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AFD Group's policy to prevent and combat Prohibited practices (2020)

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I - INTRODUCTION

1. The purpose of this document is to outline the policy of Agence Française de Développement and its subsidiaries (hereinafter "the Group") to prevent, detect and combat any act of corruption, fraud, money laundering, terrorist financing and anti-competitive practices (acts collectively referred to as "Prohibited Practice(s)") which would undermine its activities or operations.

2. For the purpose of this policy, AFD Group means Agence Française de Développement (hereinafter "AFD") and its subsidiaries, the Société de Promotion et de Participation pour la Coopération Economique (hereinafter "PROPARCO"), the French Overseas Guarantee Fund Management Company (SOGEFOM) and the Investment and Support Fund for Businesses in Africa (FISEA).

A. TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY

3. The Group intends to fully comply with the requirement of transparency and accountability in its actions, set out in Law n° 2014-773 of 7 July 2014 on the orientation and planning of the development and international solidarity policy, which states that transparent aid allows:

- "taxpayers, parliamentarians and, more generally, public opinion to assess the proper use of public funds;
- recipient countries to plan external resource inflows and build more reliable and consistent budgets and is a prerequisite for the ownership of aid by these countries;
- a comprehensive overview of projects in a country and fosters the coordination and division of labor between donors".¹

4. As a key actor in France's public policies for solidarity-based and sustainable investment for the benefit of countries in the South and the French Overseas Territories, **the Group therefore pays special attention to the proper allocation of its financing and aims to ensure that its funds are used for the purposes intended.**

5. Similarly, the Group seeks to promote the highest norms and standards for integrity. In this respect, **AFD Group has a zero tolerance policy towards any Prohibited Practice in the context of its activities and operations.** Its approach is based on the relevant international, European and French regulations and is in line with best practices in place to prevent, detect and combat Prohibited Practices.

6. In terms of national, European and international standards, the Group is subject to the following main texts:

¹ Preamble to Law n° 2014-773 of 7 July 2014 on the orientation and planning of the development and international solidarity policy.

- articles L. 561-2 et seq. of the Monetary and Financial Code referring to the obligations with regard to the fight against money laundering and terrorist financing;
- article 17 of the "Sapin 2" Law n° 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernization of economic life;
- law n° 2014-773 of 7 July 2014 on the orientation and programming for the development and international solidarity policy;
- law n° 2018-898 of 23 October 2018 on the fight against fraud;
- the United Nations Convention against Corruption;
- the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- the Council of Europe Criminal Law Convention on Corruption;
- the Convention for the fight against fraud and other illegal activities affecting financial interests;
- the 4th and 5th Directives relating to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing;
- the United Nations Conventions and Protocols relating to the fight against terrorism;
- the 40 Recommendations of the Financial Action Task Force.

7. Furthermore, the Group is also attentive to the Uniform Framework established by the working group of international financial institutions (IFIs) for the fight against corruption and the guidelines drawn up by the French Anti-Corruption Agency.

B. PROHIBITED PRACTICES AS MAJOR OBSTACLES TO DEVELOPMENT

8. Preventing and combating any Prohibited Practice are issues inextricably linked to the Group's mandate and its strategic directions that assign it with the core mission to fight against poverty and promote growth in the countries in its geographical area of operation, and thereby contribute to France's commitment to global public goods – climate, biodiversity, peace, gender equality, education and health – and the Sustainable Development Goals. Indeed, such practices are major obstacles to development as they damage the integrity and stability of the public institutions and the financial system that are the foundations of the growth that the Group aims to promote.

9. Corruption, fraud and any other form of diversion of public and private aid cause lasting damage to all actions that aim to fight against poverty. For beneficiary populations of aid, corruption and fraud break the social pact, are a form of "tax abuse"² that weighs heavily on the poorest, establish a mismanagement of public finances, undermine the rule of law and the credit given to it by people, increase the cost of public services and weaken any contribution to support the economic growth of a country by distorting healthy and free competition and affecting the profitability of an investment through the indirect costs they generate. Such consequences are not limited to developing countries as developed countries are also affected by acts of corruption, but to varying degrees. However, corruption and fraud have much more destructive effects in developing countries as they are a key barrier to their development: corruption is one of the causes of the underdevelopment of the countries where AFD Group operates.

