

**Global Investigations Review**

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# The Guide to International Enforcement of the Securities Laws

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**Editors**

John D Buretta, David M Stuart and Lindsay J Timlin

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## Publisher's Note

Global Investigations Review is delighted to publish *The Guide to International Enforcement of the Securities Laws*. For those who don't yet know, Global Investigations Review is the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing. We tell them all they need to know about everything that matters.

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Being at the heart of the corporate investigations world, we often become aware of gaps in the literature before others – topics that are crying out for in-depth but practical treatment. Recently, the enforcement of securities laws emerged as one such fertile area.

Capital these days knows no borders, but securities-law enforcement regimes very much do. In that juxtaposition lie all sorts of questions. The book you are holding aims to provide some of the answers. It is a practical, know-how text for investigations whose consequences may ring in securities law. Part I addresses overarching themes and Part II tackles specifics.

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I would like to thank the editors of *The Guide to International Enforcement of the Securities Laws* for helping us to shape the idea. It's always a privilege to work with Cravath, Swaine & Moore. I'd also like to thank our authors and my colleagues for the elan with which they've brought the vision to life.

We hope you find it an enjoyable and useful book. If you have comments or suggestions please write to us at [insight@globalinvestigationsreview.com](mailto:insight@globalinvestigationsreview.com). We are always keen to hear how we could make the guides series better.

**David Samuels**  
Publisher, GIR  
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# Part II

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Expert International Perspectives



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## France

**Kiril Bougartchev, Emmanuel Moyne and Nathan Morin<sup>1</sup>**

### **What are the relevant statutes and which government authorities are responsible for investigating and enforcing them?**

The main regulations in France are:

- the European Union regulations and directives (such as Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the EU Market Abuse Regulation) and Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012); and
- the French Monetary and Financial Code.

The primary securities enforcement authority in France is the Autorité des Marchés Financiers (AMF). Created by Law No. 2003-706 of 1 August 2003 on financial security, the AMF is an independent public body with a remit to (1) safeguard investments in financial products, (2) ensure that investors receive material information and (3) maintain orderly financial markets. It regulates financial markets and market infrastructures, listed companies, financial intermediaries authorised to provide investment services and financial products.<sup>2</sup>

To fulfil its remit, the AMF is granted with (1) a normative power,<sup>3</sup> (2) the right to conduct investigations and inspections and (3) enforcement powers enabling it to impose financial and disciplinary sanctions.

Thus, the AMF's investigators have been granted with various investigatory powers enabling them to (1) request any documents, (2) interview anyone who may be useful to the

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1 Kiril Bougartchev and Emmanuel Moyne are the managing partners and Nathan Morin is an associate at Bougartchev Moyne Associés AARPI.

2 Article L. 621-1 of the Monetary and Financial Code.

3 Article L. 621-6 of the Monetary and Financial Code.

investigation, (3) enter business premises and, in the course of investigations only, (4) carry out house searches and seize documents based on a reasoned order from a judge with territorial jurisdiction.<sup>4</sup>

The AMF can take disciplinary sanctions against professionals acting under its supervision, but it also has the power to bring administrative proceedings against natural and legal persons.

With regard to market abuse (which can be considered both an administrative and a criminal offence), the National Financial Prosecutor – created by Law No. 2013-1117 of 6 December 2013 on combating major economic and financial crimes – and consequently the investigating magistrates of the financial division of the Paris High Court have the exclusive jurisdiction to investigate and prosecute market abuse that constitutes a criminal offence.<sup>5</sup> For nearly 30 years, a person committing market abuse could be sentenced both by the AMF's Enforcement Committee and by a criminal court under French law.

French Law No. 2016-819 of 21 June 2016 prohibited duplicate proceedings in instances of market abuse and created a process of case referral in light of (1) the *Grande Stevens* case,<sup>6</sup> where the European Court of Human Rights stated, on the ground of the *ne bis in idem* principle, that the double repression of securities law violations was forbidden, and (2) a decision handed down by the Constitutional Council, which deemed this double-jeopardy system to be contrary to the Constitution.

