launched in 2021



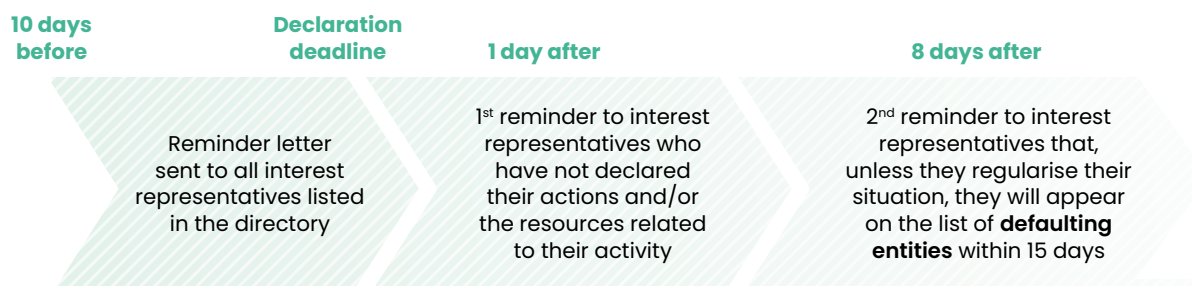


EXAMPLES OF CONTROLS OF ANNUAL DECLARATIONS OF ACTIVITIES LAUNCHED AND COMPLETED IN 2021

- Following the submission of an activity form that was too broad and imprecise concerning an interest representation action centred on the prevention of loss of autonomy, a pharmaceutical laboratory amended it by replacing it with seven new forms that were more detailed on the various objectives pursued;
- Several entities in the agri-food sector have had to change elements of their identity, updating their management team, the persons responsible for interest representation within them and the declared membership organisations;
- Several pharmaceutical companies have had to significantly increase their ranges of declared resources over several declaration years, following controls by the High Authority.

A graduated and proportionate control procedure according to the breaches observed

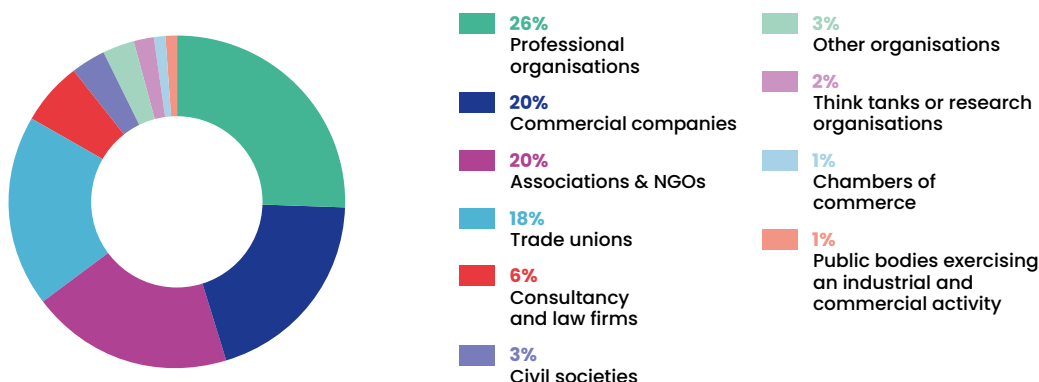
List of defaulting entities



Despite various reminders from the High Authority's services, by 31 December 2021, 97 entities had not declared any of the information required by law, i.e. neither their interest representation activities for 2020 nor the resources allocated to

their activity. These entities are then entered on a list of defaulting entities, which can be consulted online on the High Authority's website and is regularly updated.

Entities on the list of defaulting entities as at 31 December 2021 that have not declared any of the information required by law, by type



The procedure for notifying breaches

The High Authority may notify entities that have not complied, in whole or in part, with their declaration obligations, or that are unaware of their ethical obligations, of their failings. This prerogative was used 236 times in 2021.

Formal notice to an interest representative

According to Article 18-7 of the Act of 11 October 2013, when the High Authority finds, on its own initiative or following a report, a breach of a declaration or ethical obligation, it may send formal notice to the interest representative concerned, after giving him or her the opportunity to present his or her observations⁵⁵. The formal notice may be made public, on the High Authority's website. The interest representative may, at any time before the formal notice is issued, regularise his/her situation.

Any interest representative who receives a formal notice has two months to put an end to the breach of his/her obligations. Following a formal notice for non-registration or non-declaration, the High Authority may refer the case to the public prosecutor's office if the entity does

236

notifications

of non-compliance sent in **2021** for failure to file a declaration of activities and means

97

entities
on the list of
defaulting entities

as at 31 December 2021 that have not declared any of the information required by law

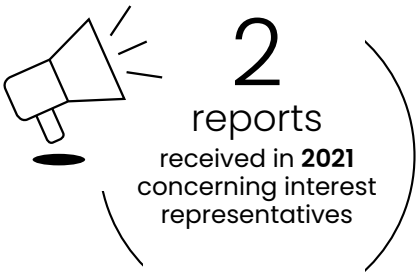
1

formal

notice made public in 2021, the first since 2017

⁵⁵. The interest representative has one month to submit his/her observations to the High Authority.

not comply. An interest representative to whom the High Authority has previously sent a formal notice to respect his/her ethical obligations and who again fails to respect the same obligation within three years is liable to a one-year prison sentence and a fine of €15,000. The formal notice procedure is reserved for entities that have already been notified of non-compliance and have not, at least partially, remedied their situation.

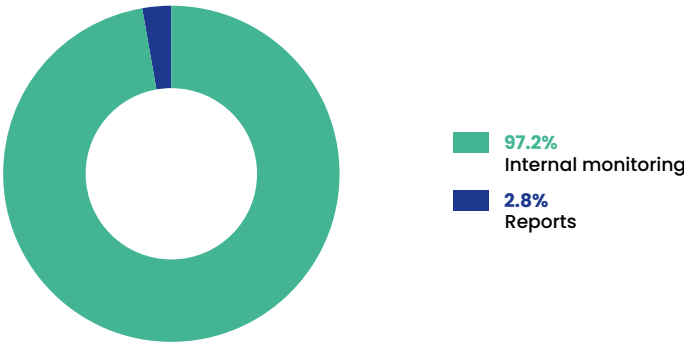


Diversified control tools

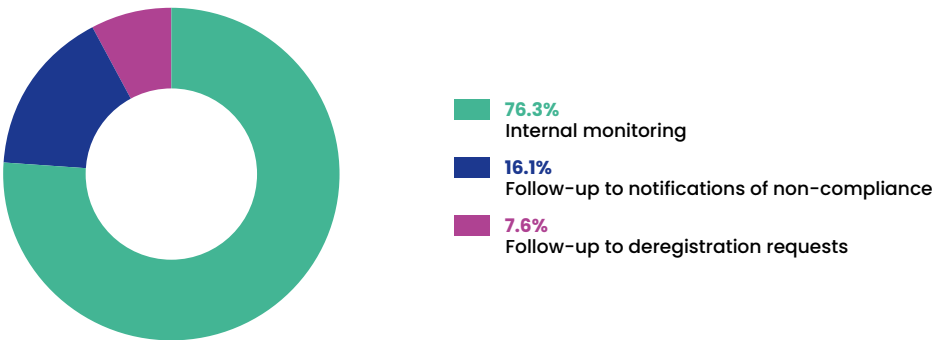
To carry out its controls, the High Authority relies on several tools that enable it to detect non-registered entities, as well as breaches of declaration and/or ethical obligations:

— open source intelligence based on access to a wide range of information sources (general, specialised and regional press; social networks; specialised databases and websites; open agendas, etc.);

Origin of the 108 controls of non-registered persons launched in 2021



Origin of the 118 declaration controls launched in 2021



- analysis of political and legislative news;
- monitoring of sectors deemed to be priorities by the High Authority⁵⁶;
- the drafting of thematic documents;
- a control carried out after a notification of non-compliance is sent or following a de-registration request;
- reports: two reports were received in 2021, one from a lobbyist association (see box) and the other from an association. They were thoroughly checked.

Investigative powers that are still limited: a barrier to the effectiveness of controls

The supervisory powers of the High Authority remain limited compared to those of other independent administrative authorities. In order to make controls more effective, these powers should be clarified and extended, while remaining proportionate to the objective pursued⁵⁷.

In addition, in order to exchange and share best practices in the field of documentary and on-site checks, the High Authority participates in a working group composed of other independent administrative authorities. The main topic of the last meeting was hindrance of on-site checks.



AN EXAMPLE OF AN ETHICS CONTROL TRIGGERED BY AN ALERT

In 2021, the High Authority received a report from a lobbyist association about a parliamentary staff member offering lobbying services to consultancy firms.

Article 18-5 of the Act of 11 October 2013 prohibits interest representatives *“from paying any remuneration to the aides of the President of the Republic, to members of the ministerial cabinet and to the aides of an MP, a senator or a parliamentary group”*.

The investigation finally revealed that there had been no breach.

⁵⁶. See p. 102.

⁵⁷. The list of the High Authority's proposals on the lobbying framework can be found on page 147.

4 The challenge of using data from the directory of interest representatives

The directory of interest representatives is still little known to the general public, but it nevertheless provides civil society with a great deal of information to enhance transparency in the public decision-making process. In line with its past work, in 2021 the High Authority continued its efforts to promote use of the directory.

