

# Agence France-Presse: Proposed Changes to Company Statutes

## Annotated Translations & Summary of Key Documents Published by the SUD-AFP Trade Union

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### Introduction

**Agence France-Presse is one of only a handful of news agencies capable of providing full coverage of world affairs via a truly global network. Supplying text, photos, graphics and video in six main working languages - French, English, Spanish, German, Portuguese and Arabic - it can claim to reach an audience of billions.**

Although its roots go back to the very first international news services in the 1830's, AFP has existed in its present form since January 1957, when the act of parliament defining its statutes came into force. "*Le statut de 1957*" has allowed the agency to grow into the worldwide presence it is today.

AFP thus has the distinction of being the only worldwide news agency whose statutes are defined by an act of parliament. Those [statutes](#), which define the company as "*an autonomous civil entity functioning under commercial rules*", aim to ensure AFP's independence from "*any ideological, political or economic grouping*", as stated in their emblematic [second article](#).

For the same reason, the composition of [AFP's board](#) is artfully weighted to try and prevent those who pay the piper from "*calling the tune*", as the agency's historic post-war chief executive, Jean Marin<sup>1</sup>, put it.

Indeed, the new statutes were a welcome change from the situation that had existed since the end of World War II, when the agency had been nationalised in all but name.

Despite their success, attempts have been made in recent years to completely rewrite AFP's statutes.

In particular, the administration of President Nicolas Sarkozy has spearheaded two major offensives, both of which have been strongly opposed by the agency's staff and trade unions. In 2009 CEO Pierre Louette agreed to do the government's bidding and proposed to turn AFP into a joint-stock company wholly owned by the state. His successor Emmanuel Hoog, appointed after M. Louette abruptly resigned on February 24, 2010, has not only proved equally malleable, but has actively pushed for the changes being proposed.

Like his predecessor, M. Hoog started out in the job by telling staff and the unions that changes to the statutes were "*not on the agenda*". And like M. Louette, he wasted no time in going back on his word.

In November 2010, less than nine months after M. Hoog's arrival, the [French culture minister](#) told parliament that a new draft law was being drawn up. And indeed, in May this year a senator from President Sarkozy's UMP party introduced a [private member's bill](#) deceptively entitled "*On the Governance of Agence France-Presse*" (in fact, it seeks to change [much more](#) than just [the structure of the board of governors](#)).

A strange aspect of the attempts to modify AFP's statutes is that although most of them have gone hand-in-hand with impassioned statements about modernity, technology and the need for an international viewpoint, none have seen any of the key documents whatsoever produced in any language other than French.

This is particularly surprising given that the latest attempt to rewrite the statutes is being justified, in part, by the supposed need to bring AFP's contractual relationship with the French state into line with European Union law on subsidies.

As for the 1957 law, hailed by Jean Marin as "*the Statute of Liberty*", it has as far as we know never been translated into English.

The present document aims to correct those omissions.

**SUD-AFP, Paris, Monday September 5, 2011**



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<sup>1</sup> Jean Marin helped draw up the 1957 statutes, and served as the agency's chief executive between 1954 and 1975.

Describing the statutes, he was quoted as saying: "*L'AFP ne peut fonctionner que si celui qui paye ne commande pas*", which we have chosen to translate as: "*AFP can only work if he who pays the piper does not call the tune.*"

## Scope of the Present Document; Future Updates

The present document does not claim to provide a comprehensive overview of AFP and its problems, and the material presented herein is not intended to be read in any particular order.

The document does not, for example, directly address the controversy over AFP's relationship with the state in the light of European Union competition policy; that will be dealt with in a later update.

All such new material will be referenced on the source page at [http://www.sos-afp.org/en/draft\\_law\\_2011](http://www.sos-afp.org/en/draft_law_2011).

Readers wishing to be informed of such updates might like to either subscribe to the mailing list run by the Association to Defend the Independence of AFP - its sign-on page is at <http://lists.adiafp.org/mailman/listinfo/infos> - or follow the SOS-AFP Twitter feed at [http://twitter.com/#!/SOS\\_AFP](http://twitter.com/#!/SOS_AFP).

Requests for further information may be addressed to [sudafp@orange.fr](mailto:sudafp@orange.fr) or to the translator/editor at [david.sharp@sharp-words.com](mailto:david.sharp@sharp-words.com). We will do our best to reply in a timely fashion.

### The present document contains:

- The full text of AFP's 1957 statutes, translated for the first time ever into English;
- A full translation of the preamble ("*statement of aims*") from Senator Jacques Legendre's draft law on AFP's statutes, which is before the French parliament at the time of writing;
- A summary drawn up by SUD-AFP of the main changes proposed in the Legendre law, with translated extracts where necessary and links to the relevant articles in the current statutes;
- The "*Open Letter to MPs*" published by the Association to defend the Independence of Agence France-Presse in November 2010;
- The text of the joint AFP unions "*Petition for the Independence and Survival of Agence France-Presse*", launched in November 2008 but still relevant (and still being signed) today

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## AFP's Current Statutes

### ACT OF PARLIAMENT

# Law n°57-32 of January 10, 1957 Defining the Statutes of Agence France-Presse.<sup>2</sup>

Consolidated Version as of August 14, 2011

*Translator's note:* The footnotes and bracketed information to the right of the numbered article headings have been added for the convenience of readers. The text of the 1957 Statutes is also available as a separate PDF file, to be downloaded from <http://www.sos-afp.org/en/statutes>.

#### Article 1 [nature and purpose]

Is hereby created, under the name of Agence France-Presse, an autonomous civil entity<sup>3</sup> functioning under commercial rules.

The said body having as its purpose:

1. To seek out, in France and all of the French Union<sup>4</sup> as well as abroad, the elements of a complete and objective information service;
2. To place that information at the disposal of users in exchange for payment.

#### Article 2 [fundamental obligations]

The activities of Agence France-Presse must comply with the following fundamental obligations:

1. Agence France-Presse may under no circumstances take account of influences or considerations liable to compromise the exactitude or the objectivity of the information it provides; it may under no circumstances fall under the control, either de facto or de jure, of any ideological, political or economic grouping;
2. Agence France-Presse must, to the full extent that its resources permit, develop and enhance its organisation so as to provide French and foreign users<sup>5</sup> with exact, impartial and trustworthy information on a regular and uninterrupted basis;
3. Agence France-Presse must, to the full extent that its resources permit, ensure the existence of a network of facilities giving it the status of a worldwide information service.

#### Article 3 [higher council]

Is hereby created a higher council<sup>6</sup> charged with ensuring respect for the obligations laid out in Article 2.

<sup>2</sup> Source document in French, downloaded August 14, 2011:

<http://www.legifrance.gouv.fr/affichTexte.do;?cidTexte=LEGITEXT000006068171&dateTexte=20110815>

<sup>3</sup> *Organisme autonome doté de la personnalité civile*

<sup>4</sup> *Union française*: Now defunct, this was the colonial administration set up after World War II under the French Fourth Republic, in force when AFP's statutes were adopted.

<sup>5</sup> *Usagers*

<sup>6</sup> *Conseil supérieur*

## Article 4 [make-up of higher council; mandates]

The composition of the higher council is as follows:

- A member of the Council of State<sup>7</sup>, either in activity or retired, elected by the Council of State's general assembly. To serve as president, with a casting vote in the event of a tie;
- A judge, either in activity or retired, from the supreme appeals court<sup>8</sup>, elected by the general assembly of the said court;
- Two representatives of publication directors<sup>9</sup> from daily newspapers appointed by the most representative professional organisations<sup>10</sup> representing the same. The representativity of the said organisations to be determined in line with the French act of parliament n° 53-287 of April 7, 1953 and by the texts applying that law;
- A professional journalist appointed by the most representative professional organisations<sup>11</sup>;
- A representative of French television and radio services<sup>12</sup> appointed as laid down in the Council of State decree provided for in Article 17 of the present act;
- Two members chosen by the other members of the higher council, one from among figures who have held high administrative posts overseas and the other from among figures who have held a high post representing France abroad.

The members of the higher council are appointed for three-year terms. Their mandates may be renewed.

However, the mandates of the members of the first higher council only come to an end after four years.

If in the course of a mandate a member ceases to qualify for the requirements laid down above, he or she automatically ceases to be a member of the higher council. When the mandate of a member ends prematurely, for whatever reason, the term to be served by his or her successor comes to an end at the same time as those of the other members.