Article L. 465-3-6 of the Monetary and Financial Code now states that if the AMF or the National Financial Prosecutor intends to bring proceedings against a person for market abuse, it must inform the other authority of its intent and the latter shall have two months to contest it. In the case of disagreement between the two authorities, the Paris Court of Appeal's Attorney General is empowered to decide which authority will handle the case. If not provided by law, it appears that the National Financial Prosecutor will handle the most serious market abuse cases.

When market abuse is considered a criminal offence, the National Financial Prosecutor (PNF) carries out all the necessary actions to determine the truth, such as searches, seizure of documents and witness interviews. Furthermore, where market abuse is committed by an 'organised gang', the PNF may take advantage of measures such as surveillance, infiltration, wiretapping, recording conversations and filming certain premises or vehicles.<sup>7</sup>

Under French law, only the AMF's Secretary General or his or her delegate has the power to decide to open an investigation. He or she usually does so after an alert has been brought to the authority's attention. Such an alert often comes from the AMF's Market Surveillance Directorate, which monitors transactions on a daily basis. An investigation may also be opened following a complaint or an alert sent by a third party, notably a whistleblower or a report of suspicious transaction from investment services providers. Moreover, the AMF can open an investigation after a request has been made to do so by a foreign authority.

There is no written standard concerning what level of suspicion of wrongdoing is required to open an investigation, and it is not possible to deduce one from the practice of the AMF.

4 Articles L. 621-10 and L. 621-12 of the Monetary and Financial Code.

5 Article 705-1 of the Code of Criminal Procedure.

6 ECHR, 4 March 2014, *Grande Stevens and Others v. Italy*.

7 Article 706-1-1 of the Code of Criminal Procedure.

The decision of the AMF's Secretary General to open an investigation is discretionary. However, it could reasonably be argued that he or she will make such a decision only if the alert is sufficiently serious.

The PNF, on the other hand, does not monitor the markets as the AMF does, which means it can be less reactive. This partly explains why most market abuse cases are handled by the AMF.

### **What conduct is most commonly the subject of securities enforcement?**

The AMF can carry out inspections and investigations<sup>8</sup> and has the investigatory powers to do so.

Inspections are focused on ensuring that professionals under the AMF's supervision<sup>9</sup> and individuals acting on their behalf comply with their professional obligations as set out in the Monetary and Financial Code or in the AMF General Regulation. A wide range of legal issues can be detected in the course of such inspections.

Investigations, on the other hand, aim at detecting a breach of obligations that could undermine orderly market activity, whether it is committed by a listed company, an individual, an institutional investor or a market professional. Investigations undertaken by the AMF mainly concern market abuse (i.e., insider dealing, price manipulation and dissemination of false information, which are prohibited by Articles 7 and 12 et seq. of the EU Market Abuse Regulation) and listed companies that do not fulfil their informational duties. As underlined in the AMF's 2020 Annual Report, more than half of investigations deal with cases of insider dealing and 20 per cent deal with market manipulation.

The PNF's investigations mainly concern market abuse that is considered a criminal offence, which is prohibited by Article L.465-1 et seq. of the Monetary and Financial Code.

Pursuant to Article L. 621-15 of the Monetary and Financial Code, the AMF can investigate and sanction:

- financial intermediaries and market infrastructures, and the individuals under their authority or acting on their behalf, for any breach of their professional obligations established by laws and regulations;
- listed companies and their representatives for any breach of their legal obligations regarding the dissemination of regulated information; and
- any natural or legal person who has engaged in or attempted to engage in market abuse.