196,504

**consultations
of the directory**
of interest
representatives in **2021**
(**-21.4%** compared
to 2020)

4.8

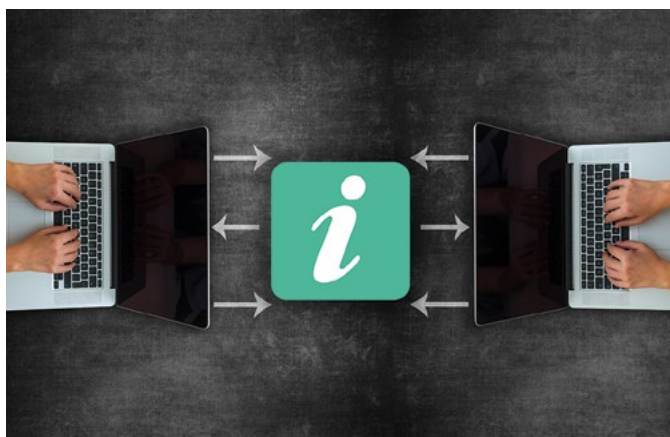
times fewer
consultations
than declarations
of public officials

The establishment of a digital platform dedicated to lobbying

In June 2021, the High Authority launched a digital educational platform dedicated to lobbying⁵⁸. This platform centralises all the information on interest representation: legal and ethical

framework, diversity of actors, documentary resources, proposals for improving the system, international comparisons, etc.

The platform makes the data in the directory more readable and thus ensures greater transparency in public decision-making thanks to data visualisation tools and thematic analyses produced from the declarations of interest representatives (see box). The launch of this platform is a continuation of the commitments made by the High Authority as part of the 2018-2020 plan of the Open Government Partnership⁵⁹.



⁵⁸. Platform dedicated to lobbying on the High Authority's website: <https://www.hatvp.fr/lobbying>.

⁵⁹. See 2020 Activity Report, p. 175.



TWO EXAMPLES OF THEMATIC ANALYSES BASED ON THE DECLARATIONS OF INTEREST REPRESENTATIVES

Act No. 2019-1428 of 24 December 2019 on the future of mobility

Aimed at reforming the general mobility framework by taking into account the ecological transition, the law on the future of mobility has been the subject of intense lobbying strategies. 132 entities registered in the directory were involved, mostly professional organisations, commercial companies, consultancy firms and associations.

413 activity forms illustrate the actions carried out, with members of the Government, ministerial advisers and aides to the President of the Republic being the subject of the largest number of interest representation actions (590). The declarations highlight a clear distinction between interest representatives involved in promoting technological innovation as a lever for the development of new solutions for everyday mobility, while others are committed to promoting the deployment of cleaner, more environmentally friendly transport.

Act No. 2019-810 of 1 August 2019 aimed at protecting France's defence and national security interests in the operation of mobile radio networks, known as the "5G Act"

Establishing a legal framework designed to guarantee the security of telecommunications networks by regulating the methods for rolling out 5G in France, this law has been the focus of many debates, as shown by the involvement of 30 interest representatives registered in the directory and the filing of 84 activity forms. 40% of the interest representatives identified were telecom operators and equipment manufacturers. The ministry most solicited, particularly by economic players, is the Ministry of the Economy and Finance, which piloted the project, in particular through its Directorate General for Enterprise.

The High Authority's commitment to the "Open Government Partnership"

The *Open Government Partnership* (OGP) is a multi-stakeholder initiative that brings together 78 countries, as well as local and regional authorities, NGOs and civil society representatives, to help disseminate good practice in favour of transparency in government.

As a stakeholder in the Partnership since 2014, the High Authority has, in line with its previous contributions, made a new commitment within the framework of the 2021-2023 national action plan, aiming to ensure the transparency of interest representation. Indeed, the persistent difficulties of the current system make it impossible to effectively measure the impact of interest representation on the legislative process.

The High Authority's commitment will be implemented by carrying out actions to facilitate use of the data in the directory and make it more readable, to understand citizens' expectations in terms of the legislative footprint and to provide more precise information on the interest representation activity in France. It is planned to:

- publish, at least half-yearly, an analysis based on the data declared by the interest representatives;
- produce an annual report with the declarations of the interest representatives;
- organise a consultation to collect citizens' expectations on the subject of the legislative footprint;
- improve access to the data in the directory of interest representatives (search engine and filters) to make it easier to use and for citizens to find the information they are interested in;
- implement extension of the directory to local and regional authorities;
- organise, with other partners, a *hackathon* or *datasession* on public data relating to the legislative footprint;



- improve the tools for visualising the data in the directory.

In May 2021, the High Authority also took part in the "*Open d'État*" Forum, organised at the Court of Accounts by the Interministerial Directorate for Public Transformation, on the theme of "Transparency in public life, transparency of public services". The High Authority, in collaboration with *Transparency International France*, held a workshop on the theme: "How can we make the impact of interest representatives on the law visible?". The participants, from a variety of backgrounds (journalists, designers, interest representatives, parliamentary staff), formulated three proposals to address this issue:

- creation of a platform to collect and make public the positions of interest representatives during the drafting of a law – in particular with a view to "sourcing" amendments;
- *open data* notification of meetings of public officials with interest representatives, following the "open agendas" principle;
- revision of the lobbying framework, so that the directory of interest representatives provides citizens with more useful and accurate information.

5 Sharing good practice at international level on lobbying

The transparency of interactions between interest representatives and public officials has been a common issue in many countries for several years, helping to spread a culture of integrity in public decision-making and fostering trust in institutions.

Sustained bilateral exchanges

In particular, the High Authority organised a working meeting in June 2021 with the Office of the Commissioner of Lobbying of Canada, an independent office of Parliament, which is responsible for maintaining a public register and checking the information declared by interest representatives. These exchanges highlighted the differences between the French and Canadian systems.

In particular, in the Canadian system, unlike in the French system:

- all communications, whether initiated by an interest representative or a public decision-maker, are taken into account and must be declared on the register;
- any entity can be considered as an interest representative, including political parties, religious organisations or foreign governments;
- the declaration frequency for new communications is monthly;
- consolidated declarations by groups of companies are possible.

In addition, in October 2021, a delegation from the High Authority met in Brussels with the services of the joint secretariat of the European

Union's transparency register, thus enabling a better understanding of the new provisions resulting from the institutional agreement of May 2021 (*see box*).

The Network of European Lobbying Registers

Created in 2018, the Network of European Lobbying Registers is a forum for the exchange and dissemination of good practice with twelve members. On 18 November 2021, the annual meeting of the Network was held online. Since spring 2021, the High Authority has carried out the general secretariat function for two years.

Two new members joined the network: Serbia and the Council of the European Union. Germany, whose register of interest representatives came into force in January 2022, attended the meeting as an observer. Several topics were discussed at the event: lobbying control procedures, re-use of registry data by citizens and educational efforts around lobbying regulation. Finally, the issue of taking the influence of foreign governments⁶⁰ into account in the framework was raised.

60. See p. 103–104.



REFORM OF THE EU TRANSPARENCY REGISTER

The transparency register is a framework for lobbying within the European institutions, listing the natural persons or legal entities who seek to influence the legislative process and the implementation of European public policies. Registration is mandatory for certain lobbying activities, and entities must declare certain information about their identity, their lobbying activities and the related financial means, and respect a code of conduct.

More than 13,000 entities are now listed on this online register.

After four years of negotiations, the European Parliament, the Council of the European Union and the European Commission reached an agreement, signed on 20 May 2021⁶¹ and entered into force in July 2021, which reforms the transparency register.

Several developments can be noted. The Council of the European Union is now included in the scope of the register and those undertaking influence actions within it are therefore listed. The register is also open to voluntary participation by other EU institutions and bodies.

Each institution is free to adopt additional transparency measures, such as publishing information on meetings between public officials and interest representatives. In the European Commission, Commissioners and Directors-General are now required to publish their meetings with lobbyists. As part of the reform, the Permanent Representatives of the Member States have also committed to meeting only with lobbyists on the register during their rotating presidency of the Council of the European Union, as well as for six months prior to it, and to publishing these meetings online.

Finally, the definition of lobbying in the agreement is intended to be quite broad: it includes all activities aimed at influencing *“the formulation or implementation of policy or legislation, or the decision-making processes of the institutions”*. This definition allows for a broad understanding of the obligation to register, irrespective, for example, of the geographical origin of the communication. The register now regulates foreign influence activities: consultancy firms must publish the list of foreign governments they work for and the values of each contract. On the other hand, local authorities and their associations are no longer considered as interest representatives.

61. Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register.



4

Supporting,
advising
and raising
awareness

- 1 | Strengthening activities to inform and support public officials and interest representatives in meeting their declaration obligations
page 119
- 2 | Ethics advice
page 125
- 3 | Disseminating the High Authority's expertise and missions
page 128
- 4 | Promoting the French integrity model abroad
page 133

While the High Authority's various control missions are essential for guaranteeing compliance with the ethical and declaration obligations incumbent on a certain number of public officials and civil servants, as well as on interest representatives, the appropriation of these obligations can only be achieved through information, training and advice for the persons concerned.

The High Authority therefore attaches great importance to raising awareness and providing support to these people, in close cooperation with the other integrity stakeholders.

The awareness-raising activities carried out by the High Authority also make it possible to reach audiences that are not within its scope of control and thus to widely disseminate a culture of integrity.

1 Strengthening activities to inform and support public officials and interest representatives in meeting their declaration obligations

The High Authority provides public officials, civil servants and interest representatives with a wide range of tools and resources and offers them ongoing support. It regularly advises these groups, answering their questions, helping them to understand their declaration obligations and improving the quality of the information available to citizens.

