



The Legal 500 Country Comparative Guides

France

BRIBERY & CORRUPTION

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in France.

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FRANCE

BRIBERY & CORRUPTION



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

The French Criminal Code incriminates corruption and bribery. In addition, the Sapin II Law of December 9, 2016 introduces further provisions relating to bribery and corruption, such as:

- The creation of the French Anti-Corruption Agency (AFA) in charge of implementing public policy on preventing and detecting bribery and corruption offences.
- The implementation of an anti-corruption compliance program to prevent and detect breaches of probity.
- The introduction of the 'convention judiciaire d'intérêt public' (CJIP), DPA's counterpart, specially dedicated to legal persons as an alternative to prosecution.

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

In France, the main authorities responsible for investigating and prosecuting corruption are:

- The French Financial Prosecution Office ("Parquet National Financier, "PNF").
- Investigating judges when the facts require the opening of a judicial investigation.

Although the AFA is not a judicial authority per se in charge of prosecuting, it controls entities subject to the Sapin II Law and can report acts of corruption and influence peddling.

3. How is 'bribery' (or its equivalent) defined?

According to the French Criminal Code's provisions:

- Corruption is defined as an act whereby a person holding a specific public or private sector function, solicits or proffers or accepts or gives a gift, offer or promise to carry out, obstruct or abstain from carrying out an act pertaining directly or indirectly to his function.
- Influence peddling is defined as the direct or indirect request or acceptance without right and at any time of offers, promises, donations, gifts or advantages for oneself or others, when done by a person holding public authority or discharging a public service mission, or by a person holding a public electoral mandate : to carry out or abstain from carrying out an act relating to his office, duty or mandate, or facilitated by his office, duty or mandate; or to abuse his real or alleged influence with a view of obtaining from a public body or administration any distinction, employment, contract or any other favourable decision.

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 law does make a distinction between bribery of private persons and bribery of public officials.

As regards public officials, the French legislation distinguishes French public official from foreign public official.

Under these provisions, a public official is defined as:

- A person holding public authority.
- A person in charge of a public service: a person to whom the public authorities have entrusted the management of a public policy.
- A person holding a public elective mandate.

In addition, the French Criminal Code specifically provides for specific corruption offences in certain areas, such as judiciary or sport.

Lastly, the French Criminal Code incriminates bribery of private persons.

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

A civil action may be brought in a criminal proceeding by any person if he/she/it demonstrates that he/she/it has suffered damage from corruption. In practice, this may be complicated as the State is the main victim of corruption.

As a result, the victim will be able to obtain compensation for the damage suffered.

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

Any individuals found guilty of bribery may be subject to the following:

- Imprisonment:
 - Up to 10 years in jail for individuals convicted for active or passive bribery of public officials.
 - Up to 5 years in jail for individuals convicted for active or passive bribery of private persons.
- Fines:
 - Up to EUR 1 million for individuals convicted for active or passive bribery of public officials, or up to twice the proceeds.
 - Up to EUR 500,000 for individuals convicted for active or passive bribery of private persons, or up to twice the proceeds.

In addition, the French Criminal Code provides for optional additional penalties, such as the confiscation of the object or the proceeds of the offence, the publication of the decision, the prohibition from exercising a public function, a commercial or industrial profession etc.

As regards legal entities, the fine is increased to five times (EUR 5 million). In addition, the French Criminal Code provides for optional additional penalties, such as the implementation of an anti-corruption program under the supervision of the AFA, debarment from public procurement (for up to five years), confiscation of the object or the proceeds of the offence, prohibition

from proceeding to with a public tender offer or from making an initial public offering (for up to five years) prohibition from proceeding to with a public tender offer or from making an initial public offering (for up to five years, Prohibition (for up to five years) from operating, directly or indirectly, one or several professional or social activities within which the offense was committed etc..

When a CJIP is concluded, the company is required to pay a public interest fine, submit to a compliance program under the supervision of the AFA for a maximum period of three years and, when applicable, to repair the damage caused by the offence.

In any case, in France, individuals cannot conclude a CJIP.

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

The French criminal code does not contain any monetary thresholds regarding the provision of gifts and hospitality, travel and entertainment expenses.

However, any gift of hospitality offered or received with a view to obliging the recipient and leading him to betray the interests of which he is in charge, may constitute acts of corruption or influence peddling.

