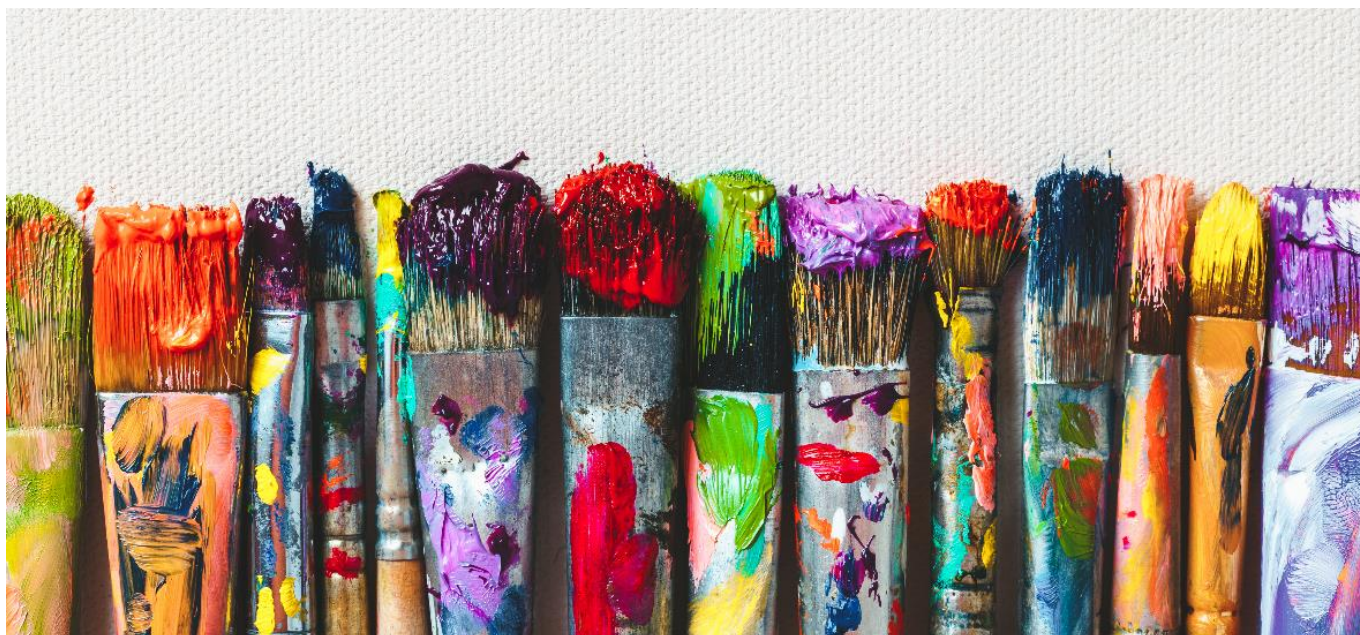




France's new Sapin-II anti-corruption law: recommendations for French companies operating in the CIS

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No country in the modern world is totally free from corruption. As a result, more and more countries are choosing to strengthen their anti-corruption legislation. The business community is involved in this process as well. In the past, the Deloitte Forensic team's projects have primarily consisted of corporate investigation engagements. Today, however, clients are increasingly asking us to assist them in verifying their employees' compliance with applicable anti-corruption laws.

France has also embarked on the path of strengthening its anti-corruption regulations, as shown by the new Sapin-II law, which is aimed at fighting corruption and bribery both within France and overseas.

Indeed, the enactment of this new law is no accident, particularly with three French companies among the top 10 organizations that paid the largest fines to U.S. regulators for 2016 under the U.S. Foreign Corrupt Practices Act (FCPA).

Effective 1 June 2017, Sapin-II mandates that the presidents, directors and managers of French companies implement a set of measures aimed at preventing corruption and bribery. Under the new law, non-compliance with these requirements may be punishable by fines of up to EUR 200,000 for corporate officers and EUR 1m for legal entities.

So, how should French companies proceed in complying with these new regulations if they operate in the CIS, a region with an ever-changing business environment and high levels of corruption, and where corporate expansion requires working with intermediaries?

We will be answering this question on the following pages by taking a thorough look at

the anti-corruption measures mandated by Sapin-II, particularly through the lens of Deloitte Forensic's experience in the CIS.

Which companies are affected?

Sapin-II applies to companies and corporate groups that:

- are incorporated or headquartered in France;
- have at least 500 employees;
- have annual revenues or consolidated revenues of at least EUR 100m.

The new law applies equally to parent companies and their subsidiaries and controlled entities, as defined by Article L-233-3 of the French Commercial Code.

A parent company may implement the Sapin-II anti-corruption program for its entire corporate group.

In this case, subsidiaries and controlled entities would be deemed to have met their obligations under the law.

1. Code of conduct

The compliance function is responsible for a company's anti-corruption efforts. Notably, best compliance practices incorporate an effective code of conduct/code of ethics, which is an integral part of corporate culture because it helps improve the company's image and employee morale while boosting investor confidence and interest.

A code of conduct helps employees understand how to act in a given ethical situation, guided not only by their own values but also by the rules and standards established by the company. If employees understand that the company's code of ethics is important and that any non-compliance would be punishable, the risk of corrupt practices for the company becomes much lower.

However, in working with numerous companies operating in the CIS, we have found that they either do not have a code of conduct in place or have adopted some purely formalistic document that is entirely ineffective. Oftentimes, employees sign special forms to confirm their acknowledgment of the code of conduct without ever having opened it.

Those French companies that do not have a code of conduct in place will have much work to do. They will not only have to draft such a code from scratch, but also create procedures for implementing it.

