



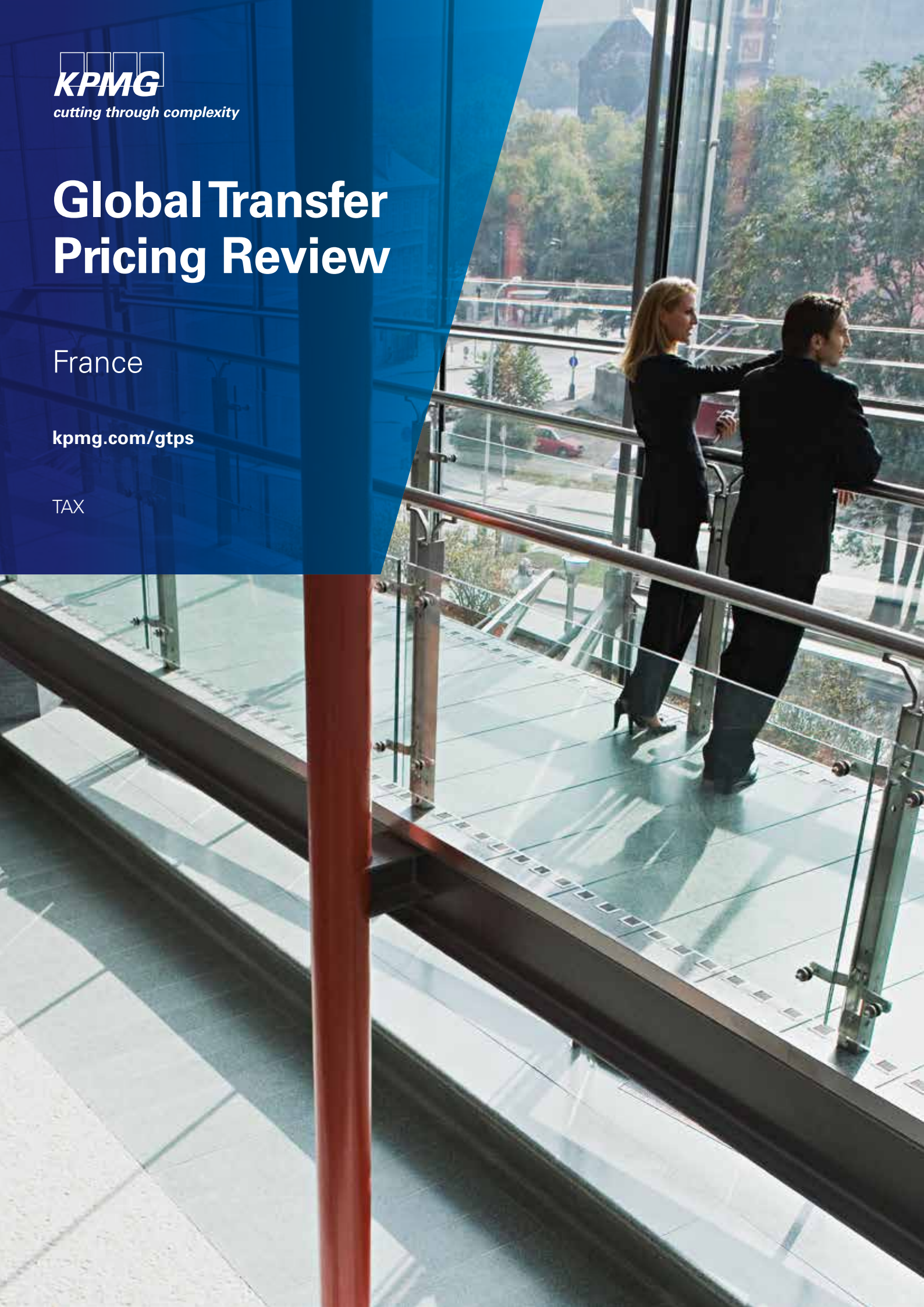
cutting through complexity

Global Transfer Pricing Review

France

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TAX



France

KPMG observation

In 2010, the French government introduced documentation requirements which are now contained in tax administrative doctrine. While the full ramifications of this legislative change remain to be seen as part of tax audits, multinational enterprises operating in France have certainly taken note and geared up in putting together transfer pricing documentation packages addressing specific French issues.

