



Your monthly briefing on business criminal law and compliance

Probité - Feminine noun (Latin *probitas*, -atis): the strict and steadfast observance of all the duties of civil life.

The criminal law and compliance team at Racine is pleased to bring you the latest edition of #Probité, our monthly newsletter published on our LinkedIn page.

This newsletter provides a selection of developments in business criminal law, criminal procedure, compliance, and business ethics, aimed at businesses, institutions, and their executives.

WHITE COLLAR CRIME

- Front National parliamentary assistants: the Court of Appeal upholds the convictions and restores Marine Le Pen's eligibility to stand for election

In a judgment delivered on 7 July 2026, the criminal appeals chamber of the Paris Court of Appeal ruled in the so-called "*Front National parliamentary assistants*" case.

The Court upheld the convictions of all 12 defendants who had appealed, on charges of misappropriation of public funds, aiding and abetting, handling the proceeds of misappropriated public funds, and the habitual handling of such proceeds by a legal entity. It found that a scheme had been put in place whereby the European Parliament funded the salaries of assistants attached to Front National — now Rassemblement National — MEPs, whose actual activities were carried out for the benefit of the political party. The Court assessed the total amount of public funds misappropriated through this scheme at €2.8 million.

On sentencing, the Court of Appeal departed significantly from the first-instance judgment. On 31 March 2025, the criminal court had sentenced Marine Le Pen to four years' imprisonment, two of which were to be served under electronic monitoring, together with a five-year disqualification from standing for election with immediate enforcement, and a fine of €100,000. On appeal, the Court sentenced her to three years' imprisonment, two of which were suspended. The unsuspended one-year term is to be served under electronic monitoring, on terms to be determined by the sentence enforcement judge. The Court also imposed a forty-five-month disqualification from standing for election, thirty months of which were suspended, and a fine of €100,000.

On the disqualification from standing for election, the Court noted that at the time of the offences such a penalty was discretionary, before the Sapin 2 Act introduced the principle of a mandatory additional penalty for certain integrity offences. Following the reservation of interpretation formulated by the Constitutional Council in its decision no. 2025-1129 QPC of 28 March 2025, the Court assessed the proportionality of the disqualification against "*freedom of candidacy*" and "*the freedom of choice of the voter, as a condition for the expression of democratic suffrage*".

The Court noted that the disqualification had taken effect on 31 March 2025 and that the period already served was sufficient. Accordingly, the fifteen-month unsuspended period of disqualification had been fully served by the date of the judgment.

This case illustrates the concrete effect of criminal courts taking electoral rights into account when determining and enforcing a disqualification from standing for election: depending on the length of the penalty imposed and the period during which provisional enforcement was in effect, any reduction of that penalty on appeal may have direct consequences for the convicted person's electoral position.

Marine Le Pen has lodged an appeal on points of law before the *Cour de cassation*.

The Paris Court of Appeal's press release on this judgment is available by clicking [here](#).

- Unlawful taking of interest: the reform of 22 December 2025 applies immediately to pending cases (Cass. crim., 6 May 2026, no. 24-81.451)

In a judgment of 6 May 2026 published in the *Bulletin*, the Criminal Chamber of the *Cour de cassation* raised of its own motion the immediate application of Act no. 2025-1249 of 22 December 2025, which amended the definition of the offence of unlawful taking of interest under Article 432-12 of the Criminal Code in a more favourable direction.

In the case at hand, a former mayor who had been finally convicted and sentenced to a disqualification from public office had resigned in 2014, leaving his first deputy to succeed him. He had nevertheless continued to intervene in the management of the municipality under the guise of an *"unpaid adviser"*, having initiated most of the decisions taken by his successor. In parallel, in 2016, he had been actively involved in recruiting his wife to the post of chief of staff at the municipal social action centre. The Court of Appeal of Saint-Denis de La Réunion had convicted him of complicity in the unlawful taking of interest committed by the new mayor, who was the principal offender.

The *Cour de cassation* noted that the Act of 22 December 2025 had amended Article 432-12 of the Criminal Code in three respects:

- as to the *actus reus*, the interest taken or retained must now *"undermine [the perpetrator's] impartiality, independence or objectivity"*, rather than merely be *"liable to compromise"* those qualities. The new wording therefore raises the threshold for establishing the offence: a mere risk of harm is no longer sufficient; actual impairment must be established;
- as to the nature of the interest, the provision now specifies that *"a public interest, or any interest whose consideration is excluded by law, shall not constitute a qualifying interest"*. Interests of a public nature are thereby expressly excluded from the scope of the offence;
- as to the exculpatory ground, the provision now states that the offence *"is not made out where the perpetrator had no alternative course of action in order to respond to an overriding reason of general interest"*. The Act thereby establishes a specific defence applicable to this offence.

