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#Probité

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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.

- Tax fraud: the National Financial Prosecutor's Office concludes its 32nd judicial public interest agreement, concerning the concealment of an effective place of management in France (CJIP SHAD SA, 9 July 2026)

On 9 July 2026, the Paris judicial court approved a judicial public interest agreement (*convention judiciaire d'intérêt public - CJIP*) entered into between the National Financial Prosecutor's Office (*Parquet national financier - PNF*) and SHAD SA, a company incorporated under Luxembourg law, which was prosecuted for aggravated tax fraud. This is the 32nd CJIP signed by the PNF since the Sapin 2 Act (*Loi Sapin 2*) came into force.

The company was prosecuted for failing to declare to the French tax authorities that, between 2015 and 2020, the place of its effective management was located in France. Although registered in Luxembourg, the company was in fact managed from France, as its decisions were taken on French territory by its director and by employees of a French subsidiary. The investigation had been opened following a mandatory referral by the *Direction nationale des vérifications de situations fiscales* (*DNVSF*).

Under the CJIP, SHAD SA undertook to pay the French Treasury a public interest fine of €2,259,492, an amount distinct from the €2,411,672 already recovered by the tax authorities in respect of the same conduct. Subject to payment of the fine, the agreement extinguishes the public prosecution against the legal entity.

This agreement is an example of the lawfulness of combining criminal and tax penalties. The taxpayer's prior payment of the duties and penalties owed to the tax authorities did not, in this case, prevent the agreement from being concluded, but was taken into account in determining the public interest fine, as were the remedial measures implemented by the company and its cooperation with the authorities.

This situation is a reminder that, although a taxpayer being subject to a tax penalty does not neutralize the risk of criminal prosecution, that penalty must nevertheless be taken into account when calculating the *quantum* of the criminal penalty.

This combination of penalties in respect of the same facts must, however, be assessed in light of the *ne bis in idem* principle: it must in particular be justified by the seriousness of the facts and comply with the principle of proportionality, with the overall amount of the penalties not exceeding the highest amount of any one of the penalties incurred.

The National Financial Prosecutor's Office's press release is available by clicking here.

- Unlawful taking of interest: the Basse-Terre Court of Appeal acquits Rodrigue Solitude in the "Respire Plus" case (CA Basse-Terre, 22 July 2026)

In a judgment of 22 July 2026, the Basse-Terre Court of Appeal acquitted Rodrigue Solitude, former chief of staff to the President of the Guadeloupe Region and current director general of the Guadeloupe Islands Tourism Board, of unlawful taking of interest. The judgment entirely overturns the ruling handed down on 17 October 2024 by the Pointe-à-Pitre criminal court, which had sentenced him to one year's suspended imprisonment, a fine of €15,000, and a five-year disqualification from holding public office and from standing for election.

The so-called *"Respire Plus"* case originated in the creation, in 2020, at the height of the Covid-19 health crisis, of a company intended to set up a surgical mask manufacturing unit in the town of Jarry. The project had received a regional subsidy of €450,000.

The public prosecutor's office accused Rodrigue Solitude of facilitating the grant of this public aid, even though the company was not yet registered with the trade and companies register (*Registre du Commerce et des Sociétés – RCS*), while being involved in its creation and operation.

In acquitting the defendant, the Court of Appeal applied Article 432-12 of the Criminal Code in its new wording resulting from the Act of 22 December 2025, on the basis of the retroactive application of the more lenient law (*in mitius*): the new wording of this article tends to give a stricter definition of the offence of unlawful taking of interest. In particular, it makes the offence of unlawful taking of interest conditional on the existence of an interest undermining the impartiality, independence or objectivity of the person holding public office.

The Court found in this case that nothing in the file demonstrated that Rodrigue Solitude's independence, impartiality or objectivity had actually been undermined in the award of the subsidy. In its view, the existence of a personal interest could therefore not be established under the conditions now set out in Article 432-12 of the Criminal Code.

