



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

- McKinsey case: the National Financial Prosecutor's Office announces the seizure of EUR 65.2 million in the investigation for aggravated tax fraud money laundering (joint PNF/Brussels Public Prosecutor's Office press release, 4 September 2026)

On 4 September 2026, the French National Financial Prosecutor's Office (*Parquet national financier*, "PNF") and the Brussels Public Prosecutor's Office announced, in a joint press release, the precautionary seizure of EUR 65,244,757.07 as part of the preliminary investigation opened in March 2022 for aggravated tax fraud money laundering targeting the consulting firm McKinsey, on the company's accounts domiciled in Belgium.

The investigation, entrusted to the French National Anti-Fraud Office (*Office national antifraude*, "ONAF"), stems from the work of a Senate inquiry committee dedicated to the influence of private consulting firms on public policy. Its findings referred to possible tax optimisation that allegedly allowed McKinsey's French entities to pay no corporate income tax in France between 2011 and 2020. Searches had already been carried out in May 2022 at the firm's Paris offices, before witness and suspect interviews continued in 2025 and 2026.

According to the joint press release of the two prosecutors' offices, the amount seized corresponds to 96% of the tax loss assessed at this stage by the PNF. McKinsey disputes any wrongdoing and has reaffirmed its commitment to complying with its tax obligations in each of the countries where the group operates.

The scale of the seizure calls for particular attention: almost the entirety of a tax loss that remains, at this stage, provisional has thus been frozen even before a court has ruled on the reality of the alleged facts, their criminal characterisation, or the amount of any eventual loss. While the precise purpose of a precautionary seizure is to preserve assets capable of securing a future confiscation or compensation, such a measure can have a considerable economic effect on the company concerned.

If the trial court were ultimately to find a lower amount of loss, the sums seized in excess of the amount finally determined would be liable to be returned. Such restitution would not offset the effect produced by the measure, since the company would have been deprived of its liquidity for the duration of the seizure.

The judicial investigation was initiated following the work of a parliamentary inquiry committee, whose investigative powers and procedural rules differ significantly from those of a criminal investigation. Persons heard in that context do not benefit from the same safeguards as those applicable to a person under investigation in criminal proceedings, in particular as regards the right to remain silent or the right to the assistance of counsel.

The judicial authority's use of material from such proceedings illustrates the risk that testimony before an inquiry committee may serve as a starting point, or even a foundation, for subsequent criminal

investigations. For companies heard in that context, the statements and documents provided must therefore be approached with particular care, even though parliamentary proceedings do not, in themselves, constitute criminal proceedings.

The National Financial Prosecutor's Office press release is available [here](#).

- Merger by absorption: a transaction carried out during a judicial investigation is not, on its own, sufficient to establish *fraus legis* (Cass. crim., 29 September 2026, No. 25-82.579, F-B)

In a ruling dated 29 September 2026, the Criminal Chamber of the Court of Cassation clarified the conditions under which an acquiring company may incur criminal liability for acts committed by the absorbed company before the merger. In particular, it clarified the reasoning requirements that trial judges must satisfy when they find that a fraud against the law (*fraude à la loi*) exists, in the specific context of a merger by absorption that predates the change in case law of 25 November 2020.

In that landmark ruling, the Court of Cassation had held that, in a merger by absorption, the acquiring company could incur criminal liability for acts committed by the absorbed company before the merger. Previously, the dissolution of the absorbed company resulted in the extinction of criminal proceedings against it. This new rule, however, applies only to mergers completed after 25 November 2020.

For transactions completed before that date, the Court of Cassation has nevertheless exceptionally accepted that the liability of the acquiring company may be sought in the event of *fraus legis*, where the merger was organised with the aim of allowing the absorbed company to escape its criminal liability. It is within this specific framework that the ruling of 29 September 2026 falls.

In this case, a company had been placed under formal investigation for manslaughter and unintentional injury following an accident that occurred in 2012 on a construction site. That company was subsequently absorbed in November 2018 by another company. Prosecuted before the criminal court, and then the Bordeaux Court of Appeal, the acquiring company was found guilty on the same charges, the judges finding that the merger, which took place after the absorbed company had been placed under formal investigation, had the sole purpose of allowing the latter to escape the ongoing judicial investigation and its criminal liability through the extinction of proceedings, which, in their view, amounted to *fraus legis*.

