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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.

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- Nuclear maintenance: the National Financial Prosecutor's Office carries out extensive searches amid suspected corruption and collusion to the detriment of EDF

On 13 October 2026, the French National Financial Prosecutor's Office (Parquet national financier, "PNF") conducted a series of searches at several companies involved in the maintenance of nuclear power plants operated by EDF, as well as at the homes of employees of the energy group. The searches form part of a wide-ranging investigation into access to maintenance contracts for France's nuclear fleet and possible collusion between several industry players.

The operation was led by the Grenoble criminal investigation unit (*section de recherches*) of the National Gendarmerie and the French *Direction générale de la concurrence, de la consommation et de la répression des fraudes* (DGCCRF). It involved substantial resources, with support from the Gendarmerie's National Judicial Police Unit, seven regional criminal investigation units and five departmental gendarmerie groups.

The investigation concerns suspected active and passive bribery of a person entrusted with a public service mission, committed by an organised group; personal and decisive participation in an anticompetitive practice; organised fraud; and money laundering. The PNF is particularly interested in possible coordination between several industry players that may have distorted access to contracts to EDF's detriment.

If established, the alleged conduct would point to a scheme combining corrupt practices and collusion between companies. Beyond individual acts that may have helped secure the award of certain contracts, investigators are seeking to determine whether those practices formed part of a broader coordination mechanism among service providers.

This investigation is a reminder that corruption and anticompetitive practices are not necessarily separate or mutually exclusive. Their combination can be used to shut competitors out of a market by influencing both the tendering process and the subsequent selection made by the awarding company. Companies should therefore pay particular attention to the audit trail for contract-award decisions, their dealings with service providers and any contacts between competitors.

The case also highlights the PNF's express, albeit non-exclusive, jurisdiction over the prosecution of anticompetitive practices under Article 705 of the French Code of Criminal Procedure, an aspect of criminal enforcement that is often overlooked.

At this stage of the proceedings, the individuals and legal entities concerned remain presumed innocent.

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CRIMINAL PROCEDURE

o Major procedural changes following the entry into force of the SURE Act (Act No. 2026-651 of 23 July 2026)

On 23 October 2026, several significant procedural amendments introduced by Act No. 2026-651 of 23 July 2026 on criminal justice and victims' rights, known as the "SURE Act", entered into force.

The amendments, which mainly stem from Article 9 of the Act, substantially revise certain procedural rules governing the raising of procedural challenges, the filing of written submissions and motions, as well as time limits for service of process and notifications to counsel.

The main changes can be summarised as follows:

Before the criminal court dealing with *délits* (*tribunal correctionnel*):

- The revised Article 385 of the French Code of Criminal Procedure now requires applications alleging procedural defects to be filed with the court registry no later than three days before the hearing, failing which they will be inadmissible.

  This rule does not apply to immediate-appearance proceedings under Articles 395 to 397 of the same Code, where the party was unable to identify the ground of challenge before the deadline, or where the party was served with a summons or notice less than twenty days before the hearing.

- As amended, Article 552 of the French Code of Criminal Procedure extends the minimum notice period for a summons to appear before the criminal court from 10 to 15 days. Similarly, where the case is referred to the court by an order committing it for trial or by a ruling of the investigating chamber, the parties must be notified of the hearing date at least 15 days in advance.

At the judicial investigation stage:

- The time limit under Article 173-1 of the French Code of Criminal Procedure for challenging the validity of investigative acts carried out before the first appearance for questioning is reduced from six months to four months.

  Where a request for a copy of the case file is made within seven days of the person being placed under formal investigation, the four-month period runs from the date on which the first copy of the file is provided. Otherwise, it runs from the date on which the person is notified of that status. The same four-month period applies to assisted witnesses and civil parties, running from their first interview.

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- Article 115 of the French Code of Criminal Procedure now provides that a summons or notification served on one of the lawyers appointed by a party is deemed to have been served on all of that party's appointed lawyers.