The *Cour de cassation* partially quashed the judgment of the Court of Appeal — setting aside the conviction for complicity in the unlawful taking of interest only, while upholding the conviction for the unlawful continuation of the exercise of functions by a public elected official — and remitted the case, with the annulment extended by way of consequence to the mayor as principal offender and to the wife prosecuted for handling, to the Court of Appeal of Saint-Denis.

The Court raised of its own motion the ground based on the retroactive application of the more lenient law (*lex mitior*), without any of the parties having invoked it, recalling that *"the provisions of a new law apply to offences committed before their entry into force and not yet the subject of a final conviction where they are less severe than the prior provisions"*. All pending cases of unlawful taking of interest that have not yet resulted in a final conviction must therefore be reassessed in the light of these new provisions.

The judgment is available by clicking [here](#).

- o The publication director cannot escape criminal liability through a delegation of authority (Cass. crim., 23 June 2026, no. 25-82.192)

In a judgment of 23 June 2026 published in the *Bulletin*, the Criminal Chamber of the *Cour de cassation* confirmed that, in press law matters, a publication director cannot escape automatic criminal liability through a delegation of authority.

In the present case, remarks made during the television programme "*Face à l'info*" and broadcast online had given rise to prosecution for public defamation of a private individual. The publication director of the television channel and the author of the remarks were prosecuted as principal offender and accomplice respectively. Partially acquitted at first instance, both were ultimately found guilty on appeal. The publication director appealed on points of law, arguing that the Court of Appeal ought to have examined whether the channel director, who in practice exercised editorial oversight, had the necessary competence, authority, and means to carry out that supervision in his place.

The *Cour de cassation* rejected this argument through a three-step analysis:

- on the exclusion in principle: Act no. 82-652 of 29 July 1982 on audiovisual communication provides for only one exception to the publication director's strict liability, namely parliamentary immunity;
- on compatibility with the right to a fair trial: this automatic liability "*is part of the balance of the parties' rights*", given that press law proceedings are subject to strict procedural rules, foremost among which is the three-month limitation period;
- on compatibility with the presumption of innocence and the principle of personal liability: the publication director has available means of exoneration, as he may establish "*the good faith of the author of the statements prosecuted on grounds of defamation or, in the context of audiovisual communication, the absence of prior recording of the offending message*". The Court further notes that the liability thus incurred is personal to him, "*by reason of the burden he accepted to bear personally by taking on such a management position*".

The judgment thus reveals the true nature of the publication director's liability: not a liability for personal fault, but a functional liability attached to the office itself, which a delegation of authority cannot neutralise.

The judgment is available by clicking [here](#).

COMPLIANCE

- Tracfin joins the list of external authorities entitled to receive whistleblower reports

Since 1 July 2026, Tracfin (France's Financial Intelligence Unit) has been authorised to receive and process reports submitted by whistleblowers.

This development stems from Decree no. 2026-311 of 24 April 2026, adopted pursuant to Act no. 2025-532 of 13 June 2025 aimed at extricating France from the narcotics trafficking trap, which amends Decree no. 2022-1284 of 3 October 2022 on procedures for receiving and processing reports. Tracfin is thereby added to the list of external authorities eligible to receive reports relating to the prevention of money laundering and terrorist financing, alongside the AMF and the ACPR — whose respective remits are also expanded by the same Decree.

Until now, Tracfin could only use information provided by its usual reporting entities — professionals subject to anti-money laundering obligations, public authorities, or foreign financial intelligence units. However, certain professionals not subject to those obligations may be aware of facts likely of interest to Tracfin, without having access to a suitable reporting channel. The Decree addresses this issue by extending to them the benefit of the protective status afforded to whistleblowers under the Sapin 2 Act, through a dedicated online service enabling them to bring to Tracfin's attention information relating to money laundering or terrorist financing.

For companies, this reform raises two practical issues. First, it broadens the range of persons who may alert Tracfin, independently of any internal reporting mechanism. Second, it reinforces the obligation on employers not to obstruct the exercise of the right to report and to protect those who make reports, regardless of the authority to which the report is addressed.

The Decree is available by clicking [here](#).

- o Sapin 2: the French Anti-Corruption Agency imposes its first financial penalty for breach of anti-corruption obligations

On 9 July 2026, the sanctions committee of the French Anti-Corruption Agency (AFA) issued a landmark decision. For the first time since the Sapin 2 Act came into force, it imposed a financial penalty on a company and its legal representative for failure to comply with the corruption prevention obligations set out in Article 17 of that Act. The decision also marks the first use of the direct penalty route, without a prior compliance injunction.

Following an audit conducted between June 2024 and July 2025, the AFA found that the company was failing to comply with seven of the eight measures required by law. The deficiencies included the absence of a group-wide risk mapping exercise, third-party assessment procedures, anti-corruption accounting controls, a training programme for staff in exposed roles, and an internal monitoring mechanism. Only the internal reporting channel was found to be compliant.