The acquiring company appealed to the Court of Cassation, arguing that the Court of Appeal had inferred the existence of fraud solely from the fact that the transaction took place during the investigation, without identifying any additional evidence or explaining its reasoning.

The Criminal Chamber quashed the appellate ruling on the basis of Articles 121-1 of the Criminal Code and 593 of the Code of Criminal Procedure. It recalled that the concept of *fraus legis* may allow the criminal liability of the acquiring company to be engaged for acts committed by the absorbed company before a merger predating 25 November 2020, provided that the judges can specifically establish such fraud by setting out the elements demonstrating it, in particular the links between the two companies, the timing of the transaction and its economic context. In this case, the mere fact that the formal investigation of the absorbed company preceded the merger was not sufficient, on its own, to legally justify the decision.

This ruling follows on from a decision of 13 April 2022, which already required trial judges to rule on any potential *fraus legis*, but now clarifies the method for establishing it. It invites courts to specifically justify each piece of evidence relied upon, rather than presuming fraudulent intent from the timing of the transaction alone.

For acquiring companies implicated in connection with mergers by absorption predating the 25 November 2020 change in case law, this ruling offers a useful line of defence: the mere fact that the transaction took place during a judicial investigation is no longer sufficient to establish fraud. Judicial debate should therefore focus more on the nature of the links between the companies concerned, the timing of the transaction and its economic context, all matters on which the defence can usefully document the absence of fraudulent intent.

The Court of Cassation's ruling is available [here](#).

CRIMINAL PROCEDURE

- Limitation period for criminal proceedings: reclassification to a petty offence at the end of the investigation does not deprive earlier prosecutorial acts of their interrupting effect (Cass. crim., 30 June 2026, No. 25-85.907, F-B)

In a ruling dated 30 June 2026, the Criminal Chamber clarified the fate of procedural acts carried out during a judicial investigation where facts initially prosecuted as a misdemeanor (*délit*) are ultimately reclassified as a petty offence (*contravention*). It also confirmed, more broadly, the extensive scope of the acts that interrupt the limitation period under the Code of Criminal Procedure.

In this case, an accident that occurred in 2014 on a construction site had injured two people. A judicial investigation had been opened for unintentional injury, following two complaints with civil party applications filed in 2016. After a discontinuance order issued in 2020, the investigating chamber, seized on appeal by the civil parties, reclassified the facts as a petty offence and referred the company to the police court (*tribunal de police*). The company was convicted both at first instance and on appeal.

The prosecuted company argued that the criminal proceedings were time-barred, the limitation period for petty offences being one year. It submitted that the 2016 complaints with civil party applications, filed when the facts were still classified as a misdemeanor, had retroactively lost their interrupting effect as a result of the reclassification as a petty offence in 2022, since a civil party cannot, in principle, refer a matter to an investigating judge for mere petty offences. It further disputed the interrupting effect of the notification of a hearing date by the Prosecutor General's Office, as well as of the ruling ordering the reopening of proceedings before the investigating chamber.

The Court of Cassation dismissed the appeal on all three points.

On the first ground, it held that the reclassification of the facts as a petty offence, occurring at the end of the investigation, does not retroactively deprive the complaint with civil party application that gave rise to the referral to the investigating judge of its interrupting effect. In other words, the act must be assessed in light of the classification applicable at the time it was carried out, not in light of the classification ultimately adopted by the courts.

On the second ground, it held that the notification, by the Prosecutor General's Office, of the hearing date before the investigating chamber also constitutes a prosecutorial act with interrupting effect, within the meaning of Article 9-2 of the Code of Criminal Procedure. The Court took the opportunity to recall that the list of interrupting acts set out in that provision is not exhaustive: other acts, provided they demonstrate the public prosecutor's intention to pursue the proceedings, may produce the same effect.

On the third ground, finally, it confirmed that a decision to reopen proceedings issued by the investigating chamber also interrupts the limitation period. It makes no difference, in this respect, that such a decision is a mere measure of judicial administration, not open to a standalone appeal: it is not the nature of the decision, nor the possibility of challenging it, that determines its interrupting effect, but the fact that it reflects the continuation of the proceedings.

