

Advantages of establishing an Association Loi 1901 (non-profit association) for operating your Study Abroad Program in France

Your study abroad program has been established in France for some time. You have been advised by colleagues or partners to create a local legal structure, but your U.S. entity is reluctant to do so.

The following document outlines a number of reasons why you should consider setting up an *Association Loi 1901* to operate your program:

1. What is an Association Loi 1901?

Art 1 of the Law states: « *An Association is an agreement whereby two or more persons permanently pool their knowledge or activity for a purpose other than to share profits.* »

Therefore the key elements are:

- A contractual relationship creating rights and obligations for members.
- A common purpose that goes beyond the interests of the founders.
- Establishment on a long-term basis.
- Non-lucrative activity (your home institution, as founder, must also be a nonprofit organization).

2. Why creating an Association 1901 is the easiest and most cost effective option.

- Because it is simple to set up and to operate.
- Because it is the least costly and the most flexible way to operate.
- Because it creates an entity with a legal personality, a status that will facilitate your program's establishment of partnerships and contracts in France while financially and legally protecting the U.S. structure by creating a screen between the U.S. and French entities.
- Because it allows the program in France to remain under the full control of the association's founders, the U.S. structure. The Board of the U.S. structure and of the association is often one and the same.
- Because an entity with association status is well adapted to operating within the field of Education and Culture, for which the status was originally created. Any *Association Loi 1901* is considered to be an *organisation de bienfaisance* (service organization), and as such is seen in a positive light by the French administration and benefits from a preferential administrative system.
- It provides major advantages: reduced paperwork, basic accounting, a presumed commercial and VAT tax exemption (as long as the program does not earn profits on French soil and acts in a closed market - i.e. is not open to students here in France and does not advertise on French soil). The greatest advantage is being able to avoid the hefty 20% VAT on your financial flow, in other words on the entire budget transiting between the U.S. and France!

Nonetheless, some programs may not benefit from the presumed tax exemption, either because the operation of their activities exceeds the exemption ceiling or because they operate activities that are by nature subject to VAT. You may have to separate or outsource some of your program's financial activities, such as tourism or real estate, if you want to protect your tax exemption status.

It may be in the best interest of some programs to be subject to VAT, for example if they want to undertake major renovations or purchase their premises and retrieve 10 to 20% of the VAT paid on any invoice.

Keep in mind that nonprofit association status and VAT exemption may not be synonymous.

3. Other options (and why they are often less beneficial):

These are all legal, and for some programs they are a good option or even a necessity, but they also have drawbacks.

- **An individual (employed or free-lance) representing the U.S. program in France.**

He or she is often detached as an expat operating under the direct instructions of the U.S. institution.

This status should not be maintained in the long term - not only because it is rarely compatible with contractual and legal operation requirements, but also because it overexposes the individual who is mandated to legally represent the program without the protection of a legal entity. This individual can be held personally responsible for the obligations and liabilities of the program, namely for the payment of payroll taxes to *URSSAF*, other taxes and failed contracts. Similarly, the U.S. structure is overexposed and can be held liable if the liability of the local representative is overridden, without benefiting from the presumed tax exemption and the limited liability of a local structure.

In addition, according to the U.S.-French Social Security Agreement, an employee is supposed to be hired under a local contract. As an exception, he or she may be detached under an American contract provided such a temporary transfer can be demonstrated to be absolutely necessary in lieu of a local contract. In any case, this expat status can be maintained for no more than five years per position (NOT per employee). The U.S. program thus runs a major risk of the position being legally re-qualified as a local contract, in which case the program will be required to pay French payroll taxes – precisely those it wanted to avoid – along with heavy late fees and penalties.

- **Liaison Office (*Bureau de Liaison*) :**

This is a good starting point for a new program, allowing time to ensure that it will successfully take root. It is an intermediary stage between having just an individual representative and creating a permanent branch. Legally, the liaison office directly represents the U.S. institution, which remains the only legal entity, but it benefits from a degree of tolerated autonomy as a “future branch”. Conversely, while the contact person employed in France working as the liaison office might be personally responsible for taking care of all the required administrative registrations and declarations, especially for *URSSAF*, s/he is presumed to be working under orders and in good faith. The liaison office is only held liable if the U.S. structure fails to pay. This avoids placing too much burden on either the individual located in France or the U.S. institution. It is a little more secure than having just an individual representative because the link between the U.S. entity and the liaison office is official and therefore the individual is presumably acting upon the orders of the U.S. entity. It facilitates local networking and partnerships. The limitations of such a structure can pose problems however, in particular when it comes to signing documents or engaging major contracts and partnerships that all require signatures and, often, extra guarantees from the U.S., whereas these would not be required with a local associative structure.

