

Anti-corruption law: a major reform for France's anti-corruption legislation

As the target of significant criticism from the Organisation for Economic Co-operation and Development (OECD), France must strengthen its approach to combat bribery and corruption. "Sapin II", a draft bill on transparency, anti-corruption and economic modernization, introduces a new framework legislation to prevent, detect and punish corruption in France and abroad.

New measures to prevent corruption

Among its many objectives, the proposed legislation will create an obligation for companies (as defined below) and their senior management to prevent bribery and risks of corruption

This duty will apply (i) to companies which employ over 500 employees, (ii) to companies belonging to a group which employs over 500 employees and has a consolidated annual revenue of at least EUR100 million (as well as their directors). Fulfilment of this obligation will force companies to adopt efficient anti-corruption internal procedures including:

- A code of conduct that defines prohibited acts and behaviours;
- An internal whistle blowing system that enables employees to report code of conduct violations;
- Due diligence procedures for the company's clients and suppliers;
- Accounting control systems to avoid fraud, including acts of concealment or influence peddling;

- Disciplinary sanctions for breach of internal rules.

While many French companies had already adopted efficient measures to prevent and detect corruption, these nonetheless remained with the "soft law" of a self-regulated framework.

As part of the bill's innovation, French companies will be required to implement these measures under the close supervision of a new national agency against corruption (the "Agency"), invested with many missions to detect and prevent corruption in commercial transactions.

Under Sapin II, the new Agency will replace France's Central Service for the Prevention of Corruption ("*Service central de la prevention de la corruption*"). Created in 1993, with no investigative or prosecutorial powers, this entity has little to no enforcement authority. Unlike its predecessor, the Agency, which would be supervised under the joint authority of the French ministries for Justice and Finance, will have broader investigative and sanction powers to fight corruption and to impose heavy sanctions for breach of compliance procedures. For instance, to fulfil its missions, the Agency will be empowered to obtain documents of all kinds, conduct on-

site investigations, and assume an intermediary role for whistleblowers by reporting allegations directly to the public prosecutor.

Contours of the Reform

- The creation of an obligation for large French companies to prevent risks of corruption through a duty to implement efficient internal measures.
- The creation of a national agency with powers to detect and punish failures to implement corruption prevention measures.
- The creation of administrative and criminal sanctions imposed and monitored by the Agency.
- The possibility for prosecuted entities to enter into criminal settlements with the French authorities, similar to deferred prosecution agreements used in the US and the UK.

New repressive measures

A first under French law, Sapin II will also introduce the possibility for prosecuted entities to enter into criminal settlements (called "*Convention de compensation d'intérêt public*") with the French authorities for allegations of corruption. As part of the settlement agreement, criminal charges would be dropped by the French authorities in exchange for (i) the payments of fines by the prosecuted entity, and (ii) compliance commitments monitored by the Agency or a period that cannot exceed 3 years. Under the proposed law, the settlement agreements will need to be ratified by the French Court of First Instance. Although the judge's ratification will effectively terminate the criminal prosecution (provided that the entity complies with its commitments under the settlement), it will not extinguish the possibility for victims to bring civil claims against the entity.

Last, the settlement agreement will not be registered in the entity's criminal record. However, the Agency will be entitled to issue a press release published on its website.

Distinctively different from the current system in France, which only provides for a specific guilty plea agreement procedure that occurs after criminal proceedings have already been initiated, and which imposes a final conviction registered in the entity's criminal record, this new settlement is more similar to deferred prosecution agreements used in the United States and, as of recently, in the United-Kingdom as well.

In addition, the new legislation also introduces new administrative and judicial compliance-related sanctions.

First, under Sapin II, the Agency's enforcement committee can impose heavy administrative sanctions to companies with internal anti-corruption procedures deemed insufficient or ineffective. These sanctions can include fines for up to EUR 1 million for the company, and EUR 200,000 for individuals, as well as injunctions to force the company to implement effective compliance programs within a period of time that cannot exceed 3 years.

Second, similar to the monitorship instated by US authorities, a company convicted for acts of corruption may face additional criminal sanctions, including the obligation to implement, at its own expense, and within a maximum of three years, effective compliance programs in line with guidance published by the Agency. Fulfilment of these obligations will be monitored by the Agency.

In addition to these key measures, Sapin II also introduces an offense of influence peddling for foreign officials. If entered into force, Sapin II's radical reforms may raise France's anti-corruption legislation to the same level as other European countries.

The proposal will be presented to the Council of Ministers on 23 March 2016, before it can be examined by the French National Assembly and Senate. It is expected to enter into force over the course of the year.

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