

Fight Against Corruption Comply or Settle the French Way

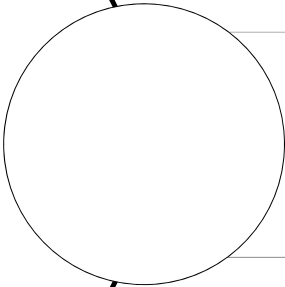
- **Eric Russo** First Deputy Prosecutor, Parquet National Financier (PNF)
- **Maria Lancri** Avocat à la Cour, GGV Avocats à la Cour - Rechtsanwälte

Common Session

Tuesday 27 March 2018 – 9:00 am

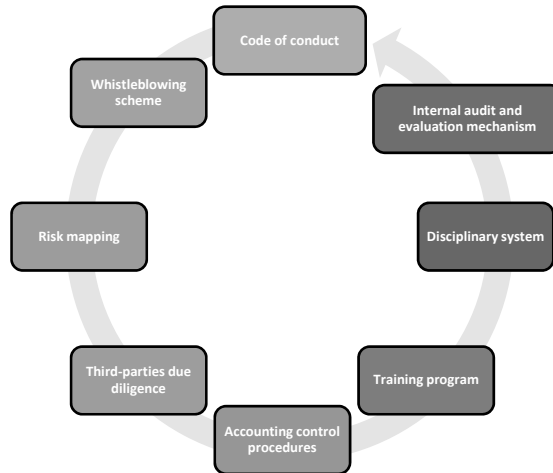
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Applicable Texts

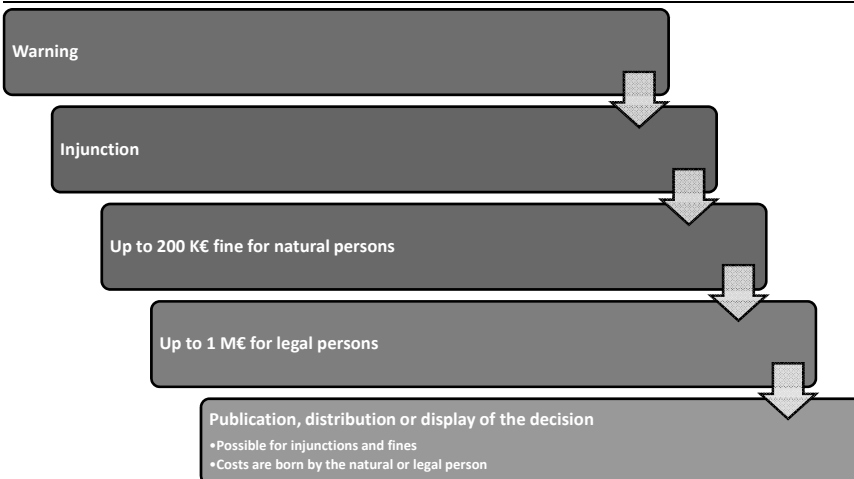


Sapin Law II – Law No 2016-1691 dated 9 December 2016 relating to transparency, fight against corruption and modernization of economic life

The Corruption Prevention Obligation



The Corruption Prevention Obligation – Sanctions



Guidelines to help private and public sector entities prevent and detect corruption, influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism



Scope of the Guidelines



■ For Private legal persons

Threshold

- 100 M€ turnover
- 500 employees

Application

- French companies
- Groups of French companies
- French groups of foreign companies

And

- The companies held in France and abroad

Purpose of the Guidelines



Not legally binding

- Help to define a compliance plan

Goals

- Help businesses to adopt adequate operating rules
- Strengthen performance and competitiveness
- Comply with legal obligations
- Prevent sanctions

Adapted application

- To the company's risks
- To its business model
- To its specific issues



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The charter on the parties' rights and duties regarding controls



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Subject of Controls

Fulfillment of the compliance obligation

- The 8 points of article 17
- « The French anti-corruption agency controls the **fulfillment of measures and procedures** »



Ensure that the entities' exposure to risk or infringement is the lowest possible