Before the investigating chamber:

- The revised Article 198 of the French Code of Criminal Procedure puts an end to the possibility of filing written submissions on the day of the hearing. Except in proceedings concerning pre-trial detention, written submissions must now be filed no later than three days before the hearing. An exception remains where the party can show that it was unable to identify the relevant ground earlier.

These changes are intended to improve procedural efficiency by limiting the late filing of applications challenging the validity of proceedings, which can lead to adjournments and disrupt the court schedule.

The new obligations imposed on parties and their counsel nevertheless raise concerns. Rather than advancing the stated objective, they may undermine the effective exercise of the rights of the defence and, in turn, the right to a fair trial. These provisions are likely to generate considerable debate.

Act No. 2026-651 of 23 July 2026 is available by clicking here.

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- Judicial investigation: audiovisual recording is required only once the person is notified during questioning of an offence classified as a *crime* under French law (Cass. crim., 13 October 2026, No. 26-81.293, F-B)

In a judgment dated 13 October 2026 and published in the Bulletin, the Criminal Chamber of the Court of Cassation clarifies when the obligation to make an audiovisual recording of questioning conducted by an investigating judge begins where the alleged offences are reclassified during the questioning itself from *délits* to *crimes*, the French legal categories of less serious and more serious criminal offences, respectively.

Under Article 116-1 of the French Code of Criminal Procedure, questioning by an investigating judge of a person placed under formal investigation for an offence classified as a crime under French law must be audiovisually recorded when conducted in the judge's chambers. This includes the first appearance for questioning and confrontations. No recording is required where the person is placed under formal investigation only for offences classified as délits under French law.

In this case, a person placed under formal investigation for offences classified as délits under French law was questioned by videoconference without any recording being made. At the end of the questioning, the investigating judge notified the person that the formal investigation had been extended to include an offence classified as a crime under French law, then brought the interview to a close without asking any further questions on the merits. The defence argued that, since the questioning had resulted in notification of an offence classified as a *crime*, the entire interview should have been recorded, and sought to have it set aside.

The Criminal Chamber rejected that argument. The recording requirement takes effect only when the person being questioned is notified that the formal investigation includes an offence classified as a *crime*. The earlier exchanges, which concerned offences classified as *délits* under French law, did not therefore need to be recorded. However, if the investigating judge intends to continue questioning the person on the merits after that notification, recording must begin before any further questions are asked.

This judgment clarifies the scope of an earlier ruling dated 13 October 2020 (appeal No. 20-81.199), in which the Court of Cassation held that the recording requirement depends on the offences for which the person being questioned has been placed under formal investigation, rather than on whether the investigation as a whole concerns *crimes* or *délits*. Accordingly, questioning did not have to be recorded where the person was placed under formal investigation only for *délits*, even if the investigation also concerned *crimes*.

The 2026 judgment addresses a different situation: questioning begins in relation to offences classified as délits and then extends to offences classified as crimes under French law following a supplementary notification or reclassification. The Court clarifies that the recording requirement applies only from the moment the person is notified of an offence classified as a *crime* and does not apply retroactively to the earlier exchanges. Any further questioning on the merits must, however, be recorded.

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The ruling is particularly relevant to business crime and financial crime proceedings, especially cases involving organised crime, where an investigation initially concerning offences classified as *délits* under French law, such as money laundering or organised fraud, may be extended to include offences classified as *crimes* as the judicial investigation progresses.

The Court of Cassation's ruling is available by clicking here.

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COMPLIANCE

o The French Anti-Corruption Agency updates its inspection policy: revised inspection charter, new "flash" inspections and sector-specific campaigns in real estate and aviation (AFA Update, published 6 October 2026)

At the second edition of the French Anti-Corruption Agency's (Agence française anticorruption, "AFA") "Meetings with Economic Operators", held on 30 September 2026, the AFA announced several changes to its inspection policy. These developments follow, in particular, the first decision by its Sanctions Committee to impose a financial penalty, issued on 9 July 2026 (discussed in issue No. 7 of #Probité, published in July 2026 and available here).

