

French Anti-Corruption Reform Expected In 2016

France to introduce significant changes affecting large companies and top management, to improve current anti-bribery system.

The French Parliament is expected to enact "Sapin II" on transparency, anti-corruption and economic modernization in 2016.

With this reform, France intends to improve prevention, detection and punishment of corruption in France and abroad, by introducing significant changes into the current French anti-bribery system.

These changes are broadly inspired by the systems already in place in the UK and US.

In a nutshell

A binding obligation upon large companies and their top management to prevent risks of corruption

The bill would impose a legal obligation upon companies and their senior management to prevent bribery and corruption risks, requiring they adopt the following anti-corruption internal procedures:

- A code of conduct that defines and illustrates prohibited acts and behaviors
- An internal whistleblowing system to allow employees to report acts or behaviors in violation of the company's code of conduct
- A risk mapping (regularly updated and based on the business sectors and geographical areas concerned)
- Due diligence procedures for the company's clients and suppliers
- Internal or external accounting control systems
- Training programs for managers and individuals most likely to be exposed to corruption risk
- Disciplinary sanctions for breach of internal rules

Under the bill's current version, this obligation applies to (i) companies with over 500 employees, and (ii) companies belonging to a group with over 500 employees and a consolidated annual revenue of at least €100 million. This obligation also applies to the companies' top management.

A new anti-corruption enforcement body

As part of the bill's innovation, a new anti-corruption body (the “new Body”, which was named Agence Nationale de Prévention et de Détection de la Corruption, or ANPDC during March 30th press conference of the French Minister of Finance) will replace the existing SCPC, an autonomous inter-ministerial structure attached to the Ministry of Justice, which was created in 1993 to coordinate anti-bribery prevention and enforcement in France. The new Body will have more powers.

This new Body will act under the common supervision of the Minister of Justice and the Minister of Budget. The French President will nominate the Body's director for a non-renewable six-year term.

Under the bill, the ANPDC will be charged with different missions, which can be summarized as follows:

- **Issuing guidelines** to help both public organizations and economic operators to fulfill their obligation to adopt internal procedures for preventing and detecting corruption;
- **Controlling the adequacy of internal procedures** public organizations and economic operators have in place, and reporting the quality and efficiency of such internal procedures to the public authority in charge
- **Monitoring compliance with the French blocking statute** (Law No. 68-678 of July 26, 1968) in relation to foreign compliance procedures, upon request of the Prime Minister
- And in general: ensuring centralization and communication of the information; participating to the administrative coordination; and supporting public actors and economic operators

To fulfill these missions, the ANPDC will be invested with extensive investigating powers. For example, the ANPDC will be empowered to:

- Interview any person of its choice
- Obtain documents of all kinds
- Conduct on-site searches and verifications

Regarding its administrative sentencing power, the ANPDC will have the option to issue formal notices to companies that are deemed to have insufficient internal procedures in place to prevent corruption.

The ANPDC will also have the power, through its Sanctions Committee to (i) send compliance injunctions to non-compliant companies, in order to force the companies to implement effective compliance programs within no more than five years, and (ii) impose fines of up to €200,000 for individuals and €1 million for legal entities, in addition possible publicity measures.

A criminal penalty of “mandatory compliance”

Inspired by the US system of monitorship, the bill creates a penalty of “mandatory compliance” for companies convicted of acts of corruption.

This additional sanction aims to ensure that sanctioned companies modify their behavior and implement effective compliance programs at their own expense, within a certain court-defined time limit (which in any case cannot exceed five years).

The ANPDC would control the company's fulfilment of this obligation, and would report the actions undertaken to the Public Prosecutor.

Failure to comply with this obligation could itself be criminally sanctioned by a maximum of two years' imprisonment and a fine of up to €30,000 for individuals, and for legal entities, up to the amount of the fine applicable to the acts of corruption they have been convicted of.

Towards the possibility for legal entities to enter into criminal settlements with the authorities?

A first draft of the bill intended to bring a major innovation which consisted in the possibility for entities accused of corruption to enter into criminal settlements (called "*Convention de compensation d'intérêt public*") with the French authorities, as long as prosecution had not been set in motion.

Under such settlement agreement, the Public Prosecutor would have been able to propose the accused entity to:

- (i) Pay a fine (capped at 30% of the annual average turnover over for the past three years) to the French Treasury; and/or
- (ii) Implement a compliance program to ensure the fulfillment of the required anti-corruption internal measures (see above, *i.e.*, code of conduct, internal whistleblowing system, etc.), under the supervision of the ANPDC, for a period that could not have exceeded three years

As the French State Council issued a negative opinion of such proposed measure, the last draft of the bill presented to the French Government no longer includes the criminal settlement procedure. It is, however, expected that the procedure (or a revised version) will be reintroduced in the text of the bill *via* parliament amendment. This will thus need to be confirmed.

Calendar / next steps

- The bill was presented to the French government on March 30, 2016
- France's Finance Minister, Michel Sapin, will now submit the bill successively to the French Parliament (National Assembly and Senate) for discussion
- Parliament is expected to enact the final version of the bill this year

However, many French companies already subject to the provisions of the FCPA and the UK Bribery Act did not wait for the enactment of Sapin II bill to begin designing and implementing compliance policies and procedures. These entities will have now to determine if their preventative measures satisfy the requirements of the new French law.

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