

French Upjohn warning requirement places "strong obligation" on lawyers

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Paris skyline (Credit: iStock.com/TomasSereda)

Lawyers in France must inform employees interviewed during internal investigations that they represent the company and arrange for the individuals to get separate counsel, attendees at the American Bar Association's Fifth London White Collar Crime Institute heard on 11 October.

Speaking at a conference session, Stéphane de Navacelle at Navacelle in Paris said that new rules from the Paris Bar Association, which issues ethical guidelines to its 24,000 members, require lawyers to issue the warning to employees during internal investigations. The rules were published on 11 September.

"We now have the French equivalent of the Upjohn warning," Navacelle said.

In the US, lawyers must warn employees who are interviewed that the privilege belongs to the company and that any information provided during the interview may be handed over to US authorities. Lawyers in the US regularly give the warning in written form and require the individual to sign a statement to confirm they have understood the full implications of the warning.

On top of those obligations, lawyers in France must now also advise employees attending interviews that they need to hire a lawyer if, at the outset of an investigation, it appears that their behaviour can be held against

them. French lawyers also have to ask interviewees to sign a verbatim interview report stating they agree with the content of the interview.

Navacelle said the new rules place a "strong obligation" on lawyers. When asked by an audience member what happens if lawyers violate these rules, Navacelle said that they can be charged and sanctioned by the bar association and that a harmed individual can seek judicial remedies.

Another panellist in the session, Jane Shvets at Debevoise & Plimpton in London, discussed whether a fictitious company facing potential liability in the UK, France and the Netherlands would receive cooperation credit if it self-reported misconduct to the relevant authorities. Shvets and fellow panellist Lisa Van Der Wal at De Roos & Pen in Amsterdam said that authorities in the UK and the Netherlands can give a company cooperation credit. Navacelle said that while this is not currently the case in France, a new anti-corruption law looks set to introduce the concept.

The French National Assembly approved the latest version of a new anti-corruption bill nicknamed "Sapin II" on 29 September, which will introduce deferred prosecution agreements to the country. This latest version of the bill is [considered final and will probably be passed into law in November](#), without any further amendments. Navacelle said the new law will be a game changer in France.

In future, he said, companies can expect to receive cooperation credit for self-reporting potential misconduct to prosecutors.

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