The higher council's operating procedures and funding arrangements are to be laid down in the Council of State decree provided for in Article 17 of the present act;

## Article 5 [right to petition higher council]

The higher council can be petitioned by a user or by a professional news organisation or, as laid down in Article 12, by the financial commission, concerning any issue liable to be considered a violation of the obligations laid out in Article 2.

If so petitioned, the higher council shall rule within three months as to whether the issue raised constitutes a violation of the obligations defined under Article 2.

If the petition is upheld, the higher council sends all necessary observations or decisions to the

<sup>7</sup> *Conseil d'Etat*: for a presentation of this state body, see the English pages of its web site at <http://www.conseil-etat.fr/cde/en/>

<sup>8</sup> *Cour de cassation*: France's highest court of appeal. Its web site contains a presentation in English, at [http://www.courdecassation.fr/about\\_the\\_court\\_9256.html](http://www.courdecassation.fr/about_the_court_9256.html).

<sup>9</sup> *Directeur de publication*: in French law he or she is the legal representative of the publisher.

<sup>10</sup> *Organisations professionnelles*: the main French media employers' unions

<sup>11</sup> Journalists' trade unions

<sup>12</sup> *Radiodiffusion-télévision française*; state-owned media. When the statutes were enacted, all radio and TV services in France were run by the state.

board of governors and the chief executive officer.

If the incident in question was the consequence of a decision made by the board of governors, the council can suspend implementation of the said decision and ask the board to deliberate a second time; this must be done within a month. The board decision thereby challenged can only be upheld if the board votes to do so with a majority of at least twelve.

If the incident in question resulted from serious misconduct<sup>13</sup> on the part of the chief executive officer, the higher council shall rule, after consulting the board of governors in the absence of the CEO, to relieve the latter of his duties.

At the start of each year the chief executive submits to the higher council a report from on Agence France Presse's activities in the light of the obligations laid down in Article 2.

### **Article 6 [board of governors]**

Agence France-Presse is administered by a board of governors<sup>14</sup> chaired by the agency's chief executive officer<sup>15</sup>.

### **Article 7 [make-up of board; mandates]**

*· The following article was modified as a result of a ruling on a constitutional question (QPC n° 2011-128) delivered on May 6, 2011 - see below.*

In addition to the chief executive officer, the board of governors is made up of:

1. Eight representatives of publication directors<sup>16</sup> from daily newspapers designated by the most representative professional organisations representing the same. The representativity of the said organisations to be determined in line with the French act of parliament n° 53-287 of April 7, 1953 and by the texts applying that law;
2. Two representatives of French television and radio services<sup>17</sup> appointed as laid down in the Council of State decree provided for in Article 17 of the present act;
3. Three representatives of public services which use the agency's services<sup>18</sup> appointed on the same basis and respectively by the prime minister, the minister for foreign affairs and the minister for finance and economic affairs;
4. Two representatives of agency staff, namely:  
A professional journalist elected by the body of professional journalists belonging to the agency's editorial staff;  
A member of personnel from among other staff categories, elected by staff from the said categories.

The board elects, in a majority vote, a vice-president chosen from among its members representing publishing company directors. The chief executive officer does not take part in the vote.

Board members serve a three-year term. Their mandate is renewable. However the mandate of board members representing public services can be terminated at any time by the prime minister or the ministries to which they belong.

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<sup>13</sup> *Faute grave*

<sup>14</sup> *Conseil d'administration*

<sup>15</sup> *Président-directeur général (PDG)*. Often also referred to in French as simply *«le président»*.

<sup>16</sup> *Directeur de publication*: See note on previous page.

<sup>17</sup> *Radiodiffusion-télévision française*; state-owned media. See note on previous page.

<sup>18</sup> *Services publics usagers*: government entities which subscribe to AFP services.

If a board member no longer possesses the qualifications which justified his or her appointment to the board, he or she ceases to be a member.

If the mandate of a member ends prematurely, for whatever reason, the term to be served by his or her successor comes to an end at the same time as those of the other members.

The provisions contained in articles 6 and 8 of the government decree of August 5, 1935 on company directors with respect to receivership and bankruptcy laws, calling for penalties including stripping such people of the right to run and administer a company, are applicable to members of the board.

**NOTE:**

Constitutional priority (QPC)<sup>19</sup> ruling n° 2011-128 dated May 6, 2011 and issued by the Constitutional Council (NOR CSCX1112526S); “*In the sixth and seventh subheadings of Article 7 of the act of parliament n° 57-32 of January 10, 1957 laying down Agence France-Presse's statutes, the words “of French nationality” are declared to be contrary to the Constitution. The statement of unconstitutionality comes into force on publication of the present ruling, in conditions laid down in its 6th subheading.*”<sup>20</sup>

**Article 8 [powers of board; chief executive]**

The board of governors is vested with the broadest powers to manage and administer the agency.

The chief executive officer has the job of drafting and executing the proceedings of the board of governors, of running all the agency's services and representing the agency.

The vice-president assists or stands in for the chief executive officer in his or her missions of representation. In the event of the chief executive officer being unable to carry out his or her duties, he or she is replaced on the board by the vice-president or by a board member chosen by the board. In such circumstances the other duties of the chief executive officer are carried out by the agency's directors or heads of service, as mandated by the chief executive with the agreement of the board.

The respective powers of the board of governors and the chief executive officer are laid out in the Council of State decree called for under Article 17 of the present act.

The board of governors may delegate some of its powers to the chief executive officer.

**Article 9 [status of AFP staff]**

The status of the agency's staff is laid down by the board of governors as proposed by the chief executive officer, and after consultation with the financial commission.

The said status is determined in line with the collective bargaining agreements<sup>21</sup> prevailing for staff categories in a press company<sup>22</sup>.

<sup>19</sup> *Question prioritaire de constitutionnalité (QPC)*. For an explanation of this mechanism in English, see the Constitutional Council's web site: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/homepage.14.html>

<sup>20</sup> Under the original AFP statutes only French nationals could vote or be candidates for the two posts of staff representative on the board. This dispensation was changed in 1998 to extend the same rights to all staff from the 30 states of the European Economic Area (the EU plus Iceland, Liechtenstein and Norway). The May 2011 ruling extended the right to all AFP staff of whatever nationality. For more information in English on this see the web site of the SUD-AFP trade union: <http://sudafpengl.zeblog.com/553068-all-afp-staff-worldwide-have-equal-voting-rights/>

<sup>21</sup> *Conventions collectives*

<sup>22</sup> *Entreprise de presse*. A specific form of legal entity in France.

## **Article 10 [election, removal of CEO]**

Within three months of the post of chief executive officer falling vacant, a new CEO is appointed by the board of governors for a renewable three-year term. The CEO is not selected from among the board's members. The appointment of the agency's first chief executive must take place under the same conditions within three months of the present law being promulgated.

The successful candidate must gain the votes of at least twelve board members.

If after three rounds of voting carried out under the conditions laid down in the aforementioned Council of State decree, no candidate has gained the requisite number of votes, the higher council proposes two candidates to the board. Whichever of the two wins the larger number of votes is elected chief executive officer.

The board of governors may terminate the mandate of the chief executive officer in the event of serious managerial misconduct<sup>23</sup> in the exercise of his or her functions or for any act deemed incompatible with the fulfilment of his or her mission. Any such decision must be voted by at least twelve board members, during a session held in the absence of the chief executive.

In the event of an application lodged under the preceding paragraph being rejected, or if it has not been possible to win the support of twelve board members during two meetings held fifteen days apart, an application can be lodged with the higher council by at least three board members. The higher council then rules on the application.

## **Article 11 [civil responsibility of CEO]**

The chief executive officer bears civil responsibility towards Agence France-Presse for serious misconduct<sup>24</sup> in the exercise of his or her duties. His or her responsibility can be contested by the president of the financial commission called for in Article 12, below. In such circumstances the president of the financial commission is considered to be legally acting for Agence France-Presse.

## **Article 12 [financial commission]**

Is hereby created a financial commission<sup>25</sup> for Agence France-Presse.

The commission comprises two members of the government accounting office<sup>26</sup> nominated by the prime minister, one of whom chairs the commission, and an expert nominated by the finance ministry.

The annual report laying out expected income and expenses is submitted to the financial commission, which checks whether the figures projected therein can be expected to result in a balanced budget.

If the commission concludes that the budget will not balance, it sends it back to the chief executive who then convenes a new board meeting in order to adopt a balanced budget.

