

## **Recent Developments in the Anti-Corruption Regulations in France and Germany**

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Since the enactment of the Foreign Corrupt Practices Act (“FCPA”) on 1977, USA has been the leading the international fight against corruption. FCPA sets forth a standard for other jurisdictions in its extraterritorial and rigorous enforcement of its rules and regulations against corruption. In addition, OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (“Convention”) has been another push force in the field, obliging its signatories on a global scale to strengthen their laws to fight international corruption. Following the US leadership and acting under the awareness raised by the Convention on the issue, recent years witnessed legislative developments from many countries which sought more effective ways of fighting corruption. This article will focus on two of the recent legislative updates in the arena of fighting corruption, namely, the developments in France and Germany.

### **France**

On 8 November 2016, Sapin II, an anti-corruption reform law, was accepted by the French parliament. This was preceded by months of debate and alterations regarding the content of the proposed legislation. The reform comes after criticism that France has not enforced any foreign bribery cases, even though large French companies such as Total, Technip and Alstom has been subject of US anti-corruption enforcement actions within scope of the Foreign Corrupt Practices Act. All three companies agreed to pay more than \$300 million to settle the FCPA charges. In addition, Transparency International’s Exporting Corruption Report of 2015 criticizes French anti-corruption law due to the lack of enforcement of the foreign bribery offence.<sup>1</sup> With this, France has now joined other European countries (such as Germany and Spain) who have updated their anti-corruption legislations.

One of the most important reforms legislated with the Sapin II is the obligation on large firms to enforce compliance programs. Accordingly, companies with more than 500 hundred employees and annual revenue of at least € 100 million are obliged to enforce compliance programs. The compliance program should include (i) a risk assessment mechanism, (ii) a code of conduct, (iii) accounting controls, (iv) third party due diligence mechanism, (v) a system for internally reporting suspected wrongdoings, (vi) training for employees, (vii) a policy regarding the disciplinary actions to be taken where necessary and (viii) a mechanism for evaluating the compliance system. In case companies do not abide by this requirement, the new anti-corruption agency to be established as per Sapin II, will have the power to (i) impose fines, (ii) issue warnings or (iii) injunctions and (iv) the agency may publish this decision.

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<sup>1</sup> [http://www.transparency.org/exporting\\_corruption/France](http://www.transparency.org/exporting_corruption/France)

Further, Sapin II introduces US-style deferred prosecution agreements (“DPAs”) to the French legal system for corruption crimes.

The law also imposes a whistleblower regime, whereby the whistleblowers are to be protected from retaliation, and their identities should stay secret.

Further, foreign companies which conduct whole or part of their businesses in France can be prosecuted under Sapin II for foreign bribery. Prior to Sapin II, the French law only applied to its citizens or businesses incorporated in France in foreign countries, if these acts are punishable under the legislation of the country, where the crime was committed. This was a much criticized aspect of the French legislation as an impediment for the enforcement of the crime of foreign bribery.

Finally, a separate anti-corruption agency with more powers than its predecessor will be established as per Sapin II. Currently, Service Central de Répression de la Corruption is the authority to deal with the anti-corruption matters whose originally vast powers were reduced and which was put in a more passive position through court decisions. The agency proposed in Sapin II will recommend anti-corruption measures to administrative authorities and companies and will be able to monitor the compliance program obligations of large companies.

With this new law, France aims to address the criticisms that it does not have any foreign anti-bribery cases. The French anti-corruption regulations are aimed to be more up-to-date and deterrent against international corruption.

## **Germany**

According to Transparency International’s Exporting Corruption Report, Germany has an active enforcement of anti-corruption laws. Under German law, active and passive bribery and also bribery of foreign officials are prohibited. Similar to Turkish law, German law does not recognize criminal liability for companies. Instead, companies are held civilly liable. In recent years, Germany reformed its anti-corruption regulations in several aspects and the new law entered into force in 25 November 2015. With this law (i) the scope of foreign official has been extended, (ii) changes regarding private sector has been made and (iii) reforms for money laundering have been enacted.

German Law against Corruption, which entered into force in late 2015, regulates that European Officials too, will now be considered as German officials within scope of corruption crimes. This means that even if a certain official may not be a German citizen, the German Law against Corruption will apply to them nevertheless. In addition, with the new law foreign officials who accept bribes can be prosecuted in Germany. Further, German law now can be applied to offences committed by a German citizen abroad or by European public officials who have their office in Germany.

Another change was in the private sector. Previous law did not cover the private sector bribes that were evaluated to be outside the scope of market competition. Following the enactment of the new law, private to private bribery now includes cases where accepting or giving any benefits without the business owner's consent leads to a breach of duty. Accordingly, accepting or giving any benefits during the scope of a business without the business owners' consent is prohibited and disruption of market competition is not a requirement.

The new law introduced reforms regarding money laundering too. Before the new law, it was not a crime for a person to launder money in the context of their own crimes. The new law criminalizes this offence called "Self-money laundering". In addition, the new law extends the catalogue of relevant predicate offences (such as accepting and giving bribes in the scope of commercial businesses) for money laundering.

### **Conclusion**

Although legislative documents such as the FCPA or the Convention set out the basics for how to fight international corruption, there is not a pre-defined formula for establishing framework for the most effective fight. Once the minimum thresholds are met (such as criminalizing foreign bribery, establishing a form of liability for legal persons etc.) each jurisdiction is free to fill its own legislative and enforcement gaps. Within this scope, France and Germany are the latest European countries to increase their efforts to fight corruption. Much like the legislators who work to ameliorate their legislations for fighting corruption, companies active / headquartered in France and Germany should also be vigilant about these legislative developments and adapt to the changing environment.

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