Last but not least, the Liaison Office is supposed to *disappear once an office provides a full cycle of activity* in France (i.e. rapidly for a study abroad program—usually within 1 or 2 years and no more than 3 years). A liaison office is not supposed to exist for more than 5 years.

- **“*Entreprise étrangère sans établissement en France*”**

This is legal but has the same drawbacks as the previous liaison office. In addition, this structure does not benefit from tax exemption because an *entreprise étrangère* can be for profit. The U.S. structure is the only legal personality, which usually results in increased paperwork and this may also increase the personal responsibility of any representative in France (see “Liaison Office” above).

- ***Etablissement en France d’une Association étrangère***

This is often the next step of implementation following the liaison office. It has the same advantages as the *Association Loi de 1901* in terms of limited paperwork, basic accounting, presumed tax exemption and autonomy but the program does not have legal personality in France. It is also presumed to have the same nature of activity as the U.S. institution (make sure it does—if it is not exactly the same, it is time to register as an Association).

Being an *Établissement* facilitates administrative declarations (*URSSAF, médecine du travail...*) and enables the program to enter into ordinary contracts, to network and to develop partnerships. It is also the minimum requirement to be a long-term employer.

Many U.S. programs prefer to maintain their Study Abroad program in France as a mere *Établissement* because it allows the U.S. Board to maintain full control of the French branch: all major documents and decision-making must be validated and signed by the U.S. entity.

When the U.S. entity is well known by its name and reputation or through its long-time presence, the drawbacks of not having legal personality are manageable. Nevertheless, the absence of a legal entity, which can only be granted to an association created in France, can quickly become an obstacle for development in France, especially for newer programs because requirements are stricter than they used to be. Not having a legal entity in France also becomes a problem when a U.S. institution has several *Établissements* on French soil that do not propose the same nature of activity (hosting high-school students vs. university students for example, or teaching in one and not in others).

The U.S. institution should be reminded that creating an association is compatible with retaining full control of decision-making. The Board for the U.S. institution and the French association can be one and the same, and they can apply internal control standards, thus allowing the institution to avoid the drawbacks of not having a legal entity in France while retaining decision-making control.

It is recommended that the program at the very least be registered as an *Établissement* at the *Préfecture* so it can be more easily recognized. This reassures French partners and administrative services that French public policy is applicable and that the credibility of the entire U.S. and French structure has been assessed.

- **Company (SARL, SA, etc.)**

This status is not an option but a necessity when the U.S. structure is a for-profit organization or when the program acts on the open market in France (such as a placement agency) in a competitive way. The main consequence is that the company is submitted to both VAT and commercial taxes. The international tax agreement and international tax law offer some options to optimize tax exposure. The accounting and reporting requirements are more complex and some of the accounting is made public, along with some aspects of the company's activities. Any change triggers fees when filed.

NB: If your program is registered as an *Établissement d'enseignement supérieur*, the VAT exemption for higher education may be granted if the program meets the numerous selective criteria, even if it is a for-profit company.

Creating a Association Loi 1901: How to proceed?

What are the first steps?

You need to complete **legal formalities** in order to create and – although it is not legally required it is practically indispensable in order to open a bank account or to hire people and sign partnerships etc. – declare your association to make it an officially recognized entity.

Draft the by-laws. A number of websites provide templates. Be cautious, however, because most of them are designed to meet the needs of leisure or community organizations in terms of format and purpose, rather than an organization carrying out a continuing activity in an international setting like your study abroad program.

Frame and draft the by-laws as simply as possible. It is recommended that you design them according to your needs, and in terms of how your U.S. institution is used to operating (Board of Directors, General Assemblies, mission & purposes etc.):

- ⇒ How does your program in France currently operate? Why are you changing the status of your program by declaring it as an association, or updating your current association? What limitations are you currently experiencing (bank account, financial leeway, securing tax exemption, simplified accounting requirements, local authority, power to sign agreements, contracts or partnerships...)? And how will the creation of an *Association Loi 1901* ease or eliminate these obstacles?
- ⇒ How does your U.S. institution operate? Use its by-laws as inspiration in drafting those for your French association, closely modeling regulations concerning purpose, General Assemblies, Board Meetings and known standards after those of the U.S. institution. You can also use the by-laws of another U.S. study abroad program in France or those of one of your U.S. institution's other study abroad programs as a source of inspiration, which can be reassuring and will lend coherence to the project.

Detail the association's goal and expand its scope as widely as possible, setting out exactly what your program intends to do and any side activities or potential developments. The association will be ruled by the by-laws you have written, and they must be wide enough in scope to cover all activities the association may have, in order to avoid having to change the by-laws too often.

Choose a name for the association, preferably simple and linked to your U.S. entity (adding "In France " or In Paris" for example) in order to give your program positive visibility.

