

## STRENGTHENING OF EUROPEAN COOPERATION IN FIGHTING CORRUPTION

In July, Giuseppe Busia, Head of the Anti-Corruption Authority of Italy (ANAC) and Charles Duchaine, Head of the Anti-Corruption Authority of France (AFA), signed a Memorandum of Understanding (the "**Protocol**") aimed at ensuring a fruitful exchange of information and best practices between the two Authorities

### MEMORANDUM OF UNDERSTANDING BETWEEN ANAC AND AFA

The European landscape has significantly changed over recent years and we have witnessed an extraordinary transformation of the local and European legal panorama with, on the one hand, the introduction of specific tools and, on the other, the establishment and recent functioning of the European Public Prosecutor's Office ("**EPPO**"), which all point at strengthening the cooperation across European Member States in criminal investigations.

The Protocol signed by Italy and France is part of this transformation and is viewed as a further milestone to the path of cooperation and collaboration in Europe.

The Protocol testifies the official cooperation between the two Authorities, guaranteeing a constructive exchange of information on Authorities' activities and good practices.

In fact, the respective Heads of Anti-Corruption Authorities' stated that "*cooperation between Italy and France in the field of anti-corruption must be strengthened, so that it becomes a **model for all European countries**, even those that do not have anti-corruption authorities or agencies*" and proposed "*to issue a European directive or regulation that obliges all member states to establish a bulwark for the prevention of corruption*".

With this precise aim, on Friday 9 July the Protocol between the *Autorità Nazionale Anti-Corruzione* (ANAC) and the *Agence Française Anticorruption* (AFA) was signed in Rome, at Palazzo Sciarra.

Busia also mentioned that A.N.A.C. is already working on a European project with the aim of measuring the levels of corruption in each country by using certain fix indicators, including the data from public contracts available on local databases.

#### Key issues

- Strengthening of anti-corruption activities between Italy and France through the execution of a *Memorandum of Understanding*.
- Formalization of an official cooperation between A.N.A.C. and AFA, guaranteeing a constructive exchange of information on their respective activities.
- Technical and operational cooperation.

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The signatories of the Protocol are respectively the Heads of the *Agence Française Anticorruption* ("**AFA**") and of the *Autorità Nazionale Anticorruzione* ("**ANAC**").

ANAC is an independent administrative authority whose mission is the prevention of corruption within the public administration, in the participated and controlled companies, through the control and supervision of the public administration's sectors that could potentially give rise to corruptive episodes.

AFA is a national administrative agency under the joint authority of the Minister of Justice and the Minister of Finance created by the law of 9 December 2016 on transparency, the fight against corruption and the modernization of the economic life ("**Loi Sapin II**"). Its mission is to prevent corruption both within the public administration and the private sector. AFA both controls the adequacy of antibribery compliance programs and provides guidance and support in this respect. Deficiencies identified by AFA in the context of its controls may give rise to administrative sanctions issued by an independent sanctions committee.

The Protocol's scope is set forth in the second provision and covers three main areas of cooperation: (i) **exchange of information**, as the Authorities agree to exchange any useful information within the scope of their respective powers and in accordance with their respective national laws; (ii) **technical cooperation**, i.e. the parties agree to exchange professional and promotional documents and good practices in preventing and contrasting corruption, with the exception of confidential documents; and (iii) **operational cooperation**, consisting in the Authorities' willingness to provide mutual assistance locally in carrying out activities.

The Protocol includes a provision aimed at ensuring the confidentiality of all the information gathered by the Anti-Corruption Authorities, which must be guaranteed by each party through the implementation of appropriate and necessary measures to protect the information itself. Along with the confidentiality, the Protocol also request that data is treated and processed in accordance with the national legislation of Italy and France.

The Protocol is the first step towards the establishment of the cooperation between the Authorities and anticipates the adoption of further specific agreements, programs and protocols.