10. Money laundering or terrorist financing also hinder development.

C. THE GROUP'S PROCEDURAL CORPUS FOR FINANCIAL SECURITY AND PROFESSIONAL ETHICS

11. To conduct its activities in strict compliance with the regulations applicable to it, the Group has adopted a Procedural Corpus for financial security and professional ethics. It comprises general policy documents, such as this policy and the Code of Conduct for the fight against corruption and influence peddling³, as well as various internal procedures and contractual provisions set out in all its standard financing agreements.

² To use a term employed by the NGO Transparency International.

³ Available on the websites of AFD and PROPARCO.

12. This policy and AFD Group's Anti-Corruption Code of Conduct set out the guiding principles and standards that guide its actions to prevent and combat Prohibited Practices. They are also intended to clarify the conduct expected of the Group's employees and stakeholders in this area.

13. The internal procedures set out the various actions and points of control to be carried out by Group employees, as well as the related roles and responsibilities.

14. Apart from this Procedural Corpus, the actions of the Group and its staff are also guided by a set of references and values promoted in AFD Group's Professional Ethics Charter.

II – SCOPE OF THE POLICY

15. This Policy covers all the Group's activities and operations, including the projects it finances and the services the Group procures for its own account.

16. It applies, in various capacities, to the following persons and entities:

- members of the Board of Directors and Senior Management;
- group officers, regardless of the position held;
- members of the COMEX and CODIR;
- borrowers, beneficiaries, promoters, entrepreneurs, subcontractors, consultants, suppliers and, in general, the persons or entities that participate in activities financed by the Group;
- consultants, suppliers, service providers and the other persons or entities which the Group has recourse to for its own account.

17. Prohibited Practices, as understood in this Policy, concern all practices liable to undermine the Group's activities and operations, whether the acts are carried out in France or abroad, directly or indirectly, *i.e.* through a third party.

III - DÉFINITIONS

18. This Policy covers all the Group's activities and operations, including the projects it finances and the services the Group procures for its own account.

19. A **whistleblower** means any natural person who discloses or reports, disinterestedly and in good faith, facts or evidence suggesting that prohibited practices have been committed in relation to the Group and of which they have personal knowledge.

20. **Prohibited Practices** refer to the following acts:

- **Act of corruption**⁴. This term refers to:
 - The fact of promising, offering or giving a public official, or any other person who directs a private sector entity or works for such an entity, in any capacity whatsoever, directly or indirectly, an undue advantage of any kind, for oneself or another person or entity, in order to act or refrain from acting in a manner that breaches their official duties or legal, contractual or professional duties and affects their own actions or those of another person or entity; and

⁴ Defined and punishable under the Criminal Code under articles 432-11, 433-1, 434-9, 434-9-1, 435-1, 435-3, 435-9 and 445-1.

- the solicitation or acceptance by a public official or any other person who directs a private sector entity or works for such an entity, in any capacity whatsoever, directly or indirectly, of an undue advantage of any kind, for himself or herself or another person or entity, in order to act or refrain from acting in a manner that breaches their official duties or legal, contractual or professional duties and affects their own actions or those of another person or entity.
- **Fraud.** This term refers to any operation (act or omission), whether or not it is a criminal offence, intended to deliberately deceive another person, intentionally withhold information from them or fraudulently obtain or vitiate their consent, circumvent legal or regulatory obligations and/or violate the internal rules of the company in order to obtain an illegitimate advantage.
- **Fraud to the European Union's financial interests.** This term refers to any intentional act or omission aimed at causing damage to the European Union's budget and involving (i) the use or presentation of false, incorrect or incomplete statements or documents which has as its effect the misappropriation or wrongful retention of funds or the illegal diminution of resources from the general budget of the European Union; (ii) the non-disclosure of information with the same effect and (iii) the misapplication of such funds for purposes other than those for which they are originally granted.
- **Anti-competitive practice.** This term refers to:
 - any concerted or implicit action which has as its object or effect the prevention, restriction or distortion of competition in a market, in particular when it aims to: 1° restrict access to the market or the exercise of free competition by other companies; 2° hamper price-fixing by the free play of market forces by artificially encouraging an increase or decrease in the prices; 3° limit or control production, markets, investments or technical development; 4° share markets or sources of supply;
 - any abuse by one or more undertakings of a dominant position on a domestic market or on a substantial part of it;
 - any predatory price offering or sale price, the object or effect of which is to eliminate a company or one of its products from a market or prevent it from accessing a market.
- **Money laundering.** This term refers to⁵:
 - the act of facilitating, by any means, the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanor which has brought him a direct or indirect benefit;
 - the act of assisting in investing, concealing or converting the direct or indirect products of a felony or misdemeanor.
- **Terrorist financing**⁶. This term is defined as the act of providing or collecting, directly or indirectly, funds or managing funds with the intention that they should be used or in the knowledge that they are to be used to commit a terrorist act.

