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THE EU'S NEW ANTI-CORRUPTION DIRECTIVE: A LANDMARK REFORM WITH UNRESOLVED TENSIONS

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After decades of fragmented and largely ineffective supranational efforts, the European Union has taken a decisive step forward in the fight against corruption. Directive (EU) 2026/1021 of 21 April 2026 on combating corruption (the "Directive") establishes a common legal framework applicable across all Member States, replacing instruments that had long since demonstrated their limitations. While the Directive represents a genuine structural advance, its ambitions are tempered by a number of concessions that raise questions about its long-term operational effectiveness.

I. The Structural Inadequacies of the Pre-Existing Framework

For much of the past three decades, the EU's approach to corruption was defined by two principal instruments: the Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, and Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

The 1997 Convention was narrowly drawn, focusing exclusively on corruption in the public sector and covering only civil servants, to the exclusion of elected officials. The 2003 Framework Decision, which extended the scope of EU instruments to private-sector corruption, suffered from a different set of failings: uneven transposition across Member States and weak enforcement in practice.

The combined effect of these shortcomings produced three structural vulnerabilities in European anti-corruption law. First, the definitions of corruption offenses and the severity of sanctions varied considerably from one jurisdiction to another, particularly in the private sector. Second, limitation periods and asset confiscation regimes remained highly divergent, creating asymmetries that sophisticated actors could exploit. Third, and perhaps most critically, effective cross-border cooperation between national authorities remained the exception rather than the rule. The credibility of the EU as a normative actor in the anti-corruption space was measurably weakened as a result.

II. The Directive's Contribution to a European Level Playing Field

A. A Comprehensive Catalogue of Criminal Offences

The primary objective of the Directive is to achieve substantive harmonization across Member States through the mandatory criminalization of a defined set of conduct. Member States will be required to penalize: active and passive corruption in both the public and private sectors; embezzlement; trading in influence; unlawful exercise of public functions; obstruction of justice; corruption-related illicit enrichment; concealment; and incitement, aiding and abetting, and attempt.

One notable absence from the final text is the offense of abuse of office, which had featured in earlier legislative proposals. Its removal, attributable in large part to pressure from Italy following that country's decriminalization of the offense in August 2024, represents a significant retreat from the Commission's initial ambitions. In its place, the Directive introduces the more narrowly defined offense of unlawful exercise of public functions, restricted to serious violations of applicable law. The political dynamics underlying this compromise illustrate a broader tension inherent in harmonization exercises: the risk that the final instrument gravitates toward the least demanding common denominator rather than toward genuine convergence at a high level of protection.

B. Corporate Liability: A New Standard of Due Diligence

One of the more significant innovations introduced by the Directive concerns the conditions for establishing corporate criminal liability. Beyond the classical model of liability based on the direct acts of a company's representatives, the Directive introduces a default liability standard premised on failures of supervision or internal control. Where such a failure has enabled a corruption offense committed by a person subject to the authority of the legal entity and for its benefit, liability may be engaged regardless of any direct involvement by senior management.

This mechanism implicitly validates the compliance-oriented approach that has been at the center of French law since the enactment of the Sapin II Law in 2016. Companies that can demonstrate the existence of rigorous and effective compliance programs will benefit from mitigating circumstances under the Directive, creating a concrete legal incentive for the adoption of preventive governance structures.

C. Sanctions and Enforcement Tools

On the question of penalties, the Directive sets maximum custodial sentences of three to five years depending on the gravity of the offense. These thresholds fall short of the six to seven years that had been proposed in the draft text of May 2023, a reduction that reflects the compromises required to secure political agreement among Member States.

For legal entities, the Directive introduces a turnover-based fine mechanism, providing that the maximum penalty shall not be less than three or five percent of global annual turnover, or 24 or 40 million euros, depending on the specific offense concerned. This approach breaks with fine systems calibrated by reference to penalties applicable to natural persons and aligns the EU framework more closely with international standards in areas such as competition law and data protection.