Support for public officials

Many public officials become aware of their declaration obligations when they are elected or take office. The filing of a declaration may also raise certain questions, even for those who have gone through the process before.

In order to respond to this, the High Authority is putting in place several tools to assist those who have to declare their assets or interests.

At the same time, the High Authority conducts specific, targeted communication campaigns to raise awareness among the people concerned right when it is needed, before the filing campaigns.

A **summary table of** mandates, jobs and functions for which there are declaration obligations, so that the persons concerned can **identify themselves and comply with their obligations**

A **declarant guide, which details** the various declaration sections and **explains** precisely the information that must be included

Individual support, by telephone or email, for any questions relating to the **filing of declarations** or to the **procedures for referring a matter to** the High Authority

Targeted information campaigns ahead of the main deadlines

In order to ensure that those who must submit their declarations of interests and assets are fully informed, the High Authority has carried out targeted communication actions before the main filing periods, in particular with associations of elected representatives before departmental and regional elections, but also with the presidents of the regional and departmental councils.

Alongside that, four webinars were organised to answer declarants' questions directly and provide them with all the information they need to file their declarations.

In addition, the High Authority has published various information and reminder materials (brochures, letters), and has developed specific versions of its declarant's guide, depending on the target audience.



Déclarations de patrimoine
et d'intérêts :
**Guide
du déclarant
à destination des
Régions & Départements**



**Exécutifs
locaux**
—
**Présidents,
vice-présidents
et conseillers
de départements
et de régions**
(édition 2021)



FOUR WEBINARS FOR PUBLIC OFFICIALS IN 2021

Four webinars were organised by the High Authority for:

- members of the Economic, Social and Environmental Council (CESE);
- members of ministers' private offices;
- members of Parliament;
- regional and departmental elected representatives.

These webinars answered declarants' questions directly and provided them with all the information they needed to file their declarations.

The webinar for members of ministers' private offices, for example, was an opportunity to remind them of the various ethical obligations to which they are subject in the event of professional transition to the private sector after their duties have ended, as well as the procedures for requesting the prior opinion of the High Authority.

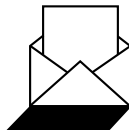
Personalised support for declarants

The services of the High Authority are available throughout the year to answer questions from public officials, by telephone and by email⁶². The system is reinforced during the main filing periods, which, depending on the case, follow or precede the holding of elections.

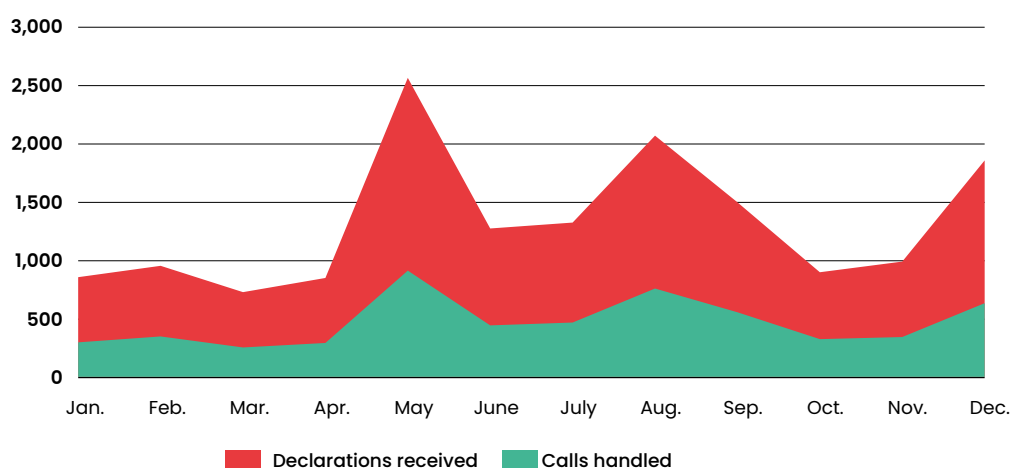
The questions concern the submission deadlines, the use of the “ADEL” remote declaration service, as well as the correct understanding of the different declaration sections and the right way to complete them.

 **5,476**
calls handled
by the public
officials'
hotline

3'57
average
call
time

 **50**
emails
processed
per week
on average

Calls handled by the public officials' helpline in 2021 as a proportion of the number of declarations received each month



⁶². Public officials can contact the High Authority by telephone on +33 (0)1 86 21 94 97 or by email at adel@hatvp.fr.



AN EXAMPLE OF MOBILISATION: FILING OF END-OF-TERM DECLARATIONS OF ASSETS OF MEMBERS OF PARLIAMENT

With seven seats vacant when the filing period opened, 570 MPs were required to file their end-of-term declarations between 21 November 2021 and 21 December 2021, i.e. no earlier than seven months and no later than six months before the expiry of their term of office.

This system of filing before the end of the term of office should enable the High Authority to check the declarations before the polls are held; it is therefore crucial, for this control to be carried out, that all declarations are received as soon as possible.

Several communication tools were used to ensure that MPs were properly informed: the President of the High Authority sent all MPs a letter reminding them of their declaration obligation and a webinar attended by more than 330 MPs and their assistants, organised at the beginning of December, answered many questions in advance.

In addition, the end of the filing period saw exceptional mobilisation of the High Authority's services, which made it possible to respond, via the telephone hotline, to all requests made by MPs.

In total, 99% of the MPs had filed their end-of-term declaration of assets within the legal deadline, with the others having regularised their situation in the following days, after exchanges with the High Authority.

Support for interest representatives

The High Authority also deploys tools and support mechanisms for interest representatives, in order to answer any questions they may have about

the information they are required to declare and their ethical obligations in their relations with the public authorities.

Online resources,
including videos,
for identifying
yourself as an interest
representative and
**understanding your
obligations**

Guidelines
for **identifying
the interest
representative**
and specifying
the **information
to be declared**
in the directory

Individual support,
by telephone or
email, for any
questions relating
to **compliance
with declaration or
ethical obligations**

Increased capacity to inform and train interest representatives

In 2021, the High Authority continued its efforts to make interest representatives aware of their obligations.

Two webinars were organised, each attended by over 250 interest representatives. As an illustration, one of the topics discussed was the study on the lobbying framework published in November 2021⁶³.

63. See p. 95.



LAUNCH OF A DIGITAL PLATFORM DEDICATED TO LOBBYING

In 2021, a new area was created on the High Authority's website in order to better explain the information produced by the High Authority on the representation of interests. This platform, which is available in support of the directory, also enhances its content by using additional tools to visualise the data declared and by regularly producing thematic analyses⁶⁴.

64. See p. 111.

The High Authority has also intervened on several occasions in the context of initial or ongoing training courses in universities and political studies institutes, in order to present the missions of the High Authority to future interest representatives and make them aware, from the start of their career, of the ethical issues specific to this profession.

In addition to these one-off events, new permanent resources have been made available on the High Authority's website, such as explanatory videos on lobbying, aimed at both citizens and interest representatives.

 **1,356**
calls handled
by the interest
representatives'
hotline

4'33
average
call time

Personalised support

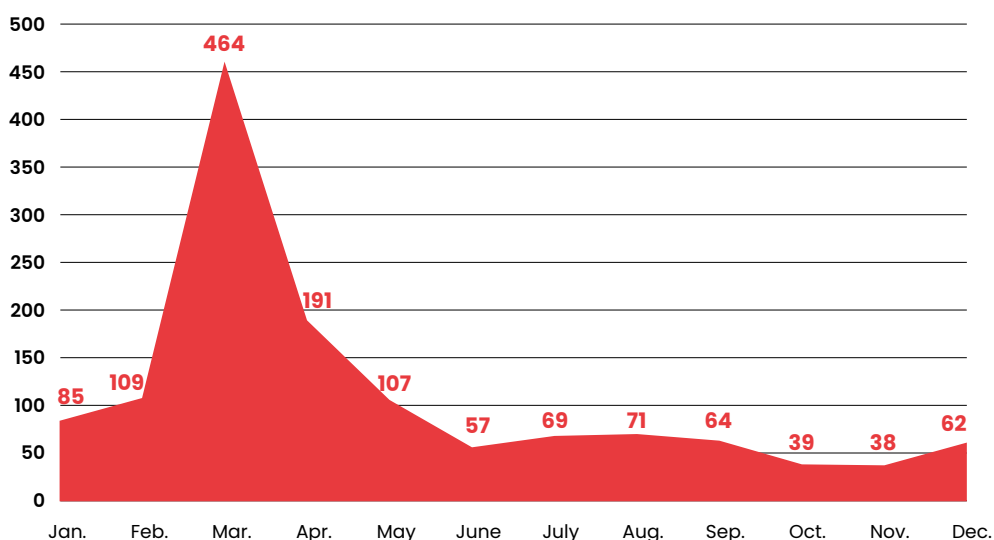
As it does for public officials, the High Authority provides assistance to interest representatives by telephone and email⁶⁵.

This one-on-one support contributes to a good understanding of the information to be declared and ultimately to the quality of the

information published in the directory of interest representatives.

As interest representatives declare their activities within three months of the end of their accounting year and most of them close their accounting year on 31 December, the first few months of the year are when the hotline is most in demand.

Calls handled by the interest representatives' hotline in 2021, by month



⁶⁵. Interest representatives can contact the High Authority by telephone on +33 (0)1 86 21 92 29 or by email at agora@hatvp.fr.