This decision provides certainty for proceedings that have undergone, as is common for unintentional offences, a reclassification to a petty offence during or at the end of the investigation: acts validly carried out before the reclassification retain their interrupting effect, including those, such as a complaint with civil party application, that could not have been validly carried out had the petty-offence classification applied from the outset.

The Court of Cassation's ruling is available by clicking [here](#).

COMPLIANCE

- Environment: the Pays Basque and Suez Eau France placed under formal investigation for unlawful wastewater discharges into the Atlantic Ocean

The Pays Basque urban community (*communauté d'agglomération*) and the company Suez Eau France, responsible for treating its wastewater, were placed under formal investigation (*mis en examen*), on 6 July and 22 April 2026 respectively, for unlawful discharges of wastewater into the ocean since 2017. These formal investigations form part of a judicial investigation opened in 2021 by the regional environmental division of the Bayonne court, following complaints filed by an environmental protection association and the inter-departmental fisheries committee.

Since May 2019, and for a period of eight years, the Pays Basque urban community, which comprises 158 municipalities, had delegated the public wastewater treatment service to Suez Eau France. The six wastewater treatment plants located on the Basque coast (Biarritz, Bidart, Guéthary, Saint-Jean-de-Luz, Urrugne and Hendaye) are entitled to discharge untreated water in the event of network saturation, but only up to a limit of 5% of their total volume. According to the findings of the investigation reported in the press, this threshold was allegedly exceeded at several facilities: in Hendaye, the proportion of water discharged without treatment is said to have reached an average of 15.44% over six years, with a peak of 22% in 2020, while in Saint-Jean-de-Luz approximately 500,000 m³ of untreated water is said to have been discharged on average each year.

The Bayonne public prosecutor, Mariel Garrigos, stated that the two legal entities were placed under formal investigation in particular for "discharge by a legal entity of a harmful substance into surface or ground waters or into sea waters", "throwing or abandoning of waste" and "throwing, discharging or allowing to flow into the waters a substance restricting the use of bathing areas".

The case also illustrates the role of the specialised regional divisions for environmental offences, created by the law of 24 December 2020 to handle complex environmental cases. The Bayonne division, which has jurisdiction over the area covered by the Pau Court of Appeal, is conducting an investigation in which the Central Office for Combating Environmental and Public Health Offences, the French Biodiversity Agency and the judicial police have been involved.

Finally, it highlights the criminal risk that may weigh both on the public body responsible for the service and on its delegatee, provided that the specific conditions for establishing each party's criminal liability are met.

It should be noted that being placed under formal investigation does not in any way prejudice the guilt of the legal entities concerned, which are presumed innocent.

- o European sanctions: a mere connection with a sanctioned person is not sufficient to justify freezing the assets of a third-party company (CJEU, 3 September 2026, Case C-147/25, Inter Rao Lietuva)

On 3 September 2026, the Court of Justice of the European Union issued a ruling on a reference for a preliminary ruling from the Supreme Administrative Court of Lithuania, in a case between Inter Rao Lietuva, an independent electricity importer and supplier in Lithuania, and the Lithuanian Financial Crime Investigation Service.

In April 2022, the Lithuanian Financial Crime Investigation Service placed the company Inter Rao Lietuva on a national asset-freezing list. That company is 51% owned by a Finnish subsidiary of the Russian group Inter Rao UES, which is itself indirectly owned by entities controlled by the Russian State. On the basis of that ownership chain, the Lithuanian authorities considered that the company was in fact controlled by the President of the Russian Federation, a person targeted by the EU sanctions relating to Ukraine. They argued, in any event, that such influence of the Russian State over the management of the company could be found even in the absence of any legal link or direct shareholding.

In its decision, the CJEU upheld the principle of such national lists established by Member States, insofar as they do not create an additional sanction but merely implement the asset-freezing obligation already provided for under EU law.

The Court, however, set a strict limit as to the evidence required: a mere link or general connection with the sanctioned person is not sufficient. The competent authority must establish, on an objective and sufficiently solid factual basis, that the assets in question belong to, or are owned, held or controlled by, that person.

In this case, the Court found that the autocratic and oligarchic nature of the Russian regime could not, on its own, serve as proof of effective control over a given company. That finding may shed light on the context in which the evidence is assessed, but never dispenses the national authority from demonstrating, through direct evidence or a body of sufficiently specific, precise and consistent evidence, a genuine and effective capacity to influence the decisions of the company concerned, including where such control is exercised informally.