Criminal authorities, on the other hand, can investigate and sanction any person – natural or legal – that has engaged in or attempted to engage in market abuse.<sup>10</sup>

### **What legal issues commonly arise in enforcement investigations?**

A number of issues may arise in securities law enforcement investigations, related to the statute of limitations, document production, international cooperation, privilege, witness interviews, protection of whistleblowers, among other things.

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8 Articles L. 621-9 to L. 621-12 of the Monetary and Financial Code.

9 Referred to in Article L.621-9II of the Monetary and Financial Code.

10 Articles L. 465-1 to L. 465-3-5 of the Monetary and Financial Code.

## Statute of limitations

In France, Law No. 2017-242 of 27 February 2017 on criminal offences and Law No. 2019-486 of 22 May 2019 on administrative offences increased the limitation period for charges for security and related violations from three years to six years following the day the act is committed, subject to what follows.

The starting point of the limitation period varies according to the nature of the offence. For an instantaneous offence (such as an insider dealing), it begins when the violation is committed. For continuous offences (such as breach of a professional obligation that would remain through the time), it is deferred to the date of the last illegal action taken by the individual.<sup>11</sup>

After the aforementioned laws entered into force, the starting point of the limitation period was delayed for secret and concealed securities law violations to the date on which they could be discovered under circumstances enabling prosecution. However, to avoid the risk of offences being imprescriptible, the French legislature specified that prosecutions against criminal and administrative offences would, in any event, be time-barred for 12 years following the day on which the offence was committed.<sup>12</sup> With respect to criminal matters, this new rule enshrined in legislation the ruling of the Court of Cassation of 10 December 1925, which was rendered on the principle that the limitation period shall not run against those who are not in a position to take action (*contra non valentem agere non currit praescriptio*).<sup>13</sup>

However, there seems to be an evolution happening with regard to administrative offences. Indeed, in an important case where investors, having invested in a hedge fund many years prior, realised that they had not been provided with all legal information pertaining to their investment, the Enforcement Committee refused to report the limitation period's starting point on the ground that it was up to the AMF to detect securities laws violations in due course.<sup>14</sup>

In light of the above, we can reasonably expect that the AMF's Enforcement Committee will have a strict appreciation of what can be deemed a secret or concealed offence.

Moreover, French law distinguishes between the suspension of the limitation period and its interruption. For the latter, a new limitation period will start running when the cause of interruption ends. With regard to the suspension of the limitation period, Article L. 621-19 of the Monetary and Financial Code states that if a settlement occurs, the limitation period will be suspended and, in cases where an approved agreement is not reached, the limitation period resumes from the time the procedure failed.

As the law is silent on causes of interruption, the AMF's Enforcement Committee devised its own approach. For example, the Secretary General's decision to open an investigation will interrupt the statute of limitations,<sup>15</sup> as will the act of summoning a witness to an interview.<sup>16</sup> With regard to criminal offences, the limitation period is interrupted by any act performed

11 AMF, 16 March 2004, SAN-2004-01.

12 Article 8 of the Penal Code; Article L. 621-15 of the Monetary and Financial Code.

13 Cass. Crim., 10 December 1925, Bull. 1925 No. 339.

14 AMF, 19 April 2012, SAN-2012-03.

15 AMF, 19 April 2012, SAN-2012-03.

16 AMF, 7 October 2010, SAN-2010-26.

by the prosecutor, a law enforcement officer or an investigating magistrate. It is also interrupted by any decision handed down by a court.<sup>17</sup>

There is no rule on how long a securities or related investigation will typically take – it can vary from a few months to more than a year. However, pursuant to the AMF’s investigation and inspection guides, investigators are committed to closing their investigations as soon as possible.

### Document production and seizure

Unlike law enforcement officers – who can carry out dawn raids and seize documents both in private and business premises in the conditions set forth by Articles 56 et seq. and 76 et seq. of the Code of Criminal Procedure without any judicial prior authorisation (subject to the authorisation of the searched party under Article 76) – the AMF’s investigators have the power to enter business premises but are not allowed to conduct dawn raids on their own initiative or to seize documents. They will enter business premises in nearly all cases, irrespective of the seriousness of the allegations.

