



MINISTÈRE
DES SPORTS
ET DES JEUX OLYMPIQUES
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*Liberté
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Guidelines on the prevention of breaches of probity for sports federations



Sommaire

The recipients and objectives of the guidelines	4
Foreword by the Director of the French Anti-Corruption Agency AFA	5
Foreword by the Director of Sports	6
SIMULATION EXERCISES	8
I – MANAGEMENT OF CONFLICTS OF INTEREST	9
Factsheet 1 : The risk of conflicts of interest for executives in public procurement	10 10
II - GIFTS AND INVITATIONS POLICY	15
Factsheet 2 : Offering a gift or an invitation	16
Factsheet 3 : Receiving a gift or invitation	18
III – HUMAN RESOURCES	21
Factsheet 4 : Trainee gratuity – equal treatment	22
Factsheet 5 : The staff recruitment policy	24
IV - OTHER CONSTRAINTS AND PRACTICES SPECIFIC TO THE WORLD OF SPORT	27
Factsheet 6: Ticketing	28
Factsheet 7: Search for sponsors	30
Factsheet 8: Subsidies	35
Factsheet 9: Sports competition fraud	38

APPENDICES	40
APPENDIX I – DEFINITION OF OFFENCES	41
CORRUPTION OF OR BY A FRENCH PUBLIC OFFICIAL	42
INFLUENCE PEDDLING BY A FRENCH PUBLIC OFFICIAL	46
FAVOURITISM	50
ILLEGAL ACQUISITION OF INTEREST	53
ILLEGAL ACQUISITION OF INTEREST BY A FORMER PUBLIC OFFICIAL	55
MISAPPROPRIATION OF PUBLIC PROPERTY OR FUNDS	57
GRAFT (EXTORTION BY A PUBLIC OFFICIAL)	60
APPENDIX II – GLOSSARY	63

The recipients and objectives of the guidelines

These guidelines were drafted by a collaborative working group composed of representatives of the Sports Directorate, sports federations, CNOSF and the French Anti-Corruption Agency.

Their purpose is to enlighten stakeholders in sports federations, leagues and sports clubs about risk situations in terms of breaches of probity, particularly in the most sensitive sectors (recruitment, purchases, cumulative activities, conflicts of interest, sports betting, etc.).

This guide also aims to illustrate and promote good practices that prevent these breaches of probity, through practical cases chosen with the representatives of the federations and based on concrete situations observed on the ground.

After the first version of these guidelines, they will be updated with additional practical cases over time.

The French version of the guidelines has been amended to present only those concepts that are of interest to the international sports movement. The factsheets relating to specific French aspects have been removed and can be found, in French, on the website of the French Anti-Corruption Agency (<https://www.agence-francaise-anticorruption.gouv.fr/fr/document/guide-sur-prevention-des-atteintes-probite-destination-des-federations-sportives>).

Foreword by the Director of the French Anti-Corruption Agency AFA



France actively contributes to international discussions on combating corruption in sport. It thus participates in the International Partnership Against Corruption in Sport (IPACS), particularly in its reflections on conflicts of interest and on the good governance of organisations, so as to limit the risk of corruption.

Law No 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, known as the Sapin II Law, brings French legislation to the level of the best European and international standards in the fight against corruption. It introduces new obligations in terms of preventing

and detecting of breaches of probity for economic and public stakeholders, including associations and foundations recognised as being of public utility. Although the law does not define specific anti-corruption measures that are enforceable against public stakeholders, it nevertheless requires them to implement procedures to prevent and detect breaches of probity, as specified in the [AFA recommendations](#).

The promotion of integrity in sports organisations and events is one of the pillars of the 2020-2022 National multi-year plan to fight corruption. Preventing the risks of corruption in major sporting events goes hand-in-hand with strengthening the integrity of sports stakeholders. It is in this perspective that these guidelines have been prepared, led by a working group composed of representatives of the Sports Directorate and the French Anti-Corruption Agency, and I thank them for their commitment.

Based on situations illustrating the risks of probity which the leaders and staff of sports federations may face in the exercise of their missions, these guidelines offer, in an educational form, examples of conduct to be adopted, regulatory references and good practices to prevent such risks.

The twelve factsheets that constitute the report specifically deal with the processes which, based on AFA experience, in terms of both advice and control of public stakeholders, call for special vigilance in the prevention and detection of risks of breaches of probity. The management of human resources is thus approached through the example of the remuneration of interns, the recruitment policy and the management of cumulative activities (Factsheets 6, 9 and 11). The process of granting subsidies, which carries specific risks in the field of action of public stakeholders, is also dealt with in a practical case (Factsheet 10). The issue of gifts and invitations, particularly sensitive in the sporting world, and the events surrounding competitions, is an opportunity to recall the right reflexes in this area (Factsheets 2, 3 and 4). Other situations specific to the constraints and practices of the sporting world (ticketing, searching for sponsors, rigging competitions, etc.) are addressed with the concern of raising awareness of legal risks and guiding each person towards the right reflexes, by asking the right questions.

I hope that these guidelines can contribute to the collective awareness and information effort that is needed, to support sports federations in the implementation of anti-corruption measures that are commensurate with the risks they face and the values they uphold, particularly among young people.

Foreword by the Director of Sports



Sport plays an important role in personal development and social cohesion, as a powerful vector for transmitting positive values and behavioural models, particularly to young people. This role is closely linked to the respect and promotion of high ethical principles by all stakeholders in the sports world.

Among these ethical principles, the integrity of the competitions and, more broadly, of the sports stakeholders, has a value and is a precious asset.

As a value, sport implies an unbiased competition, the results of which are based solely on merit and performance. Athletes are expected to behave in an exemplary manner, and to avoid cheating and any behaviour that would distort the outcome of healthy competition.

It is legitimate to expect the same example from organisations that participate in the world of sport. The purpose of sports federations is to organise the practice of one or more sports disciplines. When they are accredited in accordance with Article L.131-8 of the French Sports Code, they benefit from the advantages associated with the recognition of public utility. Article L.131-9 of the same Code provides that accredited sports federations participate in the implementation of public service missions relating to the development and democratisation of physical and sports activities. The approval by the State and the nature of the tasks entrusted (public service tasks) also impose a duty of exemplary character and respect for standards.

As a valuable asset for sport, integrity must be observed and preserved by the stakeholders in order to maintain a positive image. The globalised and economic dimension of sport is regularly indicted to explain its contagion with criminal abuses such as corruption, as well as the manipulation of sports results and doping. However, while we cannot deny that the economic stakes of sport are fuelling the appetite of criminal organisations, the recognition of the importance of these issues should also mobilise the stakeholders concerned to fight against external attacks as well as against internal abuses. The latter could thus be controlled and managed by an organisation committed at all levels, starting with the governing bodies, in the fight against breaches of probity. A tarnished image implies, in time, disinterest from the public as well as from sponsors and private funders.

As called for by the Council of Europe in its guidelines on good governance and ethics in sport, the French anti-corruption agency, the French Ministry of Sport and the French Olympic Committee [CNOSF] have wished to associate themselves with voluntary sports federations in order to produce guidelines on the prevention of breaches of probity in sports federations¹.

These guidelines, the result of collaborative work, do not constitute a complete and exhaustive mapping of the risks of breaches of probity, which is the responsibility of the governing bodies of the federations. However, the work carried out in recent months seeks to target, among the activities of sports federations, the most sensitive areas in terms of breach of probity, whether these are risky activities common to all organisations, such as recruitment or purchases, or activities in which the criminal judge has pronounced convictions (corruption in connection with sports betting, for example).

1. Resolution 1875 (2012) Final version Good governance and ethics in sport – Council of Europe Appendix – Guidelines on good governance and ethics in sport

These guidelines are addressed to the member States of the Council of Europe and to all governing bodies of the sports movement, all of which have their own responsibilities but need to work in a co-ordinated manner and co-operate effectively in the search for common solutions.

This work is fully in line with the objective of strengthening the integrity of sports stakeholders, included in the multi-year plan to fight corruption, and falls within the advisory mission of the French Anti-Corruption Agency. They will be complemented by awareness-raising activities organised by the Ministry.

SIMULATION EXERCISES

I – MANAGEMENT OF CONFLICTS OF INTEREST

Factsheet 1 : The risk of conflicts of interest for executives in public procurement

Keywords: conflicts of interest, illegal acquisition of interests, recusal, contracts.

A sports federation launches a public contract for legal advice services.

Mr X is a founding partner of a law firm that is submitting its tender for this public contract.

The amount of the contract requires that it be validated by the governing body of the federation. Mr Y, Mr X's father-in-law, is a member of that body.

At the end of the proceedings, the governing body of the federation accepted the offer of the law firm founded by Mr X, on the grounds that it was the best-placed in terms of the selection criteria.

- a. This solution does not pose any problems, because the firm founded by Mr X was the best-placed one according to the criteria set by the federation.
- b. The firm founded by Mr X should not have made any offers, because of the conflict of interest created by the presence of his father-in-law in the governing body of the federation.
- c. The firm founded by Mr X may submit its bid, but Mr Y must recuse himself from the governing body during the selection process.
- d. The firm founded by Mr X may submit its bid, provided that it is not the governing body of the federation that selects the candidate, but the director of financial affairs, for example.

■ Analytical components

Mr Y, as a member of the governing body of an accredited federation or delegate, is obliged to apply the statutes and regulations validated by the Ministry responsible for sport, notably concerning the transparency of management that applies to any public service or organisation performing a mission of general interest.

- From conflict of interest to illegal acquisition of interests :

In this operation, Mr Y, as a member of the governing body of the federation, must participate in the award of a public contract on behalf of the sports federation that he heads. He must therefore defend the public interest of the federation (body charged with a public service mission). However, at the same time, he has an indirect personal interest in this operation, through his son-in-law.

Once Mr Y is in a position to make a decision in the course of his duties within the federation, and that decision is likely to be (or appear to be) influenced by another interest, a conflict of interest arises. Conflict of interest in and of itself is not a criminal offence. However, if no measures are taken to manage it, it could lead to an offence of illegal acquisition of interests.

Indeed, the fact of a person participating, in any capacity, in decision-making on behalf of the federation, while having an interest in it that might compromise their impartiality, independence or objectivity, constitutes an offence of illegal acquisition of interest, punishable by a maximum of 5 years imprisonment and a fine of 500,000 euros.