As regards the scope of review by the national court, the Court specified that it must verify the accuracy of the facts relied upon, the absence of any manifest error of assessment and the absence of any misuse of power, without however having to rule itself on the necessity of the measure in light of a threat to national security.

The Court did not, however, rule on whether the evidence produced in this case was sufficient to establish effective control of Inter Rao Lietuva by the Russian President: that assessment now falls to the Supreme Administrative Court of Lithuania, which is responsible for ruling on the merits of the dispute.

In practice, this decision sets a demanding framework for any national authority wishing to freeze the assets of an entity not directly targeted by EU sanctions on the basis of an alleged link with a person listed on an asset-freezing list.

Economic operators affected by such a measure now have a precise basis on which to challenge its validity before the national court, since the authority cannot merely invoke the nature of the political regime or an indirect shareholding link without specifically justifying the resulting consequences in terms of control.

The CJEU press release is available by clicking [here](#).

- o Environment: the DGCCRF fines Boohoo EUR 224,950 for failing to provide information on the environmental quality of its products

The French *Direction générale de la concurrence, de la consommation et de la répression des fraudes* (DGCCRF) imposed on Boohoo UK Limited an administrative fine of EUR 224,950 for failing to comply with its obligations to provide information on the environmental quality and characteristics of its products.

This sanction, imposed following an investigation carried out in 2025 on the boohoo.com and boohooman.com websites, results from several failures identified by the DGCCRF:

- the absence of information on the geographic origin of weaving, dyeing, printing and manufacturing operations, for 1,863 items offered for sale;
- the absence of the statement "*releases plastic microfibres into the environment when washed*" for 773 textile products whose proportion of synthetic fibres exceeds 50%; and
- the failure to provide a product information sheet on environmental qualities and characteristics, for 1,863 products offered for sale.

The DGCCRF recalled that these obligations, applicable to textiles generating waste, are intended to enable consumers to access clear and reliable information on the place of manufacture and the environmental impact of the products they purchase.

This sanction forms part of a broader strengthening of controls over environmental information provided to consumers, as combating greenwashing and, more broadly, the reliability of information relating to the environmental characteristics of products become an increasing priority for regulatory authorities.

This sanction comes a few weeks after another set of proceedings against Boohoo. On 20 August 2026, the company accepted a criminal settlement of EUR 2.33 million following a DGCCRF investigation which found, among other things, that 95% of the promotions checked were non-compliant, as well as the improper use of the terms "*leather*", "*faux leather*", "*imitation leather*" and "*suede*" to describe synthetic products.

The succession of these two sets of proceedings demonstrates the DGCCRF's vigilance towards fast-fashion players, both as regards commercial practices and compliance with environmental information obligations.

The DGCCRF press release is available by clicking [here](#).

- Internal investigations: bill regulating internal investigations following reports of sexist and sexual violence in the workplace

Tabled on 11 August 2026 in the National Assembly by Member of Parliament Céline Thiébault-Martinez and co-signed by numerous MPs from several political groups, the bill providing a comprehensive response to sexual and sexist violence against women and children includes a section devoted to the workplace. After being examined by a special committee, which adopted a text on 23 September 2026, debate in plenary session began on 1 October.

Title VI of the bill notably provides for the following:

- Article 40 – Collective bargaining: the prevention of sexual assault, sexual harassment and sexist conduct would be added to the topics of branch-level and company-level collective bargaining;
- Article 41 – Single occupational risk assessment document (*document unique d'évaluation des risques professionnels* "DUERP"): the single document for assessing occupational risks would be required to include measures for preventing sexual assault, sexual harassment and sexist conduct;
- Article 42 – Sexual harassment officer: the headcount threshold above which an employer must appoint an officer responsible for guiding, informing and supporting employees would be lowered from 250 to 50 employees. The text adopted in committee also provides for a right to training for that officer;
- Article 44 – Handling of reports and internal investigations: where an employer is informed that an employee considers themselves a victim of sexual assault, sexual harassment or sexist conduct in a work-related context, or where such facts are reported to the employer by a third party, the employer would notably be required to:
 - retain the report;
 - initiate an internal investigation without delay;
 - take protective measures to prevent contact between the individuals concerned;
 - interview the alleged victim, then witnesses, then the person implicated, in that order;
 - prepare an investigation report within a reasonable time;
 - communicate the findings of the report to the alleged victim and to the person implicated, while preserving the confidentiality of testimony.