IV - PRINCIPLES

21. **The Group will make every effort to avoid and deter any Prohibited Practice by its employees, persons working on its behalf, its counterparts and, more generally, all its stakeholders.** However, if such a practice is found to exist, it will address it within an appropriate timeframe and with appropriate measures.

22. The members of the governing bodies and all the Group's officers ensure that a maximum level of integrity and efficacy is maintained in the performance of their duties. Counterparts, third parties and partners involved in the Group's projects are expected to work in the same direction.

⁵ Article 324-1 of the Criminal Code.

⁶ Article 421-2-2 of the Criminal Code.

23. All cases of Prohibited Practices must be promptly reported and will be subject to a full investigation respecting, where appropriate, the adversarial principle and the rights of defence.

V - REPORTING MECHANISMS FOR PROHIBITED PRACTICES

24. For this purpose, the Group has reporting mechanisms for allegations and suspicions of Prohibited Practices that would tarnish the funded projects and cause damage outside the projects.

25. The first mechanism allows such allegations or suspicions to be reported through line management under the internal permanent control mechanism. Consequently, any officer who is aware of allegations or suspicions of Prohibited Practices must inform their line management and the Compliance Department. Officers must use this mechanism. It aims to allow the Group to promptly take the necessary remedial action.

26. The second mechanism is a whistleblowing mechanism outside of line management. It is optional and additional and available to Group employees and those who work on its behalf (whistleblowers). It is also permitted to escalate these alerts outside the Group in accordance with the provisions of French law (in particular under the Sapin 2 Law).

VI - MEASURES TO PREVENT AND DETER ANY PROHIBITED PRACTICE

27. To ensure it does not participate in a Prohibited Practice without its knowledge, the Group has adopted this General Policy, which it has set out in the form of operational procedures. These procedures specify the actions and points of control that must be carried out by Group officers.

A. AT THE PROJECT APPRAISAL STAGE

28. At the project appraisal stage, due diligence is carried out by the operational departments on the quality of the counterparty, its relevant shareholder base and its beneficial owner, as well as on the characteristics of the operation conducted for its benefit. This due diligence is carried out under the Know Your Customer (KYC) procedure required as part of the obligations in relation to the fight against money laundering, terrorist financing and the fight against corruption, but also as part of the financial rating the Group carries out on its prospects and counterparties.

B. AT THE STAGE OF THE CONCLUSION OF THE CONTRACT

29. All the financing agreements signed by the Group contain contractual provisions to prevent or deter any Prohibited Practice. They include representations and undertakings relating to:

- the lawful origin of the counterparty's funds and the obligation to inform AFD and PROPARCO in case of doubt as to the lawful origin of the funds;
- compliance with the economic and financial sanctions imposed by the United Nations, the European Union and France;
- the prohibition of the Committee on Prohibited Practices in the context of projects, operations and activities and the obligation to inform the Group in the event that such practices occur;
- the possibility for the Group to carry out verifications and audits, or have them carried out by an independent third party, of the Group's counterparties, but also of project stakeholders;

- the possibility for the Group to take any measure it deems appropriate, in particular declare the termination of the contract and the end of the business relationship, in the event of Prohibited Practices.

30. Furthermore, all Beneficiaries, in the context of the procurement and performance of contracts partly or full financed by AFD, are subject to the integrity requirements set out in the Procurement Guidelines for AFD-Financed Contracts in Foreign Countries.

31. The presence of these integrity clauses demonstrates the attention that the Group pays to these issues.

C. AT THE PROJECT IMPLEMENTATION STAGE

32. The implementation monitoring aims to ensure that the project financed by the Group is implemented in accordance with the contractual provisions and that any risks are managed appropriately. Consequently, the Group is entitled to impose periodic audits external to the project in order to ensure the proper use of the funds allocated to the financed project. It also ensures the proper conduct of the procurement and performance of the public contracts financed with its resources. The Group reserves the right to carry out unannounced audits of the project at its initiative.

33. Throughout the business relationship, the aim of the periodic updating of the information about the counterparty is firstly to take into account any changes that may occur with the counterparty, but also in the legal or financial structuring of the project, and to update the risk it poses of money laundering and terrorist financing.