However, pursuant to Article L. 621-12 of the Monetary and Financial Code, when an investigation has been opened for market abuse or acts that may constitute property crime and be sanctioned by the AMF’s Enforcement Committee, the AMF’s Secretary General is entitled to file a request before the liberty and custody judge of the regional court in whose jurisdiction the premises to be searched are located to obtain an order authorising the AMF’s investigators to carry out dawn raids, in any place, and to seize documents. This request must contain all the information in the AMF’s possession that justifies such a search. During the inquiry, a law enforcement officer will ensure that due process is followed and inform the judge of his or her progress.

As investigators have no coercive power in investigations, it is up to the person concerned to accept or refuse to produce a document. Thus, the production of documents plays a crucial role.

Nevertheless, Article L. 642-2 of the Monetary and Financial Code states that anyone who obstructs an inspection or investigation of the AMF or who provides it with inaccurate information shall incur a penalty of two years’ imprisonment and a fine of up to €300,000. In practice, this provision has led to very few sanctions being imposed, which tend to be in extreme cases. For example, in the *Prologue Software* case, where two individuals erased crucial information with correction fluid, both individuals were sanctioned with a €10,000 fine.<sup>18</sup>

Law No. 2013-672 of 26 July 2013 created a new administrative sanction for obstruction. Article L. 621-15, II of the Monetary and Financial Code prohibits and sanctions the fact of refusing to: give access to a document; communicate information; comply with a summons; or grant access to business premises. For example, in 2018, the AMF’s Enforcement Committee imposed a €150,000 fine on an individual because he had ‘cleaned’ his mailbox of more than 38,000 emails before transferring the mailbox to investigators.<sup>19</sup>

With regard to the enforcement authorities’ ability to request production of materials protected by secrecy, as a principle, professional secrecy does not affect the AMF’s right to ask

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17 Article 9-2 of the Penal Code.

18 CA Paris, 15 January 2009.

19 AMF, 7 May 2018, SAN-2018-06.

for the communication of documents, whether to the person under investigation or to a third party. Nonetheless, Article L. 621-9-3 of the Monetary and Financial Code provides that 'officers of the law', including lawyers, bailiffs and court officers, can withhold documents from the AMF on the grounds of professional secrecy.

As provided for by the AMF Investigation Guide,<sup>20</sup> investigators cannot attach privileged documents to the investigation's file. In practice, however, the investigators usually ask for a copy of the whole mailbox, whether it contains privileged documents or not, and seal it, then subsequently return the privileged documents if there are any (which is problematic as it means the investigators are in a position to review the documents). In addition, under Article 66-5 of Law No. 71-1130 of 31 December 1971, client-attorney privilege only protects the bilateral correspondence between the lawyer and his or her client. If a third party is added as a recipient of the correspondence, the information is no longer privileged.

As stated above, information may not be withheld from the AMF on the grounds of professional secrecy.<sup>21</sup> However, on the ground of the right to privacy, the Constitutional Council has held that the 'fadets' procedure, which authorised the AMF's investigators to obtain data relating to telephone calls made by a person from telecommunications operators, did not offer proper guarantees to ensure a balance between the right to privacy and protection against breaches of public policy.<sup>22</sup> Since Law No. 2018-898 of 23 October 2018 on the fight against fraud entered into force, Article L. 621-10-2 of the Monetary and Financial Code provides that, to obtain data from telecommunications operators, investigators must be authorised to do so by the 'connection data's request controller'.