The text expressly provides that persons interviewed could review and amend their statements before signing the record.

In the event of a failure to comply with these obligations, the employer could be subject to a financial penalty of up to 1% of the remuneration and earnings paid to employees or equivalent staff during the year preceding the finding of the breach. The person making the report could also refer the matter to the labour inspectorate if they consider that the investigation did not meet the applicable requirements or that its findings are manifestly inadequate.

This provision would mark a significant change compared with current law. In a ruling dated 14 January 2026, the Social Chamber of the Court of Cassation recalled that no provision of the Labour Code currently requires an employer to conduct an internal investigation following a report of sexual harassment. Article 44 would thus turn the internal investigation into a legal obligation, non-compliance with which could be financially sanctioned.

The bill also comes against a backdrop of strengthening case law on sexist and sexual violence in the workplace. In a ruling dated 28 May 2026, the Court of Cassation recognised the concept of "*ambient sexual harassment*", accepting that an employee may be subjected to sexual harassment as a result of repeated remarks or conduct of a sexual or sexist nature in their working environment, even where they are not directly the target of such remarks or conduct.

While the final adoption of the bill remains uncertain, these provisions invite companies to pay particular attention to formalising their reporting and internal investigation procedures, to taking sexist and sexual violence into account in the DUERP, and to the evolving obligations relating to the appointment and duties of specialised officers.

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

- Compliance: the AFA publishes a new survey on the anti-corruption maturity of economic operators

On 29 September 2026, the French Anti-Corruption Agency (*Agence française anticorruption*, "AFA") published a new survey on the maturity of anti-corruption arrangements among economic operators, carried out by IPSOS-bva among a representative panel of 502 French companies with 50 or more employees, nearly 80% of which were SMEs.

This new edition is based on a different methodology from previous surveys. The French National Audit Office (*Cour des comptes*) had indeed noted the limitations of earlier surveys, which relied on voluntary participation by companies that were often already aware of compliance issues. The AFA therefore used a representative sample interviewed by telephone using the quota method. It specifies that, due to this change in methodology, the results cannot be directly compared with previous editions. Only 16% of the companies surveyed stated that they were subject to Article 17 of the Sapin II law.

On risk awareness, 59% of respondents were able to define corruption in its general sense, compared with 34% for influence peddling, 32% for active corruption and 24% for passive corruption. The survey notes that this level of awareness varies in particular depending on the respondent's role, whether the company is subject to Article 17, and perceived exposure to risk. Yet 63% of the companies surveyed consider themselves not exposed to any risk of corruption or influence peddling, compared with 5.2% who consider themselves fairly or very exposed.

Among companies subject to Article 17, the main arrangements are widely deployed: an internal whistleblowing system and disciplinary regime (79%), a code of conduct (75%), internal control and audit (68%) and accounting controls (65%). Training (58%), risk mapping (56%) and third-party due diligence (50%) remain less widespread. According to the survey, risk mapping and third-party due diligence are also the measures most frequently cited as complex to implement.

The situation is more mixed among companies not subject to Article 17: 49% report having no anti-corruption measures at all. Where a scheme does exist, it mainly consists of a code of ethics (43%), rules governing gifts and invitations (29%) or the management of conflicts of interest (24%). The AFA notes that international exposure is the factor most strongly associated with the implementation of a structured anti-corruption scheme.

In terms of governance, 46% of the companies concerned still entrust the oversight of anti-corruption measures to functions other than legal or compliance. Even among companies subject to Article 17, the compliance function is responsible for this oversight in only 38% of cases. Training for the person responsible also remains closely linked to company size: it applies to 76% of companies with 500 or more employees, compared with 43% of those with between 50 and 99 employees.

This survey thus highlights a two-fold finding. Companies subject to Article 17 have largely implemented the main pillars of the Sapin II law, even though certain measures, in particular risk mapping and third-party due diligence, remain less well mastered. Conversely, a significant proportion of companies not subject to Article 17 remain poorly structured when it comes to preventing corruption.

The survey 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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