

CORONAVIRUS INFORMATION & UPDATES

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France's Anti-Corruption Agency Publishes Guidance on Its Enforcement Activity During COVID-19 Crisis

In late March 2020, France's Anti-Corruption Agency (*Agence Française Anticorruption*) ("AFA")¹ announced that it would temporarily suspend inspections due to the COVID-19 crisis. The AFA's decision followed wide-ranging measures adopted by French President Emmanuel Macron (e.g., closures of schools and businesses) and the French Council of Ministers' March 25th Order (*Ordonnance No. 2020-306*)² relating to French law enforcement activity and other applicable legal measures and proceedings during the health crisis.

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One of its country's primary anti-corruption enforcement entities, the AFA came into existence when France reformed its anti-corruption framework through the passage of the Sapin 2 Law (*Loi Sapin 2*), which entered into force on June 1, 2017. The AFA operates under the umbrella of France's Ministers of Justice and of the Budget, and its mandate charges it with assisting relevant authorities and officials—such as the National Financial Prosecutor's Office (*Parquet National Financier*) ("PNF")—in the prevention and detection of acts of corruption and related crimes. For more information on joint AFA-PNF anti-corruption enforcement in France, see our earlier [Alert](#).

In response to the French Council of Ministers' March 25th Order, the AFA published guidance on its plan to adapt its enforcement activity during the COVID-19 outbreak.³ The AFA closed its offices over one month ago on March 16, 2020 and ordered its officials, including agents from its Inspections sub-Directorate (*sous-direction du contrôle*), to work remotely. More importantly, due to the new constraints on its operations and activities, the AFA announced that its agents would not conduct new inspections or controls during the confinement period mandated by the French Government. The AFA noted that certain entities subject to inspection may be more impacted by the crisis than others and affirmed that it would work with those entities to adapt its post-confinement activity (i.e., document requests, on-site inspections and controls, etc.) to each entity's specific circumstances.

The AFA's guidance also provided useful color regarding how the agency will tailor its two primary areas of activity during the confinement period in France: (1) on-site inspections; and (2) monitoring of the implementation of compliance programs.

¹ The French Anti-Corruption Agency (*Agence Française Anticorruption*) ("AFA") was established by France's recently enacted (December 2016) Law No. 2016-1691 relating to Transparency, the Fight against Corruption, and Modernisation of Economic Life (*Loi No. 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*) also known as the "Sapin 2 Law".

² *Ordonnance n° 2020-306 du 25 mars 2020 relative à la prorogation des délais échus pendant la période d'urgence sanitaire et à l'adaptation des procédures pendant cette même période* (consolidated on April 15, 2020), available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755644>.

³ French Anti-Corruption Agency, *Adapting AFA Inspection Activity in the Context of the COVID-19 Epidemic* (Adaptation des opérations de contrôle de l'AFA dans le contexte d'épidémie de Covid-19), available at <https://www.agence-francaise-anticorruption.gouv.fr/fr/covid-19-adaptation-des-operations-contrrole>.

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On-Site Inspections

- The AFA will suspend all on-site inspections during the confinement period, which includes inspections that were scheduled before the health crisis began;
- The AFA will postpone any previously scheduled end-of-inspection closing interviews with inspected entities and will ensure that it reschedules said interviews in consultation with inspected entities;
- The AFA and an inspected entity may only exchange information and documents if the relevant inspected entity provides explicit authorization;
- The modalities and timelines applicable to the exchange of information and documents must be agreed to by the inspected entity; and
- The AFA will soften the timelines for inspected entities to submit their written observations in response to AFA Inspection Reports.⁴ In particular:
 - The deadline for observations in response to Inspection Reports issued **before** the state of emergency went into effect shall be suspended, and any remaining days left shall be counted from May 25, 2020 (if the state of emergency is not modified before then).
 - The deadline for observations in response to Inspection Reports issued **during** the state of emergency shall be suspended and shall begin running on May 25, 2020 and shall have a deadline of July 25, 2020 (if the state of emergency is not modified before then).
 - The AFA also reserves the right to grant extended deadlines for entities that are particularly impacted by the COVID-19 epidemic.

Monitoring of the Implementation of Compliance Programs

- Initial interviews shall be suspended and rescheduled upon the end of the confinement period in consultation with the inspected entity; and
- Any entity with a diminished capacity to meet the deadlines set in a Judicial Public Interest Agreement (*Convention Judiciaire d'Intérêt Public*) (“CJIP”) shall notify the French prosecutorial authority with which the entity entered into the agreement. The AFA may, with the authorization of the relevant prosecutorial authority, conduct its scheduled activity after the expiration of the agreement (for more information on CJIPs, please see our earlier [Alert](#)).

⁴ See Article 5(I) of the Decree No. 2017-329 of 14 March 2017 concerning the French Anti-Corruption Agency (*Décret n° 2017-329 du 14 mars 2017 relatif à l'Agence française anticorruption*), available at <https://www.legifrance.gouv.fr/eli/decret/2017/3/14/JUSD1638396D/jo/texte> (The Decree of 14 March 2017 establishes the modalities and procedures applicable to the AFA's operations and activities, including the AFA's inspections and reports as well as the AFA's Sanctions Commission. Article 5(I) of the Decree provides that an inspected entity must present its written observations in response to an AFA report within two months of receiving said report).

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Key Takeaways

While the COVID-19 crisis has certainly impacted anti-corruption enforcement activity in France, the AFA's guidance demonstrates that, rather than come to a standstill, the AFA has decidedly marched on with its mandate. For example, the AFA made it clear that it continues to analyze and assess evidence and information it obtained from entities before the outbreak with a view to hitting the ground running once the state of emergency is lifted. As a result, companies and individuals subject to the AFA's oversight and inspection activity should expect to see a more efficient and streamlined agency emerge from the crisis. Additionally, entities that are currently the subject of an AFA inspection should be prepared to respond to the AFA's findings or reports as soon as the confinement period in France ends, a date that will depend significantly on how the health crisis develops.