The AFA regularly published guides and recommendations on the risks of breaches of probity concerning gifts and hospitality. The AFA recommends companies to implement an internal gift and hospitality policy in order to prevent any risk of bribery.

In this sense, the AFA published on 15 September 2022 a practical guide 'Public officials: the risks of breaches of probity concerning gifts and invitations'. The AFA refers to several criteras such as:

- The identity, functions, or duties of the gift giver.
- The value of the gift or the invitations.
- The risk of creating a situation of accountability towards the gift giver.

Although the AFA does not impose monetary limits in the sense that it sets neither a floor price nor a payment ceiling, it does provide some guidance on the value of the gift or hospitality.

8. Are political contributions regulated? If so, please provide details.

Political contributions and political financing are regulated in France.

Political parties may be financed by private resources in the following manner:

- Donations from private individuals are limited to 7,500 euros per year and per person.
- Donations from individuals or political parties (party donations are not capped; those from individuals cannot exceed €4,600 per election)

Since 1995, donations in any form from companies are prohibited by French law.

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

The legislator does not define or regulate facilitation payments. The AFA defines facilitation payments as *'paying, directly or indirectly, undue remuneration to a public official for the performance of administrative formalities, which should be obtained through normal legal channels. It is intended to induce public officials to perform their duties more efficiently and diligently'*.

Thus, any facilitation payments offered or received with a view to obliging the recipient and leading him to betray the interests of which he is in charge, may constitute acts of corruption or influence

The AFA has addressed this issue in several materials, including a non-binding short presentation on facilitation payments published in September 2018, a practical guide to implementing a corporate risk prevention system in the building and public sector published on February 2022. The AFA refers to the Network of Corruption Prevention Authorities (NCPA)'s recommendations on How to deal with facilitation payments?¹.

Footnotes: 1.

<https://rm.coe.int/ncpa-recommandations-pratiques-paie-ments-facilitation-fr/1680a2a32b>

10. Are there any defences available to the bribery and corruption offences in your jurisdiction?

Companies are advised to implement all necessary

measures to prevent and detect corruption. Any company must necessarily adopt the 8 pillars provided for by the Sapin 2 law (see questions n°13).

Companies may, in case of doubt, conduct an internal investigation to determine whether corruption has occurred. If necessary, legal persons can approach the prosecutor to negotiate an out-of-court settlement agreement. In exchange, the charges will be dropped, and the sanction will not be mentioned in the company's criminal record.

We strongly recommend the assistance of a lawyer for the defence and protection of companies and their directors.

11. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

On January 16, 2023, the PNF and the AFA published joint guidelines regarding minority factors in determining the public interest fine entered into in the judicial public interest agreement, such as:

- Adequacy of internal investigations.
- Corrective measures.
- Effectiveness of the internal whistleblowing system.

An analysis of CJIP already published, allows us to note that are mitigating factors:

- The 'conduct of a thorough internal investigation' and 'the implementation, from the outset of the investigation, of corrective compliance measures intended to prevent the recurrence of the facts' as stated in Airbus SE CJIP, 30 November, 2022.
- The "implementation of a compliance, ethics and accounting program, as well as the very active cooperation of the new management of the legal entity from the investigation phase to the negotiation phase" in Doris Group SA, 9 June 2022.

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

Both individuals and legal entities may be held liable for bribery.

13. Has the government published any

guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction?

According to Article 17 of the Sapin 2 law, companies employing at least five hundred employees, or belonging to a group of companies whose parent company has its registered office in France and whose workforce includes at least five hundred employees, and whose turnover or consolidated turnover exceeds 100 million euros, are required to take measures to prevent and detect the commission of acts of corruption or influence peddling in France or abroad must implement the following measures and procedures:

- A code of conduct.
- An internal whistleblowing system.
- A corruption and influence peddling risk map.
- Procedures for evaluating third parties.
- Accounting control procedures.
- An anticorruption training system for employees.
- A disciplinary regime for employees.
- An internal monitoring and assessment systems to control and evaluate the measures implemented.

14. Does the law in your jurisdiction provide protection to whistle-blowers?

The legal framework for whistleblowers is provided by the Sapin II Law, the Law No. 2022-401 of March 21, 2022 and the decree n° 2022-1284 of October 3, 2022.

Furthermore, the AFA provides guidance on the implementation of the internal whistleblowing system.

