



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
France: Bribery & Corruption (2nd edition)

This country-specific Q&A provides an overview to bribery and corruption laws and regulations that may occur in France.

This Q&A is part of the global guide to Bribery & Corruption. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/bribery-and-corruption-second-edition/>



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The Legal 500



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The Legal 500

1. **What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?**

The French legal framework with respect to bribery and corruption can be summarily described as follows:

- The **French criminal code (Art.432-11 ff.)** provides for the definition and sanctions of offenses such as corruption and influence peddling (*trafic d'influence*). It also provides for specific forms of bribery within the context of public procurement or public elections (on this point, see 8.).
- Procedural rules applicable to the investigation, prosecution and judgement of bribery cases are contained in the **French criminal procedure code** (territorial competence, statute of limitations, etc.).
- With respect to the prevention of corruption, legal and regulatory provisions derived from the **2016 Sapin II anticorruption Act**, which are now included in the criminal code, provide for various obligations such as a compliance program for businesses of a certain

size, or a corporate alert system.

2. **Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?**

At the judicial level, the public prosecutor and the investigating judge are competent to investigate and prosecute bribery.

In the past, major bribery cases used to be assigned to investigating judges, given their complexity. However, in February 2014, the French Financial Prosecution Office (the PNF) began operating and has since become the leading judicial authority with regards to anti-bribery. The PNF is indeed competent on the whole French territory with respect to offences such as corruption and influence peddling, when they are of a complex nature.

At the administrative level, the recently created French Anti-Corruption Agency (the AFA) is qualified to carry out controls within companies and public administrations, in order to verify that they have established and implemented efficient compliance programmes in order to prevent bribery (see also **15.**).

3. **How is bribery defined?**

According to the provisions of the French criminal code:

- The offence of bribery broadly consists in offering money, services or any other advantage in order to influence the conduct of a person in a position of entrusted power;
- The offence of influence peddling defines the situation when a person who has real or apparent influence on the decision-making of a public official trades this influence in exchange for money, services or any other advantage.

For these two offences, under French law, both the person offering the bribe (active form), and the person receiving it (passive form) can be charged.

4. **Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Are there different definitions for bribery of a public official and bribery of a private person?**

French criminal law does distinguish between bribery of a public official or a private person.

With respect to the offences of corruption and trading in influence, a public official is strictly defined as a person holding public authority, discharging a public service mission, or holding a public electoral mandate (e.g. Minister, Member of Parliament, policeman, public servant) This definition applies to both French and foreign public officials, as well as to persons working in international organisations.

Moreover, the French criminal code specifically provides for bribery offences in relation to French or foreign legal professionals such as judges, jurors, or clerks.

5. **What are the civil consequences of bribery in your jurisdiction?**

As generally provided for by the French criminal procedure code, anyone who has personally suffered a loss directly caused by the offence of bribery is entitled to claim damages.

In addition, the provisions of the criminal procedure code specifically allow two types of legal entities - provided they meet certain conditions, such as being at least 5 years old - to file a civil claim:

- Associations the purpose of which is to fight against corruption; and,
- Foundations recognized as being of public interest.

6. **What are the criminal consequences of bribery in your jurisdiction?**

Individuals who are found guilty of bribery face:

- For all corruption offences, except private corruption, and for influence peddling of domestic public officials: a maximum of 10 years' imprisonment and a maximum fine of 1 million euros, or up to twice the proceeds of the crime;
- For private corruption and all types of influence peddling, except that of domestic public officials: a maximum of 5 years' imprisonment and a maximum fine of 500,000 euros, or up to twice the proceeds.

It is worth noting that except for private corruption, when the defendant reported the offence to competent authorities, thus making it stop, or enabling the identification of other perpetrators or accomplices, imprisonment may be reduced by half.

Individuals may also incur additional penalties such as:

- A ban on the exercise of civil, civic and family rights;
- A ban on the exercise of a public office or managerial functions;
- Publishing of the judicial decision;
- Seizure of the proceeds of the crime, or of the assets which were used to commit the crime.

Legal persons found guilty of bribery are liable to a maximum fine of up to 5 times the amount of the fine specified for individuals.

Additional sanctions imposed on companies may include:

- A prohibition to carry out the activity in the course of which the crime was committed;
- Judicial supervision imposed on the company;
- Closing of business establishments;
- Exclusion from public procurement;
- A ban on writing cheques;

- Implementation of a compliance program, under the supervision of the AFA;
- Publishing of the judicial decision;
- Seizure of assets.