The Directive also extends limitation periods, introduces aggravating and mitigating circumstances, and strengthens operational tools including investigative powers, asset freezing and confiscation mechanisms, and structured cooperation with Europol, Eurojust, and the European Public Prosecutor's Office (EPPO). In addition, it places a positive obligation on Member States to adopt national anti-corruption strategies, conduct awareness-raising campaigns, and designate dedicated prevention bodies.

D. Remaining Weaknesses

Despite its scope, the Directive leaves a number of structural gaps unaddressed. The most significant of these is the abandonment of the proposed European Anti-Corruption Coordinator, which had been envisaged as a body attached to the Commission responsible for overseeing implementation of the EU's anti-corruption strategy, facilitating coordination among Member States, and producing an annual European report. The absence of this mechanism undermines the coherence of the overall framework and weakens the prospects for meaningful convergence in practice.

Equally noteworthy is the limited treatment of the EPPO's role, the absence of provisions for negotiated justice mechanisms, and the disappearance from the final text of the independence guarantees for national prevention bodies that had been present in earlier drafts. Taken together, these omissions suggest that enforcement will continue to depend heavily on the political will of individual Member States, a dependency that has historically been the principal source of the EU's difficulties in this domain.

III. Implications for French Law and the Sapin II Framework

A. A Sophisticated Starting Point

France enters the transposition process from a position of relative strength. The Sapin II Law of 9 December 2016, and the subsequent reforms enacted through the Waserman Law transposing the 2019 EU Whistleblower Directive, have equipped French law with one of the most comprehensive anti-corruption frameworks in the world. A complete overhaul of French law will not be required.

That said, transposition will necessitate a series of targeted but meaningful adjustments, the contours of which can already be identified.

B. Key Transposition Requirements

Corruption-related illicit enrichment. The Directive requires Member States to criminalize enrichment attributable to corruption offenses. While French law's broad *recel* (concealment) offense already captures many of the situations this provision targets, a specific legislative response may nonetheless be required to ensure full compliance.

Corporate liability for supervisory failures. The default liability standard introduced by the Directive has no direct equivalent in French criminal law, which traditionally conditions corporate liability on the commission of an offense by an organ or representative acting on the company's behalf. The new mechanism, which extends potential liability to situations where a supervisory failure within the organization has enabled an offense committed by a subordinate, will require a legislative innovation. At the same time, it powerfully reinforces the importance of the compliance obligations set out in Article 17 of the Sapin II Law and the role of the Agence française anticorruption in assessing their adequacy.

Sanctions alignment. French corporate sentencing law, which calibrates fines by reference to multiples of the penalties applicable to natural persons, will need to be revised to comply with the Directive's turnover-based fine floors. Ensuring that the applicable maximum penalties meet the three and five percent thresholds stipulated by the Directive will require legislative adjustment.

Compliance-related mitigating circumstances. French law will need to formally integrate the mitigating circumstances provided for by the Directive, including those applicable to entities that have adopted effective compliance programs, cooperated with the competent authorities, or self-reported the relevant conduct. The codification of these factors will give legal certainty to a practice that has developed largely in the shadow of prosecutorial discretion.

Limitation periods. Finally, certain limitation periods under French law will need to be extended to meet the minimum standards established by the Directive.

Conclusion

Directive (EU) 2026/1021 marks a genuine turning point in the development of European anti-corruption law. For the first time, the Union has equipped itself with a comprehensive, binding instrument capable of driving substantive convergence among Member States on the definition of offenses, the level of sanctions, the conditions of corporate

liability, and the architecture of prevention. The mandatory transposition deadline of 2028 will be a critical test of whether the political commitments embedded in the text translate into meaningful and durable legal change.

For companies operating across the EU, the Directive sends a clear and consistent message: effective compliance is no longer merely good governance practice. It is a legal imperative with direct consequences for criminal exposure, the allocation of corporate liability, and the quantum of available sanctions. Those that have already invested in robust anti-corruption programs are well positioned. Those that have not should treat the Directive's adoption as a significant catalyst for change.

August Debouzy's White-Collar Crime and Compliance practices regularly advise companies and institutions on anti-corruption compliance, internal investigations, and engagement with regulatory authorities in France and internationally. We will continue to monitor the transposition process closely and are available to discuss the implications of the Directive for your organization.