

New French Transparency and Anti-Corruption Law

Creation of a Whistleblower's Common Status

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On December 10, 2016, the law n° 2016-1691, also known as “Sapin II”, relating to transparency and anti-corruption measures (the “**Law**”) was published in the French *Journal Officiel*. Notably, the Law creates a new legal framework for whistleblowing.

The Framework

The Law provides a definition of who can be deemed to be a whistleblower and sets out new measures to facilitate and secure protection of such whistleblowers.

These provisions will come into force after the publication of an administrative decree.

Definition

The Law defines a whistleblower as “a physical person who reports, selflessly and in good faith, a crime or an offence, a serious and obvious breach of an international commitment duly ratified or approved by France, of a unilateral act from an international organization issued on the basis of such commitment, of law or regulation, or a serious threat or harm to the public interest, of which he has personal knowledge”.

However, the Law sets limits in respect of the content of the warning. Any facts, information or documents protected by a French defense secret, medical secret or matters relating to attorney-client confidentiality are excluded.

Reporting Process

The whistleblowing process should take place as follows:

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1. The whistleblower should raise the alert with their hierarchical manager(s), employer or the person(s) designated by the employer for that purpose;
 2. If the alert is not addressed within a reasonable time period, the alert can be raised to the relevant administrative or judicial authority, or to the professional authorities; and
 3. If the alert is still not addressed within three months, the whistleblower can disclose it to the public through the press or social media.

Where there is a serious and imminent threat or risk of irreversible damage, the whistleblower may bring the alert directly to the attention of the administrative or judicial authority, or to the professional authorities. The whistleblower may also alert the public directly.

Companies employing at least 50 persons are required to draft and implement internal procedures to enable their employees to initiate, on an anonymous basis, whistleblower alerts when necessary. During the entire whistleblowing process, the identity of the whistleblower, the information provided and the person(s) involved in the reported alert must remain confidential. Revealing information that could lead to the identification of a whistleblower is punishable by up to two years' imprisonment and a criminal fine of up to EUR 30,000 (the legal entity itself may face a criminal fine of up to five times this amount).

Protection

Whistleblowers must not be subject to discriminatory measures and any retaliation by an employer following an alert will be considered null and void. Preventing the right to alert is a crime punishable by up to one year of imprisonment and a criminal fine of up to EUR 15,000 (the legal entity itself may face a criminal fine of up to five times this amount).

Anti-corruption Provisions

Six months after the publication of the Law, companies with a turnover of at least EUR 100 million with 500 or more employees will have to take all necessary measures to prevent and detect—in France and outside—acts of corruption or influence trafficking (e.g. implementation of an internal alert procedure).

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