2 Ethics advice

The mission of advising public officials on ethical issues entrusted to the High Authority by the Act of 11 October 2013 has taken on a whole new dimension since the adoption of the Civil Service Transformation Act of 6 August 2019.

By establishing the High Authority as the supervisory authority for all conflicts of interest related to revolving-door movements, directly or indirectly, the legislator has given it a central and essential role in the public sector.

Advice for public officials

Public officials who submit declarations of assets or interests to the High Authority may ask for its opinion on any ethical issue encountered in the exercise of their duties, on the basis of the provisions of Article 20(1)(3) of the Act of 11 October 2013.

In addition to the questions that public officials send individually on their personal situation, the High Authority receives requests for advice formulated on an institutional basis (for example, requests for advice on draft ethics charters or questions about the management of certain types of conflict of interest in a local authority or deliberative assembly) and requests relating to the situation of a third party, in particular when the referring public official has questions about the ethical aspects of an appointment to be made.

The opinions issued are confidential and give the public officials who ask for them a sense of security in the face of the problems they encounter.

The High Authority received 35 referrals in 2021 and issued 30 opinions, with several requests received at the very end of the year. On average, these opinions were issued within 54 days, an increase compared to previous years. While the exercise of its new missions to control revolving-door movements has had an impact on the High Authority's capacity to respond to requests for opinions, the increase in the number of

requests received and their growing complexity also explain these longer delays. The simplest cases no longer necessarily give rise to a referral to the High Authority, as the dissemination of its doctrine enables public officials to deal with a certain number of issues themselves. From this point of view, the increase in the number of opinions issued in 2021 compared to the previous two years is all the more significant.

30
formal
opinions issued
in 2021, including:

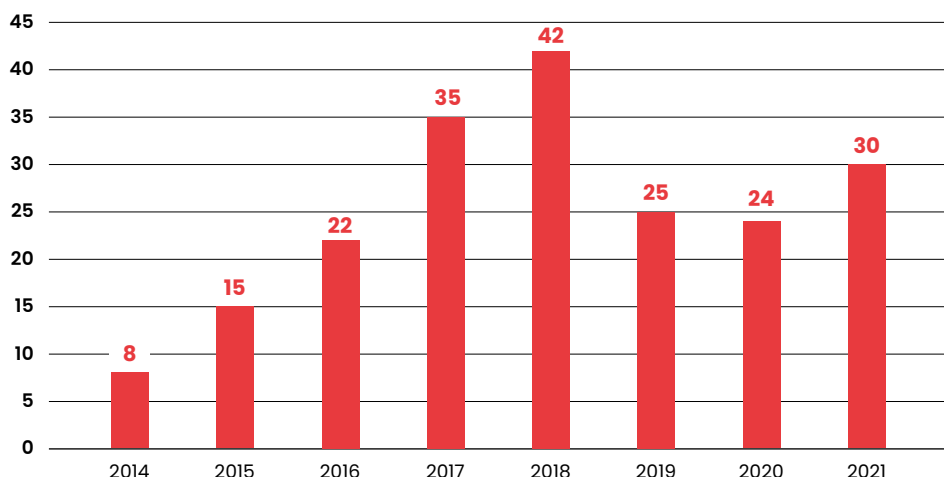
13
opinions issued
on individual applications

7
opinions issued
on institutional requests

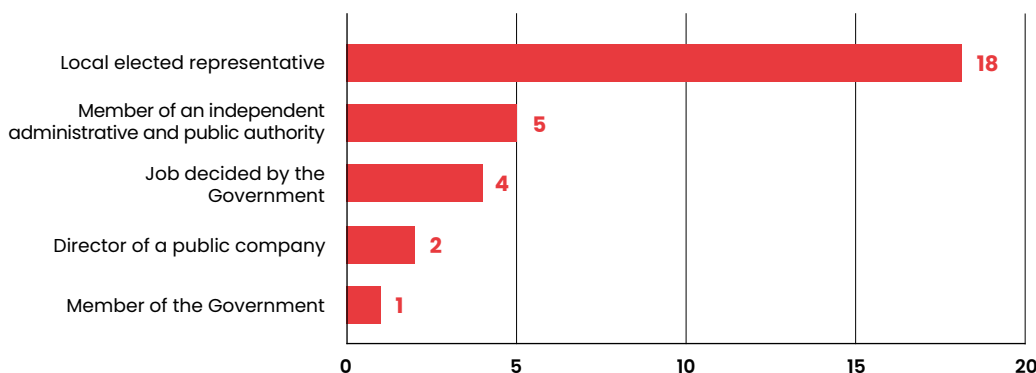
10
opinions issued
on applications
concerning the
situation of a third party

200
formal
opinions issued
since 2014

Number of formal opinions issued on the basis of Article 20



Capacity of the author of the request for an opinion



As in 2020, the majority of these requests for formal opinions were made by local elected representatives, which demonstrates both the acquisition of an ethical reflex and the many questions raised by the application of ethical rules and principles.

Specifically, these requests for opinions cover a wide range of issues, such as conflicts of interest, including the prevention of conflicts between public interests, or the management of financial instruments.

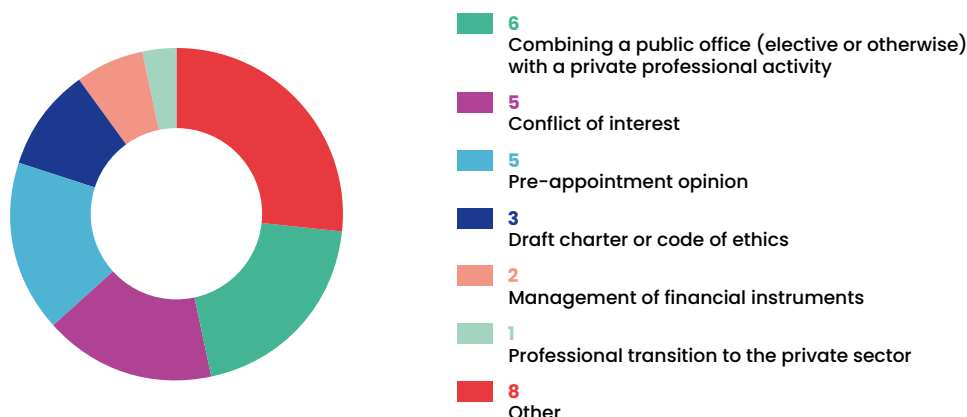
Several requests also concerned revolving-door projects or projects to hold multiple jobs. In some of these cases, the prior referral to the High Authority has helped to prevent ethical or criminal risks.

Advice for administrations

Administrations can contact the High Authority for advice on a variety of ethical issues. Use of this referral facility, which is little known to administrations, would nevertheless contribute to risk prevention in the civil service.

In particular, the High Authority may be asked to give an opinion, under certain conditions, on conflict of interest situations. Article 25 *ter* of the Act of 13 July 1983 on the rights and obligations of civil servants, now codified in Articles L.122-4 et seq. of the French Civil Service Code, provides that appointment to certain public posts is conditional on the submission of a declaration of interests to the hierarchical authority. Where the hierarchical authority finds that the public

Issues raised by requests for opinions based on Article 20



official is in a conflict of interest situation, it shall take the necessary measures to put an end to it.

Where the hierarchical authority does not consider itself in a position to assess whether the public official is in a conflict of interest situation, a request for an opinion may be made to the High Authority.

The High Authority then carries out an examination of the risks of conflict of interest likely to result from the elements declared by the official concerned. It shall make a decision within two months.

In 2021, three referrals were received on the basis of this article and two opinions were issued, with the third being processed in early 2022.

In one case, the High Authority considered that the declaration of interests did not call for any observations. In the second case, the identification of risks of conflict of interest led the Commission to recommend measures to ensure their prevention.

Although little used, this referral facility helps to ensure that a public official whose *"hierarchical level or the nature of his duties"*⁶⁶ are such that they justify the filing of a declaration of interests, takes office under the best possible conditions.

The High Authority also noted that, when a matter is referred to it, the hierarchical authority does not indicate the elements of the declaration that led it to question the existence of conflicts of interest, so additional exchanges are required. Such clarifications would improve the effectiveness of the High Authority's intervention.

Exchanges with administrations

In addition to the opinions it issues in the context of the various procedures provided for by law, the High Authority maintains numerous exchanges with administrations and ethics officers, in order to assist them and answer their questions.

In 2021, over 200 exchanges were recorded. These exchanges covered both legal analyses and control methodology, all of which are likely to enable the hierarchical authority to fully exercise its new role of first-level control, conferred by the Civil Service Transformation Act of 6 August 2019.

⁶⁶. For example, in the State administration, these are the posts of head of department or, in the regional administration, the posts of director-general of services or director-general of a public inter-municipal cooperative establishment or a public-private entity. Decree No. 2016-1967 of 28 December 2016 on the obligation to submit a declaration of interests specifies the list of jobs concerned.

3 Disseminating the High Authority's expertise and missions

Through its publications, its interventions and the organisation of networks, the High Authority works daily to disseminate a culture of integrity, which is crucial for the collective appropriation of ethical reflexes and the reduction of breaches of probity.