You must declare an address in France as headquarters. Using only the address in the U.S. is no longer sufficient. This can be someone's home, an office, or any building where the activities might take place. It is possible to change the official address by decision of the Board without an assembly... as long as this is permitted by the bylaws.

The full names of the people running the association (Board of Directors) must be declared as well as their personal addresses, dates and places of birth, nationalities and current occupations. This information must be updated anytime the Board changes. Board members do not need to be French.

The by-laws must be signed by all of the founding members, then two original signed copies must be sent to the *Préfecture* or *Sous-Préfecture* of the department where the association is located.

The **Déclaration (registration)** may be done directly at the *Préfecture* by sending the CERFA form, a copy of the by-laws and the list of the board members. This may also be done online. You simply need to create an account, which can be done in a couple of clicks (see below). Please note that the website is quite well done and simple BUT the capacity to upload documents is limited. This service should improve soon. In the meantime, it is recommend that you open an account, wait a few days, try to upload your by-laws, and if you aren't able to, mail them and wait for the *Préfecture* to post them to your account. Documents are more easily uploaded from there.

You will have to pay a tax of at least 44€ for the publication of the creation of the association in the *Journal Officiel* (contains a record of all legal matters nationwide) which marks the official existence of the association in the eyes of a third party. The *Préfecture* will take care of this publication (mentioning the association's name, date of registration, and purpose of the bylaws).

Any subsequent modifications should be declared within three months of the General Assembly or Board Meeting during which the changes were voted upon (a copy of the *procès verbal* (minutes) of this meeting must be included with the declaration), but in most cases there are no penalties if this deadline is not respected, as long as no third party suffers prejudice from the delay. So while it shouldn't be a cause for anxiety, don't forget keep the status of the association up-to-date by posting changes to your by-laws, to the Board or to the headquarters address.

Get a SIRET number, delivered by the *INSEE*, which will be the association's business identification number. You should insist that your core activity is either Education or Animation so they will provide an appropriate *code NAF*. While it is only used for statistical purposes, the *code Naf* also designates the applicable CBA (collective bargaining agreement); it is therefore very important to make sure you get the appropriate one, either for *Enseignement privé hors contrat* or for *Animation socio-culturelle*.

Get an URSSAF number, indispensable for all hiring and HR purposes. Be sure to request a *NAF* for education if you teach as this supports the presumption of tax exemption status and indicates the applicable CBA.

How to do it:

There is now an online service. If you previously had an account on servicepublic.fr, make sure it has properly migrated to the new website.

<https://www.service-public.fr/compte/se-connecter?targetUrl=/loginSuccessFromSp&typeCompte=association>

You will also declare any changes to your headquarters address, by-laws or the composition of your Board of Directors or Executive Committee online. You will not declare your accounting books or the minutes of your

Board, General Assembly or Executive Committee meetings online, unless there is something to be declared at the *Préfecture*.

How to operate once established:

Call General Assemblies:

- Mandatory at least once a year
- The association's members meet to discuss business orientation, elect new Board members, and validate the budget. You must also call an Extraordinary General Assembly in specific cases such as the recall of a board member, changing the by-laws, purchasing your premises or dissolving the association.

As long as it is permitted in the by-laws, it is possible to hold the General Assemblies in the U.S. or anywhere else. Be sure to mention this when drafting the by-laws.

You will also facilitate the voting process and tailor it to your needs.

***Conseil d'administration* (Board of Directors):**

The Board of Directors must be composed of at least a president, a secretary and a treasurer that the association will appoint. You may have VP(s) and other members, with or without specific tasks or responsibilities. It generally isn't necessary for the Board of Directors to be composed of too many members.

It is recommended that the by-laws grant significant power to the Board to administrate and operate the association. This avoids having to call General Assemblies too frequently. There is wide flexibility in French associative law in terms of the scope of the Board's powers vs. those of the Assembly.

A *Bureau* (Executive Committee) is a restricted Board of Directors and is generally limited to the President, the Treasurer and the Secretary. Having an Executive Committee is not mandatory and it likely is not necessary for your program. Often, the Executive Committee and the Board of Directors are one and the same.

Although it is not prohibited per se, it is not advisable to name the Director of the program to the Board, as by legal standards being both a paid employee of and a Board member for the same association are not easily compatible, due to the subordination of the latter to the former.

Several other options remain in terms of the role to be played by the Director. One is to name him or her as a non-voting Board member. This ensures close ties between the Board and the Director while avoiding a legal conflict of interest. In this case it is also important to state that the Director will be immediately dismissed from the Board should his/her contract as Director end, no matter the reason for termination.