The only solution for Mr Y is to recuse himself during the whole candidate selection procedure for the public contract, i.e. not to be present and not to participate in the different phases of the procedure (preparatory work, collegial discussion and voting), in order to avoid creating confusion between his private interest and the public interest of the federation of which he is a member of the governing body.

- Equal treatment of candidates. :

The solution of simply preventing the firm founded by Mr X from submitting its bid for this public contract cannot be accepted, as it would be a distortion of the equal treatment of candidates.

With regard to hypothesis d), as a matter of principle, it is preferable to maintain maximum collegiality when it is a collegial body that has to decide to award a contract. Thus, in the present case, it is sufficient for Mr Y to recuse himself, since he is the only one on the board who is in a situation of conflict of interest.

In the event of an award decision by a single person (such as the Director-General) in a conflict of interest situation, it may be good practice for that person to inform the federal office as soon as possible that they have recused themselves, and have the contract managed by an employee (for example, in the position of Director of Financial Affairs (DFA)), without giving them instructions on the matter, while having the award of the contract validated by the office or president of the federation. Since the DFA is under the authority of the Director-General, if they made the decision on their own, they could be suspected of having done so in accordance with their superior's orders.

Similarly, if a contract was to be signed by the President of the Federation and he was in a situation of conflict of interest, the contract should be handled by the Director-General, under the control of the office (or the executive committee, according to the organisational choice of the federation).

The correct answer is c.

■ **Declarations of interests**

Declarations of interests

[Law No 2013-907 of 11 October on transparency in public life \(Article 11 III bis 1, as amended\)](#) lists the personalities of the world of sport subject to an obligation of declaration of interests, which must be transmitted to the High Authority for Transparency in Public Life [HATVP]. These include the presidents, vice-presidents, treasurers and secretaries general of the delegated sports federations and professional leagues, the presidents of the French National Olympic and Sports Committee and the French Paralympic and Sports Committee, the President and Director-General of the National Sports Agency.

In addition, Law No 2022-296 of 2 March 2022 to democratise sport in France also amended [Article L.131-15-1 of the French Sports Code](#), which now provides that: *The Ethics Committee shall be competent to determine the list of members of the national and regional governing bodies of the delegated federations, as well as of the committees mentioned in the statutes provided for in Article L. 131-8, of professional leagues and bodies referred to in Article L. 132-2 who submit a declaration showing the interests held on the date of their appointment, during the five years preceding that date and, by means of amending declarations, until the end of their term of office. It shall refer any problems regarding these declarations of interests to the High Authority for Transparency in Public Life* ”.

Thus, in addition to the declarations of interests that are required by law and which must be transmitted to the HATVP, the ethics committees of the delegated federations may ask certain persons linked to these federations to fill out such declarations and submit them. In the latter case, the HATVP will be approached only if problems arise.

■ Good practices

- Designate a person or department responsible for answering questions from staff and members of the governing body on ethical issues (prevention of conflicts of interest, gifts or invitations, cumulative activities, etc.), or even for actively contributing to the federation's anti-corruption policy (steering the code of conduct and training, etc.)
- In order to prevent any risk, it is advisable that members of the governing body:
 - be made aware of the concepts of conflict of interest and illegal acquisition of interests;
 - **declare their possible conflicts of interest at the beginning of their mandate**². This avoids any involvement in a procedure in which a conflict of interest could arise. Such declarations are voluntary and must be proportionate to the objective sought:
 - only interests likely to interfere with the functions performed should be declared;
 - the procedures for using and processing these declarations must be specified (recipient, management of recusals, archiving, updating, etc.)
 - or, before each meeting of the board of directors, **make a declaration of no conflict of interest** or indicate their possible conflicts of interest according to the agenda they receive for this purpose in advance, with the names of the entities or companies concerned. In the event of conflicts of interest, the file of the board of directors [BoD] is sent to them only in redacted form.
- In addition, in view of the legislative changes introduced by Law No 2022-296 of 2 March 2022, seeking to democratise sport in France, the federation's ethics committee may decide to ask the members of the BoD to complete **declarations of interest**, which will be transmitted to the HATVP only if problems arise ([Article L. 131-15-1 of the Sports Code](#)).
- In the event of a conflict of interest, ensure that the person concerned recuses themselves by inviting them:
 - not to participate in preparatory work, debates or decision-making;
 - to physically leave the room and mention it in the meeting minutes;
 - not to be involved throughout the duration of the contract (implementation phase: penalties for delay, evaluation of proper performance of the service, etc.).
- The person concerned does not have to give the reason for their conflict of interest.
- The transparency of the procedure could usefully be strengthened in order to avoid suspicions of the privileged treatment of a head of enterprise to the detriment of their competitors.
- Formalise in an operational guide (separate from the financial regulation) the procedures for implementing the rules on public procurement within the federation, whatever the amount of the consultation and whatever the decision-making body (services of the federation or a collegial deliberative body).
- Ensure collegial and transparent decision-making in the award of contracts at all times and that the principle of equal treatment of candidates, open access to public procurement and transparency of procedures are respected. More generally, federations can draw inspiration in their financial regulations from the main principles of public procurement, in order to protect themselves from risks in their procurement policy.

II - GIFTS AND INVITATIONS POLICY

Factsheet 2 : Offering a gift or an invitation

Keywords: contracts, gifts, favouritism, corruption.

As part of the renewal of a federation's insurance contract, the federation offers the insurance company holding the contract 20 invitations to a sports competition in return for some intervention on the price of the new contract.

- a. This solution does not pose any problems, because the contract will thus be more favourable to the federation.
- b. All elements of this contract must be known to all candidates, but the consideration offered to the candidates can be kept secret.
- c. The consideration for the intervention on the price is minimal, it is not necessary to put it on record.
- d. This situation constitutes a breach of equality between candidates. It may constitute a criminal offence.

■ Analytical components

- Principle of competitive tendering :

In addition to the Public Procurement Code, which establishes the principle of equal access for candidates to public procurement, the Sports Code provides that, when an insurance contract is renewed, a call for tenders and negotiations are mandatory³

- Equal treatment of candidates :

For competition to be effective, the law requires that all candidates have access to the same information before making their bids. If the federation is willing to offer seats to its insurer in exchange for a price intervention, it should state this publicly in its consultation and offer this equally to all candidates. This is because invitations are then a price component (intervention on the price compensated by the seats) that must be included in the contract. The Federation, as a contracting authority, must respect the main principles of public procurement, particularly the equal treatment of candidates.

- Criminal offences. :

If the same negotiating elements were not offered to all candidates, such as this consideration in exchange for a price reduction, this would constitute the offence of granting undue advantages (also known currently as the offence of favouritism).

Moreover, if we consider that the seats are offered (illegitimate donation) in return for an insurance contract on abnormally advantageous terms, the federation could also incur criminal liability for active private sector corruption and the insurance company (or its representatives) for passive private sector corruption..

Private sector corruption (Articles 445-1 and 445-2 of the Criminal Code) is constituted in the presence of a corrupting agreement (in the same way as corruption of public officials), but this time between:

- the corruptor (briber), who can be “any person” (in this case, the sports federation);
- and the corrupted party (bribe-taker), who is “a person who, not being in a position of public authority, neither entrusted with a public service mission nor vested with a public elective mandate, carries out, in the context of a professional or social activity, a management function or a job for a natural or legal person or an organisation” (here it is the representative of the insurance company).

In practice, the judge will concretely examine the situation (purpose of the donation, value, frequency, consideration, etc.) in order to legally determine whether a corrupting agreement exists (known as the “group of indicators” approach).

The correct answer is d.

■ Good practices

- It is advisable to formalise, in the code of conduct, the specific rules governing gifts, invitations and advantages that are received by members of the federation and those that the federation offers to its third parties. It is possible to refer to the AFA’s practical guide to this policy for the development of these codes of conduct.
- Formalise, in operational guidelines (separate from the financial regulations), the rules and procedures for implementing the rules on public procurement within the federation, regardless of the amount of the consultation and regardless of the decision-making body (services of the federation or a collegial deliberative body).
- The offer of seats to attend a competition must be made at least with the agreement of the organiser of the tender, which is the sole holder of the operating rights.
- If in doubt, seek the opinion of the federation’s ethics committee, if it is responsible for these matters.

■ Legal framework

- [Article L.131-15-1 of the Sports Code](#)
- [Articles 432-14 and 433-1 of the Criminal Code](#)

Factsheet 3 : Receiving a gift or invitation

Keywords: code of conduct, gift policy, corruption

The Event Project Manager in the Communications Department of a sports federation receives a crate of grands crus classés bottles from an event organisation company, following the signing of a contract for the organisation of a motivational seminar for the executives of the federation.

- a. This situation does not pose any problems, because the contract is already signed, so this gift could not influence the project manager's decision.
- b. This situation does not pose any problems if the project manager decides to give their entire department this gift.
- c. This situation could constitute a breach of probity; this gift should be refused.

■ Analytical components

● Principles :

Gifts and invitations are ordinary acts of business life and do not, as such, constitute acts of corruption. Nevertheless, their value or the context in which they are offered can generate risks.

Thus, if purely ceremonial gifts or gifts of negligible value do not generally pose any problems, offering or receiving a gift of value may suggest the existence of a concealed consideration that would then expose the federation to a criminal risk. Similarly, this suspicion may exist depending on the person who receives the gift, the nature of the gift, or the period in which the gift is offered.

● Formalising a gifts and invitations policy :

Known rules safeguard employees and members of the governing body by allowing them to know clearly how to behave. It is therefore up to the federation to formalise, in a written document, particularly the code of conduct, the set of rules to be followed with respect to gifts and invitations in order to prevent any risk of breach of probity.

● In this case :

A gift received or solicited in the period around the signing of a contract should be considered suspicious, as it could be a quid pro quo for contractual conditions that are not advantageous for the federation. The same would apply in the period surrounding the award of a public contract.

Accepting a gift in return for an act of office, even after the contract has been signed, is likely to constitute an act of passive bribery for the employee of the federation and active bribery for the person offering the gift.

Sharing the gift with colleagues, or returning it after a long period of storage, does not prevent the offence from being committed.

The correct answer is c.

■ **Bonnes pratiques**

- Formalise a policy on gifts, entertainment and other benefits for employees and members of the governing body in a code of conduct. This may include, but is not limited to :
 - the rules for declaring gifts and invitations (in a register or software, to the line manager, etc.);
 - the threshold of acceptability (ideally expressed in monetary terms);
 - enhanced due diligence rules for particularly exposed functions (e.g. for those involved in the procurement process, or sponsors);
 - an absolute ban on receiving gifts and invitations during certain periods (awarding and renewal of contracts, etc.).

