



November 2016

Follow @Paul_Hastings



With the Sapin II Law, France Is Adopting a New Anticorruption Law and Regulations

By [Philippe Bouchez El Ghozi](#), [Clémence Auroy](#) & [Dorothee Hever](#)

On November 8, 2016, the definitive text of the Sapin II bill of law was adopted by the French National Assembly. Even if the text is currently challenged by the Constitutional Council (but not regarding the anticorruption provisions), the Sapin II Law should be published and effective within a few weeks.

Inspired by international standards and, in particular, the U.K. Bribery Act, this law contains significant changes in the area of prevention and elimination of corruption. In particular, the statute (1) creates an obligation to prevent risks, (2) creates additional penalties for being out of compliance, (3) creates a protected status for whistle blowers, (4) creates a French Anticorruption Agency ("*Agence française anticorruption*"), and (5) creates a legal public-interest agreement as an alternative to criminal prosecution.¹

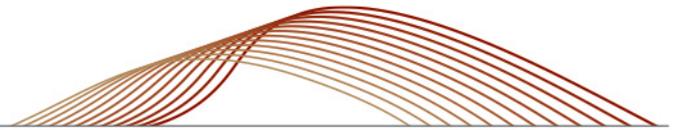
1. The Sapin II Law creates a **new obligation to prevent corruption risks** that applies (i) to companies with more than 500 employees and (ii) companies belonging to a group with at least 500 employees, the principal and registered office of which is in France and the revenue of which is more than €100 million and to their executive management.

This obligation also applies to:

- (i) presidents and chairs and managing directors or general managers of state entities engaged in an industrial or commercial activity and (ii) members of the Executive Board ("*directoire*") of companies with at least 500 employees belonging to a group with at least 500 employees and the revenues or consolidated revenues of which are greater than €100 million; and
- to subsidiaries and companies controlled by a company preparing consolidated financial statements (Article 17 of the Law).

The affected companies will be required to take effective steps to combat corruption which must include:

- adoption of a code of conduct setting forth prohibited conduct;
- implementation of an internal alert or whistle blowing system;
- preparation of a universe of risks;
- implementation of procedures to audit and verify the integrity of contractual partners (clients/customers, suppliers, intermediaries);



- performance of accounting audits;
- training and education of exposed managers and staff;
- implementation of disciplinary sanctions; and
- an internal audit and evaluation of the steps taken.

In the event of breach by the affected companies, the sanctions committee of the French Anti-Corruption Agency (*cf. infra* § 4) may issue a warning or impose compliance orders as well as sanctions and penalties (up to €200,000 for individuals and €1,000,000 for legal entities, together with possible publication of the sanction or penalty).

2. The Sapin II Law contains a new Article 131-39-2, inserted into the Criminal Code providing for **an additional obligation to implement compliance** (Article 18 of the Law). It involves instituting a compliance program for no more than five years, under the supervision of the French Anti-Corruption Agency, on the part of anyone found liable. Failure to institute such compliance program will itself be an offense carrying a penalty of two years' imprisonment and a fine of €50,000 for individuals and, for legal entities, the same fine as the one for the offense for which they have been found liable and which gave rise to imposition of the penalty set forth in Article 131-39-2.

In addition, the bill provides for taking account, in evaluating the penalty in cases of demonstrated corruption, of the existence of a plan to prevent and detect corruption ("*account shall be taken, in carrying out the penalty, of measures and procedures already in place*").

3. The Sapin II Law introduces a **protected status for whistle blowers**. A whistle blower is thus not criminally liable for violating any secret protected by law, when such violation is "*necessary and proportional to protecting the interests involved.*"

Initially, the matter should be brought to the attention of the person's superior, thereafter to management, or the responsible person appointed thereby. If nothing is done "within a reasonable time," the matter may be brought to the attention of the appropriate judicial, administrative, or professional authorities. Refusal to bring a matter to the attention of an employer or appropriate authority is subject to one year's imprisonment and a fine of €15,000 (Article 12 of the Law).

