



# New Anti-Corruption Law Creates Changes To Whistleblower Provisions In France

Insights

12.16.16

On December 10th, France's National Assembly published a new law on transparency and anti-corruption. As a result France is expected to begin instituting newer and stronger protections for whistleblowers under the updated regime. This is expected to unify the country's disparate whistleblower protection rules and procedures.

## Background

Up until a little over a month ago, France, unlike many countries, did not have a comprehensive framework for addressing whistleblowing. Instead, procedures were spread among multiple laws and lacked coherence and global application.

France's new framework was the result of a lengthy legislative process between the National Assembly and the Senate. These new whistleblower rules are part of a new package of anti-corruption laws focused on transparency and modernization of economic activity called the Law on Transparency and Anti-Corruption, commonly referred to as "Sapin II" after the law's proponent, and minister of Finance, Michel Sapin. This new legal framework will be enacted in six months' time and creates a powerful new task force called The Anti-Corruption Agency to investigate and enforce its provisions. Among things, [Sapin II](#) also provides whistleblowing procedures applicable to companies with 50 or more employees.

## Whistleblowing Under the "Ancien Régime"

Pre-Sapin II, whistleblowing protections were scattered throughout France's anticorruption, environmental protection, tax, and labor laws. The [French Labor Code](#) in particular prohibits employers from punishing employees when:

- An employee reports a situation where the individual had a reasonable belief that the circumstances presented a serious and imminent dangers to an individual's life or health;
- members of the health and safety community reporting situations that could "present a serious and imminent danger" to employees or the general public;
- employee representatives who report the occurrence of "a violation of rights of persons, physical or mental health, or individual freedoms in the firm that would not be justified by the nature of

of mental health, or individual freedoms in the firm that would not be justified by the nature of the task at hand nor proportionate to the goal sought,” including, among others, situations of harassment and discrimination; or

- employees who report sexual or moral harassment practices.

The French Supreme Court recently affirmed these protections by ruling in favor of employees who took legal action against their employers based on the situations mentioned above, and the new anti-corruption law should therefore be seen to supplement, rather than replace, the current regime outlined in the Labor Code.

## **Whistleblower Defined**

Under the new legal framework, Article 6, Chapter 2 of the new transparency law defines a whistleblower as “a physical person who reveals or signals, without personal interest and in good faith, a crime or misdemeanor regarding, or a grave and flagrant violation of which he or she became aware, of an international commitment ratified or approved by France, [...], the law or regulation, or the threat or severe harm to the public, which the individual personally gained knowledge of.” Information pertaining to national security/defense, confidential medical information, or attorney-client communications are exempted.

Given the above definition “reporting selflessly and acting in good faith,” requirement it appears the regime applies only to disinterested parties. Unfortunately, the “personal knowledge requirement” is left vague and it is unclear whether an employee who was made aware of a violation by another would be protected.

## **Protections**

Retaliation and discrimination against whistleblowers are prohibited by the new law, and any discipline or punishment by an employer as a result of whistleblowing are considered null and void. Preventing whistleblowing activity is punishable by up to a year in prison and a fine of up to 15,000 Euros for individuals and 75,000 for legal entities. Under the new regime, employees are entitled to assistance from the Anti-Corruption Agency for losses incurred as a result of reporting.

The law also provides protections for employers by imposing penalties for unfounded/abusive assertions. Abusive/fraudulent whistleblowing is subject to French libel laws. Unfounded accusations made against an entity or person holding public authority may result in a fine of up to 45,000 Euros. Similar accusations against a private person may result in a fine of up to 12,000 Euros.

## **Whistleblowing Procedures**

Companies with at least 50 employees must implement internal alert procedures through internal regulations. During the whistleblowing process, the identity of the whistleblower, the information

provided, and the person(s) involved in the report must remain confidential. Revealing information that could lead to identification of the whistleblower is punishable by up to two years in prison and a fine of up to 50,000 Euros. If an employee wishes to make a report, the process is as follows:

- The whistleblower alerts either his/her manager or designated person(s) (company inspector, ethics committee, or others with similar roles).
- If the alert is not addressed within a reasonable period of time, the alert can be brought to judicial authorities, personnel representatives, *Defenseur des Droits* (literally, “Defenders of Rights”) otherwise known as Ombudsman, or any whistleblower organization which has been registered for at least five years.
- If, at this point, the alert is not addressed, a whistleblower may disclose to the public. Such disclosures are only allowed in order to prevent an imminent threat to the general public.

Employers must also declare all databases relating to whistleblowing which contain personal information to the French Data Protection Authority (CNIL). Employers must also inform employees of their right to access, modify, or erase the content pertaining to them on such whistleblowing database(s). Unfortunately, the new law does not provide specific instructions or standards for how to inform employees of the contents of the whistleblowing database(s).

## Conclusion

With three of the top 10 FCPA enforcement actions in 2015, France appears to be sincere in its efforts to update enforcement. International and domestic companies operating in France should anticipate higher levels of scrutiny and should ensure their compliance programs are up to date. If you have any questions or would like more information regarding these changes, please contact the [Fisher Phillips International Employment Practice](#).

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