CORPORATE CRIME UPDATE

REFORM OF THE FRENCH CRIMINAL CODE:
FRENCH NATIONAL ASSEMBLY ADOPTS
GOVERNMENT BILL TO STRENGTHEN THE
EFFECTIVENESS OF CRIMINAL SANCTIONS

On 10 June 2014, the French National Assembly adopted, in first reading, a Government bill modifying the French Criminal Code in order to strengthen the effectiveness of criminal sanctions. The French Senate adopted however a modified version of the bill on 26 June 2014.

The first key measure implemented by the bill concerns the abolition of automatic minimum sentences ("peines planchers") for repeat offenders, which were introduced by Law n° 2007-1198 of 10 August 2007. The measure aims to promote the individualisation of punishments by enhancing the judge’s discretion to have regard to the gravity of the offence when determining the appropriate sentence.

Another key measure is the introduction of a new alternative to imprisonment, the so-called "contrainte pénale", in the Criminal Code (Article 131-4-1). The new punishment consists of control measures, as well as the imposition of specific obligations and prohibitions on the convicted person under the oversight of the judge responsible for the enforcement of sentences. The goal of this alternative sentence is to prevent recidivism by promoting the offender’s integration or reintegration into society. Such sentences should be applied by the courts when the circumstances of the case justify the sustained social and educational support of the offender.

FINAL ADOPTION OF THE REFORM CONCERNING
REVIEW PROCEDURES FOR CRIMINAL
CONVICTIONS

The parliamentary bill reforming the review procedures for final criminal convictions was finally adopted on 11 June 2014. The bill allows definitive criminal convictions to be reviewed where a new fact, or a fact unknown to the Court at the time of sentencing, has emerged and this fact can establish the innocence of the convicted person or raise a doubt about their guilt.

The law also unites the procedures for the revision and review of criminal convictions. The revision of criminal convictions in cases of

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error of fact and review in cases of errors of law identified by the European Court of Human Rights will be examined by a new Court, the so-called Court of revision and review of criminal convictions ("Cour de réévaluation et de réexamen").

PUBLICATION OF DIRECTIVE ON THE EUROPEAN INVESTIGATION ORDER IN CRIMINAL MATTERS

On 1 May 2014, the EU directive regarding the European Investigation Order in criminal matters was published in the Official Journal. The directive is designed to replace the existing legislative framework, which has been criticised as over-complicated and ineffective.

The directive allows the judicial authorities of a Member State (the issuing State) to issue a European Investigation Order (EIO) for specific investigative measures to be carried out in another Member State (the executing State) for the purposes of obtaining evidence. EIOs may be issued in relation to investigations into legal or natural persons, and the possible measures expressly include steps to identify the holders of accounts in banks and other financial institutions, as well as the real-time monitoring of banking and other financial operations. A suspected or accused person, or their counsel, may also request the issue of an EIO.

The judicial authorities of an issuing State may only issue an EIO where it: (i) is "necessary and proportionate"; and (ii) could have been issued "under the same conditions in a similar domestic case". The executing authority may refuse to recognise or execute an EIO on a number of grounds, including domestic rules or laws on freedom of the press or freedom of expression and national security grounds.

The Member States must take the steps necessary to implement the Directive by 22 May 2017.

IMPLEMENTATION OF DIRECTIVE N° 2012/13/EU RELATING TO THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

The bill on the right to information in criminal proceedings was adopted on 15 May 2014 (the "Law") and came into force on 2 June, significantly reforming existing criminal procedure.

The Law creates a new regime applicable to persons suspected of having committed or having attempted to commit a criminal offence when there are plausible grounds for such suspicions, so-called interrogation without custody ("audition hors garde à vue").

As such, the person may be questioned after being informed of the circumstances surrounding the alleged criminal conduct (the legal significance, time and place of the alleged facts) and of certain of their rights, such as the right to remain silent, to leave the premises, to have an interpreter and, in respect of offences punishable by imprisonment, to retain legal counsel ("avocat"). Where there are no plausible grounds for such suspicion, however, a person cannot be held in custody against their will, unless it is necessary for the investigation, in which case the person can only be held for a maximum of four hours.
The Law also reforms the regime applicable to police custody ("la garde à vue"). From now on, a person held in police custody must be informed of certain facts, such as their right to an interpreter, their right to see the documents to which their counsel has access, as well as their right to express their views on the extension of custody. The Law, however, still does not give lawyers access to the full case records when the person is brought into custody.

CIRCULAR OF 22 MAY 2014: HARSHER PENALTIES IN THE FIGHT AGAINST TAX FRAUD

On 22 May 2014, the Public Finances Office of the Ministry of Finance and Public Accounts (Direction générale des finances publiques du ministère des Finances et des Comptes publics) and the Ministry of Justice jointly issued the latest in a series of circulars specifying how the law of 6 December 2013 on the fight against tax fraud and serious economic and financial crimes should be applied. The circular outlines in detail the need for "strengthened cooperation between the judicial authority and the tax administration", including improved information-sharing. The circular emphasises the importance of severely punishing the most fraudulent conduct – particularly, conduct demonstrating a clear intent to evade taxes such as the use of foreign accounts or shell companies, "recourse to other manoeuvres intended to lead the administration astray" such as "missing trader fraud" (i.e. importation of goods not subject to VAT and selling them with VAT added), an attitude during a tax audit demonstrating the absence of any intent to cease the conduct in question, or repeat offences.

With respect to sentences, the circular advocates the adoption of so-called "complementary" sentences in addition to the current primary sentences which can extend to 7 years' imprisonment and 2 million euros in fines. Possible complementary measures include seizures and confiscations, publication of the court decision, suspension of civil, political, and family rights, prohibition from exercising rights, either directly or indirectly, in an independent, commercial, or industrial professional capacity or managing or controlling a commercial or industrial company, or the suspension of a driver's licence. The importance of adopting proper sanctions in order to effectively combat tax fraud is reflected in the 10 billion euros in additional revenue which the Government collected in 2013 through its anti-fraud efforts.