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The “Sapin II” Bill: Towards strengthened rules to combat corruption

Regularly singled out for criticism for lack of efficiency of its anti-corruption arsenal, France finally seems committed to catch up in this field.

The so-called “Sapin II” Bill, which should be debated in the French Parliament at the beginning of June 2016, heralds significant changes in the fight against corruption.

A draft Bill on “*transparency, fight against corruption and modernization of the economic life*”, commonly referred to as the “Sapin II” Bill was adopted by the Council of Ministers on March 30, 2016 and should be debated in the National Assembly next June.

More than 20 years after the so-called “Sapin” Law of January 29, 1993, and even though this Bill is likely to be amended, the contemplated reform in the fight against corruption heralds the following changes:

Creation of a National Agency to prevent and detect corruption

The modernization of the existing rules presumably hinges on the creation of a new independent administrative authority endowed with extensive powers of investigation and sanction: The *Agence Nationale de Prévention et de Détection de la Corruption* (National Agency for the Prevention and Detection of Corruption).

Placed under the authority of the Minister of Justice and the Minister of Budget, this new entity should replace the currently existing *Service Central de prévention de la corruption* (Central Corruption Prevention Department), take over its missions and assignments, and be vested with new duties to be set forth by law.

The National Agency for the Prevention and Detection of Corruption should be, in particular, responsible for helping administrative authorities to implement internal corruption prevention programs, and assisting companies in the definition of internal schemes in order to comply with the obligation to put in place plans to prevent corruption and influence peddling in France and abroad.

It should also be responsible for supervising the proper implementation of these obligations to exercise vigilance that will be imposed on companies and, if necessary, imposing sanctions in case of non-compliance.

Obligation to prevent risks of corruption

As per the terms of the Sapin II Bill, companies with at least 500 employees and companies belonging to a corporate group that employs at least 500 employees and generate a turnover or a consolidated turnover in excess of 100 million euros will be required to take measures to prevent and detect the commission of acts of corruptions and influence peddling in France and abroad.

These measures should include, but not be limited to, the adoption of a code of conduct, the implementation of an internal whistleblowing procedure, the creation of a corruption risk mapping and the provision of training programs for employees exposed to risks of corruption and influence peddling.

If companies fail to comply with these obligations, the National Agency for the Prevention and Detection of Corruption will be entitled to enjoin them to do so, and to impose a fine of up to 200,000 euros for natural persons and 1,000,000 million euros for legal entities.

Creation of new “mandatory compliance” penalty

The Sapin II Bill creates an additional penalty of “mandatory compliance” for companies convicted of acts of corruption or influence peddling. This penalty should consist in the obligation for the convicted companies to implement a compliance program under the supervision of the National Agency for the Prevention and Detection of Corruption, within a certain period of time that may not exceed five years.

This is aimed at ensuring that relevant companies effectively adopt and implement the above-mentioned measures to comply with the obligation to prevent corruption.

Any breach of these obligations should result in the following sanctions being imposed on the bodies or representatives of the non-compliant entities: two years of imprisonment and a 30,000 euros fine (it being specified that the amount of the fine could be increased up to the amount of the fine incurred for the crime for which the legal entity has been convicted and that led to the imposition of the “mandatory compliance” penalty).

A new offense of influence peddling with respect to foreign public officials

The Sapin II Bill also creates the offense of corruptly influencing foreign public official. This should help prosecute natural persons and legal entities who/that offer bribes to foreign public officials to obtain, for example, works contracts or jobs.

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