GIR Global Investigations Review

The Practitioner's Guide to Global Investigations - Ninth Edition

France: Financial Prosecutor's Office prioritises investigation of corporate misconduct

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GIR publishes the ninth edition of its practical guide for external and in-house counsel, compliance officers and accounting practitioners. Chapters are authored by leading practitioners from around the world and made available to GIR's readers free to view and download. The chapters in Part I cover, in depth, the broad spectrum of law, practice and procedure applicable to investigations in the United Kingdom and United States. In Part II, local experts from major jurisdictions across the globe respond to a common and comprehensive set of questions designed to identify the local nuances of law and practice that practitioners may encounter in responding to a cross-border investigation.

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France: Financial Prosecutor's Office prioritises investigation of corporate misconduct

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Summary

ANTICIPATED DEVELOPMENTS

GENERAL CONTEXT, KEY PRINCIPLES AND HOT TOPICS

1 IDENTIFY THE HIGHEST-PROFILE CORPORATE INVESTIGATION UNDER WAY IN YOUR COUNTRY, DESCRIBING AND COMMENTING ON ITS MOST NOTEWORTHY ASPECTS.

In recent years, a number of large-scale investigations have received media coverage, notably in the political and media spheres, such as the case of embezzlement of public funds by political parties, as well as large-scale fraud cases such as the ***Cum Cum*** case.

In this latest case, major investigative resources, including almost 160 investigators and 16 prosecutors, were deployed by the National Financial Prosecutor's Office (PNF) to investigate aggravated laundering of tax fraud, with five major French banking establishments being searched simultaneously.

The PNF conducts many high-profile investigations that conclude with judicial public interest agreements (CJIPs, which are the French equivalent of deferred prosecutions agreements). Since the Law of 9 December 2016 addressing transparency, anti-corruption and economic modernisation (known as the Sapin II Law) entered into force, around 50 CJIPs have been agreed to by corporations. Since December 2020, the field of application of CJIPs has widened to include environmental crimes, and 24 CJIPs have been concluded to settle allegations of environmental offences.

The PNF's two most recent CJIPs (at the time of writing) were concluded in December 2023.

ADP Ingenierie entered into a CJIP with the PNF on 29 November 2023 regarding acts of bribery of public officials. The investigation was opened in 2014 after ADP Ingenierie filed a criminal complaint for breach of trust, forgery, aiding and abetting, and concealment of these offences, following the receipt of an anonymous letter alleging corruption in connection with the negotiation of Libyan contracts between 2006 and 2008, and the discovery in a commercial dispute of documents suggestive of corruption in connection with these contracts. Following an investigation that revealed that ADP Ingenierie had access to confidential information in the context of a call for tenders launched in 2006 by Libyan authorities, and other red flags of corruption, the company agreed to pay a fine of €14.6 million but was not required to implement a compliance programme.

On 28 November 2023, the PNF signed a CJIP with Seves Group Sarl and Sediver SAS in the context of bribery of foreign public officials in the Democratic Republic of Congo, Algeria, Libya and Nigeria. Sediver agreed to pay a fine of €13.373 million and to implement a compliance programme under the supervision of the French Anti-Corruption Agency (AFA). In the CJIP, the PNF implemented a golden clause according to which the CJIP also covers similar bribery of foreign public officials likely to have been committed in a list of 19 countries between 2009 and 2015 by Sediver. This is the first CJIP to include this type of clause.

2 OUTLINE THE LEGAL FRAMEWORK FOR CORPORATE LIABILITY IN YOUR COUNTRY.

Corporations can be held liable on both civil and criminal grounds.

Corporate civil liability is incurred via contract or outside the framework of a contract (a tort).

Corporations can be held criminally liable for offences committed on their behalf by their organs or representatives (i.e., individuals who have executive, administrative, managerial or control functions or those who act pursuant to a valid delegation of power). Corporate

criminal liability does not exclude liability of the individual having committed the offence or an accomplice to the offence.

3 WHICH LAW ENFORCEMENT AUTHORITIES REGULATE CORPORATIONS? HOW IS JURISDICTION BETWEEN THE AUTHORITIES ALLOCATED? DO THE AUTHORITIES HAVE POLICIES OR PROTOCOLS RELATING TO THE PROSECUTION OF CORPORATIONS?

Corporations are regulated by judicial authorities – with investigative and prosecutorial functions – as well as administrative and regulatory authorities. For the most part, jurisdiction between the authorities is dependent on subject matter, with numerous opportunities for cooperation and competition.

Jurisdiction of the judicial courts is usually defined by the location of the offence or the location of the corporate headquarters.

Moreover, specialised interregional courts have jurisdiction over complex economic and financial matters, or multi-jurisdictional matters.

In addition, specialist sections of the prosecution authorities in Paris have national jurisdiction to handle specific offences (e.g., financial crime and corruption, terrorism and crimes against humanity). One example is the PNF, which investigates and prosecutes financial crimes (such as public and private corruption, favouritism, aggravated tax fraud, VAT fraud, insider trading and index fund manipulation).

The French Financial Markets Authority regulates the integrity of financial markets, ensuring investor protection and information, and preventing market abuse. The French Competition Authority combats antitrust practices and ensures the lawful functioning of the markets by conducting field enquiries, overseeing corporate mergers, and publishing opinions and recommendations. France's Supervisory and Resolution Authority preserves the stability of the financial system, working with international bodies that supervise insurance and banking industry corporations' operating conditions and compliance with rules designed to protect customers. The AFA controls and sanctions corporations covered by Article 17 of the Sapin II Law (i.e., corporations with more than 500 employees or groups with headquarters in France with more than 500 employees and a turnover that exceeds €100 million) for flawed or insufficient anti-corruption processes and policies, and monitors the implementation of anti-corruption programmes.

4 WHAT GROUNDS MUST THE AUTHORITIES HAVE TO INITIATE AN INVESTIGATION? IS A CERTAIN THRESHOLD OF SUSPICION NECESSARY TO TRIGGER AN INVESTIGATION?

Investigations can be initiated by public prosecutors or by civil parties via the filing of a formal complaint with an investigating judge.

With respect to public prosecutors, investigations are initiated pursuant to a complaint, reporting, voluntary disclosure or ***flagrante delicto***. Prosecutorial discretion with respect to the following steps is considerable. The public prosecutor can choose to prosecute, to settle or to drop the charges, to investigate itself or to appoint an investigating judge to handle complex cases. There is no minimum threshold of suspicion provided by law for prosecutors to initiate investigative acts and the latter cannot be challenged in court.

With respect to investigating judges, investigations are initiated either through the prosecutor or pursuant to a complaint filed by civil parties.

All investigative acts of the investigating judge can be challenged in court.

5 HOW CAN THE LAWFULNESS OR SCOPE OF A NOTICE OR SUBPOENA FROM AN AUTHORITY BE CHALLENGED IN YOUR COUNTRY?

Orders issued by investigating, administrative and judicial authorities must comply with specific formalities and be based on a legal provision.

Notice to attend or a subpoena (i.e., a written notice that requires a party to attend a court hearing or to produce a document to the authorities) can be challenged under French law if the orders are not provided for by law or do not contain the appropriate information to inform the recipients of their rights.

Moreover, the principle of secrecy (e.g., professional secrecy, bank secrecy, defence and security), for instance, is a ground to object to the issuance of an order for the communication of documents – even though the trend in recent case law has admitted the seizure of documents protected by the attorney–client privilege.

When a notice or a subpoena is issued by a foreign authority, it is possible to challenge the request for production of documents or information by opposing the French Blocking Statute (Law No. 68-678 of 26 July 1968) if these documents fall within the scope of the Statute and the request for production is not made pursuant to international agreements.

6 DOES YOUR COUNTRY MAKE USE OF COOPERATIVE AGREEMENTS GIVING IMMUNITY OR LENIENCY TO INDIVIDUALS WHO ASSIST OR COOPERATE WITH AUTHORITIES?

There are no formalised cooperative agreements signed with corporations that grant immunity or leniency for individuals who assist or cooperate with authorities.

Nevertheless, the cooperation of individuals with authorities could lead to more lenient sentences. Plea bargaining for individuals is only permitted should they admit guilt (a CRPC); in return, they will receive half the applicable prison sentence.

