

# EU/local-law approaches to global US law enforcement

AmCham Denmark, 11/9-2018

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# Sapin II – The new enhanced French anti-corruption legislation

## LOIS

LOI n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique (1)

NOR : ECFM1605542L

L'Assemblée nationale et le Sénat ont délibéré,

L'Assemblée nationale a adopté,

Vu la décision du Conseil constitutionnel n° 2016-741 DC du 8 décembre 2016,

Le Président de la République promulgue la loi dont la teneur suit :

TITRE I<sup>er</sup>

DE LA LUTTE CONTRE LES MANQUEMENTS  
À LA PROBITÉ

CHAPITRE I<sup>er</sup>

De l'Agence française anticorruption

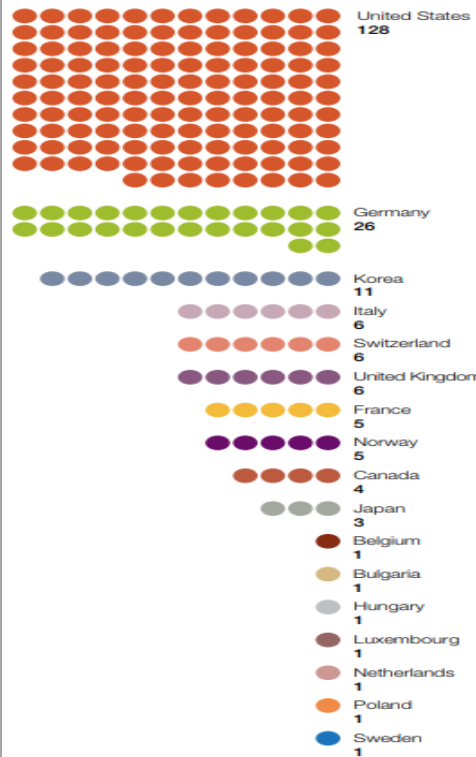
**Article 1<sup>er</sup>**

L'Agence française anticorruption est un service à compétence nationale, placé auprès du ministre de la justice et du ministre chargé du budget, ayant pour mission d'aider les autorités compétentes et les personnes qui y sont confrontées à prévenir et à détecter les faits de corruption, de trafic d'influence, de concussion, de prise illégale d'intérêt, de détournement de fonds publics et de favoritisme.

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- › A code of conduct
  - › Internal whistleblower mechanisms
  - › Risk mapping
  - › Third party due diligence
  - › Strong accounting controls
  - › Compliance training program
  - › Disciplinary regime
  - › Internal controls
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# The slowly changing enforcement picture

**Figure 19. Number of foreign bribery schemes sanctioned per country**



Source: OECD analysis of foreign bribery cases concluded between 15/02/1999 and 01/06/2014

## THE RESULTS

### BROADER AND IMPROVED LAWS



BRIBERY IS NOW A CRIME IN ALL

**43**

PARTIES TO THE CONVENTION

**43**

COUNTRIES HAVE STRENGTHENED OR CREATED CORPORATE LIABILITY LAWS

in compliance with commitments made under the Anti-Bribery Convention. These laws allow them to hold companies, not just individuals, liable for foreign bribery.

**0**

COUNTRIES EXPLICITLY PERMIT TAX DEDUCTIBILITY OF BRIBES

AT LEAST

**29**

COUNTRIES ELIMINATED TAX DEDUCTIBILITY OF BRIBES

in order to comply with their obligations under the Convention.



**18**

COUNTRIES HAVE INTRODUCED OR STRENGTHENED WHISTLEBLOWER PROTECTION in response to peer evaluation reports and recommendations.

### ENFORCEMENT



**443**

INDIVIDUALS AND

**158**

ENTITIES HAVE BEEN SANCTIONED under criminal proceedings for foreign bribery in

**20**

PARTIES

between the time the Convention entered into force in 1999 and the end of 2016.

AT LEAST

**121**

INDIVIDUALS AND

**235**

ENTITIES IN

**8**

COUNTRIES HAVE BEEN SANCTIONED

for other offences related to foreign bribery, such as money-laundering or accounting.



**500**

INVESTIGATIONS ARE ONGOING IN

**29**

COUNTRIES



**125**

INDIVIDUALS AND

**19**

ENTITIES ARE SUBJECT TO ONGOING PROSECUTIONS IN

**11**

COUNTRIES

for offences under the Convention.