It is possible to refer to the [AFA Guide](#).

- Introduce and explain to employees and members of the governing body the internal rules of the federation regarding gifts, invitations and other benefits. The gift policy can thus be the subject of information meetings allowing for feedback, and at the end of which each employee must sign a copy of this code of conduct. In addition, it is a living document, which is intended to be updated according to the concrete situations encountered by employees.
- Distribute this policy regarding gifts, invitations and other benefits to third parties. This practice allows employees of the federation to refuse gifts of excessive value, based on a policy known to third parties.
- Establish a register (physical or digital) that ensures the traceability of gifts, invitations and benefits, and whether they have been accepted or refused.
- Regularly monitor compliance with the policy on gifts, invitations and other benefits, both by employees and members of the management body.
- If in doubt, seek the advice of the Federation's Ethics Committee, if it is responsible for dealing with these matters.

■ **Legal framework**

- [Article L.131-15-1 of the Sports Code](#)
- [Articles 432-11](#) and [433-1 of the Criminal Code](#)

III – HUMAN RESOURCES

Factsheet 4 : Trainee gratuity – equal treatment

Keywords: remuneration, internship, conflict of interest, illegal acquisition of interests, corruption.

The daughter of the CEO of a partner company of a federation is hired to do a two-month internship in the communications department of the federation. The federation remunerates her up to 50% of the monthly minimum wage, which is not the case for the other unpaid interns working for a maximum of two months. Moreover, in return for this internship, the CEO of the company undertakes to lend his holiday home to the president of the federation for a week, an offer accepted by the latter, who does not find this situation problematic and believes that this introduces a fair compensation for the sums paid by the federation to the intern.

- a. This situation is not problematic because, even if she is the only intern benefiting from such financial compensation, it is a decision that the federation can make in a totally discretionary manner.
- b. This situation is problematic, because all interns in the federation should be compensated without discrimination, according to the application of a salary grid internal to the structure.
- c. This situation is not problematic, because it was negotiated orally between the federation and the partner company during the conclusion of the partnership agreement.
- d. This situation is unacceptable and constitutes a case of corruption: active by the CEO and passive by the president of the federation. A bribery pact is established to the extent that, in return for this decision to accommodate the company with a paid internship, the CEO of the company grants an advantage to the decision-maker by lending him his holiday home for a week.

■ Analytical components

- Payment of an intern :

The company is not under obligation to pay interns present for a period of two months or less, but may, however, according to its policy or salary grid, choose to pay them a salary.

- Equal treatment :

In the situation described, the payment of 50% of the minimum wage [SMIC] per month given by the federation to the daughter of the CEO of a partner company of this federation in the context of a two-month internship would not be problematic if all interns in similar conditions (similar tasks, similar training, etc.) were also to benefit.

As the daughter of the CEO is the only one to be paid at this level, there is therefore a breach of equality between the interns, which reflects a conflict of interest.

- The conditions of employment are not discretionary :

Decisions made by a federation as an employer cannot be discretionary. They must be based on objective, verifiable and justifiable elements that leave no room for dispute.

- Corruption and other offences :

The benefit given to the CEO's daughter in conjunction with the signing of a contract between the company and the federation could raise suspicions of illegal practices. Indeed, accepting any advantage in return for an act of his office is likely to constitute a fact of passive corruption. Meanwhile, the partner company's CEO is in a situation of active corruption. It does not matter whether the bribery pact was made orally or even tacitly.

In the event of fictitious employment of the CEO's daughter, the federation may also be accused of the offence of misappropriation of public funds.

The correct answers are b and d.

■ **Good practices**

- Formalise in writing all the rules on human resources management: hiring, salary setting and increasing, especially for interns (with the establishment of a precise grid which would complement the national collective agreement for sport (CCNS) to clarify the payment of interns according to the duration of their presence in the company, their training, etc.), dismissal, etc.
- Ensure that the principle of equal treatment of employees and interns is respected.
- If in doubt about a situation, seek advice from the federation's ethics committee if it has jurisdiction over the matter.

■ **Cadre juridique**

- • [Law No 2013-907 of 11 October 2013 on transparency in public life](#)
- [Articles 432-11, 432-15](#) and [433-1 of the Criminal Code](#)

Factsheet 5 : The staff recruitment policy

Keywords: recruitment, collegiality, conflict of interest, illegal acquisition of interests.

A communications officer position becomes available at the federation. The Director-General hires Mr Dupont after interviewing him. He is the son of a colleague who retired a year ago. No advertisement related to the position was published, because Mr Dupont had all the required qualities: a diploma in communication and in-depth knowledge of the federation's sports disciplines.

- a. The federation should not hire Mr Dupont
- b. Mr Dupont may apply, but the Director-General should have recused himself..
- c. This recruitment does not pose any problems, because Mr Dupont has all the qualities required to perform the function for which he was recruited.
- d. Mr Dupont may apply, but the recruitment procedure must be open and adapted to be collegial and ensure the equal treatment of candidates.

■ Analytical components

Recruitment without prior publicity may give rise to suspicions of conflicts of interest or constitute the offence of illegal acquisition of interests or corruption. To avoid this, good practices exist to safeguard recruitment.

- Publishing the advertisement :

It is important to ensure that the advertisement is disseminated in a way that is appropriate to the importance of the proposed position, to the federation (in particular with regard to its size) and to ethical issues (particularly if there is a risk of illegal acquisition of interests). It is notably possible to publish job advertisements on specialised sites.

- Candidate analysis grid :

It is necessary to provide tools for formalising the recruitment procedure and an analysis grid, in particular to trace the reasons that led to the selection of the selected candidate.

- Éviter les conflits d'intérêts :

Avoiding conflicts of interest. The conflict of interest may concern all elected officials and employees of the federation. It is recommended to ensure collegial recruitment (involving at least two people), including, for example, the Human Resources Director [HRD], an elected official, or someone outside the department of the post to be filled. This collegiality can also be ensured by planning several stages of recruitment, by successive interviews.

- A formal procedure :

If the recruitment originates from a spontaneous application, it may be appropriate to organise a formal recruitment procedure with publicity. The rationale would be the same if a federal elected official were to be hired.

The correct answer is d.

■ **Good practices**

- The organisation should have a recruitment process that addresses the following points:
 - Identification of the need related to the position;
 - Budgetary validation;
 - Writing a job description;
 - Advertising;
 - Collegiality of the selection decision (multiple or grouped interviews etc.);
 - Traceability of choices.
- If a conflict of interest is identified, the recruiter should recuse themselves from the selection process as stated in the previous factsheets.
- Hiring should be done under the conditions (salary, benefits, type of contract, etc.) normally practised in the organisation.

■ **Legal framework**

- [Law No 2013-907 of 11 October 2013 on transparency in public life](#)
- [Article 432-12 of the Criminal Code](#)
- [Article L.131-15-1 of the Sports Code](#)



IV - OTHER CONSTRAINTS AND PRACTICES SPECIFIC TO THE WORLD OF SPORT

Factsheet 6: Ticketing

Keywords: conflict of interest, ticketing, invitations, elections, corruption..

An elected member of a federation receives 10 tickets for a competition organised by the federation in which the French team is participating. He gives them to the delegates of some regional leagues. This competition comes just a few weeks before the federation elections..

- a. This is not a problem if this practice has always been observed in this federation.
- b. The federation must keep track of the seats offered, by name. Moreover, the elected representative cited as an example must not place themselves in a delicate situation by offering seats to a future elector.
- c. The elected representative of the federation may invite the delegates of certain leagues, even in the run-up to the elections, but the delegate must not offer or resell these seats that were obtained free of charge.
- d. As the elections are to be held soon, the elected representative must refuse these 10 seats.

■ Analytical components

In this case, two questions arise.

The first concerns the conditions under which a federation distributes seats to its elected representatives for a competition it organises.

- • The elected official must refer to the code of conduct of their federation concerning the gifts and invitations policy in order to assess whether the allocation of the 10 seats is in accordance with this policy.
- • In addition, the invitations offered by the federation must be assigned by name in order to identify the beneficiaries and thus ensure transparency and traceability. It is the responsibility of the elected official to send the federation the information it needs to trace the tickets by name.

The second question concerns the conditions under which the elected representative himself offers these seats to other persons, some time before the elections in which he is a candidate or even simply interested in the result of the elections (moral interest).

- In general, the rules regarding the sale and resale of tickets are tightened for reasons of event security. The organiser of the event must therefore determine the rules for the transmission or exchange of these seats and the elected representative must respect them.
- Furthermore, the elected official must be vigilant about the context in which they offer gifts. An election year is always a particularly sensitive time. In this context, the occasional invitation from an elector may lead to risks of:
 - Conflict of interest: as an elector, he must make his decision in the interests of his league (public interest). This public interest could conflict with his private interest (maintaining a good relationship with the elected official who offered him a seat).
 - Corruption: If the gift is offered in exchange for the vote of the delegates of the regional leagues, the elected officer, by proposing or agreeing to do so, commits the offence of active corruption and the elector, by soliciting or agreeing to receive

it, commits the offence of passive corruption.

To weigh these facts of corruption, the judge uses the “group of indicators” technique by analysing this information in its context. For example, they analyse:

- The previous relationships between this elected official and the delegates of the leagues: does the elected official offer this same type of seat to the same delegates every year, or can we detect atypical behaviour in connection with the electoral period? Do they offer these seats to a lot of people? Only to their acquaintances? To people who are “useful” for the election...?
- The nature of the event (therefore the value of the invitation). In this case, the participation of the national team in an event organised directly by the federation indicates that the latter is appreciated.

The correct answer is b).

■ **Good practices**

- The code of conduct and the gift policy of a federation should include both the methods for the receipt of gifts and invitations by its employees, and the methods according to which elected representatives and employees can themselves offer gifts to the federation’s partners.

In this regard, these documents must in particular formalise the policy for issuing invitations: who can offer these invitations? To whom (external partners, families of federation members)? How many places? With what follow-up? Etc.

For example, it is possible to specify that invitations are personal and non-transferable and that they can be monitored by any technical means. As far as delegates are concerned, especially in times of internal elections, it is preferable that they are invited by the federation as a legal entity and not by the elected representatives *intuitu personae*.

- Finally, it is up to the federation to carry out regular checks, either automatically or randomly, in order to detect any abuse. Each new situation detected must lead to corrective action.