7 WHAT ARE THE TOP PRIORITIES FOR YOUR COUNTRY'S LAW ENFORCEMENT AUTHORITIES?

In the field of financial crime, the main priority for French enforcement authorities for several years has been the fight against corruption, but now the fight against tax fraud has also been stepped up.

This is notably due to the partial end of the ***verrou de Bercy***, which was a procedure according to which the fiscal administration could file a complaint for tax fraud before a prosecutor only after receiving the advice of the tax fraud commission (an independent administrative authority). Now, the fiscal administration must file a criminal complaint if it notices a tax fraud of more than €100,000. Greater means for enforcing and prosecuting tax fraud are also used in France, such as the special tax fraud police created in 2019 and composed of police officers trained on these issues.

In the same vein, since the extension of the scope of the CJIP to tax fraud cases, these agreements have often been used in that context. Between July 2023 and July 2024, only one CJIP was concluded for tax fraud.

8 TO WHAT EXTENT DO LAW ENFORCEMENT AUTHORITIES IN YOUR JURISDICTION PLACE IMPORTANCE ON A CORPORATION HAVING AN EFFECTIVE COMPLIANCE PROGRAMME? WHAT GUIDANCE EXISTS (IN THE FORM OF OFFICIAL GUIDANCE, SPEECHES OR CASE LAW) ON WHAT MAKES AN EFFECTIVE COMPLIANCE PROGRAMME?

Within the context of a trial for probity offences, corporations meeting the requirements of the Sapin II Law, under Article 17, can request the public prosecutor to offer a CJIP and to impose a lower financial sanction. Nevertheless, this remains at the public prosecutor's discretion.

The public prosecutor considers the ability and willingness of the executive management, once it is aware of the offences that have been committed within the corporation, to implement the necessary corrective measures to enhance the compliance programme. Implementing an effective corporate compliance programme may be a condition of a CJIP, and the law enforcement authorities can order the AFA to monitor the compliance programme of a corporation for up to three years.

In practice, should a company enhance its compliance programme in accordance with best practice before a CJIP is signed, the public prosecutor may rule on completion of the structure of the programme, and the AFA will only have to monitor its implementation.

The first official guidance on the content of an effective compliance programme was provided by the eight pillars of the Sapin II Law, namely code of conduct; whistleblower channel; risk mapping; due diligence on customers, suppliers and third-party agents; internal and external accounting controls; training for high-risk employees; disciplinary sanctions; and monitoring and evaluation of measures. Moreover, the AFA has issued several sets of guidelines – including the Practical Guide on the Corporate Anti-Corruption Compliance Function and the Practical Guide on Implementation of the Compliance Programme Sanction – and practical Q&As for private and public sector entities.

CYBER-RELATED ISSUES

9 DOES YOUR COUNTRY REGULATE CYBERSECURITY? DESCRIBE THE APPROACH OF LOCAL LAW ENFORCEMENT AUTHORITIES TO CYBERSECURITY-RELATED FAILINGS.

A comprehensive framework addresses cybersecurity at different national levels.

The National Cybersecurity Agency (ANSSI), established in 2009, is the national authority in charge of cyber defence and information security. Its purpose is to oversee the activities of government departments, public services, strategic businesses and operators, with the aim of providing a proactive response to cybersecurity matters. It also issues authorisations for exports and imports of goods containing encryption. ANSSI is also responsible for allowing exports of cybersecurity goods.

Alongside ANSSI, other specialist bodies address cybersecurity: the police force (the Central Cybercrime Prevention Office) is responsible for fighting crimes linked to information and communication technologies, the National Gendarmerie office is responsible for fighting digital crimes and the Paris Prefecture brigade is responsible for the investigation of information technology fraud.

Should an undertaking's cybersecurity measures fall short of ensuring data protection, for instance, administrative fines can be incurred.

The latest military programming legislation in France, known as the Military Programming Law, covering 2024–2030, was approved by the National Assembly on 7 June 2023. The Law allocates €413.3 billion to bolster cyber defence and aims to enable ANSSI to 'increase its knowledge of the modus operandi of cyberattackers, better remedy the effects of their attacks and more effectively alert victims of incidents or threats to their information

systems'. This legislation is essential for the modernisation and strengthening of France's defence capabilities.

10 DOES YOUR COUNTRY REGULATE CYBERCRIME? WHAT IS THE APPROACH OF LAW ENFORCEMENT AUTHORITIES IN YOUR COUNTRY TO CYBERCRIME?

The implementation of cybercrime regulations is coordinated by the Interior Ministry in collaboration with ANSSI and dedicated police services.

Several pieces of French legislation include sanctions for offences constituting cybercrime.

French law provides for extraterritorial application of its provisions in that a cybercrime is considered to have been committed in France if the offence is committed through an e-communication network to the detriment of a person in France or a company with its registered office in France.

CROSS-BORDER ISSUES AND FOREIGN AUTHORITIES

11 DOES LOCAL CRIMINAL LAW HAVE GENERAL EXTRATERRITORIAL EFFECT? TO THE EXTENT THAT EXTRATERRITORIAL EFFECT IS LIMITED TO SPECIFIC OFFENCES, GIVE DETAILS.

Criminal law can have extraterritorial effect should a crime or misdemeanour be committed abroad by a French national. For misdemeanours (***délits***) committed abroad, extraterritoriality will apply, provided that the conduct is sanctionable under the legislation of the country in which it was committed (double incrimination). In respect of corruption, whether in a public or private context, the Sapin II Law removes the double incrimination requirement and extends the extraterritoriality effect to French residents or those individuals and corporations who conduct their economic activity on French soil.

Criminal law can also have extraterritorial effect should a crime or misdemeanour that is sanctioned by imprisonment be committed abroad against a French national.

The public prosecutor can only initiate proceedings against an offender once a formal complaint has been filed by a victim or by the concerned foreign authorities.

In specific circumstances, French criminal law can have extraterritorial effect should a crime or misdemeanour (punishable by imprisonment for at least five years) be committed abroad by a non-French national, in the event that their extradition or transfer to their country of origin is refused by the French authorities.

12 DESCRIBE THE PRINCIPAL CHALLENGES THAT ARISE IN YOUR COUNTRY IN CROSS-BORDER INVESTIGATIONS, AND EXPLAIN WHETHER AND HOW SUCH CHALLENGES DEPEND ON THE OTHER COUNTRIES INVOLVED.

The challenges of cross-border investigations mainly occur when French authorities are not involved in the investigation and prosecution proceedings.

The Sapin II Law marks a change in cross-border investigations, in that the French authorities are now more involved and trusted as international participants. The ***Airbus*** CJIP (judicial public interest agreement) is an illustration of this new status. In this case, the National Financial Prosecutor's Office coordinated the investigations with the United Kingdom's Serious Fraud Office and the United States Department of Justice and was the main point of contact for Airbus.

13 DOES DOUBLE JEOPARDY, OR A SIMILAR CONCEPT, APPLY TO PREVENT A CORPORATION FROM FACING CRIMINAL EXPOSURE IN YOUR COUNTRY AFTER IT RESOLVES CHARGES ON THE SAME CORE SET OF FACTS IN ANOTHER? IS THERE ANYTHING ANALOGOUS IN YOUR JURISDICTION TO THE 'ANTI-PILING ON' POLICY AS EXISTS IN THE UNITED STATES (THE POLICY ON COORDINATION OF CORPORATE RESOLUTION PENALTIES) TO PREVENT MULTIPLE AUTHORITIES SEEKING TO PENALISE COMPANIES FOR THE SAME CONDUCT?

The principle of double jeopardy enshrined in Article 14.7 of the International Covenant on Civil and Political Rights, Article 50 of the Charter of Fundamental Rights of the European Union and Article 4 of Protocol No. 7 to the European Convention on Human Rights has been ratified by France. The French state provides an exception in its ratification of Article 4 of Protocol No. 7, limiting the application of ***ne bis in idem*** to the field of criminal law. Based on this principle, no individual who has been convicted or acquitted in France by definitive criminal judgment may be prosecuted again for the same offence.