Law

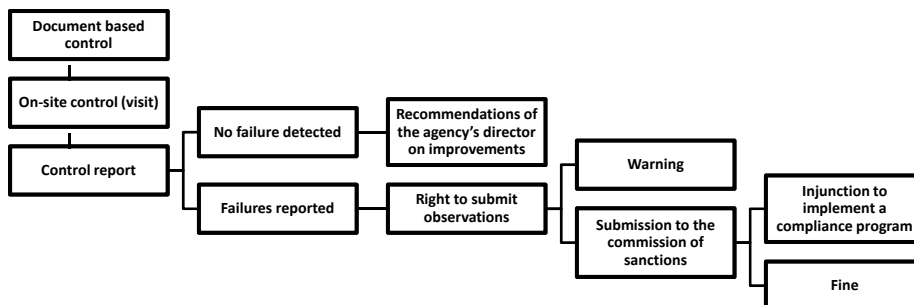
Charter

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Organization of Controls



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The French Deferred Prosecution Agreement

Origins of the Mechanism

Inefficiency of the French legal device

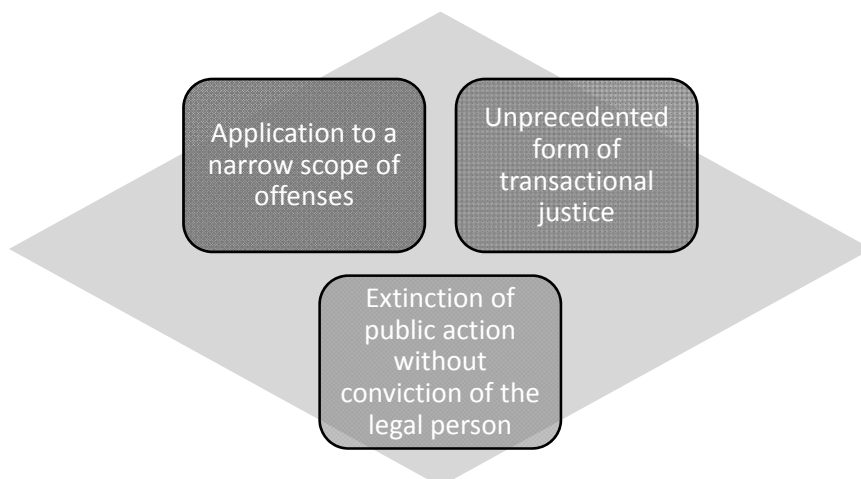
Application of extraterritorial laws to French companies by foreign prosecution authorities (USA, GB, Brazil, China...)

Recommended by the OECD

Goals of the French DPA

- Increases speed of resolution for complex procedures
- Encourages companies' cooperation
- Allows to reach a negotiated and acceptable solution with no appeal
- Does not entail criminal conviction → no exclusion from public procurements
- Ensures procedures concerning French companies are being dealt with by French authorities

Features of the French DPA



Scope: List of Offenses allowing a DPA

- Active corruption by a private individual
- Influence peddling by a private individual
- Active corruption of a foreign civil servant
- Active influence peddling with a foreign civil servant
- Active corruption of foreign judicial institutions
- Active influence peddling with foreign judicial institutions
- Active/passive private corruption
- Active/passive corruption in sport bets
- Active/passive influence peddling regarding court staff's decisions
- Laundering of tax fraud proceeds
- Related offenses (excluding tax fraud)

The Procedure and its Protagonists

Prosecutor

- Authority to
 - offer and negotiate DPA
 - file for validation by a judge

Company Officer(s)

- Disclosure, negotiation, approval of DPA offer
- Performance of the obligations contained in the DPA (fine and compliance)

The Procedure and its Protagonists

Victims

- Informed of tentative DPA
- But not participating in the negotiations
- File damages claims

Judge

- Appreciation of opportunity
- Formal requirements
- Validation of the DPA

Anti-corruption agency

- Publication of the DPA
- Implementation of the compliance program

Content of the DPA

Description of facts

Offenses triggered by the facts

Agreement of company on offenses triggered

Calculation of fine, terms of payment

Award of damages to the injured party

Compliance program

The Compliance Program Sentence and its Goals

Maximum duration
of 3 years

Expenses relating to
third party help to
AFA born by the legal
person

7 measures-plan

- Code of conduct
- Whistleblowing scheme
- Risk mapping
- Third-parties due diligence
- Accounting control procedures
- Training program
- Disciplinary system

Our Compliance Team



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