The external contributions of the High Authority

An increase in external contributions in 2021

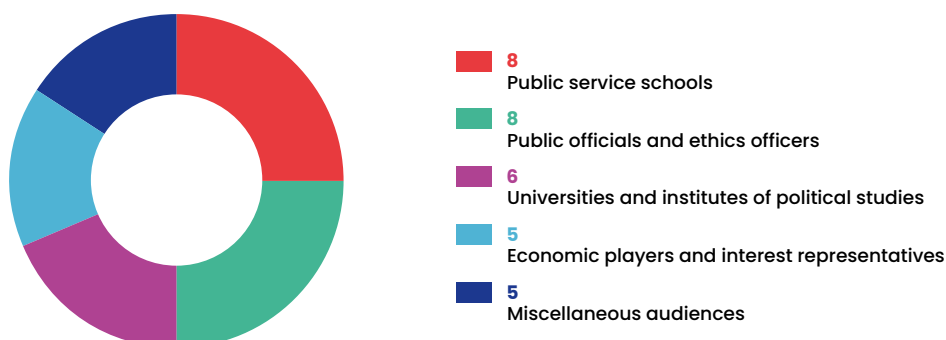
Firmly committed to training and disseminating a culture of integrity, the High Authority continued its educational efforts in 2021 by making 32 presentations to various audiences during training or awareness-raising activities, symposia or public debates.



The High Authority was, for example, involved in:

- an info day of the National Centre for the Regional Civil Service dedicated to ethical rules in the civil service;
- training in ethics and the prevention of conflicts of interest for the elected representatives of the Regional Council of Bourgogne-Franche-Comté;
- ethics training for agents in the Île-de-France region;
- a conference bringing together ethics officers from the regional civil service, organised by the *Centre de Gestion du Nord*;
- in several initial or ongoing training programmes led by the *École nationale d'administration* (now the *Institut national du service public*) or the *École nationale de la magistrature*.

Breakdown of the High Authority's initiatives, by type of audience





THE 3RD ANNUAL MEETING OF ETHICS OFFICERS

Organised on 14 October 2021 at the Senate, this meeting brought together nearly one hundred ethics officers from local authorities, central administrations and independent administrative authorities⁶⁷.

The morning round-table discussion provided an opportunity for a panel of ethics officers with different profiles to share their respective experiences in implementing the reform introduced by the Civil Service Transformation Act, before engaging in an exchange with the public.

In the afternoon, the ethics officers, divided into small groups, were able to discuss specific issues such as the establishment of reservations, assessment of the risks of unlawful taking of interest or the control of multiple jobholding, within the framework of workshops led by pairs of High Authority agents and external people.

This meeting, which had been postponed in 2020 due to health conditions, has once again proved its usefulness, by allowing ethics officers to meet each other, to prepare potential future exchanges between peers and to complete training directly in contact with the High Authority, which, for its part, benefits from their feedback and can evaluate its practice.



⁶⁷. A look back at the day in pictures: <https://bit.ly/3gSq4Lf>

These initiatives, whether they are structured as real training sessions supported by practical examples, as a debate or as a presentation of the institution's missions, help to disseminate the High Authority's doctrine and expertise and to create time for exchanges with participants.

The High Authority shall ensure that its actions are distributed between the different audiences that fall within its field of competence, while paying particular attention to initial or ongoing training within public service schools and to the training of public officials and ethics officers.

The President's interventions

The President of the High Authority, Didier Migaud, has himself taken part in several events, such as round tables, debates and symposia on integrity in the public sector, conflicts of interest or the French policy to combat ethical violations.

In September 2021, he took part in a debate on public ethics and business ethics at the Summer University of the Observatory of Public Ethics, and in November he introduced one of the round tables of the "*Rencontres capitales*" organised by the *Institut de France*.

The President has initiated a series of meetings with elected representatives, civil society organisations and the local press in the regions. This project, which should have started at the beginning of his term of office in 2020, had been postponed due to the pandemic. The first of these trips was to the Eure department. It was an opportunity to discuss with local public officials their declaration obligations and the ethical issues they face. This initiative will be continued in other regions on a regular basis.

Constant dialogue with ethics officers

The departments of the High Authority maintain regular exchanges with the ethics officers appointed within administrations.

Now consulted by the administration, pursuant to the law, in the event of serious doubt as to the compatibility of a professional transition project with the respect of the ethical principles inherent in the exercise of a public function, the ethics officers have had to take on a new competence that has modified their role and their position within the administrations.





THE ESTABLISHMENT OF AN ETHICS OFFICER FOR ELECTED REPRESENTATIVES

The law on differentiation, decentralisation, deconcentration and various measures to simplify local public action, known as the “3DS Act”⁶⁸, created the right for all local elected representatives to consult an ethics officer, like the one that has existed for public officials since the adoption of the Act of 20 April 2016.

While some local authorities have, for several years, been taking the initiative by appointing an ethics officer for elected officials, systematisation of this function will give elected officials who do not fall under the competence of the High Authority a point of contact for ethical issues and will be an additional channel for disseminating the culture of integrity in local public life.

68. Act No. 2022-217 of 21 February 2022 on differentiation, decentralisation, deconcentration and various measures to simplify local public action.

It was precisely this reform of the control of revolving-door movements that was the focus of the third annual meeting of ethics officers.

The Research Prize: encouraging the production of knowledge

Every two years, the High Authority awards a Research Prize for a publication that provides a better understanding, enriches the theoretical approach or develops innovative and operational proposals in the field of transparency, deontology, public ethics, lobbying or the fight against corruption.

The panel for the 2021 Research Award was chaired by Didier Migaud, President of the High Authority, and composed of Alberto Alemanno, Professor of European Law at HEC and founder of The Good Lobby, Catherine Husson-Trochain, Honorary President, Ethics Officer and President of the Ethics Commission of the Sud-Provence-Alpes-Côte d’Azur region, Anne Levade, member

of the High Authority’s College and professor of public law at the University of Paris 1 Panthéon-Sorbonne, Sabine Lochmann, member of the High Authority’s College, Chair of Vigeo Eiris and Global Head of Moody’s ESG Measures, Patrick Matet, member of the High Authority’s College and honorary adviser to the Court of Cassation, and Élise Untermaier-Kerléo, lecturer in public law at the University Jean Moulin Lyon 3 and Ethics Officer.

After deliberation by the panel, the 2021 Research Prize was awarded to Baptiste Javary for his public law PhD thesis, *La déontologie parlementaire. Étude du cas français au regard des expériences étrangères (Allemagne, Canada, États-Unis, Parlement européen, Royaume-Uni)*.

At the same time, and in recognition of the quality of his work, the panel also awarded a special prize to Alexis Zarca for his book *Le travailleur obligé. Regards croisés sur les obligations de l’agent public et du salarié* and its

analysis of the ethical requirements for public officials and employees.

The production and dissemination of tools, studies and doctrine

The High Authority strives to contribute to the production of knowledge and to provide public officials, administrations and ethics officers with useful tools for the performance of their duties.

The publications of the High Authority

In 2021, the production of legal studies and contributions focused on two main media.

The publication, at the beginning of the year, of a second volume of the ethics guide made it possible to widely disseminate the High Authority's doctrine on conflicts of interest and unlawful taking of interest, and to make practical information available to the various stakeholders in the control of revolving-door movements.



+178%
subscribers
to the legal
watch
mailing
list in 2021

In addition, the High Authority has published a study on the framework for the representation of interests, which assesses the implementation of the mechanism created by the Sapin 2 Act and sets out proposals for improvement, particularly with a view to extending the mechanism to the local public sphere on 1 July 2022⁶⁹.

Legal watch and the international newsletter

The High Authority carries out bimonthly monitoring on the issues of transparency, integrity, ethics and representation of interests. Short summaries are provided of legal articles, court decisions and institutional news.

It also publishes a monthly international newsletter, in French and English, which summarises international news, mainly institutional, on public integrity and the fight against corruption.

This watch and this newsletter are circulated on the High Authority's social networks and to people on the relevant mailing list⁷⁰.

⁶⁹. See p. 95.

⁷⁰. To receive the legal watch, write to: veillejuridique@hatvp.fr
To receive the international newsletter, write to: comm@hatvp.fr

4 Promoting the French integrity model abroad

The High Authority has a strong presence in multilateral fora working in the field of public integrity and the fight against corruption, and also maintains multiple bilateral relationships with its counterparts in foreign countries. All of these interactions allow it to compare and enrich its practices and to disseminate its expertise.

The central importance of relations with the European Union and its institutions

The project to create a European ethics body, which has been under discussion since 2019, had concentrated a significant part of the High Authority's international activity in 2020. This mobilisation continued in 2021: cited as an

example during the debates in the European Parliament, the High Authority was frequently consulted.

Alongside that, the High Authority also met with the European Ombudsman⁷² and representatives of the secretariat of the European Transparency Register⁷³ during a visit to Brussels.



THE CREATION OF AN "INDEPENDENT EU ETHICS BODY"

On 16 September 2021, the European Parliament adopted a resolution on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body⁷¹.