In accordance with the law, a whistleblower is any natural person who reports or discloses, without financial compensation and in good faith, an information concerning a crime, a misdemeanour, or a threat to the general interest, a violation or an attempt to conceal a violation of an international commitment duly ratified or approved by France, of a unilateral act of an organization, of the law of the European Union, or of a law or regulation.

Whistleblowers have the following guarantees:

- Integrity and confidentiality of the information collected.
- Protection from disciplinary action ;
- Impartial treatment of alerts.
- Competence and authority of the persons handling the alerts.
- Lack of civil and criminal liability for damages

caused by their reporting or public disclosure if they had reasonable grounds to believe, at the time of reporting or public disclosure, that the reporting or public disclosure of all such information was necessary to protect the interests at stake.

15. How common are government authority investigations into allegations of bribery? How effective are they in leading to prosecutions of individuals and corporates?

Prosecution for bribery allegations have increased these last two years:

- In 2021, 800 offences of breach of probity (corruption, influence peddling, illegal taking of interest, misappropriation of public funds, favoritism, and concussion) were recorded by the police and gendarmerie. Between 2016 and 2021, they increased by 28%, or an average of 5% per year.
- In 2022, 44.35% of the 708 proceedings pending before the Financial Public Prosecutor concerned breaches of probity.

Since its creation, ten CJIP have been concluded in matters of corruption, which represents more than half of the total number of CJIP.

In 2021, the AFA undertook 34 new audits, including:

- 6 enforcement audits, including 2 compliance audits at the request of the Enforcement Committee, 3 examinations prior to the establishment of a CJIP and 1 compliance program audit in execution of a CJIP signed by the PNF.
- 28 own-initiative controls, 18 of which concerned economic actors and 10 private actors.

16. What are the recent and emerging trends in investigations and enforcement in your jurisdiction? Has the Covid-19 pandemic had any ongoing impact and, if so, what?

Since the pandemic, the focus has been on:

- Negotiated proceedings such as CJIP.
- International cooperation between French enforcement authorities and their foreign

counterparts. French authorities have strengthened international cooperation with foreign entities with the aim of taking charge of the prosecution of French companies abroad.

More generally, in the last few years, we have witnessed an increased severity of the courts through a broad interpretation of the law. For example, the Paris Court of Appeal recently ruled that organizational decisions taken in the professional context can, in a particular context, be a source of permanent insecurity for all staff and become an “institutional harassment”, which creates a presumption of guilt on any manager having taken part in the reorganisation of the company.

Overall, the COVID-19 pandemic has not made any significant impact on the overall trends in relation to investigations and enforcement. In fact, between 2020 and 2021 there were more than 800 cases of breaches of probity dealt with the public prosecutor’s office.

More recently, the war in Ukraine also had an impact on the overall trends in relation to investigations and enforcement, particularly in relation to the offences of complicity in war crimes and complicity in crimes against humanity.

Companies and their executives must be particularly vigilant, as shown by the complaint filed against French energy giant “Total Energies” for complicity in war crimes, for allegedly helping fuel Russian planes that have bombed Ukraine.

17. Is there a process of judicial review for challenging government authority action and decisions? If so, please describe key features of this process and remedy.

Under French law, defendants may challenge criminal and civil charges before the Court of Appeal or before the Court of Cassation, which is the highest court of the judiciary.

Besides, in France, there is a judicial review on abuse of power by administrative authorities (“recours pour excès de pouvoir”). This is an administrative action against acts issued by an administrative authority. The purpose is to review the legality of an act and, if necessary, to quash it. As regards bribery, this action is not particularly useful, as the decisions taken are usually judicial.

18. Are there any planned developments or

reforms of bribery and anti-corruption laws in your jurisdiction?

On October 19, 2021, a bill was submitted to amend the Sapin II Law, following the report on the evaluation of the law published on July 7, 2021. The planned innovations are related to:

- The strengthening of the obligations of public services of local authorities regarding compliance.
- The strengthening of the role of the High Authority for the Transparency of Public Life (HATVP) to include the control of public actors in the fight against corruption.
- The extension of the geographical scope of the law, in particular the removal of the criterion of the location in France of the parent company’s registered office. In other words, the obligations provided for in Article 17 should be extended to the French subsidiaries of foreign companies.