French criminal case law considers, however, that ***ne bis in idem*** does not apply when a definitive foreign judgment has been rendered for an offence of which elements occurred in France. For instance, on 25 November 2020, in a decision regarding money laundering and tax evasion, the Court of Cassation confirmed that the principle of ***ne bis in idem*** did not prevent prosecution in France despite a prior conviction in Switzerland, as the offences had distinct elements and impact within France. Article 14.7 of the United Nations International Covenant on Civil and Political Rights applies only when both proceedings are initiated in a territory of the same state. Thus, the double jeopardy provision found in a US deferred prosecution agreement (DPA) does not apply. The only exception to this is for an offence committed abroad when French law applies (because it was committed by a French national or against a French national) for which no prosecution can be initiated if the offender has been definitively tried for the set of facts abroad according to Article 113-9 of the French Penal Code.

Owing to the French exception in its interpretation of Article 4 of Protocol No. 7, in France it is possible for an individual or corporation to be sanctioned for the same offence by both judicial and administrative authorities.

14 ARE 'GLOBAL' SETTLEMENTS COMMON IN YOUR COUNTRY? WHAT ARE THE PRACTICAL CONSIDERATIONS?

Global settlements are a recent development in France in multi-jurisdictional investigations. The ***Société Générale*** CJIP in 2018 and the ***Airbus*** CJIP in 2020, both signed alongside foreign DPAs, demonstrate an intent to reinforce cooperation between cross-border authorities. The 2023 ***Technip*** CJIP is also an example of a multi-jurisdictional investigation as Technip also signed agreements (DPA or similar instrument) in the United States and in Brazil. The main practical consideration with respect to global settlements is that they can occur in jurisdictions with an entirely different legal system.

15 WHAT BEARING DO THE DECISIONS OF FOREIGN AUTHORITIES HAVE ON AN INVESTIGATION OF THE SAME MATTER IN YOUR COUNTRY?

In criminal matters, except for cases in which ***ne bis in idem*** applies, the French authorities are free to take a foreign court ruling into consideration to open an investigation. The French authorities conduct their own investigations independently.

In practice, however, the emerging trend is towards cooperation between French and foreign authorities.

ECONOMIC SANCTIONS ENFORCEMENT

16 DESCRIBE YOUR COUNTRY'S SANCTIONS PROGRAMME AND ANY RECENT SANCTIONS IMPOSED BY YOUR JURISDICTION.

The implementation of economic sanctions in France is essentially part of UN sanctions policy and the European Union's Common Foreign and Security Policy. Restrictive measures, such as asset freezing, embargoes and commercial restrictions, are enforced by a European Council decision supported by EU regulations and are directly binding on EU Member States. However, France has also adopted similar national retaliatory mechanisms in its own legislation. At the national level, France has the ability to impose asset freezes in the area of counterterrorism (Article L562-2 of the Monetary and Financial Code), as well as for breaches of the peace and acts of aggression (Article L562-3 of the Monetary and Financial Code). France can also impose sanctions in defence of its 'national interest' (Article L151-2 of the Monetary and Financial Code).

Sanctions can target a specific individual, territory or country or be limited to a specific economic sector. When a sanction targets an individual, it generally takes the form of the blocking of the target's accounts or financial products that are included on sanctions lists. Sectoral sanctions are restrictions of trade or the rendering of certain services. For instance, recent EU sanctions against entities from the Russian Federation were imposed to restrict trade in respect of energy production, and the aviation, mining and quarrying, and defence and security sectors.

France's Ministry of the Economy and Finance (Directorate-General of the Treasury) and Ministry for Europe and Foreign Affairs oversee the implementation of any sanction decided at European level.

17 WHAT IS YOUR COUNTRY'S APPROACH TO SANCTIONS ENFORCEMENT? HAS THERE BEEN AN INCREASE IN SANCTIONS ENFORCEMENT ACTIVITY IN RECENT YEARS, FOR EXAMPLE?

There is no unique approach to sanctions enforcement. In general, the sanctions regime at the EU or UN level does not have a direct sanctions mechanism that is applicable to violations. Each state is responsible for its enforcement regime, for defining the penalties applicable for a breach of sanctions regimes and for sanctioning violations. However, with the entry into force of Directive (EU) 2024/1226 on 24 April 2024, the violation of restrictive measures adopted by the European Union was added to the list of 'EU crimes'. The Directive lists the conduct that must be penalised by Member States, such as failing to freeze assets, breaching travel bans and arms embargoes, and providing prohibited economic and financial measures. In recent years, measures to fight terrorism financing have increased. For instance, the French Monetary and Financial Code entitles the Minister of Economy and Finance to order the freezing of assets belonging to individuals or legal entities who commit, or attempt to commit, terrorist acts, or who facilitate or participate in these acts. Additionally, Regulation (EU) 2024/1624 represents a significant step forward in the fight against money laundering and terrorist financing. The Regulation addresses existing gaps that fraudsters have exploited, and it expands anti-money laundering rules to include new entities, notably many cryptoasset players, as well as luxury goods traders, and football clubs and agents. The Regulation entered into force in July 2024 and will apply progressively until 2030. It will ensure a more secure and regulated financial environment across the European Union.

18 DO THE AUTHORITIES RESPONSIBLE FOR SANCTIONS COMPLIANCE AND ENFORCEMENT IN YOUR COUNTRY COOPERATE WITH THEIR COUNTERPARTS IN OTHER COUNTRIES FOR THE PURPOSES OF ENFORCEMENT?

France enforces international and European restrictive measures, and French authorities can cooperate with their counterparts when doing so, for instance, to obtain information about the ultimate beneficial owner of a specific asset.

19 HAS YOUR COUNTRY ENACTED ANY BLOCKING LEGISLATION IN RELATION TO THE SANCTIONS MEASURES OF THIRD COUNTRIES? DESCRIBE HOW SUCH LEGISLATION OPERATES.

As a member of the European Union, France is subject to the EU Blocking Regulation established on 22 November 1996 and updated on 6 June 2018 by the European Commission. This Regulation is directly enforceable in France. The measure forbids EU citizens from complying with third-country extraterritorial sanctions unless exceptionally authorised to do so by the European Commission, as set forth in Commission Implementing Regulation (EU) 2018/1101.

20 TO THE EXTENT THAT YOUR COUNTRY HAS ENACTED ANY SANCTIONS BLOCKING LEGISLATION, HOW IS COMPLIANCE ENFORCED BY LOCAL AUTHORITIES IN PRACTICE?

Although the EU Blocking Regulation sanctions EU companies that would comply with third-country sanctions, the measure has much more of a symbolic effect than an economic one.

It has been applied only in 1998 in the context of a complaint filed by the European Communities before the World Trade Organization.

BEFORE AN INTERNAL INVESTIGATION

21 HOW DO ALLEGATIONS OF MISCONDUCT MOST OFTEN COME TO LIGHT IN COMPANIES IN YOUR COUNTRY?

Allegations can come to light through various channels.

The Sapin II Law was modified when France adopted the EU Whistleblowing Directive (Directive (EU) 2019/1937). Whistleblowers can directly report externally to authorities without making an internal report first to the company (which was the case under the previous version of Article 8 of the Sapin II Law).

INFORMATION GATHERING

22 DOES YOUR COUNTRY HAVE A DATA PROTECTION REGIME?

France adopted a data protection regime in 1978 with the Law on Information Technology, Data Files and Civil Liberties.

In 2016, the European Parliament and the Council of the European Union adopted the General Data Protection Regulation (GDPR), which entered into force on 25 May 2018. The GDPR was incorporated in France's internal legislative framework via Law No. 2018-493, which was passed on 20 June 2018, amending the existing law, of which some provisions were contrary to the GDPR.

On 13 June 2024, the Council of the European Union reached an agreement on the enactment of a new regulation that will improve cooperation between national data

protection authorities when enforcing the GDPR. It will notably provide tools for the handling of cross-border complaints and any follow-up investigations.

23 TO THE EXTENT NOT DEALT WITH ABOVE AT QUESTION 9, HOW IS THE DATA PROTECTION REGIME ENFORCED?

Law No. 2018-493 of 20 January 2018 and the GDPR grant new investigating and sanctioning powers to the National Commission on Computing and Liberty (CNIL).