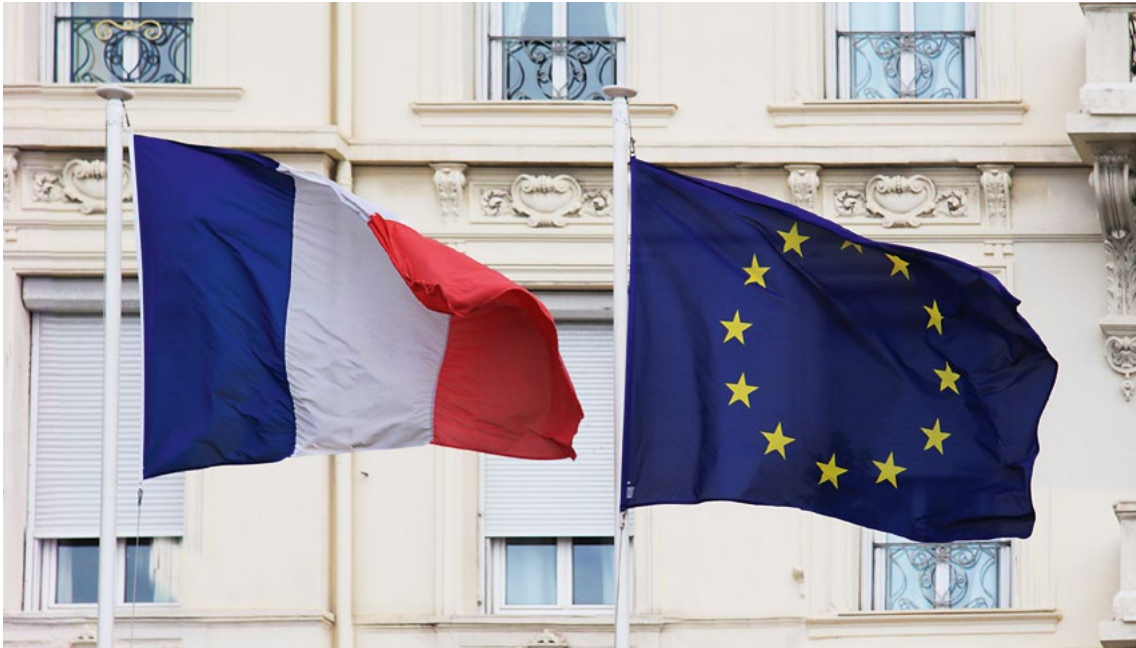
The body would have a mixed composition to ensure its independence and would have advisory and investigative powers to apply ethical standards to participating institutions. In terms of advice, the body could issue recommendations on all ethical issues, in particular on conflicts of interest, but without having decision-making capacity and enforcement powers.

An agreement between the Council, the Commission and the European Parliament has yet to be reached for such a body to be established.

⁷¹. European Parliament Resolution: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0396_EN.html

⁷². See p. 74.

⁷³. See p. 115.



It also contributed to the chapter on France in the *2021 Rule of Law Report*. Published by the European Commission since 2020, this annual report, the results of which may determine the award of grants under the European Union's rule of law mechanism and which will be accompanied in the future by recommendations, covers, among other things, the measures implemented to combat corruption.

As a follow-up, the High Authority was invited by the European University Institute in Florence to take part in a round table of high-level experts on the role of independent authorities in maintaining the rule of law.

Bilateral relations

As health measures were relaxed, the High Authority was once again able to welcome foreign delegations in 2021. It has also pursued and initiated cooperation projects with authorities exercising certain similar powers, including:

- a visit by the President of the Republic of Moldova, Maia Sandu, led to the establishment of regular exchanges with the Moldovan National Integrity Agency, whose representatives showed great interest in the French model;

In 2021, the French Presidency of the European Union (FPEU) approved a conference on public ethics, organised by the High Authority.

- In collaboration with Expertise France, the High Authority provided support to the High Authority for Good Governance of Côte d'Ivoire in the field of control of declarations of assets;

- in the run-up to the adoption of a law on the regulation of lobbying in Greece, the High Authority presented its missions and prerogatives for controlling interest representation, and this cooperation will continue within the context of preparation of the implementing decrees for the adopted law.

As it does every year, the High Authority participated in the Ministry for Europe and Foreign Affairs' programme of invitations to promising young leaders (PIPA).



CLOSE EXCHANGES BETWEEN THE HIGH AUTHORITY AND THE CANADIAN AND QUEBEC AUTHORITIES

In March 2021, the High Authority participated in a webinar organised by European parliamentarians on the regulation of lobbying, alongside the Canadian Conflict of Interest and Ethics Commissioner, Mario Dion, and the Canadian Commissioner of Lobbying, Nancy Bélanger.

As a follow-up, the High Authority has engaged in more sustainable bilateral exchanges with these two institutions. Discussions with the Conflict of Interest and Ethics Commissioner focused in particular on the issue of professional transition to the private sector and on ways of reconciling revolving-door movements with respect for an ethical framework.

The exchanges with the Canadian Commissioner of Lobbying, as well as those with the Quebec Commissioner of Lobbying, Jean-François Routhier, have made it possible to put the French declaration model into perspective and to outline new ways of improving the system.

Multilateral activity in international networks and organisations

Recognised for its expertise, the High Authority actively participates in numerous working groups on public integrity and the fight against corruption within multilateral bodies.

In December 2021, the High Authority spoke at the AGM of the European Partners Against Corruption (EPAC) network, alongside the anti-corruption authorities and police inspectorates that are members of this network.

Its contribution to the OECD's Working Party of *Senior Public Integrity Officials* (SPIO) continued in 2021, notably in the context of the revision of

the OECD Recommendation on Principles for Transparency and Integrity in Lobbying⁷⁴.

In 2021, the High Authority also contributed to:

- the definition of France's anti-corruption strategy in its cooperation action (2021-2030);
- the GRECO compliance report on France, published within the framework of the 5th evaluation round on preventing corruption and promoting integrity in central governments and law enforcement agencies;
- the interviews conducted by the OECD's Financial Action Task Force (FATF) as part of its evaluation of France;

⁷⁴. As recommended by the OECD in its *Report on the implementation of the OECD recommendation on principles for transparency and integrity in lobbying* (April 2021).

— the evaluation of Namibia's implementation of the UN Convention against Corruption, alongside other French institutions.

In addition, the High Authority's participation in several networks of authorities with similar missions allows it to enrich its practice and promote its model abroad.

In 2021, the High Authority took over the secretariat of the Network of European Lobbying Registers, which led it to organise the network's

annual conference on 18 November 2021. Modelled on the Integrity Network, this forum for the exchange of good practice was expanded in 2021 to include Serbia and the Council of the European Union.

Finally, the High Authority was able to rely on the expertise and diverse experience of its peers, whom it called upon in the context of preparing its study on the interest representation framework and the prospects for development at local level.



GRECO'S PUBLICATION OF FRANCE'S COMPLIANCE REPORT FOR THE 5TH EVALUATION ROUND

At the end of 2021, the Group of States against Corruption (GRECO) published the report on France's compliance with the recommendations addressed to it in the context of its 5th evaluation round on preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies⁷⁵. The High Authority was consulted extensively in the preparation of this report.

Of the 18 recommendations, one has been implemented satisfactorily, nine have been partly implemented, while the remaining eight are considered to have not been implemented.

GRECO recognises, for example, the progress made by France on the control of professional transitions to the private sector, notably on pre-appointment vetting. GRECO recommends that the register of withdrawals of members of the Government be extended to members of ministers' private offices, so that the measures they take to prevent conflict of interest situations are made public.

Furthermore, GRECO continues to deplore, as in its previous reports, the lack of obligation for certain public officials to make public their meetings with interest representatives.

⁷⁵. GRECO Compliance Report: <https://rm.coe.int/greccor5-2021-12-final-eng-compliance-report-france-public/1680a50f59>

5

Proposals and avenues of development

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

- 1 | Strengthen the coherence and coordination
of public probity and ethics legislation
page 141
- 2 | Ensuring the effectiveness
of the High Authority's controls
page 149
- 3 | Securing and strengthening public
policy in the fight against corruption
and ethical violations
page 151



This 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 revolving-door movements, which it will do from 1 February 2020.

For all of these missions, this part includes proposals that have already been made in previous reports and others that 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 Act 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 Act 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 Civil Service Transformation Act of 6 August 2019, on ethical control of the professional transition of public officials;
- the Act 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 (2016⁷⁶);
- the presidents (2017⁷⁷), vice-presidents, treasurers and general secretaries (2022⁷⁸) of public service sports federations and professional leagues;
- the presidents (2017⁷⁹), 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 (2018⁸⁰);

— the President, the Chief Executive Officer and the Head of High Performance of the National Sports Agency (2019⁸¹);

— the members of the Economic, Social and Environmental Council (2021⁸²).

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 Marseilles, even though they enjoy important prerogatives at local level.

76. 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.

77. Act 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.

78. Act No. 2022-296 of 2 March 2022 aimed at making sport accessible in France.

79. Act No. 2018-202 of 26 March 2018 on the organisation of the 2024 Olympic and Paralympic Games.

80. Act No. 2018-643 of 23 July 2018 on competition controls and sanctions in French Polynesia and New Caledonia.

81. 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.

82. 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 establishment⁸³, 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 Bpifrance⁸⁴ or La Poste⁸⁵, for example.

In the case of La Poste, its managers were covered by the declaration 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 revolving-door movements

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

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

⁸³. Act of 28 April 1816, incorporated in Article L518-2 of the French Monetary and Financial Code.

⁸⁴. €1.5 billion in turnover.

⁸⁵. €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 Act 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 issued by the High Authority;

— the contract held by the staff member shall be terminated on the date of notification of the

opinion issued by the High Authority, without notice and without compensation for termination.

For its part, Article 23 of the Act 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 issued by the High Authority prior to professional transition to the private sector, on the one hand, on the basis of the Act 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 issued by the High Authority in the field of revolving-door movements 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 revolving-door movements to certain categories of strategic public officials

With regard to the scope of public officials whose professional transition to the private sector must be controlled under Article 23 of the Act 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 nature⁸⁶.

