

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

FRANCE

(Information as of 18 September 2009)

Date of deposit of instrument of ratification or acceptance or date of accession

The Act authorising the ratification of the OECD Convention was adopted on 25 May 1999 (Act N° 99-424 of 27 May 1999, *JORF* N° 121 of 28 May 1999, page 7 858). France deposited its instrument of ratification on 31 July 2000.

Implementing legislation

The former framework established by the Corruption Act of 30 June 2000 (*JORF* N° 151 of 1 July 2000, page 9 944) was amended by the Anti-Corruption Act of 13 November 2007 (Anti-Corruption Act N° 2007-1598 of 13 November 2007 published in *JORF* N° 264 of 14 November 2007, page 18 648).

In addition to the existing offences of bribery and trading in influence in domestic law, there are now four offences addressing bribery of foreign public officials:

- passive bribery of a public official of a foreign State or international organisation;
- active bribery of a public official of a foreign State or international organisation;
- passive bribery of foreign or international judicial staff;
- active bribery of foreign or international judicial staff.

These offences do not distinguish between whether the acts were committed inside or outside the European Union or in the course of international business transactions or not.

There are also four offences addressing trading in influence with foreign public officials that are drafted in the same terms as the equivalent offences in domestic law:

- passive trading in influence with an international public official;
- active trading in influence with an international public official;
- passive trading in influence with international judicial staff;
- active trading in influence with international judicial staff.

The Act of November 2007 also created two new offences regarding bribery of a witness in a foreign or international judicial procedure (Article 435-12) and threats against or intimidation of foreign or international judicial staff (Article 435-13) that are counterparts to the domestic offences in this field.

All these offences are applicable to both natural and legal persons.

The Act also introduces a new Article 706-1-3 of the Code of Criminal Procedure that makes all domestic and international offences of bribery and trading in influence subject to surveillance and undercover measures, telephone tapping in the investigation phase and the use of audio and video recording in certain locations or vehicles and the possibility of taking preventive measures that until now have only been used in cases of crime and organised crime.

Other relevant legislative or regulatory provisions concerning the implementation of the OECD Convention or Recommendations

With regard to the implementation of the OECD Convention in the field of money laundering (Article 7):

On 11 February 2004 adoption of Act N° 2004-130 reforming the status of certain judicial and legal professions, legal experts, industrial property consultants and experts in public auctions, which transposes the second anti-money laundering Directive of 4 December 2001. This Act organises the methods of access to these professions, strengthens ethical and disciplinary standards and improves the means available to certain professions to contribute to implementing decisions and thereby to ensuring the effectiveness of the justice system. It broadens the scope for the reporting of suspicious activities to include accountants, auditors, notaries, bailiffs, judicial administrators and legal agents responsible for winding up businesses as well as barristers with a right of audience before the *Conseil d'Etat* and the *Cour de cassation*, lawyers and solicitors appearing before courts of appeal and judicial auctioneers and auction houses.

Publication on 31 January 2009 of Order No. 2009-104 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, which transposes into domestic law the Third Money Laundering Directive of 26 October 2005. This order was ratified on 12 May 2009 in connection with the so-called Act on the simplification and clarification of the law and the streamlining of procedures. The scope of the anti-money laundering provisions (due diligence obligations vis-à-vis customers, preserving records for at least five years and reporting suspicions to Tracfin, the financial intelligence unit) was extended to domiciliation companies and fiduciary lawyers. In addition, the scope of the obligation to report suspicious transactions, previously limited to certain forms of exceptional crime, was expanded to encompass common crime, including tax fraud. In addition, the legislation has instituted anti-money laundering provisions applicable to all professions subject thereto (except for antique dealers and jewellers). The control authorities designated therein are the professional associations of the legal and judicial professions as well as those of accountants and auditors. Moreover, a national sanctions board will impose disciplinary sanctions in the event of any failure of estate agents, domiciliation companies or casinos to comply with anti-money laundering rules.

With regard to the implementation of the Convention in the field of accounting (Article 8)

On 1 August 2003 adoption of the Act on financial security (Act N° 2003-706, *JORF*, N° 177 of 2 August 2003, page 13 220), which contains several provisions intended to strengthen supervision of auditors. It provides, in particular, for the creation of a body responsible for the supervision of the profession, the *Haut Conseil du commissariat aux comptes*, with three quarters of its membership comprised of non-auditors (magistrates and prominent people with appropriate qualifications). It also introduces a series of measures aimed at strengthening the independence of auditors in performing their duties within a company, particularly by guarding against situations of conflict of interest and the danger of collusion between an auditor and the company whose accounts he is responsible for auditing.

Application of the OECD Action Statement on Bribery and Official Supported Export Credit, which requires that, when making an application for credit insurance, the exporter must declare that the contract covered by the guarantee was not secured by actions outlawed by the articles of the Criminal Code introduced by the French law transposing the OECD Convention.

Protection against all discriminatory measures for employees reporting cases of bribery encountered while they are performing their duties (Act of 13 November 2007): Article L. 1161-1 of the Labour Code establishes effective legal protection against any form of disciplinary sanction against employees who, in good faith, disclose or report to their employer or to the judicial or administrative authorities acts of bribery that have come to their attention while performing their duties. Any breach of the employment contract that might result from this and any sanction or measure taken in breach of this provision shall be automatically void.

Other information

Relevant authorities:

- Ministry of Justice
- *Service Central de la Prévention de la Corruption* (Central Department for Corruption Prevention)
- Ministry of Economy, Industry and Employment
- Ministry of the Budget, Public Affairs, Civil Service and Reform of the State
- Ministry of European and Foreign Affairs
- *Brigade centrale de lutte contre la corruption [B.C.L.C]* (Central Anti-Bribery Brigade)
- TRACFIN

Relevant Internet links to national implementing legislation, for example:

For the implementation of the Criminal Code and the Code of Criminal Procedure, see:

<http://www.legifrance.gouv.fr>

Ratification of other relevant international instruments:

- United Nations Convention against Corruption: signed on 9 December 2003, ratified on 11 July 2005.
- European Convention on Extradition: signed on 13 December 1957, ratified on 10 February 1986.
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime: signed 5 July 1991, ratified on 25 February 1997.
- EU Convention on the Protection of the European Communities' Financial Interests and its First and Second Protocol: ratified on 27 May 1999.

- EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States: ratified on 27 May 1999.
- United Nations Convention against Transnational Organized Crime: signed on 12 December 2000, ratified on 29 October 2002.
- Council of Europe Criminal Law Convention on Corruption: signed on 9 September 1999, ratified on 25 April 2008.
- Council of Europe Civil Law Convention on Corruption: signed on 26 November 1999, ratified on 25 April 2008.
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption: signed on 15 May 2003, ratified on 25 April 2008.

Signature of other relevant international instruments

- European Union Council Framework Decision of 22 July 2003 on combating corruption in the private sector.

Phase 1 and Phase 2 Monitoring Reports on the Implementation of the Convention

Phase 1 report: <http://www.oecd.org/dataoecd/24/50/2076560.pdf>

Phase 2 report: <http://www.oecd.org/dataoecd/36/36/26242055.pdf>

Phase 2 Follow-up report (since January 2004):
<http://www.oecd.org/dataoecd/36/18/36411181.pdf>