■ **Legal framework**

- [Law no. 2013-907 of 11 October 2013 on transparency in public life](#)
- [Articles 432-11 et 433-1 of the Criminal Code](#)

Factsheet 7: Search for sponsors

Keywords: sponsorship, contract, conflict of interest, illegal acquisition of interest.

A federation is looking to recruit its future sponsor. In the previous contracts, only one company, whose manager is a member of the federation's executive committee, was the recipient of the federation's sponsorship information.

- a. The federation launches a call for tenders open to all stakeholders according to a formalised procedure based on objective criteria, both qualitative and financial, at the end of which the best candidate will be designated the winner.
- b. If the company represented by the board member already meets the federation's needs, there is no need to look for other candidates: it is decided not to proceed with a tender. Only this company is the recipient of the contract information.
- c. The federation, on its own initiative, canvasses known market stakeholders, presenting its activity and purpose. Each potential sponsor has the same information. The Steering Committee decides without the presence of the potentially interested member.

■ Analytical components

- The risk of reclassification of sponsorship contracts as public contracts :

As the State Intangible Heritage Agency (APIE) states in its guidelines for the conduct of public interest actions with private funding⁴, sponsorship, which is defined as material support given to an event, a person, a product or an organisation with a view to deriving a direct benefit, is likely to be reclassified by the judge as a public contract if there is a direct and balanced relationship between satisfaction of the administration's needs and the consideration involved; in particular, in terms of advertising benefits granted to the company by the public entity. Thus, the Council of State, in its opinion No 397961 of 2 July 2019 on the marketing partnership contracts concluded by the Organising Committee for the Olympic and Paralympic Games, recalled that:

- under the first paragraph of Article L. 2 of the Public Procurement Code: "Public procurement contracts are contracts concluded for pecuniary interest by a purchaser or a contracting authority with one or more economic operators to meet its needs for works, supplies or services";
- according to Article L. 1111-1 of the same code, public procurement contracts concluded by a buyer "***in return for a price or any equivalent***" are public contracts;
- marketing partnership agreements may, in return for the granting of rights to use the Olympic marks and emblems and advertising space on the occasion of the Games, provide for the payment of contributions in kind and in cash;
- when the contributions in kind, whether supplies, services or works, meet the needs of the Organising Committee for the Olympic Games for the accomplishment of its mission, these agreements constitute public contracts subject to the Public Procurement Code.

As a general rule, marketing partnership agreements providing for contributions in cash and in kind therefore constitute, regardless of the cumulative value of the respective contributions, public contracts subject to the Public Procurement Code, with the exception of those whose main purpose is a contribution in cash or occupation of the

public domain.

A careful analysis of the purpose of the sponsorship and its balance in terms of the consideration provided must be carried out in order to determine whether it runs the risk of being assimilated to an operation seeking to satisfy the needs of a contracting authority in terms of works, supplies or services, and therefore being reclassified as a public contract. In such a case, the sponsorship scheme should be abandoned in favour of a contract procedure.

- Distinction between patronage and sponsorship :

Although there is no legal definition, according to [tax instruction BOI-BIC-RICI-20-30-10-20-20170620](#), "patronage is defined as material or financial support given without direct or indirect consideration by the beneficiary to a work or to a legal person for the exercise of activities of general interest.

In other words, patronage consists of making a donation, in cash or in kind, to an organisation of general interest for the conduct of its activities without expecting any equivalent consideration in return.

The benefit of the patronage scheme will only be questioned if there is no marked disproportion between the sums donated and the value of the "service" provided by the organisation receiving the donations".

Sponsorship is defined as the material or financial support given to an event, person or organisation with a view to deriving a direct benefit, particularly in terms of image. "Unlike patronage, sponsorship operations are intended to promote the image of the sponsor for business purposes. They are essentially distinguished from patronage by the nature and amount of the compensation. In the context of a sponsorship operation, the company's payment corresponds to the remuneration of the service provided by the organisation. As such, the tax mechanism is not a tax reduction, but a simple deduction of expenses.

- A vital resource :

Sponsorship is nowadays an important, even essential, financial lever for federations. In addition to income from licences, activities and various subsidies, income from sponsorship and patronage constitutes essential financial or in-kind resources.

For this reason, the federations are constantly looking for new sponsors who will be new financial providers for them. Most federations have internal departments dedicated to the search for sponsors or work in collaboration with companies specialised in marketing and sales whose purpose is to find these new sponsors. In order to avoid any risk of corruption linked to these "business providers", they must be subject to an integrity assessment as part of the anti-corruption procedures established by the sports federation and be selected in compliance with public procurement rules.

Federations can canvass various areas, sometimes directly related to their primary activity, and sometimes with various sectors that may be interested in their purpose. Thus, a federation specialising in cycling, for example, may seek sponsorship from brands specialising in the technical-sports field (cycle manufacturers, sports equipment suppliers) but also seek other financing from banks, insurance companies, etc.

here are two types of sponsorship :

- Material sponsorship: making a specific need known to several potential sponsors, for example, a need for equipment, clothing or services such as consultancy;
- Financial sponsorship : canvassing various structures, whether or not they are specialised in the field of sport, to secure financial sponsorship, via the payment of a sum of money in return for contractually defined services.

- No regulatory framework :

Subject to the above observation concerning the application of the Public Procurement Code to certain sponsorship contracts concluded by contracting authorities, it is noted that, unlike audiovisual rights or the insurance market, this search does not necessarily fall within the scope of a contract predefined by law and the Sports Code.

- But healthy and fair competition :

In all cases, however, the federation must be able to present a complete, precise and transparent dossier to the potential future sponsor in order to be in a position, if necessary, to ensure healthy and fair competition. Tendering is not mandatory, but remains a reliable and secure mechanism, as long as all of the stakeholders have the same information. For example, for a material partnership in bicycle equipment, all the candidates must know the number of bicycles, the quality, the requirements, the timetable, etc., so that they can formulate an offer in line with the demand.

- The risk of competitive advantage :

Since the sports world consists of a small number of people, it is possible that a member of a federal governing body is also a director of a group that would be interested in becoming a sponsor of that same federation. In this case, the federation must ensure that fair competition is maintained between the different stakeholders.

- A minimum of formalism and publicity :

It may be wise for the federation to canvass competing companies in order to get a feel for the various offers and thus promote competition. For this to be effective, the other stakeholders must have the same information in order to be able to make an offer on a similar basis.

- Respect the statutes :

While the decision to enter into a partnership does not necessarily fall within the competence of the federation's governing body, this may be the case. Indeed, each federation, through its statutes, can adopt different decision-making rules and distribute decision-making powers between the president and a governing body.

- Recusal in case of conflict of interest :

In such a situation, the member concerned must recuse themselves and not participate in any way in the decision-making process (preparatory phase, exchanges and decision), nor intervene in the performance of the contract. Otherwise, this could constitute the offence of illegal acquisition of interests.

The correct answer is c.

■ Good practices

- In order to prevent any risk, it is advisable that members of the governing body:
 - be made aware of the concepts of conflict of interest and illegal acquisition of interests;
 - **declare their possible conflicts of interest at the beginning of their mandate.** This

avoids any involvement in a procedure in which a conflict of interest could arise. Such declarations are voluntary and must be proportionate to the objective sought:

- only interests likely to interfere with the functions performed should be declared;
- the procedures for using and processing these declarations must be specified (recipient, management of recusals, archiving, updating, etc.).
- or, before each meeting of the Board of Directors, make a **declaration of no conflict of interest** or declare their possible conflicts of interest according to the agenda they receive for this purpose in advance, with the names of the entities or companies concerned. In the event of conflicts of interest, the file of the board of directors [BoD] is sent to them only in redacted form.
- • In addition, in view of the legislative changes introduced by Law No. 2022-296 of 2 March 2022, seeking to democratise sport in France, the federation's ethics committee may decide to ask the members of the managing body to complete declarations of interest, which will be transmitted to the HATVP only if problems arise (Articles L. 131-15-1 of the Sports Code).
- • In the event of a conflict of interest, ensure that the person concerned recuses themselves by:
 - inviting them not to participate in the preparatory work, the debates or the decision-making;
 - inviting them to physically leave the room and mentioning this in the meeting minutes;
 - ensuring that the person with a conflict of interest is not involved throughout the duration of the contract (implementation phase: penalties for delay, evaluation of the proper performance of the service, etc.).

The interested person does not have to give the reason for their conflict of interest.

The transparency of the procedure could usefully be strengthened in order to avoid suspicions of the privileged treatment of a head of enterprise to the detriment of their competitors.

- Good practices in sponsorship
 - Formalise the federation's needs and the selection criteria prior to the consultation:
 - Distinguish between sponsorship and patronage in order to avoid any subsequent reclassification.
 - CAUTION: certain sectors are excluded from sponsorship or patronage: alcohol, tobacco and medicines⁵.
 - Depending on the needs identified and, as mentioned above in the first analytical component of this sheet, check whether the contract falls under public procurement law
 - oFor sponsorship contracts that do not constitute a public contract, limit the risk of litigation by formalising a procurement and selection procedure that ensures fair and healthy competition.
 - oEnsure collegial decision-making in the selection of the new sponsor and respect the principle of equal treatment of candidates.
 - oIn the event of an over-the-counter negotiation approach, the federation must implement the means to demonstrate that the market does not have an appetite for the matter.
 - oMake competition between candidates on the basis of objective, clear and identical elements for all.
 - oEnsure the traceability of exchanges, particularly negotiations with companies, as well as the traceability of the selection made by the federation.

■ Legal framework

- [Article L. 3323-2 of the Public Health Code](#)
- [Articles 39](#) and [238 bis of the General Tax Code](#)
- [Articles L.2](#) and [L.1111-1 of the Public Procurement Code](#)
- [Article L.420-1 of the Commercial Code](#)
- [Article 432-12 of the Criminal Code](#)

5. Law No. 91-32 of 10 January 1991 against smoking and alcoholism, known as the Évin Law;
Law No 94-43 of 18 January 1994 on public health and social protection

Factsheet 8: Subsidies

Keywords: subsidy, sports event, agreement, misappropriation of public funds..

The federation receives a subsidy from a local authority to organise a sports event. Seventy percent of the subsidy is used to organise the sports event and thirty percent to organise an evening with all participants and partners to close the event.

