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France to consider tough anti-corruption reforms

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A French politician has proposed wide-ranging changes to the country's anti-corruption apparatus including making companies liable for failing to prevent crimes.

French MP Raphaël Gauvain put the **anti-corruption bill** before the French National Assembly on 19 October. The bill also suggests new rules for conducting internal investigations in France, and more stringent compliance requirements for foreign corporations.

Gauvain's proposal would see companies held criminally liable for allowing their employees to commit a crime through a "lack of supervision". In France, companies can currently be punished for offences committed by their "organs or representatives".

French companies under scrutiny for committing the proposed offence would have to prove that they had sufficient measures in place to prevent employees breaking the law, although the bill isn't clear on what those measures would be.

The bill doesn't specify the range of offences companies would be held responsible for preventing but former French prosecutor Eric Russo, now at Quinn Emanuel Urquhart & Sullivan in Paris, said he expects they will be limited to financial crimes, such as corruption, after France's parliament debates the proposal.

Other French lawyers questioned the need for the law change as French courts generally interpret the country's existing corporate liability standard very broadly, such as in the recent Alcatel-Lucet bribery case where **France's highest court ruled in June** that the company was liable for crimes committed by executives working at a foreign subsidiary.

"Frankly I'm not sure it is necessary to add that in the black letter of the law," said Alexandre Bisch at Debevoise & Plimpton in Paris. "French criminal courts already have an extensive interpretation of the existing statute," he added.

Lawyers said the tough new liability standard has likely been proposed as a measure to give companies under investigation in France extra incentive to seek a negotiated settlement through a judicial public interest agreement (CJIP), the country's version of a deferred prosecution agreement, rather than fighting the case at a trial.

The proposed reforms come four years after France introduced its landmark Sapin II anti-corruption law which introduced the mechanism for CJIPs as well as stringent new financial crime compliance standards for companies and a new agency, the French Anti-corruption Agency, to police them.

New rules for internal investigations in France

Gauvain's anti-corruption bill also proposes new rules for how companies should conduct internal investigations in response to probes by public prosecutors.

Under the bill, lawyers conducting internal investigations would be required to advise employees of their right to a lawyer and an interpreter during interviews, as well as their right to terminate the interview at any point or not answer certain questions.

Employees would also have the right to see any documents they might be questioned about at least three days before the interview; a measure practitioners said would prevent employees being surprised with potentially incriminating evidence midway through questioning.

Lawyers welcomed the proposed new rules. They said Sapin II created demand for internal investigations conducted in cooperation with French prosecutors, but provided little practical guidance on what companies should do to safeguard the rights of employees during this process.

Joydeep Sengupta at Mayer Brown in Paris said French lawyers currently have to make up their own procedures using established practices and guidelines from other jurisdictions.

"What this proposal does is create a fair amount of procedural protections for companies as well as employees being investigated," he added.

Compliance expectations increase for foreign companies

Gauvain's bill also includes a proposal to require local subsidiaries of large foreign companies to maintain compliance standards at the same level as the largest corporations in France.

Under Sapin II companies headquartered in France that have more than 500 employees and a turnover above €100 million per year are required to have compliance programmes that include internal whistleblowing mechanisms, accounting controls and third-party due diligence procedures.

The proposed change would see the requirement for the corporate to be headquartered in France scrapped – a move that practitioners say would place a heavy compliance burden on the French offices of multinationals, no matter the size of their actual operations in the country.

"What this is doing is essentially saying that it doesn't matter where the parent company is, but even if you have a small branch or subsidiary in France, if the parent company at home meets the turnover and employee threshold then it picks up the subsidiary in France," said Sengupta.

Bisch said that expecting the French office of multinationals to comply with Sapin II's compliance rules has the potential to change France's anti-corruption and compliance landscape.

"I really think they [the French government] want to target big foreign companies that have an interest in France," Bisch said.

Proposed reforms follow parliamentary review

French politician and lawyer Gauvain tabled the new anti-corruption bill three months after the publication of **a parliamentary review**, which he co-authored, into the effectiveness of Sapin II. The bill contains some of the law changes proposed in the review but omits some of the most controversial ones, such as a new system of CJIP-style agreements for individuals and a call for the French Anti-corruption Agency to surrender its compliance enforcement powers.

Gauvain is a member of France's ruling party and his bill **reportedly** has the backing of France's Minister of the Economy. However, lawyers said the National Assembly is unlikely to have time to debate the bill before the April 2022 national election, which could usher in a new government.

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