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

At the international level, the main Conventions are:

- 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, the main Conventions are:

- 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 National Rules of Procedure of the legal profession provide for the existence of an attorney-client privilege. Thus, are covered all confidences that a lawyer may have received by reason of his status or profession, whether in the field of advice or in that of defence and information received from third parties in the context of the case concerning a client, but also anything that he may have observed, discovered, or deduced from his professional activity.

Thus, during internal investigations and searches, it is ensured that professional secrecy is preserved. In this respect, requests for restitution may be made when it concerns the *'strict requirements of his own defence before any court'*.

For this purpose, France's National Bar Council published on 2 July 2020 guidelines intended for lawyers leading internal investigations, through which are developed several recommendations regarding notably actions to take to preserve legal privilege (in particular in relation with the conduct of interviews and the drafting and broadcasting of the final investigation report).

On March 14, 2023, the AFA and the PNF published a practical guide on internal anti-corruption investigations, which states that *'regardless of the quality of the members of the investigation team, the document drafted at the end of the internal investigation is not protected by any attorney-client privilege'*.

Nevertheless, this guide only demonstrates the position of the prosecuting authorities, and, to date, French courts have not ruled on the question of legal privilege in the context of internal investigations conducted by lawyers.

In any case, in France, legal privilege does not apply to in-house counsels.

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?

Since the entry into force of the Sapin II law, France has increased its efforts on tackling bribery and corruption with obligations that public and private economic actors must respect.

Thus, AFA has several missions and a wide panel of prerogatives for the detection, prevention, and coordination of anti-corruption activities.

In addition, the offence of influence peddling by foreign public officials has been created as well as additional penalties (prohibition of civil and family rights, prohibition from holding a public office or from exercising the professional or social activity in the exercise or during the exercise of which the offense was committed, etc.).

The 2022 Corruption Perception Index published by NGO International Transparency ranks France at the 21st position worldwide. In comparison, in 2020, France was ranked 69th by the same Corruption Perception Index.

The Sapin III Law will further strengthen the fight against corruption and bribery.

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

French authorities are quite serious about fighting, preventing and prosecuting bribery and corruption as shown by the above-mentioned figures (see question 15).

Overall, there has been an increase in the number of investigations opened for breaches of probity.

In addition, over the years, criminal sanctions (including fines) have increased.

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

The biggest challenges faced are:

- Evidence gathering in cross-border transactions typically poses a challenge for enforcement agencies. In matters of corruption, several countries are involved. However, in transnational cases, it is necessary to request an international criminal cooperation. According to the annual summary of the National Financial Prosecutor's Office for the year 2022, only 74 countries are involved in international criminal cooperation. In addition, there are issues

related to the statute of limitations for public action. On top of this, rapid developments in technology also continually change the complexion of crime, such that the investigation process must consistently evolve with these developments.

- There were also reported difficulties over the recruitment of staff and public resources, while companies, especially multinationals, do not skimp on resources.

24. What are the biggest challenges businesses face when investigating bribery and corruption issues?

The biggest challenges faced are:

- Find law firms using the same tools as the prosecution authorities to defend themselves on equal terms (e.g. forensic science)
- Going back into the archives and interviewing people who were working at the time of the facts.
- Difficulties when it comes to co-contractors (due diligence and alleged corruption activities).
- Companies operating in many countries and having a lot of employees: it is more complicated to conduct an internal investigation and ensure that the rules are properly implemented.
- Divergence of regulations to which companies may be subject, including whether there are extensive employee's rights of defence. Companies should pay particular attention to the protection of the whistleblowers.
- Collecting and controlling information, particularly since the entry into force of the General Data Protection Regulation (GDPR).

Handling documents in an investigation requires consideration of several issues such as data privacy, security of evidence and the effective use of technology to assist with document review.

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

Since the entry into force of the law of March 21, 2022 and the decree of October 3, 2022, companies will have to modify their compliance program, especially since it is now necessary to reason by entity and no longer by group. It seems that each subsidiary will have to set up a separate procedure.

The Sapin III Law should further strengthen the French legislative arsenal to fight against corruption.

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

It would be appropriate to:

- Regulate in hard law the issues related to internal investigations, in particular as regards legal privilege, offering more guarantees to individuals.
- Strengthen lawyer-client privilege.
- Ensure total confidentiality of proceedings before the AFA Sanction Commission.
- Extend the scope of the offences covered by the CJIP and allow individuals to benefit from this negotiated procedure.

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