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

Under French criminal law, there are no specific provisions dealing with gifts, hospitality and invitations in a professional context. They nevertheless fall within the scope of bribery laws, and as such, are restricted. In addition, as provided by the AFA guidelines, companies' codes of conduct should address such issues.

8. Are political contributions regulated?

Since 1988, political financing and election expenses have been heavily regulated in France, with a view to increasing moralization and transparency in public life.

As regards financing of political parties, French law authorizes two main sources of funding:

- Private funding accounts for a very small proportion of political parties' resources. It is comprised of members' contributions and donations from individuals for up to 7,500 euros per year. All types of corporate donations are prohibited.
- Public funding has become the primary source of funding. The State subsidizes political parties which meet certain accounting requirements, based on their past election results and their representation in parliament.

As regards financing of election campaigns, several principles apply, such as:

- Collection of donations under the supervision of a tax agent. Although legal persons cannot contribute to election campaigns, individuals can give a maximum amount of 4,600 euros per campaign;

- Campaign account, which must include all resources and expenditures, and must be formally approved by a specific committee, in order for the candidate to get reimbursed for part of the campaign expenditures.

In addition, breaching the above described rules governing funding of campaigns can lead to an election being cancelled by administrative courts.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

No specific definition or regime applies to facilitation payments under French law. Like hospitality and entertainment expenses, facilitation payments can be considered forbidden bribes and as such lead to a criminal conviction. In addition, the AFA guidelines provide that companies' codes of conduct should address this issue.

10. Are there any defences available?

Under the French system, there is no specific defence to the offence of bribery, except those derived from general legal principles, such as disputing the material facts (*actus reus*) or the intent to commit the crime (*mens rea*).

11. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction? Please identify any guidance indicating what features a compliance program should have in order to provide an effective defence/mitigation.

From a strict legal standpoint, French law does not provide for compliance programs as a mitigating factor, and thus does not set out specific guidance to that effect.

Nevertheless, in practice, the existence of a robust compliance programs may be taken

into account by criminal jurisdictions in order to appreciate criminal liability and/or sanctions. For instance, the recent settlement between the PNF and the French bank Société Générale, dated 24th May 2018, mentions that the bank provided evidence that it had been substantially and continuously improving its compliance program since 2000. Although no express credit was given to the bank for it, this mere mention indicates that it was probably favorably taken into account by judicial authorities.

Relevant guidelines published by the AFA may serve as a useful indication to set up adequate compliance programs (see **13.**).

12. Who may be held liable for bribery? Only individuals, or also corporate entities?

Corporate criminal liability is a general principle provided for by the French criminal code. Therefore, both individuals and legal entities may be held liable for bribery offences, notably as accomplices (see **6.**).

13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?

The Sapin II Act details the legally binding rules and procedures which companies of a certain size shall implement in order to prevent corruption:

- A mapping of predominant corruption risks, designed by each company;
- A code of conduct shaped by senior management;
- An internal whistleblowing system;
- Third-party due diligence procedures;
- Accounting control;
- Anticorruption training for employees;

- Internal monitoring and assessment systems to ensure the effectiveness of the measures put in place.

In addition, since it was set up in 2016, the AFA has been responsible for publishing recommendations to help private and public entities implement those procedures. Its non-legally binding guidelines were first published in December 2017 and are regularly updated, with a view to clarifying and complementing the items listed in the Sapin II Act.

The AFA also issues specific guidelines for given sectors or corporate functions (e.g. charter for public sector stakeholders, guidelines on the corporate compliance function, upcoming guidelines on mergers and acquisitions).

14. **Does the law provide protection to whistle-blowers?**

Protection is afforded to whistle-blowers, defined as those who, selflessly and in good faith, report or disclose information on serious violations of public interest – including corruption practices – which they witness in the course of their work.

Conditions for granting the whistle-blower status are stringent, particularly because of a restrictive legal definition and of the whistle-blower's obligation to use specific reporting procedures. In this regard, the AFA has provided some generic recommendations on the implementation of those procedures in its 2017 guidelines.

Provided the whistle-blower meets the requirements, he or she benefits from a threefold guarantee:

- Confidential nature of the procedure;
- Protection from retaliatory measures (e.g. dismissal is void);
- Exemption from criminal liability.