The financial commission is charged with keeping tabs on Agence France-Presse's financial management in general and on a permanent basis.

To that end it has full powers to investigate, both by demanding documents and visiting the agency's premises. It sends all necessary comments on the agency's financial management to both the chief executive and the board.

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<sup>23</sup> *Faute lourde de gestion*

<sup>24</sup> *Faute lourde*

<sup>25</sup> *Commission financière*

<sup>26</sup> *Cour des comptes*

If the financial commission observes that despite its observations, the board has not taken all necessary measures to ensure the agency's financial equilibrium, it can demand, after consulting the higher council, the appointment of a provisional administrator<sup>27</sup>. The latter is appointed by the president of the commercial court<sup>28</sup> acting at the request of the financial commission's president. In such an event the board of governors is to be replaced within a period of six months, in line with the principles laid down in Article 17 of the present act.

The mission of the provisional administrators comes to an end once the new board of governors is in place.

The financial commission audits Agence France-Presse's accounts.

It submits an annual report on Agence France-Presse's financial management to the board of governors, which passes it on to the higher council.

The financial commission can bring to the attention of the higher council any issues it has noted which may constitute a failure to respect the obligations laid down in Article 2, above.

### **Article 13 [resources, agreement with state]**

Agence France Presse's resources comprise the income it gains from the sale of documents and news services to its customers and by revenue from its assets.<sup>29</sup>

The conditions under which it sells to public state services<sup>30</sup> are laid down in an agreement<sup>31</sup> between the state and Agence France-Presse; the said agreement sets the number and price of the subscriptions taken out by the services in question, on the basis of the rates applied to French press companies.

The agreement may be revised in the event of changes in the conversion rate applicable to international telex and radiotelegraphy taxes.

### **Article 14 [dissolution, bankruptcy]**

Agence France-Presse cannot be wound up<sup>32</sup> other than by an act of parliament.

In the event of insolvency being confirmed by the commercial court as a result of an appeal either from the board of governors, from the financial commission or from creditors, the government must submit to parliament, within a month, a draft law which either lays down the conditions under which Agence France-Presse can remain in business, or pronounces the agency to be dissolved and disposes of its assets. Pending the passage of such a law, arrangements may be made for Agence France-Presse to temporarily go on operating, via a decree approved by the Council of State.

### **Article 15 [authority of court in the event of bankruptcy]**

The commercial court can strip the chief executive officer and the other members of the board of their posts in line with Article 10 of the decree dated August 8, 1935 relating to the application of insolvency and bankruptcy legislation to company managers and directors.

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<sup>27</sup> *Administrateur provisoire*

<sup>28</sup> *Tribunal de commerce*: the main jurisdiction for trade and business disputes in France. It considers cases arising from the Commercial Code (*code de commerce*), one of the main corpuses of French law.

<sup>29</sup> *Les ressources de l'Agence France-Presse sont constituées par le produit de la vente des documents et services d'information à ses clients et par le revenu de ses biens.*

<sup>30</sup> *Services publics de l'Etat*

<sup>31</sup> *Une convention*

<sup>32</sup> *Dissoute* (literally: dissolved)

## **Article 16 [status of AFP premises provided by state]**

· *Modified by Decree 81-156 1981-02-18 article. 1, published in the official government gazette<sup>33</sup> on February 20, 1981*

The government order of September 30, 1944 setting up Agence France-Presse on a provisional basis is repealed.

The premises, facilities, equipment and other assets placed at the disposal of the aforementioned agency under the government order of September 30, 1944 or acquired since by the agency are handed over free of charge to the body set up under the present law, for a period of three years. That period can be renewed via a decree issued by the council of ministers<sup>34</sup> until such time as the disposal of the said assets has been settled definitively.

As regards premises under construction for use by Agence France-Presse, an agreement<sup>35</sup> between the state and the new agency will settle the conditions under which they are to be transferred, or made available, to it.

Agence France-Presse is moreover invested in general with the rights and obligations of the body set up by the government order of September 30, 1944.

Any future transfer of the aforementioned assets and rights shall not give rise to any payout of profit to the Treasury<sup>36</sup>. All acts and conventions arising from the application of the present article are exempted from stamp and other duties arising from the recording of property or mortgage rights.

## **Article 17 [application decree]**

The terms on which the present act is to be applied will be laid down in an administrative regulation<sup>37</sup>.

For the President of the Republic: RENE COTY.

The president of the council of ministers<sup>38</sup>, GUY MOLLET.

Minister of state, keeper of the seals<sup>39</sup> in charge of justice, FRANCOIS MITTERRAND.

Minister of foreign affairs, CHRISTIAN PINEAU.

Minister for economic and financial affairs, PAUL RAMADIER.

Minister for social affairs, acting minister for France overseas<sup>40</sup>, ALBERT GAZIER.

Minister for social affairs, ALBERT GAZIER.

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<sup>33</sup> *Le journal officiel (JORF)*. Web site at <http://www.journal-officiel.gouv.fr>.

<sup>34</sup> *Conseil des ministres*: the cabinet

<sup>35</sup> *Convention*

<sup>36</sup> *Le Trésor (public)*: the French Treasury department

<sup>37</sup> *Règlement d'administration publique*: known today as a "*décret en Conseil d'Etat*", this is a government decree issued after consultation of the State Council.

<sup>38</sup> *Le président du conseil des ministres*: the prime minister

<sup>39</sup> *Garde des sceaux* (justice minister)

<sup>40</sup> *Ministre de la France d'outre-mer*: at the time, minister for overseas territories and colonies.

## PREPARATORY PROCEEDINGS

### **National Assembly**<sup>41</sup>:

Draft law (n° 1196);

Consultation of the Assembly of the French Union<sup>42</sup> (n° 2288) on the basis of a report from M. Junillon on behalf of its information committee;

Report by M. Soulié for the Parliamentary Press Committee (n° 2061);

Debate and adoption on July 3, 1956.

### **Senate**<sup>43</sup>:

Draft law adopted by the National Assembly (n° 603, S.O. 1955-1956);

Report from M. Pezet on behalf of the Senate Press Committee (n° 72, S.O. 1956-1957);

Debate and adoption on November 15, 1956.

### **National Assembly**:

Draft law amended by the Senate (n° 3260);

Report by M. Soulié for the Parliamentary Press Committee (n° 3418);

Adopted without debate on December 19, 1956.

### **Senate**:

Draft law amended by the National Assembly (n° 192, S.O. 1956-1957);

Report from M. Pezet on behalf of the Senate Press Committee (n° 207, S.O. 1956-1957);

Debate and adoption on December 28, 1956.

### **National Assembly**:

Act declared adopted on December 28, 1956.

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<sup>41</sup> *Assemblée nationale*: the lower house of the French parliament

<sup>42</sup> *Union française*: Colonial administration. See footnote on page 1.

<sup>43</sup> The upper house of the French parliament, known as the *Conseil de la République* at the time the statutes were adopted in 1956.

## The "Statement of Aims" from Senator Jacques Legendre's Draft Bill

### French Senate

Ordinary 2010-2011 Session

### Member's Bill<sup>44</sup>

*On the Governance of Agence France-Presse*<sup>45</sup>

Submitted

by M. Jacques Legendre, Senator<sup>46</sup>

*Translator's note: The following is a full translation of the preamble (Exposé des motifs) to Senator Legendre's draft law, published on May 17th 2011. Most of the footnotes have been added to provide the original French for certain important terms, and/or to give factual background information. Footnotes relating to points that I consider contentious are indicated with an "NB" and my initials.*

*David Sharp (SUD-AFP Trade Union) - Friday September 2, 2011*

### “Statement of Aims”<sup>47</sup>

Ladies and Gentlemen,

The Senate's<sup>48</sup> Culture, Education and Communication Committee<sup>49</sup> has long taken an interest in Agence France-Presse's future against the backdrop of a highly competitive international environment that is being deeply shaken up by technological change. That interest notably extends to clarifying the agency's relationship with state institutions<sup>50</sup> in the context of European Union law. In January 2010 the Committee held a round-table debate on the agency's future which reached the following conclusions:

- AFP's competitive advantage is based on a solidly-established international reputation for scrupulously respecting the independence of its news and the need for pluralism in the media<sup>51</sup>. This **genetic code** is inscribed in articles 1, 2 and 14 of the Act of Parliament number 57-32 dated January 10, 1957, which lays down Agence France Presse's statutes. To change the economics of that dispensation would be to compromise the agency's credibility, and therefore the trust that its clients place in it.

