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AFA 2018 ANNUAL REPORT

On 21st June 2019, the *Agence Française Anticorruption*, the French anti-corruption agency in charge of monitoring corporate compliance programs (the "**AFA**") published its annual report providing key figures on audits conducted in 2018. Over the past two years, this newly established regulator has audited companies to verify their compliance with the ABC obligations imposed by Article 17 of Law No. 2016-1691 on transparency, the fight against bribery and the modernisation of economic activity (the so-called "**Sapin II Law**"). While the first annual report in 2018 provided only high-level information, this second report gives a good overview of the AFA's expectations of anti-bribery programs.

Key findings

- The AFA audited 47 public and private companies in 2018
- The main features of these companies are their leading positions in their sector and presence in high risk countries
- The AFA underlined the failure of top management to demonstrate commitment to their anti-bribery programs, companies' poor awareness of their exposure to risk and the incompleteness and ineffectiveness of anti-bribery programs
- As examples of best practice, the AFA recognised the benefits of having a register for gifts & hospitality, implementing a confidential whistleblowing lines in different languages, and conducting face-to-face training

KEY FIGURES

47 audits were conducted in 2018 (versus 6 in 2017):

- 43 at the initiative of the AFA; and
- 4 as part of the enforcement of *conventions judiciaires d'intérêt public* (French style DPA).

28 audits were conducted on corporate entities (while the 15 remaining involved public entities and associations).

In particular, two state-owned companies and 11 French affiliates of international companies have been audited.

The AFA has received 303 alerts about suspicions of corruption, influence peddling or non-compliance with obligations set by Article 17 of the Sapin II Law: one of these alerts has been addressed to the Prosecutor and five have triggered audits from the AFA (only one involving a corporate entity).

In total, the AFA has reported five suspicions of corruption and similar offences to the Prosecutor, in application of Article 40 of the French Criminal Procedure Code. More particularly, these reports have been made to the French Financial Prosecutor (*Parquet National Financier*) and to the Prosecutors of Paris, Marseille, Nanterre and Lille.

PROFILE OF ENTITIES SUBJECT TO AFA AUDITS

The AFA has indicated that its focus is on companies which are leaders – either in their sector, market or region, both in Europe and internationally. By targeting such companies, the AFA expects the dissemination of best practice in terms of compliance to other companies.

The AFA also takes into account whether a company is based or works in high risk countries, where their business is particularly exposed to bribery risks.

General features of companies audited

- Turnover between €297 million and €78,9 billion;
- Headcount between 600 and 376,000 employees; and
- Number of subsidiaries going up to 1,127, with 40 of them located outside France.

THE GOOD PRACTICES IDENTIFIED BY THE AFA

The AFA has positively emphasized the following practices:

- Implementing of centralized and digital Gifts & Hospitality since it makes audit process easier and more automated.
- Providing whistleblowing lines in different languages, with the possibility for employees to make anonymous reports, thereby guaranteeing the whistleblower's confidentiality.
- Conducting face-to-face training sessions for employees most exposed to bribery risks.
- Engaging with due diligence processes conducted by external experts and outline counsel, as well as defining the appropriate methodology for such reviews.

THE DEFICIENCIES EMPHASIZED BY THE AFA

The following have been identified by the AFA as deficiencies in the anti-bribery programs audited:

- The lack of commitment from the top management in the anti-bribery program. In particular, the AFA underlines that:
  - Involvement is often limited to simple actions such as the signature of the code of conduct by the CEO; and
  - Commitment from the top management in subsidiaries is not very strong.
- The poor awareness of companies' exposure to risks: this observation stems from the fact that either risk mappings are not relevant, or the methodology applied is not sufficiently detailed to give comfort that such risks have been well assessed and ranked. Risk mapping was at the heart of the discussion of the first hearing of the AFA Sanction Commission held on 25 June 2019. The AFA did not deny the existence of risk mapping, but blamed its lack of effectiveness.
- The failure to have comprehensive anti-bribery programs: for example, due diligence, accounting and monitoring procedures are often incomplete. The AFA also notes that whistleblowing lines are not active.
- The code of conduct, training plans, due diligence procedures, accounting procedures, internal monitoring and audits which are not sufficiently thorough and connected to the identified risks per the risk mapping exercises.

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Overall, the AFA underlines that these specific procedures are not effective due to both a lack of communication to employees regarding the existence whistleblowing lines, and to the fact that training programs are not targeted at most exposed employees as required by the Sapin II Law, regarding the obligation of training.

The AFA notes that anti-bribery programs of international companies' French subsidiaries are often not sufficiently tailored to the local compliance obligations.

The fact that a company works within a highly regulated sector, such as healthcare, finance and insurance, does not guarantee the implementation of an adequate anti-bribery program.

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