The right of the individual to information and the right of access, rectification and deletion of personal data have been reinforced, and the sanctions imposed in the event of obstruction or non-compliance with the legal provisions have been increased. The CNIL has the power to impose a periodic sanction (limited to €100,000 per day) in addition to administrative fines (which can be as much as €20 million or 4 per cent of annual global turnover).

24 ARE THERE ANY DATA PROTECTION ISSUES THAT CAUSE PARTICULAR CONCERN IN INTERNAL INVESTIGATIONS IN YOUR COUNTRY?

Although there are several data protection issues relevant to internal investigations in France, these are not country-specific, as they result from European regulation (i.e., the GDPR).

The main issue is that lawyers leading internal investigations may find themselves as guarantors of data protection and must reconcile this duty of protection with the duty of professional secrecy. It is necessary to clearly identify the regulations applicable to the use or transfer of data, such as the rules protecting the transfer of data considered to be within the scope of the interests of France (i.e., the Blocking Statute and rules on corporate secrecy), the rules protecting the access, processing and transfer of personal data outside or within the European Union (e.g., transfers based on international conventions), the rules protecting the rights of individuals who are subject to internal investigations (e.g., information provided to individuals regarding their right to access, rectify or delete data) and the rules pertaining to the length of time for which data can be stored.

25 DOES YOUR COUNTRY REGULATE OR OTHERWISE RESTRICT THE INTERCEPTION OF EMPLOYEES' COMMUNICATIONS? WHAT ARE ITS FEATURES AND HOW IS THE REGIME ENFORCED?

When employees use technological devices made available to them by their employer for professional purposes, those devices are presumed to be professional. Employers are therefore permitted to request to consult or access them. The courts, however, have curtailed this right of access based on the right to privacy. Professional emails, text messages or chat applications expressly labelled as private or personal are thereby confidential and not accessible by the employer.

DAWN RAIDS AND SEARCH WARRANTS

26 ARE SEARCH WARRANTS OR DAWN RAIDS ON COMPANIES A FEATURE OF LAW ENFORCEMENT IN YOUR COUNTRY? DESCRIBE ANY LEGAL LIMITATIONS ON AUTHORITIES EXECUTING SEARCH WARRANTS OR DAWN RAIDS, AND WHAT REDRESS A COMPANY HAS IF THOSE LIMITS ARE EXCEEDED.

Yes, search warrants and dawn raids are a key element of enforcement and evidence gathering by judicial and administrative authorities.

Dawn raids must be authorised either by the public prosecutor for *in flagrante delicto* and preliminary investigations or the investigating judge for judicial investigations. In preliminary

investigations, the consent of the individuals or corporations to be raided is needed. Should consent not be given, the dawn raid must be authorised by the Judge of Liberties and Custody.

Companies subject to dawn raids should ensure that these legal provisions are followed. Any incident should be recorded in the minutes of the dawn raid and the minutes should not be signed if there is any disagreement regarding its content.

27 HOW CAN PRIVILEGED MATERIAL BE LAWFULLY PROTECTED FROM SEIZURE DURING A DAWN RAID OR IN RESPONSE TO A SEARCH WARRANT IN YOUR COUNTRY?

Privilege only attaches to external lawyer material and not that of in-house counsel.

Privileged material is protected from investigating and judicial scrutiny, except for materials unrelated to defence rights or those establishing the participation of the lawyer in an offence.

Corporations or individuals must thereby indicate the material that is covered by the attorney–client privilege. In the case of seizure of privileged material, the corporations or individuals involved must seek permission to make copies and file a subsequent request to have the privileged material returned.

28 UNDER WHAT CIRCUMSTANCES MAY AN INDIVIDUAL'S TESTIMONY BE COMPELLED IN YOUR COUNTRY? WHAT CONSEQUENCES FLOW FROM SUCH COMPELLED TESTIMONY? ARE THERE ANY PRIVILEGES THAT WOULD PREVENT AN INDIVIDUAL OR COMPANY FROM PROVIDING TESTIMONY?

There are two separate regimes for witnesses and suspects.

During the investigation phase, police officers can summon as a witness any person who they deem fit for the purposes of the investigation. Should a witness refuse to comply, a police officer may notify the public prosecutor, who may compel the person by official notice. Witnesses who fail to appear or testify before the investigating judge or police officer without proper reason face a €3,750 fine. Before a court, witnesses are always compelled to attend the hearing and testify. The summons issued to a witness must also state that failure to appear, refusal to testify and perjury are punishable by law. Witnesses who refuse to appear without proper reason face a €10,000 fine.

Police officers can detain suspects for the amount of time necessary for the purposes of the investigation and under the limitations of the law and approval of a judge. A suspect can refuse to answer questions based on the right against self-incrimination.

Testimony can also be refused on account of public service (e.g., diplomatic, presidential or parliamentary immunity) or professional secrecy.

WHISTLEBLOWING AND EMPLOYEE RIGHTS

29 DESCRIBE THE WHISTLEBLOWING FRAMEWORK IN YOUR COUNTRY. WHAT FINANCIAL INCENTIVE SCHEMES EXIST FOR WHISTLEBLOWERS? WHAT LEGAL PROTECTIONS ARE IN PLACE FOR WHISTLEBLOWERS?

The EU Whistleblowing Directive was implemented in French law in March 2022 as part of the Waserman Law (Law No. 2022-401 on whistleblower protections), strengthening the legal protection already afforded to whistleblowers since the enactment of the Sapin II Law in 2016 (e.g., access to free information and advice about the available procedures for protection against any legal action taken against them). The main new features of the implementation

of the Directive include an extension of reportable events (any crime, offence or violation of law or regulation) as well as a change in the procedure for reporting. As opposed to the previous law, the implementation law provides that the whistleblower does not have to report internally first before contacting the authorities and reporting externally. In addition, personal and direct knowledge of the facts by the whistleblower is now only required when the information was not obtained as part of the whistleblower's professional activities.

30 WHAT RIGHTS DOES LOCAL EMPLOYMENT LAW CONFER ON EMPLOYEES WHOSE CONDUCT IS WITHIN THE SCOPE OF AN INVESTIGATION? IS THERE ANY DISTINCTION BETWEEN OFFICERS AND DIRECTORS OF THE COMPANY FOR THESE PURPOSES?

In September 2016, the Paris Bar adopted a ***vade mecum*** of ethical recommendations for investigating lawyers, which was amended in December 2019. On 12 June 2020, the National Council of Bars also published a guide for French lawyers conducting internal investigations. Other legal provisions apply to these internal investigations.

Employees whose conduct is within the scope of an investigation could benefit from several rights, but these are not expressly provided by law. Employees interviewed within an internal investigation should be informed that the external lawyer represents the company and not their personal interests and that they can be assisted by an independent lawyer, should their conduct amount to misconduct. The purpose of the interview and its non-coercive nature should also be indicated.

Furthermore, data protection and privacy laws apply to all employees regardless of allegations of wrongdoing, allowing employees to access and modify all personal data that has been collected and entitling them to invoke the right to privacy. This right to privacy may be circumvented, however, should emails, text messages or chat applications be located on professional devices and not marked as private or in a private inbox.

There is no different treatment applicable to officers and directors of companies within internal investigations.

31 DO EMPLOYEES' RIGHTS UNDER LOCAL EMPLOYMENT LAW DIFFER IF A PERSON IS DEEMED TO HAVE ENGAGED IN MISCONDUCT? ARE THERE DISCIPLINARY OR OTHER STEPS THAT A COMPANY MUST TAKE WHEN AN EMPLOYEE IS IMPLICATED OR SUSPECTED OF MISCONDUCT, SUCH AS SUSPENSION OR IN RELATION TO COMPENSATION?

Presumption of innocence applies to all employees, including those who are deemed to have engaged in misconduct. These employees thereby benefit from the same rights as other employees (e.g., notice for interview and notification of rights). Employees suspected of misconduct must be advised of their right to the services of a lawyer and that their conduct is the subject of an investigation.

If misconduct is confirmed, an employer has several options for sanctioning employees, including dismissing them or putting them on furlough during the investigation.