First, the AFA announced that it would update its inspection charter by 1 January 2027, with two main changes:

- A fixed assessment date: a company's anti-corruption compliance programme will be assessed as at the date on which the inspection report is sent to the company for comments. Remedial measures implemented during the subsequent adversarial phase will no longer alter that finding, but will be taken into account when deciding what action to take following the inspection.
- The introduction of "flash" inspections, separate from standard inspections. These shorter, targeted reviews will focus on a specific risk or topic and will be exclusively preventive and educational in nature. They cannot result in a warning or referral to the Sanctions Committee.

Second, the AFA announced two new sector-specific inspection campaigns, in addition to the inspections already under way in the healthcare sector. The campaigns are being announced in advance to give the relevant businesses time to prepare:

- The real estate sector, in particular because of its dealings with public authorities in relation to planning and public procurement. These inspections will be conducted alongside a campaign targeting local authorities.
- The aviation sector, given the risks of infiltration and corruption associated with organised crime and drug trafficking. The AFA notes that drug seizures at airports doubled between 2024 and 2025, with a significant proportion involving air freight.

Third, the AFA identified three key lessons from its recent inspections, including those conducted in the healthcare sector among around ten economic operators:

- Governance and continuity of compliance programmes: group-wide frameworks are not always adequately implemented at subsidiary level to reflect each subsidiary's specific risks. The AFA also highlighted the risk of a compliance programme breaking down following a disposal where the transition has not been planned in advance.

- Effectiveness of compliance programmes: internal controls remain one of the areas in which, according to the AFA's findings, companies lag furthest behind.

- Limits of relying solely on rules governing benefits and hospitality: compliance with those rules is not enough to address all corruption risks, particularly benefits granted to third parties other than healthcare professionals and certain event-related expenses.

These announcements call for businesses in the real estate and aviation sectors to prepare for the upcoming inspections. The introduction of a fixed assessment date will also make the AFA's findings more definitive, although remedial measures taken during the adversarial phase will still be considered when determining the outcome of an inspection. Finally, the risk of a compliance gap following a disposal calls for particular attention from both buyers and sellers, who should plan for continuity of the target's anti-corruption programme from the earliest stages of the transaction.

Finally, the AFA announced that it is preparing simplified tools for early 2027 aimed at SMEs and smaller mid-cap companies that are not subject to Article 17 of the Sapin II Act. These tools will focus on a limited number of priority measures: a code of conduct, rules on gifts and hospitality, a sponsorship and charitable giving policy, a whistleblowing system and training.

The presentation and recording of the AFA Meetings are available by clicking here.

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- Ministerial conflicts of interest: the Conseil d'État clarifies the HATVP's role and rejects an overly broad approach to the interests of publicly owned subsidiaries (Conseil d'État, 29 October 2026, No. 505836)

In a judgment dated 29 October 2026, the French Supreme Administrative Court (Conseil d'État) partially set aside, at the request of the Prime Minister, a decision adopted on 6 May 2025 by the High Authority for Transparency in Public Life (Haute Autorité pour la transparence de la vie publique, "HATVP"). The decision had restricted the responsibilities of a Minister for the Economy appointed in December 2024, who had previously served as Chief Executive Officer of the Caisse des dépôts et consignations (CDC).

The HATVP had considered that the interests of the CDC Group were only partially aligned with those of the State because some of its subsidiaries operated in competitive markets. It concluded that the minister would face a conflict of interest, and a risk of committing the French offence of prise illégale d'intérêts (unlawful taking of an interest), if he made decisions concerning the CDC Group, including the appointment of its Chief Executive Officer or the annual payment owed to the State, or decisions concerning La Poste, Bpifrance and the Grand Théâtre des Champs-Élysées, on whose boards he had served.

The Conseil d'État makes three important points:

- The HATVP's role: it must determine whether other interests held by the minister interfere with the State's interests to a degree that affects, or appears to affect, the independent, impartial and objective performance of his duties. It is not, however, responsible for assessing the risk that the French criminal offence of prise illégale d'intérêts may have been committed.