**23**

COUNTRIES HAVE YET TO CONCLUDE A FOREIGN BRIBERY ENFORCEMENT ACTION

# Follow up prosecutions of individuals

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, September 21, 2017

## **Telia Company AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than \$965 Million for Corrupt Payments in Uzbekistan**

**Companies Agree to Coordinated Resolution between the Department of Justice, U.S. Securities and Exchange Commission (SEC) and the Kingdom of the Netherlands Representing the Second Major Resolution Involving Corruption by Telecom Companies in Uzbekistan**

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### UZBEKISTAN

## Swedish Prosecutors Charge Three Former Telia Execs In Uzbek Probe

September 22, 2017 16:44 GMT RFE/RL

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# Territoriality

## Rolls-Royce PLC

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Following a four year investigation, the SFO and Rolls-Royce entered into a Deferred Prosecution Agreement (DPA) which was approved by Sir Brian Leveson, President of the Queen's Bench Division on 17 January 2017. The DPA enables Rolls-Royce to account to a UK court for criminal conduct spanning three decades in seven jurisdictions and involving three business sectors.

The DPA involves payments of £497,252,645 (comprising disgorgement of profits of £258,170,000 and a financial penalty of £239,082,645) plus interest. Rolls-Royce are also reimbursing the SFO's costs in full (c£13m).

The investigation into the conduct of individuals continues.

## Forelegg til Yara på 295 millioner kroner

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ØKOKRIM har gitt Yara International ASA (Yara) et forelegg for tre tilfeller av grov korrupsjon. Saken gjelder bruk av bestiklinger overfor høytstående offentlige tjenestemenn i Libya og India, samt bestiklinger overfor en leverandør i Russland. Til sammen dreier det seg om avtaler om bestiklinger for cirka 12 millioner USD. Forholdene er skjedd i perioden 2004 – 2009.

Publisert 15. januar 2014 | Oppdatert 28. november 2017

Yara er morselskap i et internasjonalt konsern med virksomhet innen hovedsakelig produksjon og salg av gjødsel og har mer enn 8000 ansatte over hele verden. Selskapet har hovedkontor i Oslo og er notert på Oslo Børs. Den norske stat eier 36,2 prosent av aksjene. I 2012 hadde Yara en årsomsetning på cirka 84 milliarder kroner og et årsresultat på over 10 milliarder kroner.

Boten i forelegget er på 270 millioner kroner. I tillegg omfatter forelegget inndragning av utbytte med 25 millioner kroner. Yara har informert ØKOKRIM om at foretaket erkjenner at vilkårene for straffansvar er oppfylt, og forelegget er vedtatt.

# Financial penalties

- › How to measure corporate fines
- › Double jeopardy
- › Global settlements

## Press Release

### SEC Charges Medical Device Manufacturer With FCPA Violations

FOR IMMEDIATE RELEASE  
2016-126

*Washington D.C., June 21, 2016* — The Securities and Exchange Commission today announced that Massachusetts-based medical device manufacturer Analogic Corp. and its wholly-owned Danish subsidiary have agreed to pay nearly \$15 million to settle parallel civil and criminal actions involving Foreign Corrupt Practices Act (FCPA) violations.

An SEC investigation found that Analogic's Danish subsidiary, BK Medical ApS, engaged in hundreds of sham transactions with distributors that funneled about \$20 million to third parties, including individuals in Russia and apparent shell companies in Belize, the British Virgin Islands, Cyprus, and Seychelles.

Analogic agreed to pay \$7.67 million in disgorgement and \$3.8 million in prejudgment interest to settle the SEC's charges that it failed to keep accurate books and records and maintain adequate internal accounting controls. In determining the settlement, the SEC considered Analogic's self-reporting, remedial acts, and general cooperation with the SEC's investigation. BK Medical agreed to pay a \$3.4 million criminal fine in a non-prosecution agreement announced today by the U.S. Department of Justice.



# Hans Jakob Folker, Partner, Copenhagen

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Hans Jakob heads Kromann Reumert's corporate criminal law and compliance dispute practice, focusing on investigations, dispute resolution and forensic e-discovery processes

- › He joined Kromann Reumert in 2013 after having served as deputy public prosecutor with the State Prosecutor for Serious Economic and International Crime.
- › In particular, Hans Jakob assists in cases regarding more complex compliance issues. Years of experience in cooperating with Danish and foreign authorities have given him valuable insight into such matters.
- › As a seasoned litigator, Hans Jakob has acted as prosecutor and defense counsel in complex criminal proceedings. He deals with public and criminal law demands within all business sectors, including anti-corruption, conflicts of interest, money laundering, financial regulation, export control and sanctions.

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