Until now, the two previous referrals to the sanctions committee had related to applications for a prior compliance injunction, with a financial penalty only being available in the event of non-compliance with such an injunction. By choosing this time to seek a direct financial penalty, the AFA signals its intention to make full use of the sanctioning power conferred on it by law since 2016. The sanctions committee accordingly fined the company €350,000 and imposed a personal fine of €60,000 on its chairman.

The decision also provides an important clarification regarding the date at which breaches are to be assessed. The company argued that, having remedied its compliance programme before the committee issued its decision, no penalty could any longer be imposed. This argument was rejected: the committee held that assessing compliance at the date of the decision would effectively allow companies to wait until an audit before putting their house in order, thereby depriving the Sapin 2 Act's framework of any preventive effect. Breaches must therefore be assessed as at the date of the final audit report, irrespective of any remedial measures subsequently put in place.

This decision marks a turning point in the enforcement of the Sapin 2 Act. Until now, anti-corruption compliance obligations were primarily seen as requirements that could give rise to a compliance injunction. They are now fully backed by the risk of a financial penalty, including where the company remedies its programme following an audit. Effective implementation of the eight measures set out in Article 17 has thus become a genuinely binding obligation, non-compliance with which may now be directly sanctioned by the AFA.

The AFA sanctions committee's press release is available by clicking [here](#).

- The AFA steps up its approach: the national anti-corruption plan enters its operational phase

Published on 6 July 2026, the AFA's 2025 annual report signals a step change in French anti-corruption policy. It comes against the backdrop of the adoption of the first multi-year national anti-corruption plan (2025-2029) and the entry into force of the first EU anti-corruption directive.

The report first highlights the AFA's new role. Beyond its traditional audit and advisory functions, the AFA is now the driver of national anti-corruption policy. The 2025-2029 plan is structured around 36 measures across four workstreams: strengthening the prevention of integrity breaches within central government, supporting local authorities, protecting businesses, and developing international cooperation.

In the most exposed public sectors — defence, justice, finance, prison administration, and ports — the plan provides for strengthened prevention frameworks, the designation of anti-corruption officers in each ministry, enhanced oversight of officials in sensitive roles, and improved information sharing between public authorities. The report notes in particular that the AFA is continuing work with port operators and the prison administration to develop sector-specific prevention mechanisms.

With regard to local authorities, the AFA continues to focus on guidance and support. The report highlights the publication in 2025 of a practical guide on local public companies, and the launch, together with the National Centre for Territorial Civil Service and the Association of Mayors of France, of a training module for local elected officials.

For businesses, the report confirms the continuation of an active audit policy. The AFA carried out ten new audits in 2025, bringing the total number of audits conducted since the Sapin 2 Act came into force to 175. Four new judicial public interest agreements (*Conventions judiciaires d'intérêt public* - CJIPs) incorporating a compliance programme placed under AFA supervision were also concluded. The Agency is also continuing its awareness-raising activities with businesses, professional associations, and educational institutions.

The report also highlights the AFA's growing international dimension. The Agency participated in work carried out within the OECD, the United Nations Office on Drugs and Crime, and EU institutions, while also contributing to the drafting of the first EU anti-corruption directive. France intends to build on the head start gained with the Sapin 2 Act to shape the future European compliance standards.

Beyond these figures, the report above all confirms a shift in the AFA's enforcement philosophy. Read alongside the decision of 9 July 2026, the picture that emerges is of a transition from a primarily educational approach to a fully coercive one. AFA audits no longer serve merely to guide companies through compliance: non-compliance with Sapin 2 Act obligations now risks a direct financial penalty. The 2025 annual report thus marks a new chapter in the structuring of French anti-corruption policy, one in which prevention remains central but is now backed by a fully operational system of audit and sanction.

The report is available by clicking [here](#).

CRIMINAL PROCEDURE

- o Internal investigations: the *Cour de Cassation* accepts the production of a covert recording to challenge the employer's findings

In a judgment of 10 June 2026 (Soc., 10 June 2026, no. 24-17.871), the Social Chamber of the *Cour de cassation* clarified the conditions under which an employee may produce a recording made without the other party's knowledge in order to challenge the conclusions of an internal investigation.

In the case at hand, an employee had reported to her employer allegations of workplace harassment against another employee who was also a member of the works council (*comité social et économique* — CSE). Following this report, the company conducted an internal investigation, which concluded that no acts constituting workplace harassment had been established. The employee was subsequently dismissed and challenged that decision before the employment tribunal.

In order to challenge the conclusions of the investigation, the employee produced a transcript of an interview she had conducted with the investigator, which had been recorded without the investigator's knowledge. The employer contested the admissibility of this evidence, arguing in particular that it had been obtained by improper means.