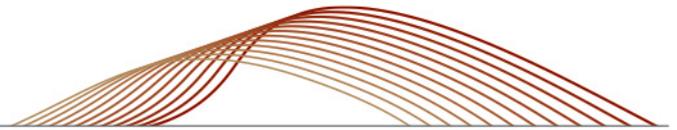
For private law legal entities law with more than 50 employees, appropriate procedures for accepting reports must be implemented (Article 8 of the Law). Such procedures must ensure strict confidentiality of reports, their content, and the identity of the people involved, violation of which is subject to a penalty of two years' imprisonment and a fine of €30,000 (Article 9 of the Law).

The whistle blower may not be subjected to any penalty or sanction, direct or indirect, by his/her employer as a result of reporting something (Article 10 of the Law).

4. **The French Anti-Corruption Agency ("Agence française anticorruption")**, created by the Law, is given several purposes both in respect of state entities and private law entities, including, but not limited to:

With respect to the public sphere (Article 3 of the Law), the Agency is responsible, in particular, for the following:

- administrative coordination of the anti-corruption effort;
- preparation of recommendations appropriate for state-owned or private legal entities;



- auditing “the quality and effectiveness of procedures adopted within State agencies, local governments, state-owned and mixed economy companies, and associations and foundations recognized as having a public purpose”;
- preparation of an annual activities report; and
- bringing to the attention of the Office of the Public Prosecutor (“*Procureur de la République*”) facts that could be characterized as an offense or a crime.

With respect to private law, legal entities and their executives and directors (Article 17 III of the Law), the French Anti-Corruption Agency is responsible, in particular, for the following:

- auditing and verifying compliance with the measures and procedures imposed on private law legal entities;
- preparation of a report in connection with such audit including comments and, if appropriate, recommendations with a view to improving existing procedures;
- reporting any breaches discovered; and
- contacting the Sanctions Committee of the French Anti-Corruption Agency so that it orders “the company and its representatives to adapt internal compliance procedures to prevent and detect corruption or influence trafficking,” or so that notice is given of complaints to the relevant persons for purposes of being financially penalized.

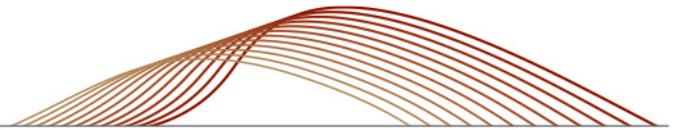
In connection with their responsibilities, agents of the French Anti-Corruption Agency may require disclosure of any professional or business document in any form in which it may be, undertake audits, enquiries, and investigations on-site and hear and question any person (Article 4 of the Law). Any obstruction of, or resistance to, the performance of these responsibilities will be punishable by a fine of €30,000.

5. The Sapin II Law innovates further by introducing into French law **a legal public-interest agreement as an alternative to criminal prosecution** (“**convention judiciaire d’intérêt public**”) (Article 22 of the Law). Thus, “so long as no public proceeding has been commenced, the Public Prosecutor may make an offer to” the legal entity involved “to enter into a legal public-interest agreement imposing one or more of the following obligations”:

- pay a “public-interest fine” (of up to, but no more than, 30% of the average revenues for the last three fiscal years);
- submit itself to a compliance program, under supervision by the French Anti-Corruption Agency for no more than three years, at company expense; and
- indemnification of the victim.

Such agreement must be approved by the Presiding Judge of the *Tribunal de grande instance* (Superior Court of First Instance). The entity involved will have 10 days to exercise a right of retraction.

It is essential to point out that such agreement will not include an admission or denial of liability or guilt and will not have either the character or the effect of a judgment. It is not to be reported, therefore, on a person’s legal criminal record.



The agreement, however, is to be made public in a press release by the Public Prosecutor. The approval order, the amount of the fine, and the agreement will be posted on the web page of the French Anti-Corruption Agency.

Except for its Article 17, which will take effect within six months following its publication in the *Journal Officiel*, the Sapin II Law, therefore, will be effective as soon as published probably within a few weeks.

✧ ✧ ✧

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Paris lawyers:

Philippe Bouchez El Ghazi
33.1.42.99.04.67

phillippebouchezelghazi@paulhastings.com

Clemence Auroy
33.1.42.99.04.20

clemenceauroy@paulhastings.com

Dorothee Hever
33.1.42.99.06.91

dorotheeheber@paulhastings.com

¹ This would appear to be similar to a consent decree in U.S. law, *but see* above (TN).