2. Whistleblowing channel (hotline)

Sapin-II also requires that companies establish an internal whistleblowing hotline that allows employees to report behaviors that violate the corporate code of conduct. Moreover, Chapter II of Sapin-II stipulates that disclosure of confidential information about a whistleblower or an alleged violator may be punishable by two years of incarceration or a fine of EUR 30,000.

Our experience shows that a whistleblowing channel works effectively when all employees can use it without fear of retaliation or persecution for blowing the whistle on wrongdoing. Companies may choose their own ways of implementing a reporting mechanism. They can use a hotline, or the Internet, or engage a third party that will receive and process hotline calls.

A third-party service for whistleblowers promotes employee confidence, increases hotline use, and reduces the cost of separating out false reports from

relevant information.

We have learned that another advantage of having a whistleblower hotline is that an employee who wants to report potentially unethical behavior will most likely do so within the company, and not release the information outside, say on blogs or social media.

By establishing a hotline, you can demonstrate that your organization treats fraud and misconduct seriously and is prepared to investigate and prevent any such irregularities.

3. Risk map

Judging from Deloitte's experience, a risk map ideally should contain an up-to-date list of identified, analyzed and prioritized business transactions/processes that are exposed to corruption risks and that correlate with the nature and geography of the company's business. Such a document should also specify the scope of measures taken to mitigate the identified risks.

We have seen that many companies do not bother to regularly update their risk maps or do not document identified risks at all. Moreover, corporate risk maps often do not cover all relevant key processes and owners. Yet, only a risk map can help a company to understand which business processes it should focus on to avoid fraud in critical transactions.

4. Due diligence on customers, key vendors and third-party agents

Our practice shows that counterparty due diligence is an integral part of any corporate anti-corruption program.

Given that significant changes may occur in the course of a business relationship with a counterparty (e.g. changes in ownership, involvement in litigation, etc.), we recommend that our clients perform regular due diligence on their counterparties in addition to conducting initial verification procedures.

Moreover, we have seen ample evidence that simply checking counterparties is not enough. A company's business partners must fully share the ethical standards and values of the company itself.

To achieve this, companies must include an anti-corruption clause and regular audit requirements in all of their counterparty contracts.

In addition, companies may conduct training sessions for counterparties to promote a better perception and understanding of their anti-corruption culture and values.

It is often challenging for large companies to allocate resources for counterparty due diligence. However, companies may rely on automated solutions or engage third-party service providers capable of performing thorough checks on individual companies.

For example, Deloitte has conducted sub-contractor audits for some of our clients and service providers and visited the offices of suspicious counterparties to verify their business addresses.

As a result of such physical verification, we have discovered on more than one occasion that many purported "corporate headquarters" were in reality vacant lots or abandoned buildings.

We recommend that French companies, and other companies, operating in the CIS exercise due care with respect to their counterparties.

5. Internal and external accounting controls

Deloitte's experience indicates that a company's failure to ensure segregation of duties, appropriate controls over the cost-effectiveness of business transactions, and regular audits of corporate activities may result in weaker financial performance and reputational losses.

According to Sapin-II, such controls may be implemented by either internal or external auditors.

In carrying out various client projects, we have repeatedly dealt with companies that had business controls on paper only, thus leading to unsubstantiated transactions, the risk of corrupt practices, and more.

Yet, a well-written procedure or policy is only half the battle. Your procedures and policies must really work, and your controls must regulate how they work.

It's no surprise that Sapin-II provides the option of engaging third-party experts for reviewing a company's internal controls. That's because only a disinterested party can thoroughly evaluate the effectiveness of internal processes and procedures in place.

6. Training for employees in high-risk positions

Employee training is an integral part of any anti-corruption program. Employees should undergo anti-corruption training both as part of their induction and on a regular on-the-job basis.

Our various projects have demonstrated that companies offer both face-to-face and e-learning sessions, but these are usually a mere formality. For example, employees doing an e-learning session simply switch from slide to slide without really reading them, which reduces training effectiveness. A higher level of effectiveness is achieved where internal training sessions are company-specific and based on real examples, rather than hypothetical scenarios.

We always encourage our clients to raise anti-corruption awareness among their employees, and help them arrange special compliance days and create informational posters, slogans and Internet messages to help facilitate compliance.

7. Disciplinary sanctions

Sapin-II obligates companies to inform their employees of disciplinary sanctions for violations of the corporate code of conduct.

Often, such sanctions are specified in separate executive orders or directly in the corporate code of conduct itself. Disciplinary sanctions may vary depending on the gravity of a particular violation. Such sanctions must apply to all employees regardless of their position.

Sometimes, it is a good idea to disclose certain violations, especially those that result in dismissal of the guilty employees. This will clearly demonstrate that the company's disciplinary sanctions are more than just words.

8. Anti-corruption monitoring and evaluation

Naturally, periodic reviews of corporate anti-corruption measures in place can help increase the effectiveness of internal risk management.

From a practical perspective, such reviews should be independent. They may be conducted either by external experts or using internal resources. In the latter case, however, it should be a specially designated employee or department that answers to the shareholders, and not to management. When an audit identifies specific weaknesses, the company should develop appropriate recommendations for rectifying them.

In conclusion, we note that the eight mandatory anti-corruption measures prescribed by Sapin-II are aligned with the standards established by the U.S. FCPA and the UK Bribery Act (2010).

In our experience, we have seen that those companies that take these requirements seriously, and not as a mere formality, can benefit not only by reducing potential penalties for unethical behavior but also by strengthening their market positions through demonstrating zero tolerance for violations of anti-corruption legislation to their investors.



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