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The UK gets tougher than France on combating bribery

III French commercial organisations doing business with the UK will be severely affected by the UK government's anti-bribery bill, currently being heard before the upper chamber of parliament, the House of Lords. The Bill is expected to come into force before the general election in 2010.

Even though the UK Anti-Bribery Bill was inspired by the OECD Convention on Combating Bribery of Foreign Public Officials which was also ratified by France, the UK legislation will go a step further in combating corruption than its French equivalent.

One of the main striking features of the UK Bill is to impose a strict liability on commercial organisations for failing to prevent bribery. By providing a defence to this offence, where it can be shown that commercial organisations have put adequate anti-bribery procedures in place, the Bill imposes *ipso facto* a requirement on these organisations to implement anti-corruption procedures.

Such requirements do not currently exist under French law and if French commercial organisations which currently carry out business in the UK want to rely on this defence, they will have to act now to ensure that adequate anti-corruption measures are put in place before the UK bill comes into force. These procedures will have to comply with both UK and French legislation. By way of example, "whistle blowing procedures" (*alerte éthique*) which had been put in place by Dassault Systèmes SA were recently held to be partly illegal by the French Supreme Court, on the grounds that they had not been approved by the CNIL¹ prior to being implemented within the Company.

Although anti-corruption procedures have already been implemented on a voluntary basis by large French companies which conduct business through US companies or subsidiaries in the US in order to comply with US legislation², these procedures will

nevertheless have to be reviewed by external service providers to ensure that they also comply with the new requirements imposed by the UK bill. It goes without saying that French companies which have yet to implement any anti-corruption procedures will have to work on these compliance issues as a matter of urgency. Compliance in France, Britain (and the United States), whilst broadly similar, also have several distinct differences which international companies will have to take on board.

Both the UK Bill and the French anti-corruption legislation have created offences of "bribing another person", "being bribed" and the related "bribery of foreign public official". Therefore criminal courts in the UK and in France could have concurrent jurisdictions in the circumstances where one element of the offence at issue has been committed in both jurisdictions.

As there are no international obligations imposing on criminal courts to stay criminal proceedings in favour of another court, a French national resident in England could be sentenced by both courts for similar offences. Further, because there are no limitation periods in common law concerning bribery offences in the UK, an offender could still be prosecuted and sentenced in the UK, when criminal proceedings would be time barred in France after three years.

France was criticised by Transparency International³ for this short limitation period of three years and for its Parliamentary proposal to dispense with investigative judges. ■

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1 - The CNIL (Comission nationale de l'informatique et des libertés) is the equivalent of the ICO (Information Commissioner's Office).

2 - The Foreign Corrupt Practices Act 1977 and the Sarbanes Oxley Act 2002.

3 - Progress Report 2009 on the OECD Anti-Bribery Convention.