The French government is striving to implement regulations in line with the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) initiative. In this respect, transparency has been strengthened by the obligation to include, in transfer pricing documentation reports, rulings awarded to related parties by foreign tax authorities, even without direct link to transfer prices. In addition, penalties were also strengthened in the case of absent or incomplete transfer pricing documentation reports. Collection of transfer pricing data has also been reinforced in 2014 by the introduction of a compulsory annual submission of an abridged transfer pricing form. A limitation of base erosion has also been implemented via a limit on interest deduction.

In addition to the various transparency measures, a regularization procedure was also implemented, allowing the French Tax Authorities ("FTA") to exempt withholding tax for "deemed dividends" (in relation to transfer pricing adjustments or payments made to recipients located in "tax haven"), under specific conditions (notably that the audited company accepts the reassessments and penalties). Over the next months, it is highly expected that the French transfer pricing legislation will be amended to reflect the BEPS recommendations (including different levels of documentation).

Finally, the FTA are giving increased attention to, and making increased allegations of, permanent establishments (PEs). These PE cases have given rise to a number of search and seizures, gaining some of the public attention also present in other European countries in respect of similar issues. New legislation should reinforce existing investigative powers against multinational enterprises keeping records on servers located outside of France.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Thresholds apply/exist	Required to be contemporaneous	Submission to tax authority required
Legal requirements	●			
Protection from penalties	●			
Reduce risk of adjustment	●			
Shifts burden of proof	●	●	●	●

Basic information

Tax authority name

Direction des Vérifications Nationales et Internationales (DVNI) (National and International Audit Department) for companies with a turnover higher than 152.4 million euros (EUR) (higher than EUR76.2 million for service providers), subsidiaries of such companies, and headquarters.

Directions Interrégionales de Contrôle Fiscal (DIRCOFI) (Interregional Tax Audits Department) for companies with a turnover ranging from EUR1.5 million to EUR152.4 million (up to EUR76.2 million for service providers).

Directions des Services Fiscaux (DSF) (Departmental Tax Services Departments) for small companies with turnover lower than EUR1.5 million.

Citation for transfer pricing rules

CGI (Code general des impôts or French General Tax Code), Articles 57, New Article 223 quinquies B, 238A and 238-OA, 1735 ter; LPF (Livre des Procédures Fiscales or French Manual of Tax Procedures), Articles L 13 AA, L 13 AB, L 13 B, L 188A, L 80 B 7° (APA).

Effective date of transfer pricing rules

- transfer pricing regulation, 1933 (CGI Article 57)
- reversal of the burden of proof in certain audit situations, April 1996 (LPF Article L13 B)
- transfer pricing documentation requirement, 2010 (LPF Article L 13 AA and L 13 B with tax administrative doctrine (Bofip BOI-BIC- BASE-80-10-20) and penalties (CGI Article 1735 ter)
- transfer pricing annual disclosure requirement, 2013 (CGI Article 223 quinquies B).

What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of more than 50 percent considered for companies to be under common control. De facto control can also be applicable.

What is the statute of limitations on assessment of transfer pricing adjustments?

Three years, based on calendar year end. Three years also when the FTA uses the international administrative assistance procedure (LPF Article L 188A). When the FTA demonstrates the existence of tax fraud, it can also extend the statute of limitations from three to a maximum of five years (LPF Article L 187). In the case of tax loss carry forwards, the statute of limitation is extended under certain limits and conditions (in relation to the use of losses).