- a. The amount of the subsidy must be checked: if it exceeds €23,000, an agreement must be drawn up. If this agreement stipulates that the subsidy must be used exclusively for the organisation of the sports event, it cannot be used, even in part, to finance a festive event even if it is linked to the sports event.
- b. There is no problem because, although the evening lasts longer than the sporting event, a representative of the local authority was invited.
- c. There is no problem, because the part of the subsidy used for the organisation of the evening was small compared to the overall budget, which of course was mainly for the sports event.
- d. Even in the absence of an agreement indicating the purpose of the subsidy (subsidy of less than €23,000), the subsidy must be used exclusively to finance its original purpose, the sports competition, and cannot be used to finance the evening event in any way.

■ Analytical components

- Prerequisite : to be accredited :

To carry out missions of general interest, accredited sports associations may be granted public subsidies by local authorities, pursuant to Article L.113-2 of the Sports Code.

- There are two types of subsidies :

those for a specific event and those voted annually for all of the association's activity. So a sports federation can, as indicated in the statement, benefit from a subsidy that would help it to fund a sporting event that it organises.

- General interest :

This subsidy must enable the organisation of the sports event, and therefore the development of the federal activity among the general public (general interest as specified in the Sports Code).

- Principle of the use of public subsidies :

The Court of Cassation has consistently developed a restrictive case law in recent years⁶ : Public subsidies may only be used for the purposes originally agreed upon between the entity paying out the subsidy (e.g. European Union, departmental council, district, etc.) and the entity receiving it (the federation). Thus, the use of even a small part of a public subsidy for purposes other than those foreseen at the time of payment of the subsidy constitutes the offence of misappropriation of public funds.

- Misappropriation of public funds :

Thus, if a federation uses a public subsidy intended to organise a sports competition to finance a private party following the competition, this constitutes the offence of misappropriation of public funds.

- Agreement threshold⁷ :

when the amount of the subsidy granted exceeds €23,000, an agreement must be concluded between the parties specifically setting out its purpose, its amount and the conditions for its payment and use. Thus, if it has been determined in the agreement that the subsidy should be used exclusively for the sporting event itself, no part of the subsidy may be used for the organisation of the evening.

For subsidies of less than €23,000, in the event of suspicion of misappropriation of public funds and criminal prosecution, the initial purpose of the subsidy will be demonstrated by all means by the police criminal investigation services or the courts (letter, email, etc.). It is therefore recommended that stakeholders take precautions by putting in writing the purpose for which the public subsidy is granted.

Finally, whatever their amount, local authorities can check a posteriori the use of subsidies and it is necessary for each beneficiary association to be able to justify their proper use.

The correct answer is (d).

■ Good practices

- Ensure that an agreement is drawn up for subsidies of more than €23,000.
- If in doubt about the purpose of a subsidy, dialogue with the local authority concerned to clarify it and avoid the risk of misusing it;
- Ensure that events financed in part by public subsidies fulfil a purpose of general interest by promoting federal sports activities to the general public.

■ Cadre juridique

- [Article L. 113-2 of the Sports Code](#)
- [Articles 9-1](#) and [10 al. 3](#) of the Law of 12 April 2000 on the rights of citizens in their relations with the administration
- [Articles 432-15](#) and [of the Criminal Code](#)

**Good practices concerning the framework
for subsidies paid by sports federations
to subdivisions or partners with limited territorial competence**

In addition to the purpose of this factsheet, concerning the use by a sports federation of subsidies received from a public administration, the case often arises of subsidies that a federation is required to pay to partners, particularly regional leagues.

In this regard, the AFA recommends establishing parameters for the use of funds to prevent the risk of breaches of probity, including the risk of misappropriation.

The following good practices can be mentioned:

- Specify, in the multiannual agreements on objectives concluded between a territorial league (for example, regional) and the federation, objectives making it possible to manage the risks of breaches of probity, as well as the consequences that will result in the event of failure to meet the objectives.
- Carry out checks on the use of these subsidies paid to the regional leagues.
- Formalise a procedure specifying the criteria as well as the procedures for investigating and checking subsidies paid to territorial committees (for example, departmental). This procedure may be incorporated into each multiannual agreement on objectives.

Factsheet 9: Sports competition fraud

Keywords: sports betting, match-fixing, manipulation of sports competitions, corruption

During a discussion in the locker room, the federation's salaried physiotherapist insists that an athlete keeps his foot raised and rests during the next competition. He even tells him that he will be rewarded later.

A game operator reports to the National Gaming Authority that a bet of an abnormally high amount was taken on the defeat of the athlete, who was the favourite.

Following a legal enquiry, we learn that the bet was made by the wife of the federation's physiotherapist.

- a. This solution is not difficult, because there is no link between the two facts.
- b. The physiotherapist should not have given his wife insider information and tried to bribe the athlete.
- c. The physiotherapist should have placed the bet himself.

■ Analytical components

- This proposal made to the athlete constitutes the offence of sports corruption (Article 445-1-1 of the Criminal Code) :

The federation's physiotherapist offers him a reward to obtain an abstention from him, likely to change the normal and fair course of this event, which constitutes sports corruption. The sports strategy is the sole responsibility of the coach and the athlete and must not be linked to any financial interest.

- Insider trading :

In addition, the physiotherapist passes on insider information, obtained in the course of his work, to his wife: the athlete's defeat in the next competition. The latter will be able to use the confidential information to safely place a large bet. The transmission of information between the physiotherapist and his wife amounts to a bet by proxy. There is indeed a correlation between the two facts, if only because of their proximity in time, so solution a) is discarded.

If the communication of inside information does not constitute, in the matter of sports betting, "sports insider trading" and is therefore not liable to incur criminal sanctions, no more than is its concealment, then disciplinary sanctions must be applied by the federations, as expressly provided for in Article L.131-16 of the Sports Code.

The ban on betting concerns all employees, managers and members of the bodies of sports federations⁸ ; proposal c) is therefore not feasible.

The correct answer is b.

In the present case, depending on the rules issued by the federation, the physiotherapist will incur a disciplinary sanction up to a maximum of permanent exclusion from the organisation and inability to practise.

In addition, he may be criminally prosecuted for active sports corruption.

Moreover, if the athlete gives in to the solicitation, he will likely be prosecuted for passive corruption.

8. In general, the federations have the responsibility to enact rules whose purpose is to prohibit these practices to the stakeholders of sports competitions, as listed in Article D.131-36-1 of the Sports Code.

■ **Good practices**

- Make known and respect the principles of prohibition of sports betting, of holding participation in a betting operator and of prognoses, with all stakeholders in sporting competitions as defined by the Sports Code: not to disclose any information obtained in the course of his duties to a third party because the information could be likely to influence a game or the outcome of a sporting competition.
- Organise awareness-raising activities to raise awareness of sports betting regulations.
- Display information panels in sports facilities and offices concerning sports betting rules.
- Maintain an up-to-date list of “sports competition stakeholders” (as defined in Article L. 131-16 of the Sports Code) and ask ANJ to cross-check annual files on the basis of Article R.131-37 of the Sports Code, when the sports discipline is open to online sports betting.
- Have members of the federation sign a charter of good conduct at the beginning of each sports season.
- Observe a strict subject policy when there is failure to comply with betting prohibitions and other similar prohibitions..

■ **Legal framework**

- [Article L.131-16](#) and [D.131-36-1](#) of the Sports Code
- [Articles 445-1-1](#) and [445-2-1](#) of the Criminal Code

APPENDICES

APPENDIX I – DEFINITION OF OFFENCES

CORRUPTION OF OR BY A FRENCH PUBLIC OFFICIAL

Art. 432-11 et 433-1 of the Criminal Code

Summary

Corruption between public or private persons in the context of a sports event consists in offering an advantage to a participant in a sports event to perform or refrain from performing an act in order to change the course of the sports event. Active corruption refers to the situation of the corruptor (the person offering or agreeing to offer some kind of advantage to a participant in a sports event), whereas passive corruption refers to the situation of the corrupted party (the participant in the sports event receives or solicits such an advantage).

The components

Prerequisites :

The persons likely to commit this offence are :

- **The corrupted party :**

This is “any stakeholder at a sporting event”. Given the broad nature of this terminology, this may extend to all stakeholders in a sporting event who have the capacity to influence it (athlete, coach, selector, agent, club manager, etc.).

- **The corrupting person :**

This can be any natural or legal person.

A sporting event giving rise to sports betting. The offences in Articles 445-1-1 and 445-2-1 of the Criminal Code only concern sporting events “giving rise to sports betting”. According to Article 4 of Law No. 2010-476 of 12 May 2010 on the opening-up to competition and regulation of the online gambling sector, the term “sports betting” is understood to mean “bets involving a stake in monetary value where the potential winnings of the players depend on the accuracy of their predictions concerning the outcome of any (...) real sports competition legally organised in France or abroad”.

Material element :

● **Active corruption:**

- The perpetrator must have offered an advantage of some kind to the stakeholder in a sporting event. It is not necessary for this offer to be made prior to receipt of the advantageous consideration by the briber. It is also not necessary for the advantage to have actually been received, since offers or promises are included. The advantage may be direct (gift, money, loan, performance of free work for the official, discount on a product) or indirect (debt repayment, hiring of a relative).
- The advantage must be offered for the purpose of obtaining an act arising from the function performed by the corrupted party. e.g. for the athlete: scoring against their own side, provoking a foul, voluntarily losing a point, taking a step back from the game; for the referee: signalling as faulty a regular game action, omitting to take measures against irregularities during the game.

● **Passive corruption :** the constituent elements are similar to those of active corruption :

- The stakeholder in the sporting event must have solicited or accepted an advantage, whatever that may be. This solicitation or acceptance need not be prior to the consideration provided to the briber. It is also not necessary for the advantage to have actually been received, since offers or promises are included. The advantage can be direct (gift, sum of money, loan, performance of free work for the benefit of the official, rebate on a product) or indirect (payment of a debt, hiring of a relative).
- The advantage must be solicited or accepted for the purpose of providing an act arising from the function performed by the public official.

Moral element :

- **Intention (general intent).** It is an intentional offence, which presupposes that the perpetrator was aware of their illegal behaviour and that they sought the intended effect of the offence: for the corruptor, the performance or non-performance of an act by the stakeholder in the sporting event; for the corrupted party, agreeing to perform or not perform an act.
- **Purpose sought (special fraud): manipulation of the normal and fair course of the sporting event.** The action or abstention of the stakeholder in the sports event must have the purpose and/or effect of changing the normal and fair course of the sports event. "Normal" in the sense that the normal rules of the game are not respected. "Fair" in the sense that sporting merit, fair play, probity and sportsmanship are being flouted. It is an agreement, a "rigging" of the sporting event to distort it and obtain a victory or defeat of a team/athlete so that the result benefits the corrupter through their winnings from sports betting.