<sup>44</sup> *Proposition de loi*. Under French parliamentary regulations, a draft law can be submitted either by the government (projet de loi) or by an individual member of parliament (*proposition de loi*, or *PPL*).

<sup>45</sup> The full French text of the draft bill can be found on the Senate's web site at <http://www.senat.fr/leg/pp110-522.html>. **NB**: the title of Senator Legendre's draft law gives the impression that the main change being proposed relates to the composition of AFP's board. Critics of the proposal have noted that it contains a number of other changes which are at least as important, and that the focus on the sole issue of "gouvernance" can be seen as misleading. DS

<sup>46</sup> M. Legendre is a senator for the Union for a Popular Movement (UMP) party of President Nicolas Sarkozy. At the time of writing, the UMP holds majorities in both houses of parliament. Senator Legendre's page on the Senate web site is at [http://www.senat.fr/senateur/legendre\\_jacques92031p.html](http://www.senat.fr/senateur/legendre_jacques92031p.html).

<sup>47</sup> *Exposé des motifs*. Included in the bill as a preamble

<sup>48</sup> The web site of the French Senate offers a number of presentational pages in English. <http://www.senat.fr/lng/en/>

<sup>49</sup> *Commission de la culture, de l'éducation et de la communication*: cf <http://www.senat.fr/commission/cult/index.html>. Senator Legendre is the committee's president.

<sup>50</sup> *La puissance publique*

<sup>51</sup> *L'indépendance et le pluralisme de l'information*.

- As stated in Article 14 of the 1957 Statutes, "*Agence France-Presse cannot be wound up other than by an act of parliament.*" AFP is no ordinary commercial company; its statutes exempt it from bankruptcy legislation, thereby protecting it from any takeover by hostile capital. That dispensation has also made it possible to maintain, in the French collective imagination, the nation's attachment to the icon of independent professional journalism that is AFP. Because it undertakes **missions in the general public interest**<sup>52</sup> and contributes to the vitality of democratic debate both in France and abroad by facilitating the broadcasting of rigorous and independent news, it is **the pride of the national collectivity**.
- AFP is a "one-of-a-kind" body<sup>53</sup> that, without being a company backed by capital, is subject to the commercial laws of the land<sup>54</sup>. Above and beyond its commercial activities for private customers, which now account for almost 60% of its sales revenue, the company also undertakes public interest missions that are anchored in the first two articles of its statutes. From a logical point of view, this opens up the right to a financial compensation from the state under conditions laid down in an Aims and Means Contract<sup>55</sup>. However this aspect is not explicit enough from the standpoint of [European] community law, which implies a type of judicial hazard. It is therefore necessary to clarify without delay the relationship between AFP and the public authorities in order to ensure the security of that part of its public funding that is justified by the public interest missions laid out in the law defining its statutes.
- The difficulties encountered by AFP are today mainly of a financial nature: the agency no longer enjoys sufficient leeway to cover its development costs and remain competitive in an international environment marked by strong competition and the deep upheavals brought about by changes in information and communications technologies. But **the idea of providing AFP with a stock of capital**<sup>56</sup>, **whether or not the latter be based on public funds, would raise suspicions as to its independence vis-à-vis both state and private interests**.
- The current configuration of AFP's board of governors along with the principles of its governance are now obsolete and not fitted to new commercial realities faced by the agency. The over-representation on the board of the French press, which today accounts for no more than 10% of the agency's sales revenue while occupying 10 of the 16 board seats<sup>57</sup>, can no

<sup>52</sup> *Missions d'intérêt général*. This is the term generally used in France to refer to what the European Court of Justice, in its "Altmark" ruling n° No 1191/69 of July 2003 refers to as "*public service tasks*". Cf <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62000J0280:EN:HTML>. In the present text we will use the term "*public interest mission*", which has the advantage of being closer to the French.

<sup>53</sup> *Organisme sui generis*.

<sup>54</sup> *Règles commerciales de droit commun*

<sup>55</sup> *Contrat d'objectifs et de moyens (COM)*. Such Aims and Means Contracts, generally running over several years, are now the preferred method in France for defining the state's relationship to certain services deemed to be acting in the public interest, such as the national television service. AFP's current contract with the French state was signed in December 2008 and runs for five years, from 2009 to 2013.

<sup>56</sup> *Doter l'AFP d'un capital*. One of the specificities of AFP's 1957 statutes is that the agency has no capital assets other than its business premises. Article 13 states that "*Agence France Presse's resources comprise the income it gains from the sale of documents and news services to its customers and by revenue from its assets*".

<sup>57</sup> **NB**: The exact basis for the assertion that the "*French press*" no longer accounts for more than 10% of total sales is not clear. Questioned on this issue by the translator in May 2011, AFP Director-General Rémi Tomaszewski gave a figure from the agency's draft 2011 budget indicating that total subscriptions taken out by the "*French daily press*" were expected to bring in 20.7 million euros, out of projected total sales of 282.9 million euros - a proportion of 7.32%, and even less than the 10% stated by Senator Legendre. However it should be noted that the share of sales provided by French media overall - other forms of press, as well as TV, radio and online - is clearly much greater, and also that the figure projected for daily newspapers in 2011 comes on the heels of major tariff cuts granted by AFP under pressure from its clients. Furthermore, the percentages quoted by both Senator Legendre and M. Tomaszewski are in relation to overall sales, including the 40% which derive from subscriptions taken out by the state.

In fact, AFP budget figures provided to the Works Committee in February 2011 show that 58% of total revenue is

longer be justified. Nevertheless, **any changes tending to reduce the presence of [press] publishers on AFP's board must necessarily go hand-in-hand with guarantees regarding the perimeter of the agency's missions so as to preserve the balance between the respective roles of the AFP, whose primary mission is to provide raw news to its clients, and the media, distributors and producers of news for the general public.**

On several occasions the author of the present draft law has reasserted, within the Senate Culture Committee, his determination to proceed in a constructive manner with the changes needed to the 1957 Statutes to ensure ambitious and responsible development for the agency. **He in particular expresses satisfaction that AFP's new management has rejected any plans to transform AFP into a capital-based company**<sup>58</sup>, and has declared that it will put the accent on adapting the agency's system of governance to its new commercial realities, and the diversification of its sources of finance while respecting its current statutes.

On that basis, the author of the present member's bill has chosen to not make any changes to the economic logic of Articles 1, 2 and 14 of the 1957 law, which constitute AFP's genetic identity.

He would also like to recall that, given its specific nature, AFP is subject not only to the arrangements laid down in Act of Parliament 57-32 that defined its statutes on January 10, 1957, but also to those of government order n° 45-246 dated November 2, 1945, laying down provisional regulations for news agencies.<sup>59</sup>

One of the key changes to AFP's statutes introduced by the present member's bill involves reducing the number of board seats set aside for representatives of press publishers and TV and radio services from ten to four. The author recognises that this new configuration amounts to a historic turning-point in the history of the French press, as its publishers have always played an essential role in accompanying AFP's development. Close links must continue to be maintained between the agency and the press, in particular the national and regional daily press, while making sure that **the respective roles of AFP and the daily press be kept completely separate** so as to **prevent any distortion to competition**<sup>60</sup> which would be prejudicial to the general and political daily news press as it fulfils its mission of providing news to the general public.

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generated by private media clients, with just under half of that amount - 26% - provided by French domestic customers and the remaining 32% by foreign ones. On that basis it appears that the share of French private clients in AFP sales is much greater than the impression given by Senator Legendre.

It should also be pointed out that the number of board members allotted to the French press per se is not 10 but eight; two of the 10 board members referred to by Senator Legendre being in fact set aside for "*representatives of French television and radio services*" (Article 7 of the Statutes).

To sum up: it is difficult here to avoid the conclusion that the authors of the draft law are seeking to minimise the share of French clients in the agency's revenues in order to bolster their case for changing the composition of the board - DS

<sup>58</sup> *Une société dotée d'un capital*. AFP's previous CEO, Pierre Louette, had in March 2009 produced a report commissioned by the government proposing to turn AFP into a joint-stock company wholly owned by the state. M. Louette resigned as CEO in February 2010 and was replaced two months later by Emmanuel Hoog, the incumbent as of this writing (August 2011).