32 CAN AN EMPLOYEE BE DISMISSED FOR REFUSING TO PARTICIPATE IN AN INTERNAL INVESTIGATION?

Labour courts appear to consider the refusal to participate in an internal investigation as a sufficiently severe fault to warrant sanction under specific circumstances.

COMMENCING AN INTERNAL INVESTIGATION

33 IS IT COMMON PRACTICE IN YOUR COUNTRY TO PREPARE A DOCUMENT SETTING OUT TERMS OF REFERENCE OR INVESTIGATORY SCOPE BEFORE COMMENCING AN INTERNAL INVESTIGATION? WHAT ISSUES WOULD IT COVER?

When judicial review by a labour court is likely to happen (e.g., if an employee who has been sanctioned for misconduct challenges the findings of an internal investigation), it is considered best practice to prepare a document setting out the terms of reference or investigatory scope before commencing an internal investigation.

The investigation plan should include a description of the goal of the investigation, and of the steps considered (interviews, document review, etc.) and, possibly, of the projected timescale of the investigation.

34 IF AN ISSUE COMES TO LIGHT PRIOR TO THE AUTHORITIES IN YOUR COUNTRY BECOMING AWARE OR ENGAGED, WHAT INTERNAL STEPS SHOULD A COMPANY TAKE? ARE THERE INTERNAL STEPS THAT A COMPANY IS LEGALLY OR ETHICALLY REQUIRED TO TAKE?

French law does not provide a clear set of rules with respect to the steps a company should take internally when it becomes aware of an issue with legal implications. The company should assess the scope of the facts and the probability of incurring liability, to determine the interest in cooperating with the authorities and to set out a defence strategy.

There is no obligation to report back to authorities, but this is encouraged within the framework of a CJIP (judicial public interest agreement). Voluntary self-disclosure by a company will be considered favourably, both for the opportunity to settle a CJIP and as a mitigating factor for calculation of the fine.

35 WHAT INTERNAL STEPS SHOULD A COMPANY IN YOUR COUNTRY TAKE IF IT RECEIVES A NOTICE OR SUBPOENA FROM A LAW ENFORCEMENT AUTHORITY SEEKING THE PRODUCTION OR PRESERVATION OF DOCUMENTS OR DATA?

It is very likely that the enforcement authority would collect documents or data directly by carrying out a raid within the company, having gathered sufficient information from third parties to ensure that it is possible to collect relevant information. If a company has any reason to believe a raid is likely, it should immediately ensure that any documents that may be seized indicate privilege, where relevant.

Administrative authorities can request communication of data and documents from companies under review or directly from third parties. If these requests are legally permitted, corporations must comply.

36 AT WHAT POINT MUST A COMPANY IN YOUR COUNTRY PUBLICLY DISCLOSE THE EXISTENCE OF AN INTERNAL INVESTIGATION OR CONTACT FROM A LAW ENFORCEMENT AUTHORITY?

Other than those attached to publicly traded companies, there are no obligations as to when a company must disclose the existence of an internal investigation or contact from a law enforcement authority.

Self-disclosure is an option available to obtain credit for cooperation.

37 HOW ARE INTERNAL INVESTIGATIONS VIEWED BY LOCAL ENFORCEMENT BODIES IN YOUR COUNTRY?

Although negotiating a deal with a prosecutor or an investigating magistrate is still rather uncommon, the number of CJIPs has increased in recent years, and internal investigations are an effective tool in multi-jurisdictional matters and cross-border negotiated justice. French authorities are increasingly relying on internal investigations, which are considered a key component of a criminal file.

Should a company be interested in concluding a CJIP, it is encouraged by the prosecution authorities to demonstrate its cooperation by disclosing the findings of any previous or current internal investigation.

ATTORNEY–CLIENT PRIVILEGE

38 CAN THE ATTORNEY–CLIENT PRIVILEGE BE CLAIMED OVER ANY ASPECTS OF INTERNAL INVESTIGATIONS IN YOUR COUNTRY? WHAT STEPS SHOULD A COMPANY TAKE IN YOUR COUNTRY TO PROTECT THE PRIVILEGE OR CONFIDENTIALITY OF AN INTERNAL INVESTIGATION?

There is no attorney–client privilege for communications with in-house counsel in France. To benefit from privilege, investigations should be carried out by external lawyers. Lawyers cannot be freed from the duty of professional secrecy under any circumstances, even by their clients.

Professional secrecy applies between lawyers and their clients but not with the employees of their clients. Lawyers must therefore notify those employees that anything they say can be disclosed to the authorities by their employer. Confidentiality applies to communications between lawyers, and providing separate counsel to individuals is recommended to facilitate safe communications.

In any case, the client is at liberty to disclose documents.

39 SET OUT THE KEY PRINCIPLES OR ELEMENTS OF THE ATTORNEY–CLIENT PRIVILEGE IN YOUR COUNTRY AS IT RELATES TO CORPORATIONS. WHO IS THE HOLDER OF THE PRIVILEGE? ARE THERE ANY DIFFERENCES WHEN THE CLIENT IS AN INDIVIDUAL?

There is no specific attorney–client privilege relating to corporations.

The holder of the privilege is the client. The particularity within this context is to determine who the counterpart of the lawyer is within a corporation, which will usually be the general manager or general counsel.

There are no differences when the client is an individual.

40 DOES THE ATTORNEY–CLIENT PRIVILEGE APPLY EQUALLY TO IN-HOUSE AND EXTERNAL COUNSEL IN YOUR COUNTRY?

There is, in principle, no privilege attached to communications with in-house counsel. Privilege only attaches to external lawyers.

It is important to note that, on 10 July 2023, a draft law was confirmed by the French National Assembly that grants confidentiality to in-house counsel's legal opinions if they are not in respect of criminal or tax issues. The relevant article of the law was found unconstitutional by the Constitutional Council on 16 November 2023.

However, an important ruling in this respect was made by the French Supreme Court on 26 January 2022, in which the Court confirmed that in-house emails expressly referring to a

company's defence strategy prepared by, but neither sent by or to, its external counsel were covered by the attorney–client privilege.

41 DOES THE ATTORNEY–CLIENT PRIVILEGE APPLY EQUALLY TO ADVICE SOUGHT FROM FOREIGN LAWYERS IN RELATION TO INVESTIGATIONS IN YOUR COUNTRY?

There is no general provision regarding the attorney–client privilege as regards foreign lawyers in relation to investigations.

The Paris Bar Council has stressed that email exchanges between a client and a foreign lawyer can be covered by the attorney–client privilege. In addition, foreign lawyers can be temporarily and occasionally authorised to practise consulting and counselling activities in France. In that case, they are bound by both their home country's professional rules and the ethics rules applicable to French lawyers, which include the attorney–client privilege.

42 TO WHAT EXTENT IS WAIVER OF THE ATTORNEY–CLIENT PRIVILEGE REGARDED AS A COOPERATIVE STEP IN YOUR COUNTRY? ARE THERE ANY CONTEXTS WHERE PRIVILEGE WAIVER IS MANDATORY OR REQUIRED?

The attorney–client privilege cannot be waived by lawyers under any circumstances, even when permitted by the client, except for in the personal defence of lawyers in a case opposing their client or specific cases provided by law.

The client is not bound by the attorney–client privilege.

43 DOES THE CONCEPT OF LIMITED WAIVER OF PRIVILEGE EXIST AS A CONCEPT IN YOUR JURISDICTION? WHAT IS ITS SCOPE?

This concept does not exist in France.

44 IF PRIVILEGE HAS BEEN WAIVED ON A LIMITED BASIS IN ANOTHER COUNTRY, CAN PRIVILEGE BE MAINTAINED IN YOUR OWN COUNTRY?

As the attorney–client privilege is general, absolute and unlimited in time under French law, it must be maintained, even after a limited disclosure abroad.

Cooperation between enforcement authorities is likely, however, to make the privilege moot.

45 DO COMMON INTEREST PRIVILEGES EXIST AS CONCEPTS IN YOUR COUNTRY? WHAT ARE THE REQUIREMENTS AND SCOPE?

Common interest privileges do not exist *per se* in French law. It is possible, however, for the purposes of defending a client, to share privileged information with other attorneys without waiving privilege, whether the clients share a common interest or not (*foi du palais*).