- Relevant interests: the HATVP may take into account interests held during the five years preceding the minister's appointment, including interests arising from positions that the individual no longer holds.

- Publicly owned subsidiaries: operating in a competitive market is not, in itself, enough to establish that a subsidiary has interests that diverge from those of the public entity that controls it. The HATVP must carry out a case-by-case assessment, taking into account, in particular, the entity's purpose, shareholding structure, resources, governance and operations. The Conseil d'État therefore held that the fact that certain subsidiaries operate in competitive markets does not mean that the CDC Group as a whole pursues interests distinct from, or opposed to, those of the CDC and the State.

The judgment draws a clear line between ethical conflict-of-interest prevention and criminal liability. The HATVP's assessment of whether a conflict of interest exists does not determine whether the French criminal offence of prise illégale d'intérêts has been committed; that question falls to the criminal courts. The definition of the offence was narrowed by the Act of 22 December 2025, which now requires an interest that impairs impartiality, independence or objectivity and excludes reliance on a public interest as the relevant interest. Conversely, the absence of an ethical conflict of interest does not, in itself, rule out criminal liability.

For executives of public-sector entities appointed to government office, the judgment provides a useful framework for identifying interests that may interfere with the performance of their official duties.

The Conseil d'État's judgment is available by clicking here.

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- Duty of vigilance: three NGOs put SEB Group on notice over the prevention of PFAS-related risks in its products

On 8 October 2026, the NGOs Générations Futures, Notre Affaire à Tous and ClientEarth formally put SEB Group, which owns the Tefal brand among others, on notice to strengthen its vigilance plan. They are calling on the group to improve its prevention of health and environmental risks associated with per- and polyfluoroalkyl substances (PFAS), known as "forever chemicals", and in particular polytetrafluoroethylene (PTFE), used as a non-stick coating on certain cookware products.

The notice was issued under the duty of vigilance set out in Article L. 225-102-4 of the French Commercial Code, introduced by the Act of 27 March 2017. The provision requires large companies to establish and implement a vigilance plan to identify risks and prevent serious violations of human rights, health and safety, and the environment arising from their own activities, those of companies they control, and those of their subcontractors and suppliers. If a company fails to comply with its obligations within three months of receiving formal notice, any person with standing may apply to the Paris Judicial Court, which has exclusive jurisdiction, for an order requiring the company to comply, potentially subject to a penalty payment.

The NGOs allege that the group's vigilance plan contains an overly general risk map and insufficiently specific preventive measures. In their view, the risks associated with PTFE are not adequately addressed, particularly in light of other PFAS that may be released throughout its life cycle. The plan also fails, they argue, to address emissions from manufacturing or the risks faced by employees, local residents and consumers. They are asking the group to identify these risks across its entire value chain, plan for the phase-out of PFAS and the redeployment of affected workers, and publish its strategy within three months.

SEB Group, for its part, states that Tefal operates in full compliance with French and European regulations and under the supervision of the competent authorities. It has indicated that it will review the formal notice and respond in accordance with the procedure laid down by law.

The formal notice comes against a backdrop of tighter regulation of PFAS. Since 1 January 2026, the Act of 27 February 2025 has prohibited the manufacture, import and sale of certain categories of products containing PFAS. The European Chemicals Agency (ECHA) is also considering an EU-wide restriction on these substances. Since July 2025, the group has additionally been the subject of a complaint alleging misleading commercial practices in connection with claims that its non-stick coatings are safe.

For companies subject to the duty of vigilance, this formal notice highlights the scrutiny being applied to the treatment of substances of concern in vigilance plans. It underscores the need to ensure that risks are identified across the value chain and translated into concrete preventive and monitoring measures.

At this stage, this is only a formal notice and does not prejudge how a court may assess SEB Group's vigilance plan.

The press release issued by the NGO Notre Affaire à Tous concerning this formal notice 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 in preventing and managing criminal-law risks, in both advisory and contentious matters.

The firm acts for legal entities and their senior officers in complex criminal proceedings, during preliminary and judicial investigations 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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