The Court also noted, for the sake of completeness, that the defence could have relied on the exculpatory ground now provided for in the text, based on action taken in order to respond to an overriding reason of general interest. In this respect, it held that, in the context of the Covid-19 epidemic and the shortage of masks that also affected Guadeloupe, the creation of a local mask manufacturing business met an immediate public health need.

The judgment is of twofold interest. First, it provides a first concrete illustration of the new conditions of application of the offence of unlawful taking of interest: the existence of a personal interest or involvement in a transaction is no longer sufficient, on its own, to establish the offence; it must also be shown that the interest actually undermined the impartiality, independence or objectivity of the official. Second, it confirms that the exculpatory ground based on an overriding reason of general interest may be relied upon to rule out criminal liability.

- Ill-gotten gains: the National Financial Prosecutor's Office requests that BNP Paribas be committed for trial in the Bongo case

The National Financial Prosecutor's Office (PNF) has requested that 23 individuals and legal entities be committed for trial before the Paris criminal court in the Gabonese strand of the so-called *"ill-gotten gains"* case. Among them is BNP Paribas, which has been under formal investigation since 2021 for aggravated money laundering of corruption and misappropriation of public funds.

This case, opened following a complaint lodged by *Transparency International* at the end of 2010, concerns the acquisition in France of substantial real estate assets attributed to members of the family of the former Gabonese president Omar Bongo and their entourage. In total, 52 properties are said to have been seized in the course of the judicial investigation. The PNF is now seeking the committal for trial of five legal entities and eighteen individuals, including several of Omar Bongo's children.

As regards BNP Paribas, the prosecutor's office accuses the bank of having, between 1996 and 2008, allowed the conversion of funds it considers to be of criminal origin into real estate transactions in France, for an amount of at least €35 million. The financial circuit is said to have involved in particular the French company *Atelier 74*, through which several tens of millions of euros were allegedly deposited in cash before being transferred to France. The bank, which has acknowledged certain shortcomings and failures in the course of the investigation, denies, however, any *"fraudulent intent"*.

The criminal characterization adopted by the prosecutor's office against the bank is particularly noteworthy. Aggravated money laundering does not require the bank to be the perpetrator of the underlying offence: it may result from assistance provided in transactions intended to facilitate the conversion or concealment of funds derived from a felony or misdemeanor. The central issue in the case will be whether the bank was aware of the origin of the funds and of the fraudulent nature of the transactions to which it is alleged to have contributed.

This case shows that compliance failures may, beyond the regulatory risk, become a genuine criminal liability issue for financial institutions.
Insufficient know-your-customer and transaction monitoring diligence may, in certain circumstances, be capable of giving rise to a criminal characterization of money laundering. Banking institutions that maintain business relationships with clients presenting a high-risk profile, and whose transactions display features liable to raise concerns as to the origin of the funds, must be particularly vigilant.

It is now for the investigating judge in charge of the case to issue the closing order and to determine whether he intends to follow the PNF's requests: the committal for trial of the bank and the other defendants under formal investigation is not, therefore, a foregone conclusion at this stage.

- Dieselgate: Renault committed for trial before the Paris criminal court for aggravated deception

By an order of 24 July 2026, the investigating judge committed Renault for trial before the Paris criminal court for aggravated deception. The manufacturer becomes the second, after Volkswagen (committal of 30 January 2026), to be tried in the French strand of "*Dieselgate*". Peugeot-Citroën and Fiat Chrysler are still awaiting a decision from the investigating judge.

The case originated in the revelation, on 18 September 2015, by the US EPA (*Environmental Protection Agency*, an independent federal agency of the US government established in 1970 to protect human health and the environment), that Volkswagen had used software that distorted the results of pollutant emissions tests. Criminal proceedings were opened in France in January 2017 against the manufacturers Volkswagen, Peugeot, Citroën, Fiat Chrysler and Renault. Renault was placed under formal investigation in June 2021 for aggravated deception, a decision upheld on appeal in March 2023. Its applications to have the proceedings annulled were successively dismissed by the investigating chamber (September 2025) and by the *Cour de cassation* (April 2026).