French law further incriminates both the obstruction to the transmission of a whistle-blower's report and false accusations made through the whistle-blowing system.

It is worth noting that the national ombudsman (*Défenseur des droits*) is responsible for orienting and protecting whistle-blowers who contact him; in this regard, he published a guide for whistle-blowers in July 2017.

15. **How common are government authority investigations into allegations of bribery?**


In the past decade, the fight against corruption has been given increasing importance by French authorities. In that respect, the adoption of the Sapin II anticorruption Act in December 2016 marked a decisive step. The number of criminal proceedings has increased, while remaining relatively low in comparison with other jurisdictions such as the UK or the US.

As an indication, the PNF dealt with 225 bribery cases in 2017 and 241 in 2018, which amounts to a 7,11% increase. In parallel, the AFA started auditing public and private stakeholders of a certain size as to the existence and effectivity of their anticorruption programs. The first six controls were launched in October 2017, followed by a second wave in February 2018. The AFA intends to perform 50 controls a year once 'cruising speed' is reached, bearing in mind that, for the time being, this type of audit is only to target some 1,500 companies, which fall within the scope of Sapin II requirements.

16. **What are the recent trends in investigations and enforcement in your jurisdiction?**

A major trend in enforcement is that of negotiated proceedings, which are relatively new to French criminal proceedings. The possibility for a company to enter into a settlement with the prosecutor, without having to admit guilt was introduced by the Sapin II Act and rendered effective in the past few months; in 2018, the CJIP was used in four bribery cases.

Another trend revolves around international cooperation between French enforcement authorities and their foreign counterparts. In effect, in the past, French enforcement



authorities have been criticized for not prosecuting bribery cases involving French companies or nationals, thus abandoning them to foreign authorities (e.g. Alstom case). French authorities have thus taken a more proactive approach towards corruption, as set out above, while strengthening international cooperation. For instance, in June 2018, the French public prosecutor entered into a settlement with the French Société Générale, which explicitly mentions exchanges with the US DOJ. Concomitantly, the US DOJ announced that it had reached separate non-trial resolutions with the bank and one of its subsidiaries in relation to the same facts.

Furthermore, it has become clear that French enforcement authorities want to put greater emphasis on the pursuit of natural persons, as clearly expressed by the head of the PNF at the OECD anti-corruption forum in Paris in March 2019. This approach echoes that of the American Department of justice (DOJ), which announced important changes to the *Yates Memo* in that regard in November 2018, and the British Serious Fraud Office (SFO), which in March 2018 urged companies to facilitate proceedings against individuals.

17. Is there a process of judicial review for challenging government authority action and decisions?

Under French law, the process which comes closest to the Anglo-Saxon “judicial review” is referred to as “abuse of power recourse” (*recours en excès de pouvoir*), and is to be brought before administrative courts. It does allow for judicial review of administrative action and decision. However, this administrative mechanism is not particularly relevant in relation to bribery, given that decisions and actions in that respect are mostly taken by police and judicial authorities, and can be challenged, most of the time by way of an appeal, before judicial courts.

18. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?

Since the impact of the Sapin II Act has not yet been finally assessed, no significant

reforms to bribery laws in France are planned for now. However, the government displays a strong will to tackle the challenge of bribery and corruption, in particular to have a handle over cases related to France, as already specified above (see **16**).

It is worth noting that some legal practitioners have been calling for a French Deferred Prosecution Agreement applicable to individuals, as the CJIP only exists for legal persons, and the existing equivalent for natural persons – summons to appear in court on the basis of a plea bargain, CRPC- requires an admission of guilt from the defendant.

19. To which international anti-corruption conventions is your country party?

At the international level, France is party to two conventions:

- The OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (17 December 1997), ratified by France on 31 July 2000;
- The United Nations Convention Against Corruption (31 October 2003), ratified by France on 11 July 2005.

At the European level, France is party to several instruments:

- The European Union (EU) Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of the EU Member States, adopted by the Act of the Council of the EU on 26 May 1997;
- The Criminal Law Convention on Corruption (27 January 1999), ratified by France on 25 April 2008;
- The Civil Law Convention on Corruption (4 November 1999), ratified by France on 25 April 2008.

20. Do you have a concept of legal privilege in your jurisdiction

which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.