**NB:** Senator Legendre's "*satisfaction*" on this point would appear to be somewhat forced, as the administration of which he is a member had earlier encouraged Pierre Louette to propose turning AFP into a publicly-owned joint stock company, in 2009. That particular aspect of the Louette plan was almost unanimously opposed by AFP's trade unions and can be seen as having led to M. Louette's abrupt resignation as CEO in February 2010 - DS

<sup>59</sup> *Ordonnance n° 45-246 du 2 novembre 1945 portant réglementation provisoire des agences de presse*. The text of this order, issued in the months following the end of World War II and apparently still in force today, can be found at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069183&dateTexte=20110624>.

**NB:** It should be noted that Article 1 of the text in question defines the agencies concerned as "private bodies" (*organismes privés*). Opinions diverge on whether it in fact applies to AFP. - DS

<sup>60</sup> *Biais de concurrence*.

Indeed, **the author of the member's bill considers it inconceivable that the historic "supplier-client" relationship between AFP and the daily press could in any way be changed into a "competitor-client" relationship.** Thanks to the density of its unique network of correspondents and journalists, the regional daily press constitutes the main source of news alerts and news-collecting on most of the events and activity within the country. As such, it constitutes a major source for AFP, whose wire each day picks up a large number of news items provided via its papers and sites.

Above and beyond any such distortions to competition, any possibility that AFP could provide **news in French** for free to the general public in France<sup>61</sup> would appear to be incompatible with its status as a news agency as laid down in Article 1 of the government order dated November 2, 1945<sup>62</sup>, which states that: "*In the meaning of the present order, news agencies are defined as private bodies which provide newspapers and periodicals with articles, news, reports, photographs and all other editorial products and for which the supply of such services provides their main source of livelihood.*" Furthermore, Article 3 of the aforementioned government order specifically forbids news agencies to give away information for free to newspapers and periodicals.

Moreover, the creation by AFP of a free supply of news in French and made available to the general French public could possibly imply resorting to advertising revenues to cover the investment and running costs of such a wire service. But AFP is not allowed to receive advertising revenues, for the same Article 3 of the 1945 order states that "*news agencies may not engage in any form of advertising for the benefit of third parties*"<sup>63</sup>.

**Article 1** of the present member's bill would delete the obsolete reference to the "*French Union*"<sup>64</sup> from Article 1 of the law of January 10, 1957.

**Article 2** [of the proposed law] would add to Article 2 of AFP's 1957 statutes, a fundamental mission to help promote France's language and culture around the world<sup>65</sup>.

**Articles 3 and 4** would update a number of references to the way that members of Agence France-Presse's higher council are appointed, and the way that body operates. It would also extend their mandates to five years<sup>66</sup>.

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61 Emmanuel Hoog, AFP's CEO at the time of this translation, has stated on several occasions that he wants the agency to provide news directly to the general public, including in French. This issue has been the cause of considerable tension between M. Hoog and the press representatives on the board of governors.

62 See note above.

63 Article 3 of the 1945 order defining news agencies under French law states that: "*News agencies may not engage in any form of advertising for the benefit of third parties. They are forbidden from providing for free any editorial material, and notably that defined in Article 1 of the present order, to newspapers and periodicals and from sending newspapers more than eight packages per month of free samples of photographs, snapshots or print molds.*" ("Les agences de presse ne peuvent se livrer à aucune forme de publicité en faveur des tiers. Il leur est interdit de fournir gratuitement des éléments de rédaction notamment ceux énumérés à l'article 1er de la présente ordonnance, aux journaux et périodiques et d'adresser gratuitement aux journaux plus de 8 envois par mois de spécimens d'épreuves photographiques, de clichés et de flans.")

**NB:** Senator Legendre's assertion that AFP is not allowed to receive advertising revenues is apparently contradicted by a ruling handed down by the agency's higher council in April 2008. The translator of the present document wrote a brief for one of the agency's trade unions arguing that AFP should not be allowed to receive such revenues, notably on account of the terms of Articles 1, 2 and 14 of its statutes. (cf [http://www.sharp-words.com/pdf/CS\\_AFP\\_publicite\\_0408.pdf](http://www.sharp-words.com/pdf/CS_AFP_publicite_0408.pdf)). However the higher council rejected the complaint, brought by the SNJ-CGT union. DS

64 *Union française*: The colonial administration that existed when the AFP statutes were adopted in 1956.

65 *Une contribution au rayonnement de la langue et de la culture françaises dans le monde.*

66 Under the existing statutes members of the *Conseil supérieur*, like those of the board of governors, serve three-year terms.

**Article 5** would change the composition of AFP's board of governors.

In the light of the agency's new commercial environment, the number of representatives of the French news media (political and general news print media plus TV and radio) is to be reduced to four, of whom three are to represent general and political print media and one TV and radio services.

In order to preserve the organic links between the press and the agency, the draft law calls for the most representative employers' organisations of political and general-interest newspapers<sup>67</sup>, as well as a body representing online news media to be explicitly represented on the new board of governors.

The draft law would keep the number of state representatives<sup>68</sup> on the board at three, and the number of representatives of AFP staff<sup>69</sup> at two.

As the law currently stands<sup>70</sup>, Article 7 of AFP's statutes specifies that the two staff representatives on the board are to be elected by all staff "of French nationality". Although voting rights were in practice extended to all citizens of the member states of the European Economic Area<sup>71</sup>, the provisions of Article 7 still deprive almost a thousand non-European staff members of voting rights. In the ruling it handed down as order n° "2011-128 QPC"<sup>72</sup>, the Constitutional Council stated that the nationality clause "ignores the principle of equality and the principle whereby all may take part in collectively determining working conditions and the management of companies, as laid down in the 8th clause of the preamble to the 1946 constitution."<sup>73</sup>

On that basis, and so as to take account of the aforementioned Constitutional Council decision, the

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67 The most influential of those bodies are the employers' unions of the national daily press (Syndicat de la presse quotidienne nationale (SPQN: <http://www.spqn.fr/> and the national regional press (Syndicat de la presse quotidienne régionale (SPQR: <http://www.pqr.fr/spqr/>). Since October 2009, some French online news sites have set up their own body, the Independent Online News Press Syndicat (SPIIL: <http://www.spil.org>).

68 **NB:** Senator Legendre does not mention it in this part of his text, but the status of the government representatives on the AFP board would also change if his law were adopted. Under the original 1957 statutes (Article 7.3), the three government representatives on the board are described as "*representatives of public services which use the agency's services appointed on the same basis and respectively by the prime minister, the minister for foreign affairs and the minister for finance and economic affairs*". It can thus be argued that in the spirit of the 1957 statutes, the board members from both the French media and the state are appointed as representing "users" of the agency's services. Under the Legendre reform, however, the three members in question are described starkly as just "*Three state representatives*" (Trois représentants de l'Etat). DS

69 The two staff members on the board represent on the one hand all AFP journalists and on the other all other staff. The current incumbents, elected in July 2011 for a three-year term, are Olivier Baube, journalist, and Bernard Ducamp, technician.

70 Although it was published on May 17th, 2011, Senator Legendre's text is written as though the "*nationality clause*" was still part of the Statutes. In fact the clause had been struck down with immediate effect just over a week earlier, on May 6, by the Constitutional Council's ruling. Indeed the latest elections of representatives to the AFP board, which took place in July 2011 (see preceding note), took place under the new rules, with staff of all nationalities qualified to vote.

71 The 27 European Union member-states plus Iceland, Liechtenstein and Norway.

72 The text of the ruling on the "*Prior Question of Constitutionality*" filed by the SUD-AFP trade union can be found at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2011/2011-128-qpc/decision-n-2011-128-qpc-du-06-mai-2011.96783.html>. For information in English on the mechanism involved, see the Council's web site: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/homepage.14.html> : "*Priority Preliminary rulings on the issue of constitutionality.*"

73 The preamble to France's 1946 constitution can be found on the web at <http://www.legifrance.gouv.fr/html/constitution/const02.htm>. Its Clause number 8 states that "*All workers take part, via their delegates, in collectively determining working conditions and the management of companies*". ("Tout travailleur participe, par l'intermédiaire de ses délégués, à la détermination collective des conditions de travail ainsi qu'à la gestion des entreprises.")

present draft law abolishes any nationality restrictions for participation in this workplace election.

The draft law also calls for six independent personalities to be coopted onto the board of governors by its appointed members. The said figures are to be chosen for their acknowledged experience in the fields of news and journalism, the international activities of news media companies and francophony<sup>74</sup>. At least one of them should be of foreign nationality.