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. For large taxpayers (falling under the scope of CGI Article L 13AA) whose tax return filing deadline falls after 8 December 2013 (CGI Article 223 quinquies B), an abridged transfer pricing documentation must be submitted to the relevant tax office of the taxpayer within six months following the corporate income tax return filing deadline (in practice this is within nine months following the end of the fiscal year or 10 months for enterprises with fiscal years ending on 31 December).

What types of transfer pricing information must be disclosed?

The annual transfer pricing information return consists of a specific form (No 2257-SD) to be filed by the taxpayer in the French language. It includes both general information on the group of associated enterprises (general description of the activity, list of intangibles assets owned by any group entity and used by the French taxpayer, a description of the group's transfer pricing policy and changes that occurred during the last fiscal year) and specific information on the French taxpayer (description of the activity, presentation of intra-group transactions including the nature and the amount when the aggregate amount per transaction type exceeds EUR100,000, a presentation of the transfer pricing policy per

transaction type and changes that occurred during the last fiscal year).

What are the consequences of failure to submit disclosures?

At the moment, there is no specific penalty. As such, the general EUR150 fine shall apply (CGI, Article 1729 B), plus a EUR15 penalty per inaccuracy or omission (with a minimum fine of EUR60 and a maximum up to EUR10,000).

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes, English.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for all transactions. The transfer pricing study should include information on the group of which the French taxpayer is a part (including but not limited to, general business overview, general description of the legal and operational group structure, general description of the functions performed and risks assumed by group entities that transact with the audited company, list of the main intangible assets owned and/or used by the French entity, a general description of the group's transfer pricing policy) and information on the French company itself (activities, functional analysis, intra-group transactions, list of cost sharing, Rulings or Advance Pricing Agreements (APAs), selection of transfer pricing methods and description of comparables), as well as rulings awarded to related parties by foreign tax authorities for transfer pricing documentation covering financial years ending as from 1 January 2014 (CGI, Article L13 AA).

French entities that enter into transactions with related companies located in 'non-cooperative' states or territories will need to provide additional information (balance sheet and profit and loss account of those related parties, CGI, Article L13 AB).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Normal FTA practice is to expect receipt of the documentation within 30 days of a request. When the FTA apply the L 13 B procedure, the documentation should be provided within two months, although a one month extension may be granted upon request.

However, as previously mentioned, companies that fall within the remit of Article L 13 AA (LPF) have 30 days to comply with a (written) request from the FTA to provide transfer pricing documentation, with possible additional 30 days delay upon specific request to FTA. Article L 13 AA (LPF) applies for financial years starting on or after 1 January 2010.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Mutual Agreement Procedures may be implemented provided that the adjustments are in relation to transactions entered into between the French taxpayer and a related entity established in a country which has a double tax treaty with France. European Arbitration Convention

provisions are also applicable (under the rules of this Convention).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

There are two types of penalties potentially applicable: general, and transfer pricing-specific penalties.

General Penalties: General tax penalties apply only in limited cases, and are assessed at a rate of 40 percent of the tax avoided in case of bad faith behavior (where the purpose was to pay no or less tax), or 80 percent of the tax avoided in case of acts of fraud can be payable, in addition to interest on late payments.

Transfer Pricing-Specific Penalties: In the case of absent or incomplete transfer pricing documentation report for entities falling within the ambit of LPF Article L 13AA (or for the other entities in case of absence or incomplete responses on transfer pricing matters), the minimum penalty is EUR10,000 but can reach the higher of the following amount: (i) 0.5 percent of the amount of related transactions covered by the documentation which was not submitted or considered as complete by FTA after the issue of the formal notice requiring for these documents (or responses), and (ii) 5 percent of the transfer pricing reassessment. This penalty system is applicable to all tax audits whose audit notice is sent as from 1 January 2015.

To what extent are transfer pricing penalties enforced?

The new penalty system is likely to increase the penalties effectively applied in cases of insufficient transfer pricing documentation, making it all the more important for taxpayers to carefully prepare transfer pricing support.

What defenses are available with respect to penalties?