34. The methods for repayment or for the reception of sums of any sort, including dividends, or the unwinding of equity interests (sale of shareholdings), may reveal fraudulent or money laundering practices warranting a specific examination, in particular in the case of prepayments, settlements made by a third party who is not the counterparty or settlements from countries at risk. In such cases and in the context of a risk-based approach, additional due diligence is conducted on the economic justification for the operation and the knowledge of the third party making the repayment.

35. Finally, investigation procedures are adopted so that the Group can ensure its financing is used for the purposes intended.

> D. IN THE EVENT OF THE OCCURRENCE OF "NON-PROJECT" PROHIBITED PRACTICES

36. It cannot be excluded that the Group may be subject to Prohibited Practices (officers may be victims along with it or the potential perpetrators). Investigations will be carried out in such circumstances and remedial and sanctions measures may be taken.

VII - SANCTIONS THAT MAY BE IMPOSED IN CASE OF NON-COMPLIANCE WITH GROUP POLICIES AND PROCEDURES AND MECHANISMS FOR REPORTING BY THE GROUP

A. APPLICABLE MEASURES

37. The financing agreements include contractual provisions which state that the Group may, for example, in the event of a breach of the representations and undertakings made:

- suspend the issuing of "No Objections" and the disbursements;
- carry out audits, including financial and technical audits, the objective of which is to ensure the reality and eligibility of the expenditure;
- demand repayment of ineligible expenditure;
- demand the early repayment of the loan (or part of the loan);
- declare the acceleration of the loan and call for the payment of all the sums due;
- take steps to exit the shareholding of the counterparty;
- end the business relationship;
- take legal action.

38. Consequently, in the context of financing a contract, for example, and provided that Prohibited Practices have been proven or that suspicions have been documented and are credible, the Group may:

- demand that the situation be remedied in an appropriate manner and to its satisfaction;
- declare that the bidder/preferred bidder cannot be awarded the contract financed by AFD Group;
- refuse to issue the "No Objection" to the award of the contract and apply the appropriate remedial measures, for example, suspend or cancel the contract, unless the situation concerned has been dealt with to its satisfaction.

39. In the event of proven facts, AFD or its subsidiaries, in accordance with applicable law and their policies and procedures in force, shall reserve the right to take the legal actions and measures required to recover the funds and define the conditions under which the project or activity concerned will or will not continue.

40. The Group also reserves the right to refer the matter to the relevant public authorities, in France or in its countries of operation, depending on the nature of the offences.

B. MEASURES APPLICABLE TO GROUP OFFICERS AND THIRD PARTIES WORKING ON ITS BEHALF

41. Failure to comply with the internal policies and procedures personally exposes the officer, board member, social officer or third party working on behalf of the Group to legal and/or criminal sanctions in accordance with legislation and regulations, and with the staff regulations and/or the applicable local documents, where appropriate.

C. REPORTING MECHANISMS

42. It is recalled that as a public official, the Chief Executive Officer of AFD is under the obligation to report any offence brought to his/her attention in the performance of his/her duties to the competent Public Prosecutor.

43. Finally, as financial entities subject to the anti-money laundering and terrorist financing mechanism, AFD, PROPARCO and SOGEFOM are required to report suspicions to the French Financial Intelligence Unit TRACFIN when they identify sums or operations which they "know, suspect or have good reason to suspect to be the result of an offence that carries an imprisonment sentence of more than one year or that participate in financing terrorism".

VIII - PROTECTION OF PERSONAL DATA

44. In the context of the implementation of this policy, Agence Française de Développement may process personal data concerning all the natural persons involved, directly or indirectly, in the implementation of its financing activities. In accordance with the General Data Protection Regulation (GDPR) and amended French "Data Protection Act" n° 78-17 of 6 January 1978, any person concerned may, under the conditions laid down in the applicable regulation, access the data concerning them, request its erasure and exercise their right of opposition, rectification or their right to restrict the processing of their data. To exercise these rights or for any other question, please contact AFD Group's Data Protection Officer:

- By e-mail: informatique.libertes@afd.fr
- By post: Agence Française de Développement - Délégué à la Protection des Données, 5, rue Roland Barthes – 75598 Paris Cedex 12 | France.

45. If a person concerned considers, after contacting the Data Protection Officer and obtaining their reply, that their rights are not respected, they may submit a complaint to the National Commission for Information Technology and Civil Liberties.



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