Furthermore, so as to avoid any risk of a conflict of interests in AFP's management and to ensure the independence of these qualified persons, the draft law states that during their mandates on the board they may not be involved in any relationship, either of a business or of a family nature, with AFP or the members of its board of governors.

AFP's chief executive officer is to be appointed from among the coopted independent personalities on the board. He or she is to be elected by all the board members, and must receive at least nine votes<sup>75</sup>.

Lastly, the mandate of the board's members is extended from three to five years, the aim being to provide greater stability for AFP's executive, thereby ensuring the continuity of development projects.

**Article 6** lays down the relationship between the attributions of the board on the one hand and those of the chief executive on the other. The board continues to enjoy the widest possible powers to manage and administer the agency. Under the draft law it would also gain responsibility for drafting AFP's internal regulations.

**Article 7**, linked to Article 10 of the draft law, eliminates a reference to the financial commission.

**Article 8** aims to repeal Article 10 of the law of January 10, 1957, given that the latter's provisions about appointing the CEO will be moved to Article 7 of the new law.

**Article 10** of the draft law abolishes AFP's financial commission, transfers to the board of governors the responsibility for ensuring that the agency's financial management, under the direction of the chief executive, is of good quality and calls for the use of external auditors in line with the practice in other commercial companies subject to general business law. In line with those changes, **Article 9** replaces the previous reference to the financial commission with a reference to the president of AFP's higher council<sup>76</sup>.

**Article 11** seeks to clarify AFP's sources of finance. It states that the agency draws its resources from the income gained from selling its news services, the revenues from its assets and the financial compensation provided for the net costs entailed by the fulfilment of its public interest missions.<sup>77</sup> On the latter point, it further states that "*the public revenues allocated to Agence France-Presse to compensate it for the public interest missions incumbent on it shall not exceed the amount of the net*

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<sup>74</sup> *Francophonie*: refers both to the French-speaking world in general, and to the organisation set up to promote French worldwide. The English section of the latter's web site is at <http://www.francophonie.org/English.html>.

<sup>75</sup> The Legendre draft law would reduce the size of the board of governors from 16 members under the 1957 statutes to 15, with the CEO being chosen from among the six "*independent personalities*" coopted onto the board. Under the 1957 statutes the board is made up of 15 appointed representatives who then elect a CEO from outside their number, making a total of 16 board members.

<sup>76</sup> *Conseil supérieur*. This body, charged with ensuring that AFP respects the obligations laid down in the first two articles of its statutes, would be retained under the new law, although its composition would be changed somewhat and the mandate of its members, like that of the board, extended to five from three years.

<sup>77</sup> The 1957 statutes state (Article 13) only that "*Agence France Presse's resources comprise the income it gains from the sale of documents and news services to its customers and by revenue from its assets.*" Senator Legendre retains wording similar to the original, but adds a reference to income from fulfilling a "*public interest mission*" (mission d'intérêt général) - a concept which was not part of political discourse in 1957.

*cost of fulfilling the said obligations.*"<sup>78</sup>

The draft law also specifies that AFP is authorised to borrow funds.<sup>79</sup>

**Article 12** of the draft law seeks to insert, after Article 13 of the 1957 statutes, two additional articles aiming to:

- Specify that the Aims and Means Contract concluded between the state and AFP is to define not only the public interest missions incumbent on the agency, and which justify its right to financial compensation from the public authorities, but also its priority fields of development. Prior to its signature, the said contract has to be approved by the board and must be submitted to the Cultural Affairs Committees of the Parliament<sup>80</sup> for their opinions.<sup>81</sup>
- Make AFP subject to audit by the government accounting office<sup>82</sup> in line with Article L. 111-7 of the Code of financial jurisdictions<sup>83</sup>.

**Articles 13 and 14** aim to group together and coordinate the aforementioned changes and to update references that will have become obsolete.

**Article 15** would provide for transitional arrangements concerning the continuity of the mandate of the chief executive officer and those of the staff representatives once the present proposal becomes law. Their mandates would come to an end at the same time as those of the new board members. The same article also calls for the outgoing board of governors and higher council to stay in place until the new members of those bodies have been appointed.

Lastly, **Article 16** of the draft law calls for the conditions under which the law of January 10, 1957 shall be applied should be laid out in a decree submitted to the Council of State<sup>84</sup>.

Such is the purpose of the present member's bill which you are asked to adopt.

<sup>78</sup> *Les ressources publiques allouées à l'Agence France-Presse en compensation des missions d'intérêt général mises à sa charge n'excèdent pas le montant du coût net d'exécution desdites obligations.* The phrase "ressources publiques" here refers to public funds, which under the Legendre draft law would be provided by the state in compensation for the said "public interest missions".

<sup>79</sup> One of the key accusations made against the 1957 statutes by its various critics over the years has been that it makes it difficult for AFP to finance its development through debt. In addition to the aforementioned Article 13 (see above), Article 12 specifies that the financial commission must ensure that the projected budget for the agency is in balance on a year-to-year basis. The Legendre proposal would abolish the financial commission, and make the government accounting office, or Court of Accounts, directly responsible for auditing the agency's accounts. See later paragraphs.

<sup>80</sup> Both houses of the French parliament have Culture Committees. As already stated, that of the Senate is presided at the time of writing by Senator Legendre. The Cultural Affairs and Education Committee of the National Assembly, or lower house, is currently chaired by Michèle Tabarot, who like Senator Legendre is a member of President Nicolas Sarkozy's UMP party. *Commission des Affaires culturelles et de l'éducation* [http://www.assemblee-nationale.fr/commissions/419604\\_tab.asp](http://www.assemblee-nationale.fr/commissions/419604_tab.asp).

<sup>81</sup> **NB:** As noted above, AFP is already subject to an Aims and Means Contract (*Contrat d'objectifs et de moyens*) with the French state, currently a five-year agreement which runs until 2013. However including such an agreement in the agency's statutes, which have the force of law, would be a major innovation. The current statutes clearly assimilate the agreement with the state (in Article 13) to a contract for the provision of services, even specifying that the rates to be paid by the government should be based on those charged to private media companies. There is also no mention in the 1957 statutes of the state having any say whatsoever in defining AFP's development strategy. - DS

<sup>82</sup> *Cour des comptes*, or Court of Accounts. Basic information in English on this institution can be obtained from its web site at <http://www.ccomptes.fr/en/JF/CA.html>.

<sup>83</sup> *Code des juridictions financières*. It should be noted that this body of law is designed specifically for public-sector institutions, whereas AFP has so far been generally considered as falling into the private sector. The full text of the code is available on line at <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070249&dateTexte=20110827>.

<sup>84</sup> *Conseil d'Etat*: for a presentation of this state body, see the English pages of its web site at <http://www.conseil-etat.fr/cde/en/>.

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**NB:** The remainder of Senator Legendre's member's bill consists of an article-by-article summary of the changes he proposes; as such it is difficult for a non-specialist to follow. For that reason we have decided not to provide a full translation, but instead to write a concise summary of the main changes, with links where necessary to the full text of the 1957 statutes, provided [above](#).

Readers seeking a precise and detailed comparison of the current statutes with the new version proposed by Senator Legendre are invited to consult the comparative table drawn up by SUD-AFP (in French only). It can be downloaded from the SOS-AFP web site, at [http://www.sos-afp.org/fr/proposition\\_legendre](http://www.sos-afp.org/fr/proposition_legendre) ("Statut de l'AFP : les changements prévus par le projet « Hoog-Legendre »").

## Summary of Main Proposals in the Draft Law

### Proposed Changes to the AFP Board of Governors

As specified in [Article 7](#) of the 1957 statutes the AFP board has 16 members; 15 appointed to represent different categories of users and staff members, plus the chief executive, who is elected by the first 15 from outside their ranks.

The board is made up of **eight** representatives appointed by the main employers' associations of the French daily press, **two** appointed by the state TV and radio companies, **three** appointed by the government (specifically by the prime minister, the foreign ministry and the finance ministry) and **two** elected by AFP staff. All currently serve three-year terms.

The Legendre law would slash the numbers representing French media and the state broadcasting company from 10 in all to four. The independent High Broadcasting Council<sup>85</sup> would appoint a single board member to represent TV and radio (instead of two at present), while the press would appoint three: one representing national dailies, one regional dailies and one representing online publishers.<sup>86</sup>

The draft law would leave the number of staff representatives unchanged, at two: one representing journalists and the other non-journalists.

