

France's Justice Ministry spurs on self-reporting

James Thomas

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Ministry of Justice, Paris, France (Credit: shutterstock.com/Bruno Bleu)

Experts say that new guidance issued by the French Ministry of Justice is a “turning point” in how French prosecutors will decide to offer deferred prosecution agreements to companies accused of financial crime.

Justice Minister Nicole Belloubet [issued a circular on 2 June](#) that clarifies what companies must do to be offered a judicial public interest agreement (CJIP), France’s version of a deferred prosecution agreement.

The circular says that to be eligible for a CJIP a company must not have previous convictions and must voluntarily disclose the misconduct. It must also enthusiastically cooperate with prosecutors, and while the Ministry of Justice does not specify the degree of cooperation needed, it notes that companies should help prosecutors identify the individuals most central to the misconduct.

Thomas Baudesson at Clifford Chance in Paris said that the Justice Ministry setting out the requirements for a CJIP so strongly and clearly is “a turning point”.

“There should be no CJIPs without a certain degree of cooperation – they are something special which requires it,” he said. “There were no requirements for cooperation under the Sapin II law before. It’s been introduced progressively, and here it’s pretty clear.”

Sapin II is the nickname for France's sweeping anti-corruption law that came into force in 2017, and introduced CJIPs.

The circular is significant, according to French lawyers, because it comes directly from the executive and so holds more influence compared to [previous guidance](#) from France's National Financial Prosecutor's Office (PNF) and French Anti-corruption Agency (AFA), which tended to be more for information purposes.

The head of the PNF, Jean-François Bohnert, said: "The circular doesn't have the same binding effect as law or a decree, but it is a guideline given by the minister of justice to every prosecution office, reminding them of the importance of fighting against corruption, recalling existing tools and highlighting the role of PNF".

He added that the guidance "secure[s] the high role of the PNF within the scope of French public prosecution".

The Ministry of Justice also recommends in its circular that the PNF encourage corporate disclosures by setting up exchange mechanisms with some of France's largest employer federations, including the Movement of French Enterprises (Medef) and the French Association of Private Companies (AFEP).

"The PNF could usefully develop exchanges with organisations representing internationally active enterprises (Medef, AFEP) to define and implement a framework and practical ways to encourage spontaneous disclosure," the circular states.

French lawyers noted that the Ministry of Justice's desire to have Medef help encourage self-reporting showed how important the practice is seen in France.

Julie Zorrilla at Navacelle in Paris said: "the fact that they've given instructions to put together a task force with unions representing corporations, like Medef, sends a clear message to all companies to get on board".

Centralising the system

The circular also establishes clear lines on how the PNF and the country's 164 regional prosecutor's offices should work together. It advises the offices to systematically inform the PNF about any financial crime investigations they are pursuing, allowing them to immediately take over relevant work if necessary.

The Ministry of Justice said that the PNF's expertise in economic and judicial mechanisms, its experience in retrieving and handling sensitive financial data, and its experience in negotiating with companies makes the

agency “a particularly well-placed actor to effectively handle this type of case”.

France’s prosecutorial system is decentralised, which enables regional prosecutors to open investigations into financial crime as they see fit, even if the PNF is better suited to handle them. This is unlike the UK, for example, where there is one national body, the Serious Fraud Office, that handles investigations into the most severe white-collar crimes.

Zorrilla said that often in the past, the PNF has swallowed up investigations already launched by regional prosecutors, because they have deemed that it falls under their remit.

“This has created tensions between prosecutors’ offices and has been quite discouraging for the field prosecutors,” she said, adding that under the terms of the circular, investigations into international financial wrongdoing should become more efficient.

Baudesson said that France’s current decentralised system is “old fashioned”. He recommended making the PNF a central prosecution service with divisions, rather than having separate prosecutors’ offices, but said that the circular helped establish uniformity in how prosecutors should handle investigations and share information with the PNF.

“There is a strong will to centralise information on corruption,” he said.

The circular also contains guidance on when prosecutors should offer individuals a plea bargain. The Ministry of Justice recommends that prosecutors take into account an individual’s previous charges, level of involvement in the alleged scheme, acknowledgement of the facts and cooperation before offering them such a deal.

Lawyers said the timing of the circular is significant as it comes before the OECD’s review of France in 2021.

“The [circular] is a concrete signal that France intends to tackle foreign bribery very seriously and wants to be a force in international corruption,” said Nicola Bonucci, the OECD’s former director for legal affairs, in an emailed statement.

“This guidance is a clear call to the rest of the world that France wants its share of transnational enforcement,” said Bonucci, now at Paul Hastings in Paris.

The PNF’s ongoing cases

Bohnert said that the PNF is dealing with approximately 600 cases, including high-profile bribery investigations into plane manufacturer Airbus and oil and gas company TechnipFMC.

He said that charges against individuals in the Airbus matter could be announced in six to eight months' time at the earliest, but declined to comment further.

“It’s a big job, it’s still ongoing and we’re making progress,” Bohnert said. “It will take some additional months, but it’s not been dropped in any way following the conclusion of the CJIP,” he added.

His deputy [said in March](#) that the PNF would be ready to make decisions on whether to charge individuals in the “coming months”.

The PNF signed a CJIP with Airbus in January as part of a [landmark €3.6 billion bribery settlement](#) with UK and US authorities. France took the lead in the case, netting [€2.08 billion](#) from the total settlement fine.

Bohnert also said that the PNF was “making progress” in its bribery investigation into TechnipFMC, which [signed a \\$301 million bribery settlement](#) in June 2019 with prosecutors from Brazil and the US. French authorities were notably absent from the deal, with the company previously saying it reserved an extra \$70 million to resolve the French strand of the probe.

James Thomas

Author

james.thomas@globalinvestigationsreview.com

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