A little monitoring:

- Be sure to hold an annual obligatory General Assembly, and **have the minutes** signed by at least two Board members.
- Keep and update the register of the General Assembly, Board and Executive Committee meetings, both in France and in the U.S. if that is where the meetings are held.
- Don't forget to also update the declarations on www.service-public.fr. It is free and can be accessed online by you and by your Board members and management in the U.S.
- Keep **simple accounting reports** (periodic summaries of income and expenditure records) of your activity in France in order to be able to show that there is no profit and that you only use the budget granted. These reports will also be useful if you request tax exemption status or if you undergo *URSSAF* or tax audits.

- Be aware that if you develop a *secondary activity* under the same association, you must ensure that it neither makes a profit nor acts on the open market in a competitive way (such as renting your premises, managing real estate for lodging students, opening up tours to nonmembers for a fee, etc.). If the secondary activity generates a *significant budget*, but not a profit, you may want to consider creating a *separate association in order to keep education as the main goal* and avoid creating confusion that could make the tax administration suspicious or cause them to *question your association's tax exemption status*. If these activities remain strictly within the goal of your program (such as renting some of your classroom space on a limited basis), and represent limited financial flows, then it is acceptable.

How to dissolve an association:

It is as easy to dissolve an association as it is to create it. It requires following the rules set out in the by-laws, calling a General Assembly, and holding a vote. Following those steps a simple declaration must be filed at the *Préfecture* along with the minutes from the General Assembly.

In the end, all of the assets invested in the association are returned to the home institution in the U.S., provided this is what the by-laws state, so be sure to insert such a provision.

In conclusion: if any “wrong” reasons not to establish an association remain, please consider the following responses:

- It's *complicated*
 - ⇒ It is the simplest possible legal structure to create and to operate. It allows for a large scope of internal organization, and can be tailored to your needs and individual situation.
- It's *expensive*
 - ⇒ It is far cheaper than setting up a company, or than justifying why you don't have a legal structure!
 - ⇒ There is no fee to change the by-laws aside from the publishing fee (44 € on average). It is by far the least expensive solution.
 - ⇒ It offers the best tax status by far.
- Our program will be submitted to French law and government.
 - ⇒ Associations are indeed governed by French law, but the aim of an association is to grant its members a great deal of freedom to draft the by-laws. The only requirement is that the association must fall within general French public policy - and U.S. study abroad programs always do.
 - ⇒ It is compatible with most of your U.S. standards.
 - ⇒ You will be much more strictly submitted to French public policy, laws and regulations and will pay much higher taxes if you are NOT an *Association Loi 1901*.
 - ⇒ Your online account can be consulted at all times by your U.S. institution, ensuring they are fully informed of the status of their association in France.
- We must *speak French*
 - ⇒ There is no need to be (or to speak) French to set up an association in France. The members and representatives may all be American. The by-laws must be in French but you have the option of drafting them in English and then translating them, thus having full control of the meaning and wording. But yes, the documents must be drafted and filed in French when it comes to administrative requirements.
- It's *hard to do business* in France
 - ⇒ Having an association is the easiest way to do business in France. And as long there are study abroad programs in France...there is business to be done. Keep in mind that statistically, the study abroad programs in France that are set up as Associations are long lasting. So it works.
- It's hard to find Board members.

- ⇒ Two founding members are enough to set up an association, and it is easy to dissolve it if you stop operating in France. It's unlikely that you'll be able to operate any other legal structure with fewer people.
- We cannot continue to send our own *professors as RDs*
 - ⇒ Of course you can. Your status as an association will be the best way to detach professors with American employment status for temporary assignments and to ease the visa process, which is more complicated otherwise.

FAQ:

Who can I use as legal advisor to guide me through the process?

You can use an accountant to guide you through the accounting and day-to-day management of the association.

The links below to readings and websites will provide you with an overview of the process and regulations.

And of course you can rely on your Attorney!

How long does it take?

- Bringing the decision makers to the table to draft the by-laws is usually what takes the most time. Once the by-laws have been written and the Board of Directors has been established, things move very quickly - you simply need to file the official declaration and then within a month the association should be published in the *Journal Officiel*. If you do the declaration online, the administration at the *Préfecture* has 5 working days to validate or veto (part of) the declaration. Once you have the receipt from the *Préfecture* (online or in writing), you officially have a functioning association even if the publication takes a little longer.

When do I set up the bank account?

- You can do this as soon as the association has been declared. Legally you can even do it before the declaration, but most banks require the declaration receipt first, which grants a business identification number to the Association.

Suggestions for further reading...

<http://cesc.online.fr/1901.html>

<http://www.counsellinginfrance.com/associations.htm>

<https://www.angloinfo.com/how-to/france/paris/working/starting-a-business/non-profit-associations>

<https://www.service-public.fr/associations>

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