It would also leave unchanged, at three, the number of state representatives (although it would change their attributions, of which more below).

The number of board members representing specific constituencies would thereby be cut from **15** at present to **nine**: three representing the state directly, one the state indirectly via the broadcasting authority, three the private newspaper industry and two AFP staff.

The Legendre law would call for those nine members to coopt a total of **six "independent personalities"**, making a total of 15. The persons thereby coopted would be "*chosen for their acknowledged experience in the fields of news and journalism, the international activities of news media companies and francophony.*" They would have to guarantee to have no professional or family links to AFP staff during their time on the board. At least one of them would have to be non-French.

The chief executive would then be elected by all 15 board members from among the six "independent personalities". The total number of board members would thereby be cut from 16 to 15.

The mandates of all board members would be extended from three years at present to five.

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<sup>85</sup> *Le Conseil supérieur de l'audiovisuel (CSA)*. On the English section of its web site, at <http://www.csa.fr/multi/index.php?l=uk>, the CSA defines itself as "*An Independent Authority to Protect Audiovisual Communication Freedom*".

<sup>86</sup> The draft law states that the press representatives would be drawn from "*general and political news publications and online news services as defined in Article 1 of law n° 86-897 dated September 30, 1986.*" As previously noted, a body representing the owners of online news sites, the Independent Online News Press Syndicat (SPIIL: <http://www.spiil.org>) was set up in October 2009.

## Changes to AFP's Relationship with the French State

[Article 7](#) of the statutes says that the three state appointees are on the board as "*representatives of public services which use the agency's services*". Under the Legendre law this notion would disappear: the three would simply be described as "*state representatives*".

The "*Aims and Means Contract*"<sup>87</sup> which currently lays out AFP's multi-year agreement with the state would be formally incorporated into the statutes, authorising the government of the day to not only dictate key aspects of editorial policy relating to "*public interest missions*" but also lay down the agency's development strategy.

Furthermore, the Legendre proposal would abolish the agency's financial commission (defined in [Article 12](#)). It would instead place the agency directly under the auditing authority of the government accounting office, (*Cour des comptes*, or Court of Accounts), which is charged with the financial oversight of public-sector bodies.

These changes are laid out in the proposed new version of Article 13.

As it stands now, that article [currently states](#) simply that: "*Agence France Presse's resources comprise the income it gains from the sale of documents and news services to its customers and by revenue from its assets.*"

Regarding AFP's contracts with the state, the existing law goes on to say that: "*The conditions under which [AFP] sells to public state services are laid out in an agreement between the state and Agence France-Presse; the said agreement sets the number and price of the subscriptions taken out by the services in question, on the basis of the rates applied to French press companies.*"

As rewritten by Senator Legendre, the two main sections of Article 13 would read as follows:

**13.1:** "*Agence France Presse's resources comprise the income it gains from the sale of of its news services, revenue from its assets and financial compensation for the net costs generated by the fulfillment of its public interest missions, arising in particular from the obligations laid out in Articles 1 and 2 and defined in the Aims and Means Contract called for in Article 13.1.*"

*"The public funds allocated to Agence France-Presse in compensation for the public interest missions incumbent on it cannot exceed the amount of the net cost of carrying out the said missions."*

**13.1-i:** "*The state and Agence France-Presse shall agree to a multi-year Aims and Means Contract.*"

*"It notably lays out the public interest missions that Agence France-Presse is obliged to fulfill, as well as the priority orientations for the development of the agency, and if necessary of the group it forms with its subsidiaries. It defines the aims of the public interest missions and the arrangements for carrying them out. The contract establishes the methods whereby the costs linked to [the contract's] execution are assessed and controlled, the projected amounts of revenue accruing to the agency itself and the amount of public funds to be attributed to the agency."*

*"Prior to its signature, the Aims and Means Contract is submitted for approval to the board of governors. The terms of Article L. 225-40 of the commercial code<sup>88</sup> do not apply to the contract drawn up between the state and Agence France-Presse in application of the present article.*

*"Once signed, the draft contract is submitted by the government to the cultural affairs committees of the National Assembly and the Senate. These committees have a time limit of six weeks in which to give their views on the draft contract.*

*"Each year, the chief executive officer submits to parliament and to the relevant ministries a report on implementation of the aims and means contract mentioned in the second paragraph of Article 5."*

**13.2:** "*The government Court of Accounts may exercise its monitoring powers over Agence France-Presse, as laid down in Article L. 111-7 of the Code of financial jurisdictions."*

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<sup>87</sup> *Contrat d'objectifs et de moyens (COM)*

<sup>88</sup> [Article L. 225-40 du Code de Commerce](#).

## Other Changes

- The draft law would formally make it possible for AFP to borrow funds. Section II of the new Article 13 would state that "*Agence France-Presse may resort to borrowing, including by the issuance of participatory certificates<sup>89</sup> within a limit to be set by the board of governors*".
- The Legendre law would append a fourth clause to [Article 2](#), stating that "*Agence France-Presse must, to the full extent that its resources permit, contribute to the influence of the French language and culture<sup>90</sup> around the world by producing news both in French and in other languages of regional or worldwide interest.*"  
The purpose of this addition appears to be to allow AFP to receive funds from institutions promoting French language and culture.
- The proposed law would also make a number of changes to the composition of the higher council, laid out in [Article 4](#) of the 1957 statutes. The council would retain eight members, but among its three media representatives it could include a representative of online news providers. The mandate of the higher council's, members, like that of the board, would be extended from three to five years.
- The draft law would also give the chief executive the status of a "*publication director*"<sup>91</sup> as defined in French law. The publication director is penally responsible for any offences committed by a news organisation, notably defamation.
- The revised law would bring AFP under the direct purview of commercial law, a corollary of the abolition of the agency's finance commission.

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<sup>89</sup> *Titre participatif*: a financial instrument which carries no voting rights and does not constitute a share of capital.

<sup>90</sup> *Contribuer au rayonnement de la langue et de la culture françaises.*

<sup>91</sup> *Directeur de publication*

## **ADIAFP Association<sup>92</sup>: An Open Letter to French MPs<sup>93</sup>**

### **November 16, 2010 [Extracts]**

Dear members of the National Assembly

Dear members of the Senate

Agence France-Presse has been plunged into a new period of expectancy and uncertainty since a recent statement by the Minister for Culture and Communication<sup>94</sup> abruptly reopened the extremely sensitive issue of its statutes. AFP is the largest French news media company worldwide.

Addressing the National Assembly's cultural affairs committee on November 4, 2010, M. Frédéric Mitterrand announced that a reform of AFP's statutes would take place "*in the near future*" via a member's bill to be submitted by a member of parliament. To justify the need for the said reform, M. Mitterrand stated that "*one of the issues facing M. Hoog [AFP's chief executive] is to set up a board of governors that will allow AFP to recover the scope for action that it no longer enjoys.*" He went on to say that AFP "*does not have the judicial structure, or the capital means, or the organisational structure that would allow it to confront these challenges.*" The minister even underlined "*the urgency of taking a decision on this issue,*" and announced that "*in the near future we will have a draft member's law that will be submitted either by M. Michel Herbillion<sup>95</sup> or by M. [Jacques] Legendre in the Senate<sup>96</sup>.*"

M. Mitterrand's statement was all the more surprising given that:

- The plan on the part of the former CEO, Pierre Louette, to change AFP's statutes in order to turn it into a publicly-owned joint stock company was widely rejected by the agency's staff and greeted with scepticism by members of parliament. On February 24, 2010, M. Louette resigned as chief executive.
- The "*committee of wise men on the future of Agence France-Presse*" created by M. Mitterrand and chaired by Henri Pigeat<sup>97</sup> concluded, in a report submitted to the government on April 19, 2010, that it was not necessary to change AFP's statutes.

<sup>92</sup> Association to Defend the Independence of AFP. <http://www.adiafp.org/en/node/18>.

<sup>93</sup> Available on the ADIAFP web site at [http://www.adiafp.org/en/open\\_letter\\_to\\_MPs](http://www.adiafp.org/en/open_letter_to_MPs). Full text in French: «*Lettre ouverte aux parlementaires français : l'indépendance de l'AFP est la condition même de son développement*» [http://www.adiafp.org/lettre\\_ouverte](http://www.adiafp.org/lettre_ouverte).