46 CAN PRIVILEGE BE CLAIMED OVER THE ASSISTANCE GIVEN BY THIRD PARTIES TO LAWYERS?

Professional secrecy can be extended to experts on whom lawyers rely for the purposes of their work.

It is usually safer to have the information collected and processed within the law firm's offices.

WITNESS INTERVIEWS

47 DOES YOUR COUNTRY PERMIT THE INTERVIEWING OF WITNESSES AS PART OF AN INTERNAL INVESTIGATION?

There are no legal provisions regarding internal investigations, including the interviewing of witnesses. It is common for witnesses who are part of the company conducting the internal investigation to be interviewed.

Interviews with individuals who are not current or former employees of the company are not prohibited by the Paris Bar *vade mecum*, but recourse to external counsel is advised. In any case, coercion cannot be used to oblige them to assist with interviews.

In general, no coercion can be exerted on current or former employees for the purposes of interviews.

48 CAN A COMPANY CLAIM THE ATTORNEY–CLIENT PRIVILEGE OVER INTERNAL WITNESS INTERVIEWS OR ATTORNEY REPORTS?

Professional secrecy applies between lawyers and their clients. A company can thus claim the attorney–client privilege over internal witness interviews or attorney reports. Nevertheless, the joint guidelines issued by the French Anti-Corruption Agency and the National Financial Prosecutor's Office differ slightly from the Paris Bar *vade mecum* for investigating lawyers regarding the documents covered by the attorney–client privilege.

49 WHEN CONDUCTING A WITNESS INTERVIEW OF AN EMPLOYEE IN YOUR COUNTRY, WHAT LEGAL OR ETHICAL REQUIREMENTS OR GUIDANCE MUST BE ADHERED TO? ARE THERE DIFFERENT REQUIREMENTS WHEN INTERVIEWING THIRD PARTIES?

There are no legal provisions regarding internal investigations, including the interviewing of witnesses.

The Paris Bar *vade mecum* makes no distinction between interviews carried out with employees and third parties. However, it recommends best practices for complying with due process. For instance, the external lawyer conducting the investigation must explain the purpose of the interview, that they are representing the company and not the employee, and that the interview is not coercive. If the employee has potentially violated the law or internal rules, the external lawyer must explain that the employee can seek the advice of an attorney.

50 HOW IS AN INTERNAL INTERVIEW TYPICALLY CONDUCTED IN YOUR COUNTRY? ARE DOCUMENTS PUT TO THE WITNESS? MAY OR MUST EMPLOYEES IN YOUR COUNTRY HAVE THEIR OWN LEGAL REPRESENTATION AT THE INTERVIEW?

External lawyers conducting interviews must explain to whom the attorney–client relationship applies (i.e., that they are acting in the interests of the corporation, not the employees) and that independent representation is possible. Lawyers must also indicate the purpose of the interview and its non-coercive nature.

Documents can be provided ahead of time or can be mentioned during the interview. This practice usually occurs when an employee has separate representation.

REPORTING TO THE AUTHORITIES

51 ARE THERE CIRCUMSTANCES UNDER WHICH REPORTING MISCONDUCT TO LAW ENFORCEMENT AUTHORITIES IS MANDATORY IN YOUR COUNTRY?

Except for specific crimes, only civil servants have a general obligation to report crimes of which they become aware in the context of their employment.

There is no legal requirement to self-report.

The guidelines on CJIPs (judicial public interest agreements) clearly state, however, that voluntary self-reporting of offences to prosecutors, if made in a timely manner – both as regards the choice of the CJIP procedure and as a factor reducing the amount of the public interest fine – will be considered favourably.

52 IN WHAT CIRCUMSTANCES MIGHT YOU ADVISE A COMPANY TO SELF-REPORT TO LAW ENFORCEMENT EVEN IF IT HAS NO LEGAL OBLIGATION TO DO SO? IN WHAT CIRCUMSTANCES WOULD THAT ADVICE TO SELF-REPORT EXTEND TO COUNTRIES BEYOND YOUR COUNTRY?

Self-reporting is not very common in France.

A corporation will be advised to self-report (provided misconduct is established without doubt, proper corrective measures have been taken and the corporate compliance programme has been reinforced) to be eligible for credit for cooperation with the judicial authorities notified of the misconduct.

The involvement of foreign authorities can also have a bearing on a decision to self-report, as well as the multi-jurisdictional aspect of investigations, should the multiple authorities involved be likely to collaborate.

53 WHAT ARE THE PRACTICAL STEPS NEEDED TO SELF-REPORT TO LAW ENFORCEMENT IN YOUR COUNTRY?

There is no specific procedure for self-reporting and no legal requirement to do so.

Informal contacts should be made, through external counsel, with the competent authority, after a thorough analysis of the advantages and disadvantages. Although there is no statutory requirement to evaluate self-reporting and cooperation in a CJIP, the joint guidelines issued by the French Anti-Corruption Agency and the National Financial Prosecutor's Office indicate that self-reporting within a reasonable period shall be considered favourably, as a factor for encouraging the offer of a CJIP or reducing the fine.

RESPONDING TO THE AUTHORITIES

54 IN PRACTICE, HOW DOES A COMPANY IN YOUR COUNTRY RESPOND TO A NOTICE OR SUBPOENA FROM A LAW ENFORCEMENT AUTHORITY? IS IT POSSIBLE TO ENTER INTO DIALOGUE WITH THE AUTHORITIES TO ADDRESS THEIR CONCERNS BEFORE OR EVEN AFTER CHARGES ARE BROUGHT? HOW?

Corporations must respond in writing to notices or subpoenas from a law enforcement authority in compliance with the methods and time limits provided by law.

It is possible to enter into dialogue with the investigating authorities, whether the investigating judge or the public prosecutor, but these communications often remain unofficial and may not amount to anything. Alongside ***ad hoc*** communications, investigative acts beyond the scope of the mandate of the judicial authority can be challenged in court.

55 ARE ONGOING AUTHORITY INVESTIGATIONS SUBJECT TO CHALLENGE BEFORE THE COURTS?

Yes, ongoing authority investigations can be challenged before the courts.

Ongoing investigations led by a public prosecutor are not subject to challenge before the courts, except for a limited number of investigative acts that breach legal requirements.

Challenges are only possible once the investigation is closed by requesting the nullity of the investigative acts.

However, investigative acts in ongoing investigations led by an investigating magistrate can be challenged before the courts during the investigation itself.

56 IN THE EVENT THAT AUTHORITIES IN YOUR COUNTRY AND ONE OR MORE OTHER COUNTRIES ISSUE SEPARATE NOTICES OR SUBPOENAS REGARDING THE SAME FACTS OR ALLEGATIONS, HOW SHOULD THE COMPANY APPROACH THIS?

The company should answer to all the authorities involved separately, as the questions that can be raised by different authorities vary.

It should nevertheless be borne in mind that authorities communicate with one another.

When dealing with foreign authorities, the EU Blocking Statute, specific secrecy provisions, and privacy and data protection issues should also be addressed.

57 IF A NOTICE OR SUBPOENA FROM THE AUTHORITIES IN YOUR COUNTRY SEEKS PRODUCTION OF MATERIAL RELATING TO A PARTICULAR MATTER THAT CROSSES BORDERS, MUST THE COMPANY SEARCH FOR AND PRODUCE MATERIAL IN OTHER COUNTRIES TO SATISFY THE REQUEST? WHAT ARE THE DIFFICULTIES IN THAT REGARD?

The collection of material abroad will have to be carried out in compliance with the applicable foreign law.

The difficulty may be that the applicable foreign law does not allow the seizure and production of material. If a corporation finds it impossible to provide requested material, it must explain the situation to the French authorities.

58 DOES LAW ENFORCEMENT IN YOUR COUNTRY ROUTINELY SHARE INFORMATION OR INVESTIGATIVE MATERIALS WITH LAW ENFORCEMENT IN OTHER COUNTRIES? WHAT FRAMEWORK IS IN PLACE IN YOUR COUNTRY FOR COOPERATION WITH FOREIGN AUTHORITIES?