Penalties

- **Main penalties for both active and passive corruption** (Articles 445-1 and 445-2-1 of the Criminal Code): 5 years' imprisonment and a fine of €500,000, which may be increased to double the proceeds of the offence.
- **Additional penalties for natural persons** (Articles 131-26, 131-27, 131-21 and 131-35 of the Criminal Code): prohibition of civic, civil and family rights, prohibition on exercising a public function, prohibition on exercising a professional or social activity during the exercise of which the offence was committed, prohibition on exercising a commercial or industrial profession, on directing, administering, managing or controlling in any capacity, directly or indirectly, for their own account or for the account of another, a commercial or industrial enterprise or a commercial company, confiscation of the item that was used or intended to be used to commit the offence or of the item that is the proceeds thereof, with the exception of items liable to be returned, posting or dissemination of the declared decision. Ineligibility is also provided for in the law by Article 131-26-2 of the Criminal Code.
- **Additional penalties for legal persons found guilty of active corruption** (Articles 433-25 and 26 of the Criminal Code): posting or dissemination of the decision, confiscation of the proceeds and instruments of the offence, prohibition from carrying out certain activities in the exercise or in connection with the exercise of which the offence was committed, placement under judicial supervision, closure of the establishment, exclusion from public contracts, prohibition from offering financial securities to the public, partial prohibition on the use of certain payment instruments. Obligation to undertake a compliance programme for its corruption prevention and detection measures, under the supervision of the AFA (Article 131-39-2 of the Criminal Code).

Texts and references

- **Active corruption in sport (Article 445-1-1 of the Criminal Code)**: "A penalty of five years' imprisonment and a fine of €500,000, which may be increased to twice the amount of the proceeds of the offence, applies when anyone offers, unlawfully, at any time, directly or indirectly, to a participant in a sporting event or horse race giving rise to bets, offers, promises, gifts or advantages of any kind, for themselves or for another person, so that this stakeholder can change the normal and fair course of this event or race by an act or abstention, or because this stakeholder, by an act or abstention, changes the normal and equitable course of this event or race, or because this stakeholder, by an act or abstention, has changed the normal and equitable course of this event or race".
- **Passive corruption in sport (Article 445-2-1 of the Criminal Code)**: «A penalty of five years' imprisonment and a fine of €500,000, which may be increased to twice the amount of the proceeds of the offence, applies to any stakeholder in a sporting event or horse race giving rise to betting who is found to have solicited or accepted from any person, unlawfully, at any time, directly or indirectly, offers, promises, gifts, donations or advantages of any kind, for themselves or for another person, to change or to have changed, by an act or abstention, the normal and fair course of this event or race".

Examples of corruption in sport

In order to pay off his gambling debts, a football referee's brother-in-law asks him not to penalise a team's playing irregularities in a forthcoming match and to report the opposing team's actions as wrong. In exchange, he promises his referee brother-in-law half of the winnings from the bets he places.

The childhood friend of a handball player who starts a sports betting business on Snapchat asks him to take it easy during a sporting event so that his predictions can be recognised as quality and his business can flourish. In exchange, the childhood friend offers him publicity on social networks with key partnerships.

A Formula One driver from a well-known team will quietly approach a new car manufacturer to get a contract in their newly formed team. In exchange, the new company will ask him to perform less well in future races in order to weaken the rival team in which he is employed.

The lawyer of a basketball coach threatened by a disciplinary measure from his federation proposes to the coach that he change the composition of the team in the next match in exchange for a free defence. He will deliberately choose smaller, less experienced players recovering from injuries.

INFLUENCE PEDDLING BY A FRENCH PUBLIC OFFICIAL

Art. 432-11 et 433-1 of the Criminal Code

Summary

Le trafic d'influence d'agent public français consiste à offrir à cet agent un avantage pour qu'il abuse de son influence auprès d'une autre autorité publique. On parle de trafic d'influence actif lorsque l'on s'intéresse à la personne qui offre l'avantage et de trafic d'influence passif lorsqu'on s'intéresse à l'agent public qui le reçoit.

Il s'agit d'une infraction proche de celle de corruption, avec la particularité qu'elle fait intervenir un intermédiaire qui monnaie son influence auprès de l'autorité publique.

Il existe d'autres formes de trafic d'influence qui peuvent concerner un agent public étranger, un rapport entre personnes privées, un magistrat, un fonctionnaire international...

Elements of the offence

Prerequisites

The persons likely to commit this offence are :

- With regard to the perpetrator of passive influence peddling :
 - Persons holding public authority: this refers to any person who is vested by delegation of public authority with decision-making and enforcement powers over individuals and things, which they exercise on a permanent or temporary basis, e.g. State, territorial or hospital civil servants, public and ministerial officers, law enforcement officers, military personnel.
 - Persons entrusted with a public service mission: these are persons who, without having received decision-making and enforcement powers conferred by the public authorities, nevertheless carry out a mission of general interest. e.g. certain staff of public establishments, beneficiaries of public service concessions, members of commissions or bodies responsible for giving an opinion to the public authority.
 - Persons holding a public elective office: this includes both national and local elected officials.
- **Regarding the person offering an undue advantage :** this can be any natural or legal person.

Material element:

- With regard to active influence peddling :
 - As with bribery, the perpetrator must have offered some kind of advantage to the public official. It is not necessary for this offer be made prior to the receipt of the advantage by the briber. It is also not necessary for the advantage to have actually been received, since offers or promises are included. The advantage may be direct (gift, money, loan, performance of free work for the official, discount on a product) or indirect (debt repayment, hiring of a relative).
 - But the purpose of these manoeuvres is different from that of bribery. The advantage must be offered in order for the public official to use their influence with a third person, with a view to obtaining a favourable decision or opinion. It is not necessary to demonstrate the effectiveness of this influence, as it may be real or merely assumed. In contrast to bribery, the offender does not perform an act of office, but merely acts as an intermediary.
 - The favour paid to the authority can be of any type, the text referring to “distinctions, jobs, contracts or any other favourable decision”, e.g. dismissal of an offence, lifting of an arrest warrant, obtaining a passport, dropping charges, issuing a building permit.
- With regard to passive influence peddling, the components are similar to those of active influence peddling:
 - The public official must have solicited or accepted an advantage of some kind from another person. The solicitation or acceptance need not be prior to the receipt of the advantage by the briber. It is also not necessary for the advantage to have actually been received, since offers or promises are included. The advantage may be direct (gift, money, loan, performance of free work for the official, discount on a product) or indirect (debt repayment, hiring of a relative).
 - The advantage must be required by the official in order to use their influence with a third person (person or public authority) with a view to obtaining a favourable decision or opinion for another person. It is not necessary to demonstrate the effectiveness of this influence, as it may be real or merely assumed.

Moral element :

It is an intentional offence, which presupposes that the perpetrator has sought the intended effect of the offence.

Penalties

- **Main penalties for active and passive influence peddling** (Articles 432-11 and 433-1 of the Criminal Code): 10 years' imprisonment and a fine of EUR 1,000,000, which may be increased to twice the proceeds of the offence.
- **Additional penalties for natural persons** (Articles 432-17, 433-22 and 433-23 of the Penal Code): prohibition of civil, civic and family rights, prohibition on exercising a public function or the professional or social activity in the exercise or on the occasion of which the offence was committed (this prohibition cannot affect the elective mandate or union responsibilities), prohibition on practising a commercial or industrial profession and managing a commercial or industrial enterprise, posting of the decision, confiscation of sums or objects improperly received by the offender, with the exception of objects liable to be returned. Ineligibility is also provided for by law (Article 131-26-2 of the Criminal Code).
- **Additional penalties for legal persons found guilty of active corruption** (Articles 433-25 and 26 of the Criminal Code): display or dissemination of the decision, confiscation, prohibition on carrying out certain activities in the exercise or during the exercise of which the offence was committed, placement under judicial supervision, closure of the establishment, exclusion from public contracts, prohibition on offering financial securities to the public, partial prohibition on the use of certain payment methods. Obligation to undertake a compliance programme for its corruption prevention and detection measures, under the supervision of the AFA (Article 131-39-2 of the Criminal Code).

Texts and references

- **Article 432-11(2) of the Criminal Code defines the trafficking of passive influence by a public official** as "the fact, by a person acting as holder of the public authority, entrusted with a public service mission, or vested with a public elective mandate, of soliciting or accepting, unlawfully, at any time, directly or indirectly, offers, promises, donations, any present or advantage to themselves or to others (...) for abusing or having abused their real or presumed influence in order to obtain distinctions, jobs, contracts or any other favourable decision from a public authority or administration".
- **Article 433-1(2) of the Criminal Code defines active influence peddling as** "the fact of anyone offering, unlawfully, at any time, directly or indirectly, offers, promises, gifts, presents or advantages of any kind to a person holding public authority, entrusted with a public service mission or vested with a public elective mandate, for themselves or for others (...) so that they abuse, or because they have abused, their real or supposed influence in order to obtain, from a public authority or administration, distinctions, jobs, contracts or any other favourable decision".

Examples of influence peddling in sport

- A member of a federation who solicits or accepts remuneration or gifts, directly or indirectly, in exchange for their influence on the members of a decision-making body for the award of a sporting competition.
- A federation president who accepts sums of money to try to reduce the sanction imposed on a friend's sports club by intervening with the sanctions committee, thereby abusing his/her supposed influence.
- A public official who receives various gifts from a federation in exchange for their intervention with the Ministry of Sports, where they are seconded, so that the federation obtains the subsidies it has applied for.

FAVOURITISM

Art. 432-14 of the Criminal Code

Summary

Favouritism is the main offence for breaches of public procurement regulations, where the purpose of the breach is to hinder the free and equal access of candidates to public contracts and the consequence is to give an unjustified advantage to another person (most often a candidate company).

Elements of the offence

Prerequisites :

The persons likely to commit this offence are :

- persons holding public authority, entrusted with a public service mission or vested with a public elective mandate;
- persons exercising certain specific functions: representatives, administrators or officials of the State, local authorities, public establishments, semi-public companies of national general interest with a public service mission and local semi-public companies.
- any person, including private persons, acting on their behalf.

An association may qualify as a contracting authority and therefore be subject to public procurement rules. If it does not comply with the public procurement rules, it commits the offence of favouritism.

