

# French Anti-Corruption Authority Raises Alarm About M&A Transactions

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The French Anti-Corruption Authority (the “AFA”) is zeroing in on corruption risks hidden in acquisition targets of French companies, in France and overseas.

In a statement reported yesterday, AFA representatives alerted would-be acquirers to the need to conduct in-depth pre-acquisition anti-corruption due diligences. The AFA observed that most companies and investment bankers seem insufficiently aware of this need, and urged them not to underestimate the reputational damage that may result from potential corruption issues in target companies, in addition to potential sanctions.

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The AFA also urged French acquirers to come forward and report to the French enforcement authorities any target company corruption issues they discover pre- or post-closing. The objective of this self-reporting would be to reach a French-style deferred prosecution agreement known as a Convention Judiciaire d’Intérêt Public.

The AFA’s statement is a timely one. It follows the publication in April 2019 of a proposed set of guidelines to help would-be acquirers handle corruption risks in prospective target companies.

Two contextual observations are in order:

- First, the AFA correctly observed that in France (and in most European countries), pre-acquisition anti-corruption due diligences seems less commonly done than it may be in other countries, particularly the United States. In contrast, the AFA noted that as early as 2012, the U.S. Department of Justice urged would-be acquirers to conduct these due diligences both to gain a better understanding of the target company’s risks and to mitigate their own exposure in the event that corruption issues would be discovered post-closing.
- Second, the AFA’s encouragement to report target company corruption issues is explicitly intended to minimize the risk on French companies that unreported issues may subsequently come to the attention of U.S. or U.K. law enforcement authorities,

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generating yet other cases where French companies would find themselves exposed to stringent anti-corruption sanctions of overseas law enforcement authorities.

In simple words, the AFA's pitch boils down to: *“French companies: do investigate target companies and if you find something wrong pre- or post-closing, come and talk to us early so that we can take care of the situation, or else you may face DOJ or SFO action.”*

There is welcome wisdom in the AFA's encouragement of French companies to conduct pre- and post-closing anti-corruption due diligence activities. This will likely contribute to raising the degree of awareness of M&A-related corruption risks and bringing the European market practice in line with the best international practice.

However, the promise that early involvement of French enforcement authorities would likely curb DOJ, SFO or other overseas law enforcement authority activity may appear somewhat ambitious. There is no treaty or other international instrument that would give French law enforcement authorities a right to preempt prosecution of overseas corruption in situations where other enforcement authorities would also have the right to initiate prosecution. Therefore, self-reporting in France may not provide assurances that other countries' prosecution authorities will abstain.

Nevertheless, recent years have seen increasing coordination and cooperation among anti-corruption authorities in Europe and across the Atlantic. This provides support to the idea that there could be some benefit to French companies promptly self-reporting to French authorities whenever they become aware of corruption issues in target companies, in France or overseas.

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Please do not hesitate to contact us with any questions.



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