The manufacturer is suspected of having calibrated the dCi engine of several million diesel vehicles to meet approval standards during testing, without achieving those standards under real driving conditions. The prosecutor's office alleges a *"deliberate optimization strategy"*, implemented on a *"collective"* basis. The prosecution concerns Euro 5 and Euro 6 vehicles marketed between 1 September 2009 and 12 January 2017, or more than two million vehicles according to the civil parties.

Renault denies any wrongdoing: in a press release dated 27 July 2026, the group stated that its vehicles *"have at all times been approved in accordance with applicable laws and regulations"* and that *"the order itself acknowledges that Renault's vehicles are not fitted with fraudulent devices for detecting the approval cycle"*.

Renault faces a fine of up to 10% of its average annual turnover over the last three known financial years, in addition to certain ancillary penalties. The scheduling hearing is set for 1 April 2027 and, at trial, purchasers of the vehicles concerned will be entitled to join the proceedings as civil parties.

This case illustrates the growing judicialization in France of litigation stemming from the emissions scandal, more than ten years after it first came to light, and the scale of the criminal, financial and reputational risks faced by the car manufacturers concerned. For companies in regulated industrial sectors, it sends a strong signal on the need to make their approval and certification processes more reliable, and to anticipate the litigation consequences of practices that may be recharacterized as criminal.

- Compliance: the AFA publishes a new practical guide on internal whistleblowing systems (16 July 2026)

On 16 July 2026, the French Anti-Corruption Agency (*Agence Française Anticorruption – AFA*) published a guide entitled *"Setting up an internal whistleblowing system and building an ethical whistleblowing culture in the service of probity"*. Prefaced by the Defender of Rights (*Défenseur des droits*), this document is aimed at both public entities and private companies wishing to structure or improve their reporting systems.

The AFA notes that even where a whistleblowing system formally exists, it often remains little used in practice. The main obstacles identified include insufficient awareness among staff of the available reporting channels, fear of retaliation, and a lack of confidence in how reports will be handled. The guide further recalls that, since the Waserman Law of 21 March 2022, a whistleblower may report directly to an external authority without first going through their organization's internal channel, which reinforces the need for companies to offer a reliable and protective internal system.

On a practical level, the guide sets out the key steps of an effective system: precisely defining who is entitled to report and what facts may be reported, setting up secure channels, complying with processing deadlines, ensuring confidentiality throughout the procedure, and ensuring the absence of any retaliatory measures against the person making the report. The AFA also stresses the personal involvement of senior management, which it presents as a decisive factor in embedding a genuine reporting culture within the organization, going beyond the mere existence of a written procedure.

This publication follows on from the assessment drawn up by the Defender of Rights, ten years after the Sapin 2 Act was adopted. Requests made to that institution have multiplied tenfold since 2017, a trend which, according to the Defender of Rights, reflects growing familiarity with whistleblowing rights. The AFA and the Defender of Rights nevertheless note that fear of retaliation and a lack of confidence in internal systems continue to deter certain reports.

For companies subject to the internal whistleblowing obligations of the Sapin 2 Act, in particular under Articles 8 and 17, as well as for those that have voluntarily set up such a system, this guide offers an opportunity to reassess the robustness of the existing system: the accessibility and clarity of reporting channels, the training of officers responsible for handling reports, the effectiveness of confidentiality guarantees and protection against retaliation, and awareness-raising initiatives among staff.

The AFA's guide is available by clicking here.

- Combating breaches of probity in the civil service: the Prime Minister issues a circular to ministers to strengthen the fight against breaches of probity (circular of 18 August 2026, no. 6554/SG)

In a circular dated 18 August 2026, Prime Minister Sébastien Lecornu presented to ministers and ministers delegate a number of measures designed to strengthen the fight against breaches of probity within State administrations and public operators. This text follows on from the multi-year national anti-corruption plan (2025-2029), published on 14 November 2025.