According to Article L. 1211-1 of the Public Procurement Code, contracting authorities notably include «legal persons governed by private law that have been created specifically to meet needs in the general interest that are not industrial or commercial in nature, for which :

- a) the activity is predominantly financed by a contracting authority; or
- b) the management is subject to control by a contracting authority; or
- c) more than half of the members of the administrative, management or supervisory body have been appointed by a contracting authority. ;

*One condition is sufficient and the case law considers that a body meeting a general interest need after its creation is also concerned. By definition, State operators carry out a mission of general interest and, placed under the direct control of the State, they are financed for the most part by the State and contribute to the performance of the programmes in which they participate. **Therefore, even in the absence of clear case law on the subject, it is strongly recommended that they (and the federations) position themselves as contracting authorities and submit to the rules of public procurement.***

Material element :

- The offence firstly involves the violation of a legislative or regulatory provision guaranteeing freedom of access and equality of candidates in the award of public contracts and public service delegations, but also involves violation of the general principles of public procurement.

E.g. splitting the contract to fall below the advertising thresholds, excessively technical clauses allowing only a pre-selected candidate to be selected, unjustified use of urgency, artificial declaration of the unsuccessful nature of the tender, failure to comply with advertising rules.

- Secondly, the breach must offer another person an unjustified advantage. The advantage often consists in awarding the contract to the favoured company or offering it a greater chance of obtaining it; for example, by revealing information.

Moral element: :

- This is an intentional offence characterised in its moral dimension by conscious violation of the abovementioned rules.
- However, insofar as “no one is supposed to be ignorant of the law”, case law presumes that the perpetrator was aware of public procurement rules and the error of law is only very rarely admitted.

The offence is constituted regardless of the motive (the aim sought by the offender), even if there is no personal enrichment or harm to the community.

Penalties

- **Main penalties** (Article 432-14 of the Criminal Code): 2 years' imprisonment and a fine of EUR 200,000, which may be increased to twice the proceeds of the offence.
- **Additional penalties** (Article 432-17 of the Criminal Code): prohibition of civil, civic and family rights, prohibition on exercising a public function or the professional or social activity in the exercise or during the exercise of which the offence was committed (this disqualification cannot affect elected office or trade union responsibilities), prohibition on exercising a commercial or industrial profession or managing a commercial or industrial enterprise, confiscation of sums of money or objects irregularly received by the perpetrator of the offence, with the exception of objects liable to be returned.

Texts and references

- **Article 432-14 of the Criminal Code defines favouritism as** "the act by a person holding public authority or entrusted with a public service mission or vested with a public elective mandate or exercising the functions of a representative, administrator or official of the State, local authorities, public establishments, companies of national interest entrusted with a public service mission, and local semi-public companies, or by any person acting on behalf of one of the aforementioned, to procure or attempt to procure for another person an unjustified advantage by an act contrary to the legislative or regulatory provisions intended to guarantee freedom of access and equality of candidates in public contracts and public service delegations".

Examples of favouritism

- A federation responsible for analysing the bids of candidates for a public contract for the construction of an Olympic stadium, which modifies the bid analysis report in order to favour a company in the award of a lot, at the request of a public official.
- The communication by a sports federation of privileged information to a particular company to enable it to submit a better bid than its competitors, whether before or after submission of the bid.
- The award of a public contract by a sports federation, not on the basis of objective selection criteria derived from the proposals made by the candidates, but to please a third party because of friendly relations.
- The use of riders to entrust the company initially chosen with work of a different nature from the initial contract by ordering work outside the contract without any competition.

ILLEGAL ACQUISITION OF INTEREST

Art. 432-12 of the Criminal Code

Summary

The purpose of sanctioning this offence is to prohibit confusion between personal interests and the general interest in the management of public affairs. It aims to punish those who expose themselves to the suspicion of bias and who knowingly place themselves in a situation where their own interest is likely to be seen to conflict with the public interest for which they are responsible.

Les éléments constitutifs

Material element :

The persons likely to commit this offence are :

- persons holding a public elective office;
- persons holding public authority;
- persons entrusted with a public service mission: all agents of operating bodies and approved federations are concerned.

Material element :

- **Monitoring of the business or operation.** The abovementioned persons must have been responsible for all or part of the supervision, administration, liquidation or payment of a specific operation or transaction with a company. The case law also includes any person who participated in the preparation of the acts in question. The mere fact of participating in a deliberation concerning an operation in which the elected representative has an interest is sufficient to characterise the offence.
- **Interest acquired, received or retained, directly or indirectly.** This interest may be direct (e.g. a mayor who grants a subsidy to an association of which they are president), or indirect, when it is held by someone close to the public official (e.g. a public contract awarded by a mayor's office to a company run by the mayor's son-in-law, or the fact that an elected official allocates social housing to one of his relatives). It may even be a purely moral interest, where the official takes an advantageous decision regarding a company run by one of their friends.
- **An interest likely to compromise their impartiality, independence or objectivity:** Article 15 of Law No 2021-1729 of 22 December 2021 on confidence in the judiciary amended Article 432-12 of the Criminal Code by specifying the nature of the interest in question. It is no longer a question of a simple «interest of any kind», it being specified that this notion has been interpreted very broadly by the case law. Although the legislator's stated objective is to make this offence more precise, we will have to wait for the application of the law in case law to analyse the real effect of this reform.

Moral element :

There must be an intention to commit the offence. It is not required that the person concerned has made a personal profit or been enriched.

Penalties

- **Main penalties** (Article 432-12 of the Criminal Code): 5 years' imprisonment and a fine of €500,000, which may be increased to twice the proceeds of the offence.
- **Additional penalties** (Article 432-17 of the Criminal Code): prohibition of civil, civic and family rights, prohibition on exercising a public function or the professional or social activity in the exercise or during the exercise of which the offence was committed (this disqualification cannot affect elected office or trade union responsibilities), prohibition on exercising a commercial or industrial profession or managing a commercial or industrial enterprise, confiscation of sums of money or objects irregularly received by the perpetrator of the offence, with the exception of objects liable to be returned.

Texts and references

- **Article 432-12 of the Criminal Code** defines illegal acquisition of interest as the fact "by a person holding public authority or entrusted with a public service mission or by a person vested with a public elective mandate, to take, receive or retain, directly or indirectly, any interest whatsoever in a company or in a transaction for which they are, at the time of the act, wholly or partly responsible for the supervision, administration, liquidation or payment thereof".

Examples of illegal acquisition of interest

- A member of the governing body of a sports federation who prepares the content of contracts awarded to a company run by their spouse.
- An elected official of a federation intervenes in the recruitment of his wife and/or children within the same federation.
- A member of the governing body of a sports federation responsible for allocating subsidies that benefit an association of which he is also the president.

ILLEGAL ACQUISITION OF INTEREST BY A FORMER PUBLIC OFFICIAL

Art. 432-13 of the Criminal Code

Summary

This is a form of illegal acquisition of interest committed by a person who left public office less than three years ago. The aim is to prevent a public official responsible for supervising or contracting with a private company from favouring the latter in the hope of short-term employment, shareholding or consultancy work.

Elements of the offence

Prerequisites :

The persons likely to commit this offence are :

- members of the government;
- holders of a local executive function;
- members of an independent administrative authority or an independent public authority;
- civil servants;
- military personnel;
- officials of a public administration;
- agents of public establishments, public companies, semi-public companies in which the State or public authorities directly or indirectly hold more than 50% of the capital and public operators provided for in Law No 90-568 of 2 July 1990 on the organisation of the public postal service and France Télécom.

Material element :

● **Supervision exercised or conclusion of contracts with a private company:**

The persons referred to above must have been responsible in whole or in part for the supervision, administration, liquidation or payment of a specific operation or transaction with a company. The case law also includes any person who participated in the preparation of the acts in question. The mere fact of participating in a deliberation concerning an operation in which the elected representative has an interest is sufficient to characterise the offence.

A former civil servant can only be prosecuted for illegal acquisition of interest according to Article 432-13 of the Criminal Code if, at the time they belonged to the administration, they were "entrusted (...) either with the supervision or control of a private company, or with concluding contracts of any kind with a private company, or with formulating an opinion on such contracts, or with proposing decisions relating to operations carried out by a private company directly to the competent authority, or with formulating an opinion on such decisions". Any public undertaking operating in a competitive sector and in accordance with the rules of private law is assimilated to a private undertaking.

- The acquisition of interest consists of the fact that the perpetrator takes or receives a participation by work, advice or capital in the undertaking that they have supervised or with which they have concluded contracts. Exceptions exist for capital held by inheritance, or in the case of participation in the capital of listed companies.
- The time limit: the offence requires that the acquisition of interests takes place before the expiry of a period of three years following the cessation of functions.

Moral element :

There must be an intention to commit the offence. The mere awareness of committing the offence provided for by the law is sufficient to characterise the moral element.

Penalties

- **Main penalties** (Article 432-13 of the Criminal Code): 3 years' imprisonment and a fine of €200,000, which may be increased to twice the proceeds of the offence.
- **Additional penalties** (Article 432-17 of the Criminal Code): prohibition of civil, civic and family rights, prohibition on exercising a public function or the professional or social activity in the exercise or during the exercise of which the offence was committed (this disqualification cannot affect elected office or trade union responsibilities), prohibition on exercising a commercial or industrial profession or managing a commercial or industrial enterprise, confiscation of sums of money or objects irregularly received by the perpetrator of the offence, with the exception of objects liable to be returned.

Texts and references

- **Article 432-13 of the Criminal Code** defines "peddling" as the fact "that a person who has been entrusted, as a member of the government, a member of an independent administrative authority or an independent public authority, a holder of a local executive office, a civil servant, a military officer or an agent of a public administration, within the scope of the duties they actually exercised, either to supervise or control a private company or to conclude contracts of any kind with a private company, or to give an opinion on such contracts, or to propose directly to the competent authority decisions relating to operations carried out by a private company, or to give an opinion on such decisions, or to acquire or receive a holding by way of work, consultancy or capital in one of these undertakings before the expiry of a period of three years following the cessation of these duties".

Example of illegal acquisition of interest by a former public official (outside the field of sport)

Court of Cassation, Criminal Division, 16 December 2014

The fact that a professor of pharmacology, a member of the Agency responsible for issuing marketing authorisations for drugs, then becomes a consultant for a pharmaceutical group with a view to analysing dossiers relating to the efficacy of medicines under development by the laboratory and contributing to strategic development decisions makes it likely that he is involved in an illegal acquisition of interest.

