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France Adopts Legal Measures to Combat Corruption Consistent with International Standards

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"Transparency in economic life is a factor of efficiency and effectiveness, a requirement for our international image, but also proof of a democracy that works.

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.

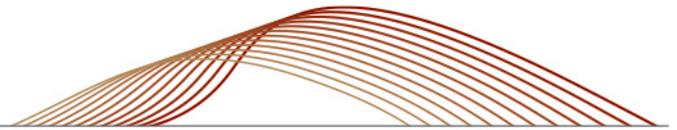
These measures meet the aspirations of our fellow citizens in respect of transparency, ethics, and justice in the economic area."

These statements, made by Michel Sapin on the occasion of his report to the Council of Ministers on 23 July 2015, announced the draft bill for transparency and modernization of economic life (the "Sapin II Law"). They also reflect French strategic thinking about strengthening the fight against corruption in commercial and business transactions published by the *Service Central de Prévention de la Corruption* (Central Office for Prevention of Corruption) in March 2015.

Inspired by international standards and, in particular, the UK Bribery Act, this bill – which is to be debated in the National Assembly in early 2016 – contains important developments in the area of preventing and punishing corruption. It provides, in particular, for (i) the creation of an *Agence nationale de prévention et de détection de la corruption* (agency for preventing and detecting corruption), (ii) imposition of an obligation to prevent risks, as well as (iii) the creation of an additional fine for failing to bring a company into compliance.

1. The *Agence nationale de prévention et de détection de la corruption* (the "Agency") created by the bill would have several responsibilities. First among them, of a general nature, is the establishment of an inventory of risks as part of defining a multi-annual plan to combat corruption and provide support for whistle-blowers. The second responsibility to be given to it relates to public officials. The Agency would thus be responsible for expressing an opinion on all contractual parties of government entities and for producing guidelines on the prevention of corruption within governmental institutions. The third responsibility given to this Agency is intended for economic actors: It will issue guidelines to their attention, verify compliance, and evaluate the validity of the programs adopted.

To carry out these responsibilities, the Agency is to be given broad authority (in particular, hear any person, require disclosure of any document, and conduct on-site verifications) as well as



authority to impose sanctions. The Agency will also have authority to enter into settlements, discussed with the public prosecutor's office subject to court supervision.

2. The draft Sapin Law II bill would create a new obligation to prevent corruption risks, which would apply to (i) companies having more than 500 employees and (ii) companies belonging to a group having at least 500 employees and sales or revenues of more than EUR 100 million, as well as to their managements. The affected companies will have to take effective steps to fight corruption through:

- adoption of a code of conduct explaining prohibited conduct;
- creation of a system for internal whistle-blowing;
- establishment of an inventory of risks;
- implementation of a procedure for verifying the integrity of partners (clients, suppliers, intermediaries);
- conducting audits;
- training of middle managers and employees involved; and
- implementation of disciplinary sanctions.

In the event of violation by the affected companies, the Agency could issue a warning, or issue orders to comply as well as impose penalties (up to EUR 200,000 for individuals and EUR 1,000,000 for companies, together with possible publication of the sanction).

3. The Sapin II Law bill creates a new Article 131-39-1, inserted into the Criminal Code, providing for an additional penalty relating to ensuring compliance. It would involve implementing a compliance program under the supervision of the Agency, at the expense of the person or entity involved, for a period of three years. This additional penalty would be imposed in the event of a conviction or judgment for corruption or influence pedaling. Failure to implement such a compliance program could, itself, be treated as a violation punishable by two years' imprisonment and a fine of EUR 400,000 for individuals, increased to EUR 2 million for companies.

In particular, the bill would provide for taking into consideration, in analyzing the punishment in cases of confirmed corruption, the existence of a plan for detection and prevention of corruption.

The obligations that the bill would impose on companies, therefore, are very significant and require the affected companies, as well as their managements, to anticipate up-front their implementations.



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