

# Client Alert

Special Matters &amp; Government Investigations Practice Group

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## Sapin II Law: The Modernization of France's Fight Against Corruption

After years of facing international criticism for purported “laxity” towards transparency and the fight against bribery and corruption, France has adopted new legislation aiming to rectify this deficiency, which imposes substantial obligations on companies operating in France. The *Law on Transparency, the Fight against Corruption and Modernization of Economic Life*, or the “Sapin II Law” seeks to elevate France’s bribery and corruption intolerance to that of the United States and United Kingdom and has the capacity to change the culture of operating a business in France. France adopted the Sapin II Law on November 8, after several months of negotiations.

France’s Finance Minister, Michel Sapin announced the Draft Bill in July 2015, at the time of his report to the Council of Ministers, along with several statements, in which he made clear that the status quo was no longer acceptable to French businesses. Sapin stated “*in the fight against corruption, France cannot just satisfy itself with the existing situation. It must seize the opportunity to adopt innovative tools to detect, prevent, and effectively punish corruption and attacks on integrity*” as he began to put in place the mechanism to transform French compliance law.

Following his announcement, the Proposed Bill was submitted in late March 2016 and approved by the National Assembly in mid June 2016. In July 2016, the Upper House recommended several amendments to the June provisions. However, the National Assembly rejected the July recommendations, and instead ratified the June draft with few additions. This version was approved by the French National Assembly in late September, and the Final Bill was adopted in November. The Sapin II Law went into effect on November 10.

The Sapin II Law aims to alter France’s approach to anti-bribery and corruption, and move towards transparency by imposing many crucial changes. Most notably, the Sapin II Law imposes an obligation to prevent and detect corruption, provides whistleblower protection, introduces the possibility of avoiding prosecution, and establishes a national anti-corruption agency with the authority to review the above. The Sapin II Law also operates extra-territorially against violations outside of France.

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## Obligation To Prevent and Detect Corruption

Going above and beyond the obligations enumerated in the United States Foreign Corrupt Practices Act (FCPA) and U.K. Bribery Act, the Sapin II Law imposes an affirmative obligation to prevent and detect corruption risks. Concretely, the Sapin II Law mandates that companies adopt a compliance plan if they employ over 500 individuals (or belong to a group of companies whose parent company is headquartered in France and employs over 500 individuals) and generate consolidated revenues exceeding 100 million Euros. Close to 1,600 companies in France fit this description.

Such compliance plans must contain:

- An ethics code elucidating prohibited conduct;
- A procedure devoted to internal whistleblower complaints;
- A risk mapping analysis;
- A procedure for assessing the integrity of third parties, such as clients, suppliers, and intermediaries;
- A system of audits;
- Employee training at various levels;
- The practice of disciplinary sanctions.

Companies subject to these requirements have until May 2017 to implement their compliance programs. Failure to do so may result in a warning or injunction from the monitoring Agency. The Agency may also refer the matter to the Sanctions Commission who can levy fines as large as one million Euros on the company, or two hundred thousand Euros on an individual.

## Whistleblower Protection

Whistleblowers, defined under the law as “*any individual who reveals or reports, disinterestedly and in good faith, a crime or misdemeanor; a serious and manifest breach of an international commitment duly ratified or approved by France, of an unilateral act of an international organization adopted on the basis of such commitment, or of a law or regulation; or a serious threat or harm to the public interest, of which he/she has had personal knowledge.*” are granted additional protections under the Sapin II Law. Similar to United States practice, the Sapin II Law offers the opportunity for financial assistance to whistleblowers who are punished as a result of their good faith complaint and inflicts financial penalties against those who seek to penalize the whistleblower. These protections are applicable both within the French administration and within private companies which employ over fifty individuals.

## Avoidance of Prosecution

Comparable to the United States’ Deferred Prosecution Agreements, the “*convention judiciaire d’intérêt public*” empowers companies to enter into an agreement with the Prosecutor “*Procureur de la République*” that will enable them to avoid prosecution or criminal sanctions. In order to take advantage of this provision, the companies must pay a public fine and implement an internal compliance program which will be monitored by the Agency for the following three years. The fine is determined based on the gains of the wrongdoing and may not exceed 30% of the

company's turnover. This provision is a major innovation in French procedure, which formerly automatically imposed public convictions on those who pled guilty.

## **Agence Française Anticorruption**

The Sapin II Law creates a new National Agency for the Detection and the Prevention of Corruption, “*Agence française anticorruption*” (“the Agency”) which will replace the Central Service for the Prevention of Corruption (“the Service”). Going beyond the Service, the Agency has investigative powers and the ability to request documentation, much like the United States Department of Justice. The Agency will come under the authority of the French Minister of Justice and Minister of Budget, and is empowered to publish an annual report.

## **Conclusion**

With more companies on the United States FCPA top ten enforcement action list than any other country, France is well poised for modernization in its fight against corruption. The Sapin II Law aims to create an environment conducive to fulfilling a duty of vigilance, and obliges the some 1,600 companies subject to its authority to prevent and detect crucial threats. In the future, global companies operating in France may need to evaluate their compliance plans to ensure that they not only satisfy U.S. FCPA and U.K. Bribery Act obligations, but also meet the requirements of the new framework established by the Sapin II Law.

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