

# Update on Sapin II law

---

January 2017

**Authors:** [Ludovic Malgrain](#), [Jean-Lou Salha](#), [Arthur Merle-Beral](#)

## Compliance programmes and related sanctions

On 8 November 2016, the French Parliament passed a law targeting transparency, anti-corruption and the modernisation of the economy, known as the Sapin II Law. This law entered into force on 11 December 2016. Consequently, implementation of compliance programmes within companies will have to be effective by mid-2017.

Although implementing decrees of the law remain to be released, companies and their directors should prepare for new requirements to create internal compliance programmes and be aware of the sanctions that can be imposed on any company and its directors who fail to implement such programmes.

### A broad scope

The provisions related to the implementation of compliance programmes are applicable to any company (i) having at least 500 employees, or belonging to any group whose parent company's headquarters is located in France and which has at least 500 employees, and (ii) whose annual turnover is more than €100 million. Presidents and directors of such companies may be held liable for failure to implement compliance programmes.

Similarly, these provisions are also applicable to limited liability companies (i) having at least 500 employees or belonging to a group of companies having at least 500 employees and (ii) whose annual turnover is more €100 million. Members of the executive board of such companies may be held liable for failure to implement compliance programmes.

**These provisions apply to French subsidiaries of any foreign company having at least 500 employees whose annual turnover is more €100 million.**

### A new anti-corruption agency and sanctions

One of the key features of the Sapin II Law is to make the implementation of compliance programmes legally binding for affected companies. This appears to be inspired by existing laws and regulations relating to anti-money laundering and the fight against terrorism. As part of this, Sapin II establishes a French anti-bribery agency, which will control the implementation of compliance programmes within companies.

To fulfil its mission, the agency will have the power to obtain any document or information on the company's premises. Officers of the agency may also communicate with any person whose cooperation seems necessary, in a way ensuring confidentiality.

Following its control, the agency makes a report on the company's compliance programme and, where necessary, recommendations to improve it.

Where a company fails to implement or to improve a compliance programme, the agency may either issue a warning or impose sanctions. These include:

- 
- A fine on any director of up to €200,000.
  - A fine on any company of up to €1 million.

Any decision issued by the agency can also be made public.

Furthermore, it is worth noting that the agency will not have to prove any acts of bribery to assess whether a compliance programme has been fully implemented. This means that a company and its directors could be sanctioned where no criminal act has been perpetrated.

## **New legal requirements for compliance programmes**

The Sapin II Law will compel companies to set up the following eight measures and procedures as part of their compliance programmes:

1. A code of conduct defining and illustrating the different types of prohibited behaviours, notably bribery or influence peddling.
2. An internal system of alerts designed to enable employees to report any violations of the above code of conduct.
3. Risk mapping, which will be regularly updated and is designed to identify, analyse and rank the company's exposure to any risk related to bribery.
4. An assessment of clients, providers and intermediaries in light of the risk mapping.
5. Accounting controls designed to ensure that the company's books and accounts are not used to conceal bribery acts or influence peddling.
6. Training for managers and employees exposed to the risks of bribery and influence peddling.
7. Disciplinary sanctions against employees in case of violation of the code of conduct.
8. Internal control procedures to assess the efficiency of the compliance programme.

In light of the above, although many companies have already implemented compliance programmes, the introduction of this new, binding framework is a good opportunity for companies and their directors to update and adapt these programmes to the French legal landscape in order to avoid any sanctions in the future.

Indeed, the mere transposition of an existing compliance programme to a French subsidiary of a foreign group is not recommended since there are specific procedures to be followed under French Labour Law when implementing such a programme.

## **New criminal offence related to bribery, broader jurisdiction and French DPA**

Beyond the implementation of compliance programmes within companies and the sanctions imposed on the latter and their directors for failure to implement such programmes, the Sapin II Law introduces a new criminal offence of influence peddling of foreign public officials, widens the jurisdiction of French criminal courts and creates an alternative procedure to criminal prosecution.

### **A new criminal offence related to bribery**

Prior to the Sapin II Law, influence peddling of foreign public officials was not punishable under French criminal law. The Sapin II Law therefore creates a new criminal offence that brings French criminal law into line with anti-corruption legislation in other jurisdictions.

---

Sapin II makes any company or individual criminally liable if it offers a donation, gift or reward to induce a foreign public official to abuse his real or alleged influence with a view to obtaining, employment, contracts or any other favourable decision from a public authority or the government.

The offence is punishable by up to 5 years' imprisonment and a fine of €500,000.

### **A broader jurisdiction for the French criminal courts**

The Sapin II Law has several significant features. First, it gives extraterritorial effect to French criminal law. French courts will be able to prosecute French citizens committing acts of bribery or influence peddling abroad even without any complaint filed by the alleged victims, and regardless of any official denunciation by the State where the offence was perpetrated. In addition, French courts will be able to prosecute foreigners usually residing in France for acts of bribery and influence peddling committed abroad. This extension aims at sanctioning foreign directors of companies subject to French law.

Secondly, the Sapin II Law provides that the public prosecutor will no longer have a monopoly on initiating the prosecution of bribery of a foreign public official. Following the entry into force of Sapin II, other associations fighting corruption will be able to file a complaint with an investigatory judge in order to trigger such prosecution. In doing so, the Sapin II Law aims at widening the number of prosecutions in an area where the OECD recently criticised France for its lack of enforcement.

### **An innovative tool for French judges: the French DPA**

The above mentioned provisions both strengthen French criminal law in order to fight against bribery and influence peddling. Similarly, the creation of the judicial agreement in the public interest – which has been largely compared to the deferred prosecution agreement (DPA) under US law – is also designed to improve the enforcement of criminal law in this field. Indeed, this agreement can be offered to any legal person suspected of having committed bribery, influence peddling and/or laundering of the proceeds of tax fraud, at the initiative of the public prosecutor or the investigating judge depending on where the criminal procedure stands.

Where such an agreement is settled, the fine imposed on the company may be up to 30% of its average annual turnover within the last 3 years at the time the offence was committed. In addition, the company will be compelled to implement a compliance program under the control of the anti-corruption agency for 3 years. Notwithstanding any settlement, the representatives of the company may still be held liable for the offences committed.

The judicial agreement in the public interest will have to be validated by the President of Tribunal after a public hearing but this validation will not have the effect of a sentencing judgment.

It is worth noting that this agreement is applicable to current criminal procedures.

White & Case LLP  
19, Place Vendôme  
75001 Paris  
France

T +33 1 55 04 15 15

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.