The exact amount of the penalty (i.e. 0.5 percent or five percent, as described above) depends on the level of insufficiencies in a taxpayer's documentation. Although it has been judged that tax penalties cannot be, in general, revisited by the tax courts, the fact that the penalties for insufficient documentation may vary could open possibilities to have the degree of insufficiencies, and hence of penalties, being revisited by French tax courts.

What trends are being observed currently?

Recent audits have focused on transfers of intangibles resulting from group reorganizations, financial services (namely guarantee fees) and unidentified embedded transactions in complex services agreements.

There also seems to be a trend whereby transfer pricing reassessments are alternatively associated with permanent establishment reassessments of activities such as e-commerce, where the activities are not physically performed on French territory but utilize a client base situated there. The obligation to include rulings awarded to related parties by foreign tax authorities, even without direct link to transfer pricing, illustrates the strengthening of the FTA's investigative powers.

The transfer pricing documentation penalties connected to the transfer pricing documentation are likely to increase due to the new provisions mentioned previously.

The new regularization procedure allowing the FTA to exempt 'deemed dividends' from the 30 percent withholding tax and treat any associated profits as 'illegally transferred' under the transfer pricing regulations may result in significant decreases in cost of tax audits focused on transfer pricing issues. However, the criteria required to obtain the benefit of this procedure are strict (notably, acceptance of the reassessments and penalties proposed by the tax authorities and repatriation of the funds "illegally transferred").

Special considerations

Are secret comparables used by tax authorities?

Yes, but only in specific situations and very rarely. Tax auditors use their knowledge of other cases they have audited and may refer to industry standards. However, such secret comparables cannot be used in the context of court cases.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. FTA inspectors generally prefer French comparables, where available, because of the consistency of the

generally accepted accounting principles (GAAP) used.

Do tax authorities have requirements or preferences regarding databases for comparables?

No specific requirements have been officially requested. However, the FTA does make use of the French Diane database.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Tax authorities prefer French comparables but can accept regional ones such as pan European benchmarks.

What level of interaction do tax authorities have with customs authorities?

Low, but there is a trend toward increasing their interaction.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No. Management fees paid by a French company are deductible for corporate tax purposes provided they meet the following tax deductibility conditions:

- the French entity must actually benefit directly from the services rendered (ensuring there is no duplicate services or to the extent); and
- the amount charged (costs and relevant markup, if appropriate) to the French company should be consistent with the services rendered and should not be excessive.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No. Royalties paid by a French company are deductible for corporate tax purposes provided they remunerate an intangible asset effectively used and to

the extent the remuneration is arm's length. Specific provisions related to royalties paid for patents and related rights state that the French taxpayer shall only deduct the royalties to the extent (i) the use of the right is actual and cannot be deemed as an artificial operation with the aim to avoid the French tax legislation, and (ii) the use of the right creates over the licensing period an added value.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

No. Taxpayers must file tax return numbers that are consistent with the book numbers. Specific computerized accounting regulations strengthened the power of the FTA in case of tax audit to check the numbers booked by the taxpayers. Taxpayers need to maintain a mandatory "file of accounting entries" (in accordance with technical characteristics provided by law).

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. France has concluded approximately 120 double tax treaties. A mandatory arbitration clause has been introduced in the US – French double tax treaty and with all EU member states except Denmark.

If extensive, is the competent authority effective in obtaining double tax relief?

The 2006–2013 OECD statistics in respect of France's mutual agreement procedure (covering approximately the 2000 to 2013 period) indicate that very few cases result in double taxation.

When may a taxpayer submit an adjustment to competent authority?

It depends on the double tax treaty involved, but usually within three years after an adjustment leading to double taxation is proposed by a tax authority.

May a taxpayer go to competent authority before paying tax?

Permitted. Nonetheless, automatic postponement of tax collection does not apply anymore to mutual agreement procedures introduced as from 1 January 2014 (LPF art 277).

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

No. The APA program is successful in France (at least 50 agreements were granted since the creation of this program). On average, the FTA is reporting that it processes approximately 20 APAs per year.

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