The notion of “legal privilege” in France differs from its British or American equivalent: it protects exchanges of any nature between lawyers registered with the Bar and their clients, which cannot be disclosed to third parties, including judicial or police authorities. This form of confidentiality is general, absolute and unlimited in time. Note that in France, exchanges with in-house lawyers -who cannot be registered with the Bar, as they are not deemed sufficiently independent- are not confidential.

On the specific question of internal investigations, in March 2016, the Paris Bar deliberated that such investigations are part of the professional scope of French lawyers and issued recommendations on how they should be led. In particular, in the course of such investigations, the investigating lawyer has the duty to let third parties know that their exchanges will not be confidential, so that the client will be entitled to use third parties’ statements, or any other information collected.

Please note that at present, French courts have not yet litigated on this question of privilege in the context of lawyer-led investigations.

21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction’s approach to anti-bribery and corruption compares on an international scale?

French government authorities place more and more emphasis on the fight against corruption, as evidenced, notably, by the adoption of the Sapin II act, the multiplication of criminal proceedings with respect to bribery offences, the growing activities of specialized agencies such as the PNF and the AFA, and the recent conclusions of various settlements in bribery cases.

Furthermore, government authorities seem particularly keen on playing their role on the international scene, and on taking responsibility for cases involving French

protagonists.

However, even though resources allocated to the investigation and prosecution of bribery cases have been increased in the past few years, they remain limited as compared to the means deployed by other jurisdictions, such as the US or the UK.

22. **Generally how serious are organisations in your country about preventing bribery and corruption?**

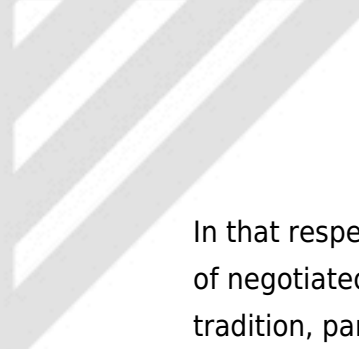
In the past, French domestic organisations tended to be less proactive in preventing corruption than international entities, which were already subject to foreign norms such as the Bribery Act or the FCPA. However, throughout all organisations, there is now a growing concern to prevent bribery which has been further reinforced by:

- The implementation of a legal and regulatory framework by the Sapin II Act (e.g. obligation to set up a comprehensive compliance program);
- Ongoing administrative controls operated by the AFA.

23. **What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?**

One major challenge for French authorities derives from the imbalance between the resources devoted by large companies involved in bribery cases to their criminal defence, on the one hand, and the resources allocated by the government to prosecute those cases, on the other hand.

In addition, French authorities must guarantee the right to a fair trial to both natural and legal persons, even if they have conflicting interests, and even though they are not given the same procedural avenues, since natural persons cannot enter a DPA or NPA style agreement under French law (see **18.**).



In that respect, another challenge lies in the assimilation, by French judicial authorities, of negotiated proceedings and settlements, which are not part of the French legal tradition, particularly with respect to criminal matters, but which can prove a mutually beneficial tool for both judicial authorities and defendants.

24. **What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?**


French corporations and establishments will have to enshrine an effective and efficient whistleblowing system in their corporate culture, given that this is yet another tool which is unfamiliar to the French legal system, and can even be poorly perceived by employees, as a form of denunciation.

In addition, businesses and their counsel will have to learn to conduct internal investigations in a way compatible with the French legal requirements, as well as the specific state of mind of French prosecutors. In effect, French prosecutors tend to be skeptical of such investigations, primarily because they are funded by defendant companies, and conducted by their counsel.

Another corruption-related challenge will be for companies targeted by investigations in relation to bribery offences to conduct fruitful negotiations with judicial authorities - despite the absence of official guidance in relation to cooperation, and the very limited number of precedents- in order to strike the right balance between traditional defence and constructive cooperation.

25. **How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?**

Within the French context, we would first advocate for the implementation of a robust



legal framework for internal investigations, which would effectively safeguard the rights of natural as well as legal persons. Such a framework should notably allow natural persons to effectively participate in the investigations, along with their counsel, thus preventing counterproductive misunderstandings or antagonisms. Similarly, we are of the opinion that negotiations between companies and judicial authorities should include natural persons and their counsel, so as to lead to a comprehensive and stable settlement, which will not run the risk of being contradicted and shattered in the context of subsequent proceedings.