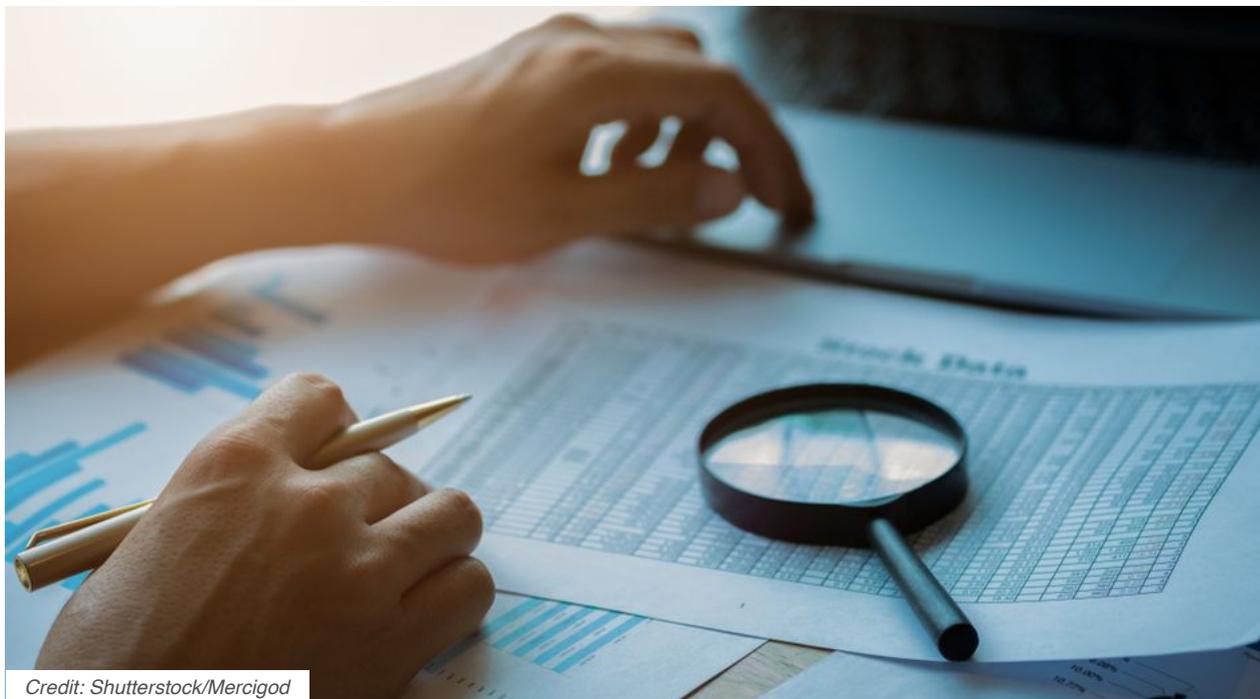


PNF and AFA publish draft guidance for corruption investigations

Alice Johnson

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France's main anti-corruption authorities have jointly published a draft guide to help companies carry out internal investigations.

The country's anti-corruption agency (AFA) and the national financial prosecutor's office (PNF) [published the guidance on 7 March](#). The document, which is open to public consultation until 8 April, sets out best practices for how and when companies should conduct internal investigations and encourages businesses to report wrongdoing to the PNF as soon as they find out about potential misconduct.

Lawyers in France said that the draft does not propose any disruptive changes but instead provides companies with a useful resource that ties together established best practices and legal principles. The draft does mark the first time that French authorities have provided written guidance on corruption investigations.

"Their goal is to encourage internal investigations in France, in the hope companies will then share more frequently the results of their investigations with the authorities," said Alexandre Bisch at Debevoise & Plimpton in Paris.

Joydeep Sengupta at Mayer Brown said the release of the draft guidelines builds on a growing trend in France for companies to report alleged wrongdoing to the authorities.

"We are getting to the stage in the French market where it is no longer shocking for French companies to share evidence and cooperate very early with the authorities, as an incentive to obtain more favourable settlement terms, which is a big change from before 2016, when the CJIP [a judicial public interest agreement, France's version of a deferred prosecution agreement] did not exist," he said.

The guidance lays out common principles companies should comply with when conducting an internal investigation, including reminding companies that they must inform employees when they are under investigation and that they cannot collect their personal emails or bank account statements to use as evidence. The guide also states that companies should respect individual privacy rights, the presumption of innocence and comply with EU General Data Protection Regulation (GDPR) with regards to digital evidence gathering.

The guide also recommends that companies let employees know when no corruption was found during an investigation. However, if suspected wrongdoing is uncovered, the employer can take disciplinary action against employees, should inform the authorities, and should update the business' anti-corruption compliance programme.

This is not the first time the PNF and AFA collaborated on guidance. In June 2019 [the agencies issued CJIP guidelines](#) to provide companies with more clarity about the requirements to obtain such a settlement when they are under PNF investigation. At the time, the agencies listed internal investigations as a recommended measure that companies can take when informed of corruption by employees.

Eric Russo at Quinn Emanuel Urquhart & Sullivan, [a former PNF prosecutor](#), said the draft guidance is a positive development as it may be valuable for the company's defence if it shares the results of an internal investigation with authorities. However, Russo added that at this stage the guidance fails to address the kind of credit companies can get from sharing the results of internal probes with the prosecutor.

"It's a shame since these are crucial points that are precisely articulated in the DOJ guidelines or the UK Bribery Act guidelines. On this point, the PNF and the AFA are still lagging behind," he added.

Russo also said the guide says nothing new about how the PNF and AFA intend to deal with the issue of attorney-client privilege. "This issue is also crucial since in many cases the internal investigation is entrusted to an attorney," he said. "It will be interesting to see whether the consultation allows the current draft to evolve significantly on these different points," he added.

In particular, Russo said the guide leaves questions unanswered about the scope of documents that companies should provide when cooperating with the authorities.

"For instance, do the authorities accept that all correspondence between the attorney and the company is privileged even when the company decides to cooperate with authorities? Do they accept that analysis performed by the attorney before, in the course or after the investigation is privileged? This is not clear from the guide," he said.

A publication date for a finalised version of the guide is yet to be announced. Some parts of the guide are not open to consultation because they relate to criminal law policy which is the exclusive jurisdiction of the PNF.

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