The *Cour de cassation* recalled that the principle of fairness in the taking of evidence does not necessarily preclude the production of evidence obtained by improper means. In a number of recent judgments, the Court has accepted that an infringement of another right may be justified by the exercise of the right to adduce evidence, provided that the production of the evidence is indispensable to the exercise of that right and that the infringement is strictly proportionate to the aim pursued.

Applying this reasoning to the case at hand, the *Cour de cassation* found that the recording in question was indispensable to the employee's defence, given that the employer entirely denied the reality of the alleged workplace harassment. It further noted that the interview had concerned work-related matters and had taken place in a professional context: in the Court's view, the recording therefore did not infringe the personal interests of those recorded.

This judgment is of particular significance for companies that conduct internal investigations into harassment or psychosocial risks. It serves as a reminder that interviews conducted in this context do not enjoy any special protection against subsequent disclosure of their content. The confidentiality of an internal investigation may in particular be called into question where one of the participants demonstrates that the transcript of an interview with the investigator, even if obtained by improper means, is necessary for the exercise of their rights.

The decision also underlines that a professional context limits the force of any argument based on infringement of privacy. Exchanges relating to the professional activities of the individuals concerned may therefore be subject to judicial review, even where they were recorded without the prior knowledge of the participants.

In practice, an internal investigation therefore remains a delicate exercise: the manner in which it is conducted may itself become a subject of litigation. Companies must therefore take care to structure their investigation procedures, both in terms of methodology and the traceability of steps taken, in order to preserve their evidential weight in the event of a subsequent challenge.

The judgment is available by clicking [here](#).

- Criminal justice: legislation finally enacted following the abandonment of the criminal "*guilty plea*" procedure

On 9 July 2026, the Senate gave final approval to the bill on criminal justice and respect for victims, following an agreement reached in the joint committee (*commission mixte paritaire*) on 8 July. Presented as a response to the structural backlog in the criminal courts, the text was nonetheless substantially reshaped during the parliamentary process, most notably through the removal of its flagship measure: the creation of a "*procedure for the trial of admitted crimes*", a form of guilty plea procedure in criminal matters.

In the fourth edition of our newsletter (available [here](#)), we discussed the debates surrounding this procedure, which was modelled on the guilty plea procedure (*comparution sur reconnaissance préalable de culpabilité* - CRPC) applicable to lesser criminal offences (*délits*). The mechanism was designed to allow a defendant who fully admitted the facts to benefit from a reduced sentence without a full criminal trial on the merits. After the procedure was rejected by the Legal Affairs Committee of the National Assembly, the Minister of Justice ultimately announced its withdrawal on 10 June 2026, despite the support it had received in the Senate.

Stripped of this central reform, the legislation nevertheless retains several measures aimed at speeding up the handling of criminal proceedings.

First, the jurisdiction of the departmental criminal courts (*cours criminelles départementales*) is expanded. Established in 2019 to try crimes carrying sentences of between fifteen and twenty years' criminal imprisonment (*réclusion criminelle*), these courts will now also have jurisdiction over crimes committed in a state of statutory repeat offending (*récidive légale*). This extension is aimed in particular at increasing the sentencing capacity of the criminal courts and reducing processing delays, especially in cases involving sexual violence.

The legislation also amends the rules on procedural nullities. A person placed under formal investigation will now be required to raise any plea of nullity in respect of acts carried out prior to their initial appearance hearing within four months of the first copy of the file being made available to their lawyer. This provision, designed to prevent challenges being raised at a late stage, is however controversial insofar as it may impinge on the rights of the defence.

In the area of pre-trial detention, the Act introduces a transitional extension mechanism for situations in which a hearing cannot practically be held within the prescribed time limits. A person proceeded against for a crime or an offence carrying a sentence of more than five years' imprisonment may accordingly be held in pre-trial detention for a maximum of five additional days, provided that a summons is served on them within twenty-four hours.

While the reform ultimately does not include the "*procedure for the trial of admitted crimes*", it nevertheless reflects a desire to achieve procedural efficiency gains. The measures adopted are primarily aimed at accelerating the processing of criminal cases, at the risk of reigniting the debate on the balance between the effective administration of criminal justice and the guarantees afforded to those subject to it.

The bill is available by clicking [here](#).

RACINE'S EXPERTISE IN BRIEF

Through its expertise in business criminal law and compliance, Racine advises and represents its clients at every stage of criminal risk, in both advisory and contentious matters.

The firm acts for legal persons and their directors and officers in complex criminal proceedings, at the investigation stage, during judicial examination, and before the criminal courts, in France and internationally.

The firm also advises on risk prevention and management, and assists its clients in implementing their compliance programmes, strengthening their governance, and overseeing their internal investigations.

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