Cooperation with foreign enforcement authorities is increasing, both within the European Union and beyond, namely through mutual legal assistance treaties, agreements between regulators and enforcement authorities, and EU cooperation agreements.

59 DO LAW ENFORCEMENT AUTHORITIES IN YOUR COUNTRY HAVE ANY CONFIDENTIALITY OBLIGATIONS IN RELATION TO INFORMATION RECEIVED DURING AN INVESTIGATION OR ONWARD DISCLOSURE AND USE OF THAT INFORMATION BY THIRD PARTIES?

Except where the law provides otherwise, inquiry (i.e., under an investigating magistrate) and investigation (i.e., under a public prosecutor) proceedings are confidential. Third parties are not bound by this confidentiality.

Any person contributing to an investigation is bound by this confidentiality, namely the judges in charge of the investigation, the public prosecutor, the law clerks, the bailiffs, the police investigators, the personality investigators and any interpreters or experts.

60 HOW WOULD YOU ADVISE A COMPANY THAT HAS RECEIVED A REQUEST FROM A LAW ENFORCEMENT AUTHORITY IN YOUR COUNTRY SEEKING DOCUMENTS FROM ANOTHER COUNTRY, WHERE PRODUCTION WOULD VIOLATE THE LAWS OF THAT OTHER COUNTRY?

The corporation should retain external counsel to obtain a legal opinion on the law of the country in which the documents sought are located. Cooperation with the French and foreign authorities – and perhaps with the diplomatic authorities of both countries pursuant to formal cooperation agreements – may be necessary for the production to be carried out appropriately.

61 DOES YOUR COUNTRY HAVE SECRECY OR BLOCKING STATUTES? WHAT RELATED ISSUES ARISE FROM COMPLIANCE WITH A NOTICE OR SUBPOENA?

Yes, France has both a country-specific blocking statute and privacy statutes.

The French Blocking Statute prohibits the communication of economic, commercial, industrial, financial or technical documents or information to foreign authorities or their use as evidence in judicial or administrative proceedings abroad, subject to mechanisms afforded under international agreements or treaties, such as the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the Hague Evidence Convention) or a mutual legal assistance treaty. Data protection legislation, in that it can prohibit the transfer of data outside Europe, could also constitute a type of blocking statute.

Several secrecy laws exist, depending on the interests at play (e.g., banking, security and defence, medical, journalism source or corporate secrecy).

62 WHAT ARE THE RISKS IN VOLUNTARY PRODUCTION VERSUS COMPELLED PRODUCTION OF MATERIAL TO AUTHORITIES IN YOUR COUNTRY? IS THIS MATERIAL DISCOVERABLE BY THIRD PARTIES? IS THERE ANY CONFIDENTIALITY ATTACHED TO PRODUCTIONS TO LAW ENFORCEMENT IN YOUR COUNTRY?

Voluntary production is limited to very specific circumstances, namely when foreign authorities are involved or there is a strategic interest in doing so in an ongoing investigation.

All material produced is included in the criminal file and is accessible, under limited circumstances, to defendants (indicted and assisted witnesses) and civil parties. Although legal professionals are bound by professional secrecy, they are not bound by the confidentiality of the inquiry. They are free to share information – not documents – from the file with their clients, who can then share the information with third parties.

PROSECUTION AND PENALTIES

63 WHAT TYPES OF PENALTIES MAY COMPANIES OR THEIR DIRECTORS, OFFICERS OR EMPLOYEES FACE FOR MISCONDUCT IN YOUR COUNTRY?

Corporations sanctioned for misconduct can face fines, orders to pay civil compensation to victims, disgorgement of profits resulting from the offence, dissolution, publication of the sanction in the press and debarment from bidding for tender for certain specific offences.

Individuals sanctioned for misconduct can face fines, imprisonment, orders to pay civil compensation to victims or a ban on undertaking specific managerial positions. Directors, officers or employees also face disciplinary sanctions by their company, including dismissal.

Hearings are rarely conducted behind closed doors. Therefore, corporations and individuals face the risk of having their identity disclosed in the press.

64 WHERE THERE IS A RISK OF A CORPORATE'S SUSPENSION, DEBARMENT OR OTHER RESTRICTIONS ON CONTINUING BUSINESS IN YOUR COUNTRY, WHAT OPTIONS OR RESTRICTIONS APPLY TO A CORPORATE WANTING TO SETTLE IN ANOTHER COUNTRY?

The EU Directive on public procurement has been transposed into French law, prohibiting companies found guilty of specific offences (e.g., corruption, fraud, money laundering, terrorism or embezzlement and misappropriation of property) from bidding in public procurements throughout the European Union for five years – unless the sentencing decision specifically provides for a more limited period.

French law provides that corporations may be prohibited from bidding for public procurements if they have previously been sanctioned definitively by a court of law for certain offences, namely corruption, extortion or probity offences.

65 WHAT DO THE AUTHORITIES IN YOUR COUNTRY TAKE INTO ACCOUNT WHEN FIXING PENALTIES?

The principle of personalisation of a sanction applies in France to corporations and individuals.

Regarding the CJIP (judicial public interest agreement) public interest fine, the joint guidelines issued by the French Anti-Corruption Agency (AFA) and the National Financial Prosecutor's Office (PNF) (the AFA-PNF Guidelines) specify that the fine should reflect the illegal profits derived by the corporation from the offence but can also have a punitive dimension. With respect to the punitive aspect, the AFA-PNF Guidelines consider the corruption of a public official, the fact that the legal entity falls within the scope of the compliance obligation of the Sapin II Law, the existence of possible convictions or sanctions for similar offences, any attempt to conceal the offence, and the repeated or even systemic nature of corruption. Gains in market share or increased visibility may also be considered when determining the amount of the fine.

In addition, the PNF published guidelines in January 2023 on the implementation of the CJIP, which set out aggravating and mitigating factors that can affect the calculation of the public fine. Aggravating factors can include obstruction of investigations, deficiencies in compliance programmes and repetitiveness of acts, and mitigating factors can include spontaneous disclosure, single occurrence of the facts under investigation, the relevance of internal investigations, active cooperation and corrective measures.

RESOLUTION AND SETTLEMENTS SHORT OF TRIAL

66 ARE NON-PROSECUTION AGREEMENTS OR DEFERRED PROSECUTION AGREEMENTS AVAILABLE IN YOUR JURISDICTION FOR CORPORATIONS?

The French legal system does not offer non-prosecution agreements.

The CJIP (judicial public interest agreement) is available, allowing corporations accused of corruption, probity offences, tax fraud or environmental crime to settle allegations. This will imply a financial fine, without constituting an admission of guilt – thereby allowing corporations to continue bidding for public procurements – except in cases following an inquiry.

67 DOES YOUR JURISDICTION PROVIDE FOR REPORTING RESTRICTIONS OR ANONYMITY FOR CORPORATES THAT HAVE ENTERED INTO NON-PROSECUTION AGREEMENTS OR DEFERRED PROSECUTION AGREEMENTS UNTIL THE CONCLUSION OF CRIMINAL PROCEEDINGS IN RELATION TO CONNECTED INDIVIDUALS TO ENSURE FAIRNESS IN THOSE PROCEEDINGS?

There is no correlation in French law between a settlement with a corporation and criminal proceedings regarding individuals. There are therefore no reporting restrictions or anonymity for corporates beyond the confidentiality of criminal settlement negotiations.

The joint guidelines issued by the French Anti-Corruption Agency (AFA) and the National Financial Prosecutor's Office provide that the aim of internal investigations conducted by a prosecuted company, and communicated to the prosecutor, is also to determine individual liabilities.

68 PRIOR TO ANY SETTLEMENT WITH A LAW ENFORCEMENT AUTHORITY IN YOUR COUNTRY, WHAT CONSIDERATIONS SHOULD COMPANIES BE AWARE OF?

If a case is likely to involve foreign jurisdictions, companies should assess the consequences of admitting guilt in France, namely regarding the principle of *ne bis in idem*.

Corporations should also be mindful that signing a French plea bargain – as compared to signing a CJIP – amounts to an admission of guilt, thus preventing them from bidding for public tenders.