MISAPPROPRIATION OF PUBLIC PROPERTY OR FUNDS

Art. 432-15, 432-16 et 433-4 of the Criminal Code

Summary

The misappropriation of public property or funds sanctions the breach of the obligation of probity that every civil servant has towards the public authority that employs them and, indirectly, sanctions the violation of the trust that individuals are entitled to place in each of the representatives of power. It also protects the financial interests of the state.

Elements of the offence

Prerequisites :

The persons likely to commit this offence are :

- public accountants and custodians: the latter category refers to persons who receive and manage money or materials entrusted to them by virtue of a legal title;
- persons holding public authority or entrusted with a public service mission (employees of operators and approved federations are in this situation);
- any other person (but the penalty is then different).

Material element :

- Nature of the goods or funds:
 - acts or titles (various administrative writings, administrative contracts, unilateral legal acts);
 - public or private funds (cash and banknotes): the first illustration of this offence is fictitious employment: the funds of the local authority or the State are then spent without any actual work being done;
 - effects, documents or titles in lieu thereof (all securities which, directly or indirectly, are substituted for money).
 - "Any other object" (furniture, decorative objects etc.).

- Holding of property or funds by reason of duties or mission. It is necessary that the embezzled goods were in the hands of the accused "by reason of his functions or mission", which amounts to examining the legal or regulatory texts that determine the powers of the person in question, because it is through them that the exact outline of the functions or mission of which the holder has abused is defined.
- Destruction or misappropriation. Destruction includes any act by which the perpetrator completely destroys the property handed over to them (attempt will apply to partial destruction), misappropriation is the substitution of a precarious possession (by reason of duties) with the behaviour of an owner (similar meaning in the offence of breach of trust). It can also be a misuse of local authority funds: the fact that the president of a departmental council allocates funds earmarked for the reintegration of people in financial difficulty to high-level sportsmen and women or to associations that have nothing to do with reintegration.

Moral element :

This is an intentional offence characterised in its moral element by the knowledge of the accused of the misappropriation of the sums in their custody. It is therefore not required that the person concerned has made a personal profit, or even that they intended to appropriate the funds. The Criminal Code provides for a specific offence when the acts are committed unintentionally (Art. 432-16 of the Criminal Code).

Penalties

- **Main penalties** (Articles 432-15, 432-16 and 433-4 of the Criminal Code):
 - when the offence is committed by a public person (see above):
 - 10 years' imprisonment and a fine of €1,000,000, which may be increased to twice the amount of the proceeds of the offence, if the offence is intentional;
 - 1 year imprisonment and a €15,000 fine when the offence is committed through negligence
 - when it is committed by a private person: 7 years imprisonment and €100,000 fine
- **Additional penalties** (Article 432-17 of the Criminal Code): prohibition of civil, civic and family rights, prohibition on exercising a public function or the professional or social activity in the exercise or during the exercise of which the offence was committed (this disqualification cannot affect elected office or trade union responsibilities), prohibition on exercising a commercial or industrial profession or managing a commercial or industrial enterprise, confiscation of sums of money or objects irregularly received by the perpetrator of the offence, with the exception of objects liable to be returned.

Texts and references

- **Article 432-15 of the Criminal Code** defines the misappropriation of public property or funds by a public person as the fact “by a person holding public authority or entrusted with a public service mission, a public accountant, a public office bearer or one of their subordinates, of destroying, misappropriating or removing a deed or document, or public or private funds, or effects, documents or titles in lieu thereof, or any other object that has been entrusted to them by virtue of their office or mission”.
- **Article 432-16 of the Criminal Code** incriminates the same acts when committed by negligence: “When the destruction, misappropriation or removal by a third party of the property referred to in Article 432-15 of the Criminal Code results from the negligence of a person holding public authority or entrusted with a public service mission, of a public accountant or of a public office bearer”. In this case, the penalty for the offence is one year’s imprisonment and a fine of €15,000.
- **Article 433-4 of the Criminal Code** defines the misappropriation of public property or funds by private individuals as the fact of “destroying, misappropriating or removing a deed or title, or public or private funds, or effects, documents or titles in lieu thereof or any other object, which have been handed over, due to their office, to a person holding public authority or entrusted with a mission of public service, a public accountant, a public trustee or one of their subordinates”. The penalty for the offence is seven years’ imprisonment and a fine of EUR 100,000.

Examples of misappropriation of public property or funds

- The provision by the secretary-general of a federation to a friend, for several months, of a federation vehicle offered by the departmental council to accompany young people to sporting events.
- Hiring a relative as a fictitious employee of the sports federation.
- A president of a sports federation who uses public subsidies from the Ministry of Sports not for the sports training of people with disabilities but for personal trips with his family and catering expenses.
- The communications director of a sports federation who recruited, using the federation’s funds, a contract agent responsible for organising two events outside the federation through an events company which he chaired.

GRAFT (EXTORTION BY A PUBLIC OFFICIAL)

Art. 432-10 of the Criminal Code

Summary

Graft consists in a public person in charge of collecting sums due to the administration knowingly claiming a sum that is not due or granting an exemption in violation of the law.

Elements of the offence

Prerequisites :

The persons likely to commit this offence are :

- persons acting on behalf of the public authority or entrusted with a public service mission or vested with a public elective mandate;
- This does not include persons holding a public elected office.

Material element :

- There are two forms of graft, either by demanding a sum that the perpetrator knows is not due, or by granting an undue exemption or release from liability. This is the case for a public official who proceeds to recover a debt he knows to be time-barred or who exempts a civil servant from paying the rent for his official accommodation.
- As regards the nature of the funds, the text refers to public duties, contributions, taxes or fees. These terms include the salary or allowances of a civil servant.

Moral element :

It is an intentional offence, which presupposes that the perpetrator is aware of the undue nature of the sum that they demanded to collect or for which they granted exemption from collection.

Penalties

- **Main penalties** (Article 432-10 of the Criminal Code): 5 years' imprisonment and a fine of EUR 500,000, the amount of which may be increased to twice the proceeds of the offence.
- **Additional penalties** (Article 432-17 of the Criminal Code): prohibition of civil, civic and family rights, prohibition on exercising a public function or the professional or social activity in the exercise or during the exercise of which the offence was committed (this disqualification cannot affect elected office or trade union responsibilities), prohibition on exercising a commercial or industrial profession or managing a commercial or industrial enterprise, confiscation of sums of money or objects irregularly received by the perpetrator of the offence, with the exception of objects liable to be returned.

Texts and references

Article 432-10 of the Criminal Code defines graft as :

- “the fact, by a person holding public authority or entrusted with a public service mission, of receiving, requiring or ordering to collect as public duties or contributions, taxes or levies, an amount which they know is not due, or exceeding what is due;
- the granting by the same persons, in any form and for any reason, of an exemption or release from liability for duties, contributions, taxes or levies, in violation of legal or regulatory instruments”.

Examples of graft

- A sports federation that charges clubs a fictitious and illegal tax.
- A sports federation that exempts its president from payment of the rent for their office accommodation.

APPENDIX II – GLOSSARY

Sports Technical Advisers (CTS) : civil servants or public officers paid by the State, placed with the sports federations and charged with various responsibilities (e.g. sport for all, high-level sport, management training). They contribute directly to the implementation of the State's sports policy and ensure coherence between the sports projects of the federations and the priority orientations of the Ministry of Health and Sports. They ensure that public funds are used properly. They serve sports federations as National Technical Directors (DTN), Assistant DTNs (DTNA), National Coaches (EN), National Technical Advisors (CTN) and Regional Technical Advisors (CTR).

Resource, Expertise and Sport Performance Centres (CREPS) : local public training institutions in the fields of sport, youth and public education. They exercise, on behalf of the State, and may exercise, on behalf of the regions, certain missions defined in the Sports Code (e.g. training and preparing high-level athletes, participating in the national high-level sports network, etc.).

Government operators : bodies distinct from the State, with legal personality, carrying out missions of general interest for the State. Their legal status is varied: public administrative establishments (EPA), public industrial and commercial establishments (EPIC), public scientific, cultural and professional establishments (EPSCP), public interest groups (GIP), associations, etc. They contribute, sometimes substantially, to the implementation of public service missions delegated to them by the State. They have financial resources, mainly financed by the State, and contribute to the efficiency of public spending.

Within the Ministry of Sport, there are six national public establishments that are State operators: the National Sports Agency (ANS), the National Institute for Sport, Expertise and Performance (INSEP), the three national sports schools (the National School of Sailing and Water Sports [ENVSN], the National School of Mountain Sports [ENSM] and the French Horse and Riding Institute [IFCE]) and the National Sports Museum.

Sports federations : unions of sports associations whose purpose is to bring together the sports groups affiliated to them as well as their members, with the aim of organising the practice of sports, particularly through competitions. They are responsible for organising and promoting the practice of their disciplines. As a mixed association, they are governed both by the Law of 1901 on associations and by the special sports law (Sports Code). The State shall exercise control over these federations in accordance with the prerogatives conferred on them under the Sports Code.

The Sports Code provides for the possibility of the Minister of Sports accrediting federations that so request, subject to certain conditions, and also granting the status of delegate to a federation, by sporting discipline, which allows the latter to organise and regulate sporting competitions in the discipline concerned.

French Anti-Corruption Agency (AFA) : Service with national competence, created by Law No 2016 1691 of 9 December 2016 (known as Sapin II), placed under the joint authority of the Minister of Justice and the Minister in charge of the budget, with the mission of helping the competent authorities and legal or natural persons, private or public, who need to deal with it, to prevent and detect acts of corruption, influence peddling, misappropriation of public funds and favouritism.

High Authority for Transparency in Public Life (HATVP) : An independent administrative authority, created in January 2014, with broad powers to promote probity and exemplary behaviour among public officials. In particular, it seeks to prevent conflicts of interest of public officials and to monitor changes in the assets of key public officials. It can also monitor the ethics of certain managers and public officials in the context of their mobility between the public and private sectors.

Person holding public authority : any person who is invested by delegation of public authority with decision-making and enforcement authority over individuals and things, which they exercise on a permanent or temporary basis. Examples: State civil servants, law enforcement officers, military personnel, etc.

Person entrusted with a public service mission : any person who, without having received decision-making and enforcement authority granted by the public authority, nevertheless exercises a mission of general interest. e.g. accredited sports federations, even non-delegated ones.

Patronage : material or financial support given to a work, a legal entity or a natural person for the exercise of activities of general interest, without any consideration from the beneficiary or with a consideration that is clearly not disproportionate.

Partnership or sponsorship : material support given to an event, a person or an organisation with a view to obtaining a direct benefit, particularly in terms of image.