<sup>94</sup> At the time (and as of this writing in September 2011) the culture minister was Frédéric Mitterrand. The culture ministry is generally recognised as having overall responsibility for AFP within the government. The ministry's web site is at <http://www.culture.gouv.fr/>; it provides some pages in English, but they are generated by automatic translation software.

<sup>95</sup> M. Herbillion is a member of the National Assembly (lower house) for President Nicolas Sarkozy's UMP party. He is also one of the four vice-presidents of the assembly's Cultural and Educational Affairs Committee. His page on the parliament's web site is at [http://www.assemblee-nationale.fr/13/tribun/fiches\\_id/1630.asp](http://www.assemblee-nationale.fr/13/tribun/fiches_id/1630.asp).

<sup>96</sup> As noted earlier in this document, M. Legendre, who went on to sponsor the draft law mentioned by M. Mitterrand in May 2011, is a senator for the UMP Party and the president of the upper house's Culture, Education and Communication Committee. M. Legendre's page on the Senate web site is at [http://www.senat.fr/senateur/legendre\\_jacques92031p.html](http://www.senat.fr/senateur/legendre_jacques92031p.html).

<sup>97</sup> Henri Pigeat is a former AFP CEO. The Committee set up under his chairmanship did indeed propose to retain AFP's statutes unchanged - but also suggested creating a separate entity, in the form of a joint stock company, to run all the agency's editorial activities by delegation. For more information, and a link to the text of the Pigeat report (French only), see the SOS-AFP web site: [http://www.sos-afp.org/fr/rapport\\_pigeat](http://www.sos-afp.org/fr/rapport_pigeat).

- Since he arrived at the head of the agency the new chief executive, Emmanuel Hoog, has stated on many occasions that a change of statutes was not on the agenda.

Our concern is all the greater in that parliamentary hearings on the future of AFP have already begun. We detect a desire to move fast, despite the fact that everything we know (the history of the current statutes, the crucial role played by AFP both in France and worldwide, the complexity of the legal, technological and economic issues raised by the agency's activities) should on the contrary inspire prudence, and a sincere attempt to build as broad a consensus as possible.

### **To understand what is at stake, it is important to recall that:**

- AFP is subject to a specific act of parliament, its Statutes, aimed at ensuring its independence in the face of all political or economic pressures.
- The said statutes resulted from a process of reflection over a good fifteen years (the first drafts were written during the wartime Resistance, with a view to planning for the Liberation).<sup>98</sup>
- The statutes, which oblige AFP to be a worldwide news agency, stipulate that it is not a property (and therefore has no owner), place it outside any capitalistic arrangements (as it has no capital) and provide for it to be run on a cooperative basis (its board is made up of its users - the private media and the government, plus staff representatives).
- In an extremely rare event, the current statutes were adopted unanimously by the parliament in 1957.
- Before being submitted to parliament, the current statutes were submitted to the agency's staff, who approved them by a very large majority in a secret ballot.
- The current statutes constitute a rare legal feat, reposing on fragile but effective checks and balances between the agency's different users (the press and the state). They are based on an implicit understanding which was summed up by Jean Marin, who headed AFP for over 20 years (between 1954 and 1975) in the phrase "*AFP can only work if he who pays the piper doesn't call the tune*".<sup>99</sup>
- Although they date from over half a century ago, AFP's statutes have allowed it, despite the major upheavals that have transformed its field of activity on several occasions, to grow, to become a worldwide news agency and to remain one of the leaders in its field. Indeed, AFP is today the only non-Anglo-Saxon<sup>100</sup> worldwide news agency (its two main rivals being the Anglo-British Reuters and the United States' Associated Press<sup>101</sup>). It is also the biggest French-speaking media company and the biggest non-Anglophone media entity in the world; news provided by AFP, in its various working languages<sup>102</sup>, reaches either directly or indirectly some three billion people!
- Thanks to its statutes, AFP today figures among the top three news agencies worldwide, and is the only one that is completely out of reach of private capital.

Despite all the above facts, and despite our conviction that AFP's current statutes remain, in their overall philosophy, absolutely modern, we consider that those statutes are not a *end* but rather a

<sup>98</sup> For more information on AFP's post-World War II history, see the excellent book published in 1992 by Jean Huteau and Bernard Ullmann "*AFP, une histoire de l'agence France-Presse, 1944-1990*". Editions Robert Laffont, ISBN 2-221-05883-6. An extract, published with the permission of the authors, can be found at <http://www.sos-afp.org/en/node/28734> (text in French only).

<sup>99</sup> «L'AFP ne peut fonctionner que si celui qui paye ne commande pas».

<sup>100</sup> «Anglo-saxon» is used in French to denote the rich English-speaking world in general.

<sup>101</sup> Reuters: <http://www.reuters.com/> - Associated Press: <http://www.ap.org/>.

<sup>102</sup> The agency's main working languages are French, English, Spanish, German, Portuguese and Arabic.

*means* to guarantee the agency's independence. Which is why we are not opposed in principle to all changes to the statutes.

**However, to be acceptable, any changes to AFP's statutes must conform to the four following basic conditions:**

1. **They must strengthen AFP's independence;** in other words they must provide additional guarantees over and above those presently provided, given that a whiff of political influence remains, particularly during the process of electing a new CEO. It is therefore essential that any changes to the statutes should provide stronger barriers to any external power centre with an interest in AFP's enormous impact.
2. **They must be presented hand-in-hand with an authentic company strategy.** The said strategy has to be clearly laid out, and any reasons why the current statutes might be an obstacle to its implementation have to be clearly explained. Then, and only then, can the statutes be changed to accommodate the said strategy.
3. **The changes must first be approved by staff in a referendum.** This demand is in no way populist or opportunist: AFP is a knowledge-based company, and its know-how and experience are the property of its staff. It is therefore vital for any changes to the statutes to be taken on board and approved by staff. A similar precaution was taken in 1955 vis-à-vis the act that was finally adopted by the parliament in 1957. It would be inconceivable to be less democratic today than we were 55 years ago!
4. **The changes must then be adopted by a very large majority in parliament.** If the complete unanimity that greeted the adoption of the statutes in 1957 may today seem out of reach, everything possible should be done to get close to it. AFP is an essential tool of democracy and pluralism. It is of concern not only to the parliamentary majority at any given time, whatever that majority may be, but the French people as a whole.

**In fact, an examination of the present situation provides grounds for serious concern on all of the above points:**

1. The plan to change AFP's statutes appears to be dictated from outside the agency [.../...]
  2. At the present time, no strategy exists for AFP [.../...]
  3. AFP staff have not been implicated in the current plan to change the statutes [.../...]
  4. Parliament is apparently divided on the plans [.../...]
- .../....

**ADIAFP <http://www.adiAFP.org>. Tuesday November 16, 2010**

## Joint Unions: Petition for the Independence and Survival of Agence France-Presse

The "SOS-AFP" petition was launched in November 2008 by the joint AFP unions in response to plans by the then CEO, Pierre Louette, to turn AFP into a joint-stock company wholly owned by the state. At the time of writing, in late August 2011, the petition had gathered just over 21,700 individual signatures, including those of many well-known figures and French members of parliament.

The text of the petition is as follows:

*"We the undersigned, members of the general public, employees of Agence France-Presse and organisations committed to media pluralism and the right to complete and objective information, express our support for the structural independence of AFP."*

*"For more than half a century its statutes have not prevented AFP from growing into one of the world's three major news agencies, present on five continents and working in six languages."*

*"We reject any change which would have the effect of either turning AFP into a government agency, or handing it over either wholly or partially to private companies of any type and in whatever form."*

*"We demand that the agency retain its specific characteristics, its ability to carry out its mission in the general interest and its structural independence. We therefore oppose any changes which would compromise its statutes, laid down in a law passed by the French parliament in 1957."*

The petition can be signed either online, via <http://www.sos-afp.org/en/node/376>, or on paper, via a form to be downloaded from the same page.

A list of prominent signatories is available at <http://www.sos-afp.org/en/node/418>.

Translation and writing: SUD-AFP <http://sudafp.zeblog.com/> - [sudafp@orange.fr](mailto:sudafp@orange.fr).

Translator: David Sharp <http://www.sharp-words.com/>

Association to Defend the Independence of Agence France-Presse: <http://www.adiafp.org/>

Source document downloadable from [http://www.sos-afp.org/en/draft\\_law\\_2011](http://www.sos-afp.org/en/draft_law_2011)

Paris, Monday September 5, 2011.