The final provisions set forth the terms and conditions of the Protocol stating that the Protocol may be revised or amended, in whole or in part, by the Authorities, upon notification to the other party, which is required to give its consent. The Protocol does not imply legally binding obligations between the parties and it has a duration of five years, which will be automatically extended for an additional five-years terms, unless one of the two Authorities notifies the other of its wish to amend or terminate it.

## COOPERATION AND COORDINATION AS A TOOL TO PREVENT CORRUPTION AND PROSECUTE CRIMES

As mentioned, the main purpose of the Protocol between ANAC and AFA is to strengthen, in terms of anti-corruption activities, cooperation between Italy and France and to anticipate a trend across other EU member states.

To make the prevention and the prosecution of potential corruptive episodes more effective, the Authorities have also previously established local cooperation agreements with national Prosecution Services.

Since 2016, ANAC entered into a cooperation agreement with the Prosecution Service of Milan with the aim of maximizing ANAC efforts and exchanging information relating to cases falling within the scope of ANAC

The purpose of the agreement was to implement the rules regarding the exchange of information concerning criminal and administrative proceedings. In particular, the cooperation between ANAC and the Prosecution Service of Milan includes i) fulfilment of disclosure obligations by the Prosecution Service, ii) filing to the Prosecution Service of the results of investigations and enquiries carried out by ANAC and iii) requests to the Prosecution Service for gathering relevant documents, information and clarification.

On their end, in 2019, AFA and the French financial crime enforcement agency, the *Parquet National Financier* (PNF), published joint guidelines on the French-style deferred prosecution agreement, known as the *Convention Judiciaire d'intérêt public* (CJIP). The purpose of these guidelines was to i) set up a more reliable procedural framework under which PNF will consider whether to enter into a CJIP and on which terms, and ii) encourage companies to cooperate with PNF (See our Client Briefing [First guidelines on CJIP](#)).

Exchange of information and disclosure obligations between AFA and PNF were already provided by law as any administrative agent that becomes aware of potential criminal acts must report them to the prosecution authorities. Apart from providing technical details as to how information should be exchanged between AFA and PNF, these guidelines specify that AFA would act as a compliance expert to assess the effectiveness of the compliance program of the company being investigated and/or monitor the company's compliance program. In this respect, AFA and PNF anticipate that should they enter into joint settlements with foreign authorities, they would clearly expect AFA to be appointed as a monitor when a French company is involved.

It is not the only example of local cooperation. AFA has been very proactive in promoting cooperation with both national and international authorities. Examples of cooperation agreements with other national authorities include the Financial Markets Authority (*Autorité des marchés financiers*), several police departments in charge of financial crime (i.e. BRDE, OCLCIFI, TRACFIN, etc.) and the High Authority for the Transparency of the Public Life (*Haute Autorité pour la Transparence de la Vie Publique* - HATVP). At the international level, AFA has also signed a series of cooperation agreements aiming at sharing experience and expertise with other foreign counterparts (e.g. Colombia, Québec, Palestine, Egypt, Kuwait, Brazil, etc.).

## **FUTURE EXPECTATIONS**

Cooperation at national and European level is more and more relevant in criminal or quasi-criminal investigations. The Protocol between ANAC and AFA has the ambition to anticipate a trend of cooperation at European level with the implementation of similar agreements between anti-corruption authorities in other EU member states, building up an every-day more specialized and European group of Authorities collaborating to fight corruption.

In addition, the proposal of ANAC's and AFA's Heads of Authorities to solicit a directive or regulation "*that obliges all member states to establish a bulwark for the prevention of corruption*" might be considered and would trigger additional implications in the EU panorama.

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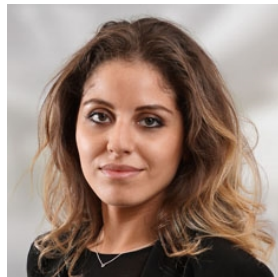
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