Finally, the High Authority has emphasised since 2020 the challenge of controlling the professional transition to the private sector of officials, regardless of their status, from industrial and commercial public establishments (EPICs) and certain special public establishments⁸⁷. In particular, these agents fall within the scope of Article 432-13 of the French Criminal Code, which punishes the unlawful taking of interest at 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 professional transition to the private sector, under Article 23 of the Act of 11 October 2013, to holders of the local executive offices referred to in Article 11 paragraph 1(3) of the Law, in particular:

- vice-presidents and councilors holding a delegated power of signature or office of regional and departmental councils and of public inter-municipal cooperative establishments with separate tax status with more than 100,000 inhabitants;
- deputy mayors of municipalities with more than 100,000 inhabitants who have delegated power of signature or office.



PROPOSAL NO. 5

Create control of professional transition to the private sector 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.

⁸⁶. See p. 78.

⁸⁷. See p. 79.

Clarify the assessment of the risk of conflict of interest, interest in the case and unlawful taking of interest 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” Act, excludes, as a matter of principle, the risk of conflict of interest and unlawful taking of interest when an elected representative participates, as a member of the deliberative body of a local authority or a group of local authorities, in a deliberation concerning an external body on which he or she sits as a representative of this local authority or group. 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 agencies⁸⁸, 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 law⁸⁹, 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 withdraw for deliberations on appointments to satellite bodies where they do not set remuneration. Separate deliberations on these two points would seem advisable.



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 readability of the legal framework of the directory of interest representatives

The directory 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.

⁸⁸. 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.

⁸⁹. 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 directory 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 Act 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 representatives⁹⁰.

— 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.

⁹⁰. See p. 101.

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.

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.



PROPOSAL NO. 9

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

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 representatives⁹¹.

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.

⁹¹. 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 Act of 9 December 2016, known as the Sapin II Act, 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 inter-penetration 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 Act evaluation mission, conducted in the National Assembly in the first half of 2021⁹², 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.

However, these institutional developments alone would not be sufficient. The fight against corruption should also be constituted as a public policy

⁹². National Assembly, information report on the evaluation of the impact of Act No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, known as the “Sapin 2 Act”, 7 July 2021.

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.

Summary of the 2021 proposals

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.

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.

Proposal No. 3

Harmonise the sanctions provided for in the event of disregard for the opinions issued by the High Authority prior to professional transition to the private sector, on the one hand, on the basis of the Act 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.

Proposal No. 4

Extend the scope of public officials subject to control by the High Authority with regard to their professional transition to the private sector, under Article 23 of the Act of 11 October 2013, to holders of the local executive offices referred to in Article 11 paragraph 1(3) of the Act, in particular:

- vice-presidents and councillors holding a delegated power of signature or office of regional and departmental councils and of public inter-municipal cooperative establishments with separate tax status with more than 100,000 inhabitants;
- deputy mayors of municipalities with more than 100,000 inhabitants holding a delegated power of signature or office.

Proposal No. 5

Create control of professional transition to the private sector 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. 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.

Proposal No. 7

Adapt the lobbying regulation system to make it more effective, whether it be the overall framework for interest representation, the means of controlling interest representatives or the gradual extension of the directory.

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.

Proposal No. 9

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

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 activities by an interest representative, with the sanction being proportionate to the seriousness of the breach and the situation of the person being prosecuted.

Appendices

- 1 Follow-up to the proposals
of the 2020 Activity Report
page 158
- 2 Table of correspondence between the provisions
of the French General Civil Service Code (CGFP)
relating to the obligations and ethics of public
officials and those of Chapter IV of the Act
of 13 July 1983
page 162
- 3 Summary table of public decision-makers
covered by the directory of interest
representatives
page 168

1 | Follow-up to the proposals of the 2020 Activity Report

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.

→ Follow-up

Ø

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.

→ Follow-up

Full implementation by Act No. 2021-1729 of 22 December 2021 on confidence in the judiciary and by Act No. 2022-217 of 21 February 2022, known as the “3DS” Act

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.

→ Follow-up

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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.

→ Follow-up

Partial implementation by Act No. 2022-217 of 21 February 2022, known as the “3DS” Act:

- no declaration of assets or interests is now required for persons who have been in office for less than two months;
- where a declaration of interests was filed with the High Authority less than six months ago, the election to a new mandate or the assumption of new functions no longer leads to the filing of a new separate declaration of interests but to the updating of the first declaration;
- the scope of the exemption from filing a new declaration of assets with the High Authority when a declaration has already been filed less than a year ago has been extended;
- the deadline for filing the end-of-term declaration of assets of local elected representatives and French representatives in the European Parliament is now the same as that for other persons filing declarations under the Act of 11 October 2013, namely two months after the end of the term of office.

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.

→ Follow-up

Ø

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.

→ Follow-up

Partial implementation by Act No. 2022-217 of 21 February 2022, known as the “3DS” Act:

- the threshold for municipalities and public inter-municipal cooperative establishments (EPCIs) concerned by the extension of the register to the local level, initially fixed at 20,000 inhabitants, is raised to 100,000 inhabitants;
- the network of chambers of agriculture is now included in the definition of interest representatives.

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.

→ Follow-up

Ø

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.

→ Follow-up

Ø

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.

→ Follow-up

Ø

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.

→ Follow-up

Ø

2 Correspondence between the provisions of the French General Civil Service Code (CGFP) relating to the obligations and ethics of public officials and those of Chapter IV of the Act of 13 July 1983

Provisions of Title II of the CGFP	Former provisions of the 1983 Act
CHAPTER I: GENERAL OBLIGATIONS (Articles L.121-1 to L.121-11) This chapter covers the various obligations to which public officials are subject:	
Articles L.121-1 and L.121-2 Ethical obligations: dignity, impartiality, integrity, probity, neutrality	Article 25
Article L.121-3 <i>"Public officials shall devote their entire professional activity to the tasks entrusted to them"</i>	Article 25 septies, first sentence
Articles L.121-4 and L.121-5 Obligation to prevent and bring to an end conflicts of interest and definition of conflict of interest	Article 25 bis
Articles L.121-6 and L.121-7 Requirements of professional secrecy and discretion	Article 26

Provisions of Title II of the CGFP	Former provisions of the 1983 Act
<p>CHAPTER II: PREVENTION OF CONFLICTS OF INTEREST AND CRIMINAL OFFENCES (Articles L.122-1 to L.122-25)</p>	
<p>Section 1: Withdrawal (Article L.122-1) Rules on withdrawal in the event of a conflict of interest</p>	Article 25 <i>bis</i>
<p>Section 2: Declaration obligations (Articles L.122-2 to L.122-25)</p> <hr/> <p>Subsection 1: Declarations of interest (Articles L.122-2 to L.122-9) Rules relating to the declarations of interest of certain public officials</p> <hr/> <p>Subsection 2: Declaration of assets (Articles L.122-10 to L.122-18) Rules relating to the declaration of assets of certain public officials</p> <hr/> <p>Subsection 3: Management of the agent's financial instruments (Article L.122-19) Rules on the management of financial instruments applicable to certain public officials</p> <hr/> <p>Subsection 4: Criminal sanctions (Articles L.122-20 to L.122-22) Criminal sanctions for failure to declare, substantial omission, false assessment and failure to respond to the High Authority's injunctions</p>	<p>Article 25 <i>ter</i></p> <p>Article 25 <i>quinquies</i></p> <p>Article 25 <i>quater</i></p> <p>Article 25 <i>sexies</i></p>

Provisions of Title II of the CGFP	Former provisions of the 1983 Act
<p>CHAPTER III: RULES ON MULTIPLE JOBHOLDING (Articles L.123-1 to L.123-10)</p> <p>This chapter breaks down the former Article 25 <i>septies</i> of the 1983 Act.</p>	<p>Article 25 <i>septies</i></p>
<p>Section 1: Common provisions (Articles L.123-1 to L.123-3)</p> <p>This section:</p> <ul style="list-style-type: none"> — establishes the principle of the prohibition on the exercise of a lucrative private activity by a public official on a professional basis (Article L.123-1) — and provides for legal exemptions in respect of the production of intellectual works (L.123-2) and the exercise, by public officials who are members of the teaching, technical or scientific staff of educational establishments or who engage in activities of an artistic nature, of the liberal professions arising from the nature of their duties (L.123-3) 	<p>Article 25 <i>septies</i>, I.</p> <p>Article 25 <i>septies</i>, V.</p>
<p>Section 2: Activities subject to declaration (Articles L.123-4 to L.123-6)</p> <p>This section groups together the specific cases of multiple jobholding subject to simple declaration to the hierarchical authority, in particular for staff members occupying a permanent non-full-time or part-time post for which the working time is less than or equal to 70% of the legal or regulatory working time (L.123-5)</p>	<p>Article 25 <i>septies</i>, II.</p>
<p>Section 3: Activities subject to authorisation (Articles L.123-7 to L.123-8)</p> <p>This section deals with:</p> <ul style="list-style-type: none"> — accumulation of an ancillary activity (L.123-7) — part-time work for business creation or acquisition (L.123-8) 	<p>Article 25 <i>septies</i>, IV.</p> <p>Article 25 <i>septies</i>, III.</p>
<p>Section 4: Sanctions (Articles L.123-9 to L.123-10)</p> <p>Sanction in case of unauthorised multiple jobholding (repayment to the administration of sums irregularly received), without prejudice to disciplinary sanctions</p>	<p>Article 25 <i>septies</i>, VI.</p>

Provisions of Title II of the CGFP	Former provisions of the 1983 Act
CHAPTER IV: SUPERVISION AND ADVICE (Articles L.124-1 to L.124-26)	
Section 1: Persons responsible (Articles L.124-1 to L.124-3)	
Subsection 1: Administrations (Article L.124-1) Role of the head of department	Article 25, last paragraph
Subsection 2: Ethics officers (Article L.124-2) Right of all public officials to consult an ethics officer	Article 28 <i>bis</i>
Subsection 3: Secularity officer (Article L.124-3) Obligation to designate a secularity officer and define his or her role	Article 28 <i>ter</i>
Section 2: Control of the lucrative activities of officials who have left office (Articles L.124-4 to L.124-6)	
Article L.124-4 defines the control of professional transition, entrusting it to the hierarchical authority and providing for the possibility of referring the matter to the High Authority in the alternative	Article 25 <i>octies</i> , III.
Article L.124-5 deals with the cases in which referral to the High Authority is mandatory	Article 25 <i>octies</i> , IV.
Section 3: Pre-appointment or re-appointment check (Articles L.124-4 to L.124-6)	
This section relates to the pre-appointment check. Article L.124-7 provides for cases of subsidiary referral to the High Authority. Article L.124-8 provides for cases of mandatory referral to the High Authority	Article 25 <i>octies</i> , V.