69 TO WHAT EXTENT DO LAW ENFORCEMENT AUTHORITIES IN YOUR COUNTRY USE EXTERNAL CORPORATE COMPLIANCE MONITORS AS AN ENFORCEMENT TOOL?

Law enforcement authorities cannot use external corporate compliance monitors as an enforcement tool, as the AFA constitutes the official compliance monitor, with a monopoly on the supervision of the compliance programmes of legal entities that have signed a CJIP, in accordance with the Sapin II Law.

In specific cases, legal entities have recourse to experts (e.g., law, accounting or audit firms) to process AFA requests.

70 ARE PARALLEL PRIVATE ACTIONS ALLOWED? MAY PRIVATE PLAINTIFFS GAIN ACCESS TO THE AUTHORITIES' FILES?

Should alleged victims demonstrate legal standing, they will be allowed to join the criminal procedure as civil parties and, as such, will be granted access to the criminal file and be able to submit requests for investigative acts.

Moreover, alleged victims can initiate a criminal investigation by filing an official complaint to that effect.

Private parties do not normally have access to the investigation files held by administrative authorities.

PUBLICITY AND REPUTATIONAL ISSUES

71 OUTLINE THE LAW IN YOUR COUNTRY SURROUNDING PUBLICITY OF CRIMINAL CASES AT THE INVESTIGATORY STAGE AND ONCE A CASE IS BEFORE A COURT.

Investigations led by a prosecutor or investigating judge are confidential.

As defendants and victims have access to the criminal file but are not bound by secrecy, it is sometimes very difficult to keep communications and information confidential. To prevent leaks of fragmented or inaccurate information or to avoid disrupting public order, the public prosecutor may, either *ex officio* or at the request of the investigating court or the parties, communicate on objective elements of the proceedings, without making an assessment on the charges.

Members of the press can be present and cover the hearing, although microphones and cameras are not allowed in the courtroom. Since the introduction of the Law of 22 December 2021 to promote trust in judicial institutions, an exception has been made to this prohibition. Under certain conditions, recordings of criminal hearings can be made and then broadcast once the case has been definitively judged, with the agreement, and respect for the rights, of the parties. Defendants and victims are free to make statements within the limits of the freedom of expression.

72 WHAT STEPS DO YOU TAKE TO MANAGE CORPORATE COMMUNICATIONS IN YOUR COUNTRY? IS IT COMMON FOR COMPANIES TO USE A PUBLIC RELATIONS FIRM TO MANAGE A CORPORATE CRISIS IN YOUR COUNTRY?

It is common to have press releases, communications and crisis management strategies prepared and, when appropriate, public relations firms assisting. The spokesperson is often a lawyer on the case, especially when individuals are involved.

73 HOW IS PUBLICITY MANAGED WHEN THERE ARE ONGOING RELATED PROCEEDINGS?

Publicity is part of the overall strategy, namely in high-profile matters that attract political attention and have numerous civil parties.

DUTY TO THE MARKET

74 IS DISCLOSURE TO THE MARKET IN CIRCUMSTANCES WHERE A SETTLEMENT HAS BEEN AGREED BUT NOT YET MADE PUBLIC MANDATORY?

There are no circumstances in which a judicial settlement could be agreed privately. CJIPs (judicial public interest agreements) and plea bargains offered by public prosecutors are officially approved by judges by way of a public hearing. Moreover, CJIPs are published on the French Anti-Corruption Agency's website.

There is no obligation to disclose settlements with administrative authorities to the public.

ENVIRONMENTAL, SOCIAL AND CORPORATE GOVERNANCE

75 DOES YOUR COUNTRY REGULATE ENVIRONMENTAL, SOCIAL AND GOVERNANCE MATTERS?

The French Duty of Vigilance Law (enacted in 2017) requires major companies (with 5,000 employees in France or 10,000 employees worldwide) to establish, publish and implement a vigilance plan with the aim of identifying and preventing serious violations of human rights and fundamental freedom resulting from the company's activities, from activities of its subsidiaries, its subcontractors and its suppliers, or from entities with whom the company has an established commercial relationship. In addition, the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) (SFDR) aims to harmonise and increase the transparency of corporations regarding environmental, social and governance (ESG) matters. The SFDR requires asset managers and investment advisers to publish specific information on how they address sustainability risks and key adverse consequences. Also, the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464), effective from 5 January 2023 (except for certain provisions), requires EU businesses, including qualifying EU subsidiaries of non-EU companies, to disclose their environmental and social repercussions, as well as details of how ESG affects their business

76 DO YOU EXPECT TO SEE ANY KEY REGULATORY OR LEGISLATIVE CHANGES EMERGE IN THE NEXT YEAR OR SO DESIGNED TO ADDRESS ENVIRONMENTAL, SOCIAL AND GOVERNANCE MATTERS?

On 24 May 2024, the EU Council approved the Corporate Sustainability Due Diligence Directive (Directive (EU) 2024/1760). The Directive introduces obligations for companies to identify and prevent potential and actual consequences of their activities on human rights abuses. The Directive entered into force on 25 July 2024.

On 20 May 2024, the new Environmental Crime Directive (Directive (EU) 2024/1203) entered into force. This Directive provides a list of environment-related conduct that Member States must penalise. It notably includes:

- 'the discharge, emission or introduction of . . . materials or substances . . . into air, soil or water which causes or is likely to cause the death of, or serious injury to any person';
- 'substantial damage to the quality of air, water or soil'; or
- 'substantial damage to an ecosystem, animals or plants'.

The Directive also includes the following in the list of criminal offences: unlawful ship recycling and water extraction, unlawful manufacture, use, storage, import or export of mercury, or the placing on the market and export of relevant commodities and products in breach of the Union Anti-Deforestation Regulation.

77 HAS THERE BEEN AN INCREASE IN RELATED LITIGATION, INVESTIGATIONS OR ENFORCEMENT ACTIVITY IN RECENT YEARS IN YOUR COUNTRY?

To date, a small number of cases have been brought before courts using the Duty of Vigilance Law. In that regard, owing to the lack of a public body acting as regulator, the enforcement is conducted by a few proactive non-governmental organisations (NGOs). One notable case pertains to Total, which was sued by NGOs for its lack of a vigilance plan, which the company is required to establish under the Duty of Vigilance Law. On 28 February 2023, the Paris Judicial Tribunal declared inadmissible the claims by several environmental protection associations against Total. The interim relief judge noted that the plaintiff associations' claims concerned a vigilance plan drawn up in 2021, whereas the formal notice, dated 2019, predated it, and that the claims were based on more than 200 new items compared with those appended to the formal notice, so that there were grounds for considering that the misconduct formulated by the plaintiff associations had not been notified to the defendant by a formal notice prior to referral to the judge, resulting in the inadmissibility of the claims.

However, uncertainties as to the content of the Law and procedural issues of jurisdiction mean that it remains difficult to ascertain what the impact of the Law will be on companies.

The Environmental Crime Directive imposes maximum penalties for the criminal offences it lists, ranging from three years' imprisonment for individuals and a fine of 3 per cent or 5 per cent of a legal entity's total global turnover or €24 million or €40 million, depending on the severity of the crime.

ANTICIPATED DEVELOPMENTS

78 DO YOU EXPECT TO SEE ANY KEY REGULATORY OR LEGISLATIVE CHANGES EMERGE IN THE NEXT YEAR OR SO DESIGNED TO ADDRESS CORPORATE MISCONDUCT?

France is proactive – various publications indicate regulatory and legislative amendments for the coming years.

An evaluation of the Sapin II Law's effectiveness by a parliamentary commission led by two Members of Parliament, which led to a bill being introduced in Parliament in November 2021, confirms France's intent to efficiently reduce corruption and the paramount importance internationally of the National Financial Prosecutor's Office. Although the bill has been shelved for the time being, the aim of the recommendations made by the parliamentary commission and this bill is to restore French and European sovereignty and protect companies from extraterritorial control. It provides recommendations to reinforce the French legal framework applicable to foreign procedures targeting French companies, including strengthening the French Blocking Statute, introducing legal privilege for in-house counsel and protecting data from the US CLOUD Act by the threat of fines similar to those applicable to violations of the General Data Protection Regulation.

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