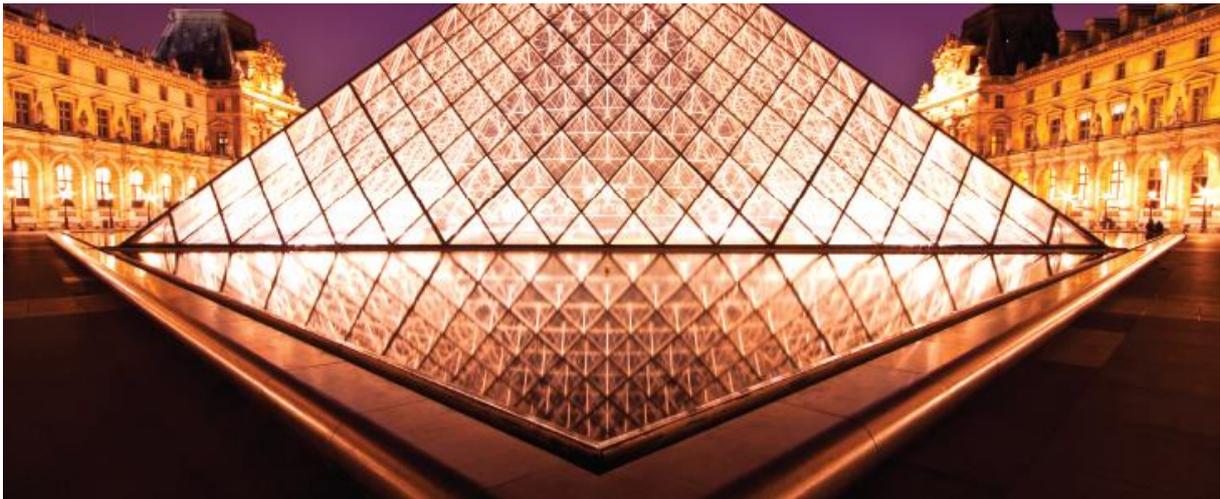


# Sapin II—A first step toward a European law on corruption?

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In December 2016, France adopted the Sapin II law. One might think of it as just another piece of law in the legislative jungle; however, it is not. Indeed, it is the first strong French anticorruption law and even though it might look, at first sight, as a pale copy of the U.S.' Foreign Corrupt Practices Act (FCPA),<sup>1</sup> the subject is worth a closer look.



May 23, 2017—Paris: France Chapter Conference on anti-corruption

# The Man Behind the French Anticorruption Act

At one of its regular events in Paris, on May 23, 2017, the France Chapter welcomed the man considered by many as being responsible for the law. The man, who wished to remain anonymous, was invited to the conference to tell his story. The audience, mainly consisting of Parisian representatives of the compliance community, silently listened to his harrowing testimony.

This former top executive of a major French industrial company explained how the FBI at the New York John F. Kennedy International Airport arrested him in April 2014 while he was on a routine business trip.

Arrested and handcuffed within the frame of the FCPA, his first thought was that he would spend a couple of hours in custody and be set free after what he then thought was a misunderstanding.

Unfortunately, months went by and he slowly had to get used to the day-to-day life of an American prisoner.

Stuck in the middle of a political and economic imbroglio, he had to plead guilty and was finally allowed to go home after spending 14 months in a federal state prison in the U.S., for allegedly being involved with a corruption case that occurred years ago.



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# What is Sapin II?

The French anticorruption law is all about transparency, anticorruption and the modernization of business life.

To ensure regulatory harmonization and consistency, Sapin II is an attempt to bring an answer to the powerful American FCPA and its European counterpart, the U.K. Bribery Act.

Sapin II creates a new authority (aka the National Anti-Corruption Agency) and protects internal whistleblowers. It also requires companies to comply with a set of eight anti-corruption measures, which include: the implementation of a code of conduct and a central register for all alerts related to corruption; a risk map of corruption risks; a risk assessment which identifies clients, suppliers and intermediaries risks; a specific training for adequate employees; a sanctions framework and an internal audit with which to ensure that the above mentioned measures are duly complied.

Failure to comply with the law can lead to a penalty amounting to 1 million euros or even 30 percent of the annual turnover of the company—taking its turnover of the last three years into account.

Last but not least, the law includes the introduction of the concept “judicial convention of public interest,” which is a remake of the U.S. “deferred prosecution agreement.”

## What Sapin II is Not

Although Sapin II can be regarded as the twin sister to the American FCPA, it is not the FCPA. While both laws aim to fight corruption, the FCPA has been applied, since 1998, to “foreign firms and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place within the territory of the United States.”<sup>2</sup> This means that the FCPA applies to foreign firms as well as any act linked to the U.S. The scope is huge.

Sapin II could be regarded as the twin sister of the U.K. Bribery Act too. Here again the British piece of law is more ambitious since it applies to any foreign subsidiary on its soil, and by extension, to the group the subsidiary belongs to.

The French Sapin II is restricted to firms registered in France. It exclusively applies to companies whose head offices are registered in France and more specifically to all private companies and public companies employing more than 500 staff members and whose turnover is higher than 100 million euros.

In other words, FCPA is aggressive, the U.K. Bribery Act is half-aggressive, and Sapin II is exclusively defensive.

## Conclusion

Although no one can deny that this anticorruption law is a big step forward for France, one can wonder whether this first action is to be followed by ones that are more ambitious. Will a more ambitious second act enhance this first attempt?

We will leave it with the businessman behind the Sapin II law, who shared his unfortunate experience with the ACAMS France Chapter community and closed the conference by reminding the audience that 25 years ago the EU adopted an antitrust law. The U.S. would then rely on such a law and the EU decided to enact its own legal antitrust infrastructure. Will the newly enacted Sapin II in France turn out the same way and have a European destiny?

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1. Foreign Corrupt Practices Act, American anticorruption law. "The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. (FCPA), was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business," retrieved on June 20th, 2017, <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>.
  2. Retrieved on June 20, 2017, from <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>.
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