Section 4: Recommendations and opinions of the High Authority for Transparency in Public Life (Articles L.124-9 to L.124-23)

This section reproduces the provisions of Article 25 *octies* relating to the role and prerogatives of the High Authority:

Article L.124-9

Introductory article defining the role of the High Authority: it *“assesses compliance with the ethical principles inherent in the exercise of a public function. In this respect, it issues the following recommendations and opinions”*

Subsection 1: Opinions on individual situations (Articles L.124-10 to L.124-20)

Article L.124-10 sets out the cases in which the High Authority is responsible for issuing an opinion: part-time work for business creation, professional transition and pre-appointment

Article L.124-11 concerns self-referral

Article L.124-12 defines the compatibility check (ethical risk and criminal risk)

Article L.124-13 relates to the investigative powers of the High Authority

Article L.124-14 sets out the types of opinion that the High Authority may issue, the time limit it has to give its opinion on part-time work for the purpose of business creation or acquisition and on professional transition (2 months) and the possibility of having recourse to opinions of the President

Article L.124-15 concerns the value of the High Authority's opinions (opinions of conformity) and the notification of opinions

Article L.124-16 concerns the possibility of making the opinions public

Article L.124-17 concerns requests for a second deliberation

Article 25 *octies*, I.

Article 25 *octies*, II.

Article 25 *octies*, VII.

Article 25 *octies*, VI.

Article 25 *octies*, VIII.

Article 25 *octies*, IX.

Article 25 *octies*, X.

Article 25 *octies*, IX.

Article 25 *octies*, X.

Articles L.124-18 and L.124-19 relate to the follow-up of opinions issued

Article L.124-20 deals with the penalties applicable in the event of failure to refer a matter to the Commission or disregard for the opinion issued

Article 25 *octies*, XIII.

Article 25 *octies*, XI.

3 | Summary table of public decision-makers covered by the directory of interest representatives

From 2017

PRESIDENCY OF THE REPUBLIC

Relevant public decision-makers

Aides to the President of the Republic

GOVERNMENT

Relevant public decision-makers

Members of the Government and their cabinets

PARLIAMENT

Relevant public decision-makers

Parliamentarians, members of the cabinets of the presiding judges of both chambers, parliamentary staff, officials of the assemblies

INDEPENDENT ADMINISTRATIVE AUTHORITIES AND INDEPENDENT PUBLIC AUTHORITIES

Relevant public decision-makers

Directors General, Secretaries General, and their deputies, members of colleges and sanction committees

STATE ADMINISTRATION

Relevant public decision-makers

Posts decided by the Government and filled by the Council of Ministers (e.g. directors of central administrations, prefects, rectors, directors general of regional health agencies)

CENTRAL ADMINISTRATIONS

Relevant public decision-makers

Civil servants whose hierarchical level or the nature of their duties justifies it:

- Heads of department, deputy directors and directors of departments with national competence whose responsibilities in the field of procurement or financial investments justify it or whose departments are responsible for the economic and financial development or implementation or for the support or control of operators acting in a competitive economic sector;
- Departmental minister responsible for procurement;
- President and vice-president of the economic committee for health products.

STATE PUBLIC ADMINISTRATIVE ESTABLISHMENTS

Relevant public decision-makers

Heads of public establishments in one of the following categories:

- Establishments whose activity contributes to the support or control of operators in a competitive economic sector;
- Establishments whose mission includes, in the context of the implementation of a public policy, the payment of financial aid or control of its use;
- Establishments whose mission includes the management of financial investments.

For establishments with a projected budget of more than €200 million:

- Head of the establishment and his/her deputies;
- Director of financial affairs and his/her deputies;
- Secretary General and Deputy Secretary General;
- Head of the purchasing function;
- Director general of services of a public scientific, cultural and professional establishment.

DECENTRALISED STATE SERVICES

Relevant public decision-makers

- Regional secretary for regional affairs;
- Director and deputy director of the regional directorates listed in Appendix I to Decree No. 2019-1954;
- Interregional delegate, regional director, departmental director and local director of public finance; director of tax control; dedicated director of public finance for *Assistance publique-hôpitaux de Paris*;
- Interregional director and regional director of customs and excise;
- Interregional director of penal services and interregional director, head of the overseas penal services mission.

HOSPITALS

Relevant public decision-makers

Director of a public hospital with a budget, where appropriate consolidated, in excess of €200 million

REGIONS

Relevant public decision-makers

- President of the regional council;
- Regional councillors (vice-presidents or not) holding a delegated power of office or signature;
- Director, deputy director and head of cabinet of the President of the regional council;
- Director-General of services.

DEPARTMENTS

Relevant public decision-makers

- President of the departmental council;
- Departmental councillors (vice-presidents or not) holding a delegated power of office or signature;
- Director, deputy director and chief of staff of the President of the departmental council;
- Director-General of services.

AUTHORITY OF CORSICA, REGIONAL AUTHORITY OF FRENCH GUIANA, REGIONAL AUTHORITY OF MARTINIQUE

Relevant public decision-makers

- Chair of the deliberative assembly;
- Where applicable, chair of the executive body;
- Councillors to the Assembly of French Guiana, Councillors to the Assembly of Martinique, Executive Councillors of Martinique and Executive Councillors of Corsica holding a delegated power of office or signature;
- Directors, deputy directors and heads of cabinet of these presidents.

OTHER OVERSEAS COMMUNITIES

Relevant public decision-makers

- President of the regional assembly;
- Where applicable, elected chair of the executive;
- Directors, deputy directors and heads of cabinet of these presidents.

CITY OF PARIS

Relevant public decision-makers

- Mayor;
- Deputy mayors holding a delegated power of office or signature;
- Members of the Paris Council holding a delegated power of office or signature;
- Director, deputy director and chief of staff of the mayor;
- Secretary general of the City of Paris, deputy secretaries general, directors general and directors;
- Director of the social action centre and director of the municipal credit.

METROPOLIS OF LYON

Relevant public decision-makers

- Chair;
- Vice-presidents with delegated power of office or signature;
- Director, deputy director and chief of staff of the mayor;
- Director-General of services.

MUNICIPALITIES WITH MORE THAN 100,000 INHABITANTS

Relevant public decision-makers

- Mayor;
- Deputies holding a delegated power of office or signature;
- Director, deputy director and chief of staff of the mayor.

MUNICIPALITIES WITH MORE THAN 150,000 INHABITANTS

Relevant public decision-makers

- Mayor;
- Deputy mayors holding a delegated power of office or signature;
- Director, deputy director and chief of staff of the mayor;
- Director-general of services;
- Director-general or director of services of the *Caisses de crédit municipal*.

PUBLIC INTER-MUNICIPAL COOPERATIVE ESTABLISHMENT WITH OWN TAX STATUS WITH MORE THAN 100,000 INHABITANTS

Relevant public decision-makers

- Chair;
- Vice-presidents with delegated power of office or signature;
- Director, deputy director and chief of staff of the President.

PUBLIC INTER-MUNICIPAL COOPERATIVE ESTABLISHMENTS WITH OWN TAX STATUS WITH MORE THAN 150,000 INHABITANTS

Relevant public decision-makers

- Chair;
- Vice-presidents with delegated power of office or signature;
- Director, deputy director and chief of staff of the President;
- Director-general or director of services.

OTHER PUBLIC INTER-MUNICIPAL COOPERATIVE ESTABLISHMENTS ASSIMILATED TO MUNICIPALITIES WITH MORE THAN 150,000 INHABITANTS; PUBLIC-PRIVATE ENTITIES MADE UP EXCLUSIVELY OF REGIONAL AUTHORITIES AND GROUPS OF AUTHORITIES ASSIMILATED TO A MUNICIPALITY WITH MORE THAN 150,000 INHABITANTS

Relevant public decision-makers

- Director-General or Director of services

NATIONAL CENTRE FOR THE REGIONAL CIVIL SERVICE; INTERDEPARTMENTAL CENTRES FOR MANAGEMENT OF THE REGIONAL CIVIL SERVICE OF THE INNER AND OUTER SUBURBS OF THE ÎLE-DE-FRANCE REGION; CENTRE FOR MANAGEMENT OF THE REGIONAL CIVIL SERVICE ASSIMILATED TO A MUNICIPALITY WITH MORE THAN 150,000 INHABITANTS

Relevant public decision-makers

- Director-General or Director of services

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