The circular notes the growing exposure of administrations to risks of breaches of probity, linked in particular to the development of organized crime (improper consultation of sensitive databases, pressure on public officials to obtain or misappropriate information). The measures announced are organized around two strands:

- Prevention and detection: the circular provides for enhanced training of public officials (with a dedicated module in public service schools by the end of 2026), the facilitation of internal and external reporting, the securing of sensitive applications and databases, and the systematic integration of the risk of breaches of probity into risk mapping exercises;

- Disciplinary policy: disciplinary proceedings must systematically be considered where facts that are materially established are liable to constitute a breach, regardless of whether criminal proceedings exist or their outcome. Each administration is invited to adopt an internal policy setting out, for the most serious breaches, the criteria guiding the exercise of disciplinary powers, in accordance with the principles of individualization and proportionality.

The text also encourages the strengthening of links with public prosecutors' offices, on the basis of Articles 11-2 and 11-2-1 of the Code of Criminal Procedure, as well as the anonymized publication of disciplinary sanctions imposed.

The circular invites State administrations and public bodies to report, by 15 October 2026, on the actions implemented in relation to training, prevention and risk mapping.

This circular reflects the Government's intention to make systematic, within the public sphere, prevention and disciplinary requirements that bear a number of similarities to the compliance obligations applicable to private sector operators.

The circular is available by clicking here.

- Public procurement: the AFA strengthens its recommendations on preventing breaches of probity

On 1 September 2026, the French Anti-Corruption Agency (AFA) and the State Procurement Department (*Direction des achats de l'Etat – DAE*) published a new edition of the guide on preventing breaches of probity in public procurement. Updated for the first time since 2020, this guide incorporates the AFA's 2021 recommendations as well as the regulatory developments that have occurred since then. It is aimed at buyers within the State, local authorities and their public bodies, but also provides useful guidance for companies taking part in public procurement.

This new edition adopts a resolutely operational approach: the risk of corruption is analyzed at each stage of the procurement cycle, from the preparation of the contract through to its performance. For each stage, the guide identifies the main risks of breaches of probity, the warning signs, and the prevention and control measures that could be put in place.

The guide illustrates these risks with a number of situations drawn from court decisions: the award of a contract to a company under conditions favoring a particular candidate, the involvement of a public official in a procedure while maintaining links with the successful company, and the amendment of a contract during its performance under conditions liable to undermine equal treatment between candidates.

The guide also devotes considerable attention to conflicts of interest, in particular in contracts for intellectual and consulting services. The AFA notes that such contracts present specific risks because of the nature of the information to which service providers may have access and the influence they may exert over the buyer's decisions.

The AFA recommends in particular anticipating the verification of the absence of any conflict of interest before the performance of the service begins and, where possible, as early as the award procedure. To this end, the guide proposes including specific clauses in the contractual documents requiring the contractor, its co-contractors and subcontractors, as well as the individuals assigned to the engagement, to declare any conflicts of interest. These obligations must continue throughout the performance of the contract, together with an obligation to give immediate notice if a new conflict arises. Where such a conflict cannot be resolved, the AFA recommends suspending the service and, where appropriate, terminating the contract.

The publication comes at a time when public procurement remains particularly exposed to breaches of probity. The guide notes in particular that 26% of French companies that have taken part in a public contract over the past three years believe they were prevented from winning one because of corruption. Nearly half of the companies surveyed also consider that conflicts of interest in the evaluation of bids are widespread.

The value of the guide lies in clarifying, for companies operating in public procurement, the situations liable to give rise to criminal risk, as well as the precautions that can be taken to document the propriety of their dealings with public buyers. The new fact sheet devoted to consulting services is particularly practical in this respect: it invites companies to incorporate the prevention of conflicts of interest into their own procedures, to check the position of those working on each engagement, and to formalize the measures taken in the event of any difficulty.

The prevention of breaches of probity is thus becoming an issue that is no longer confined to the public buyer, but also directly concerns the economic operators taking part in public procurement.

The AFA's press release is available by clicking here.
The guide 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 senior 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 rolling out their compliance programmes, strengthening their governance, and overseeing their internal investigations.

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