With regard to outside jurisdictions, Law No. 68-678 of 26 July 1968 on the disclosure of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or legal entities aims, *inter alia*, to protect French companies that may be required to produce such documents in connection with foreign administrative or judicial proceedings by punishing any person who attempts to obtain or who collects information and documents outside the channels provided for this purpose by the international treaties and conventions on mutual legal assistance. However, Articles L. 632-1 and L. 632-2 of the Monetary and Financial Code provide that, as an exception to the provisions of Law No. 68-678, the AMF can cooperate with foreign authorities. Therefore, if a foreign authority is seeking documents located in France, it will have to comply with the relevant cooperation agreement provisions, which will generally mean having to request the AMF's cooperation.

### **International and bilateral cooperation**

According to Article L. 632-1 of the Monetary and Financial Code, during an investigation, the AMF can cooperate and exchange information with equivalent authorities of the other Member States of the European Union or of the other states in the European Economic Area.

The AMF can also conclude international bilateral agreements directly with foreign authorities in order to cooperate.<sup>23</sup> The AMF is notably one of the signatories of the

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20 See <https://www.amf-france.org/sites/default/files/2020-02/amf-investigation-guide.pdf>.

21 Article L. 621-9-3 of the Monetary and Financial Code.

22 Cons. Council, 21 July 2017, No. 2017-646/647.

23 Article L. 632-7 of the Monetary and Financial Code.

2002 IOSCO Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information.

According to the 2020 AMF Annual Report, the AMF sent 361 requests for assistance in 2020 to approximately 50 foreign regulators, of which more than 20 per cent were addressed to the United Kingdom's Financial Conduct Authority (against 40 per cent in 2019, which is likely to be an effect of Brexit). The AMF itself received 152 requests for assistance from foreign counterparts in 2020. In this regard, among the 57 new investigations opened in 2020, 27 have been opened at the request of a foreign authority.

It should be noted that findings by other law enforcement authorities are usually taken into account by the French authority.

In principle, unless otherwise specified by the concerned authorities, investigations are conducted in accordance with the requested authority's laws and regulations. Therefore, the regularity of the authority's investigation is appreciated only in light of the said laws and regulations.<sup>24</sup> However, the procedure followed by the foreign authority must comply with some of France's fundamental principles, including the right to remain silent and to avoid self-incrimination, which are protected by the French Constitution and the European Convention on Human Rights.

In the *Ubisoft* case, for example, the AMF's Enforcement Committee set aside the hearings conducted by the Financial Market Authority of Quebec on the ground that the authority infringed Article 6 of the European Convention on Human Rights because the interviewee had to take a binding oath to tell the truth.<sup>25</sup>

### Witness interviews

According to Article L. 621-10 of the Monetary and Financial Code, investigators are able to summon and to take statements from any person likely to provide them with information about an ongoing investigation. They can also gather explanations on-site. Article R. 621-35 of the Code imposes that the witness be summoned at least eight days in advance for him or her to have enough time to prepare his or her interview. This obligation also needs to be complied with when investigators gather explanations on-site, unless the interviewee has waived his or her rights.<sup>26</sup>

Minutes must be established by investigators, which mention the nature, date and location of their observations, and must be signed by the interviewee.<sup>27</sup> However, during inspections, investigators are not obliged to establish any minutes. The interviews will not be made public as investigators are bound by professional secrecy. However, decisions handed down by the AMF's Enforcement Committee, which are public, may quote some parts of interviews.

Since the investigators have no coercive powers, the witness has the right to refuse to testify. Nonetheless, the Enforcement Committee<sup>28</sup> and the Council of State<sup>29</sup> have made it clear that investigators are not obliged to remind the witness of this right. This is in line with

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<sup>24</sup> Cass. Com., 1 March 2017, No. 14-26.225.

<sup>25</sup> AMF, 7 December 2016, SAN-2016-15.

<sup>26</sup> Cass. Com., 24 May 2011, No. 10-18267.

<sup>27</sup> Article R. 621-35 of the Monetary and Financial Code.

<sup>28</sup> AMF, 6 August 2012, SAN-2012-12.

<sup>29</sup> CE, 12 June 2013, No. 359245.

the non-coercive nature of the AMF's investigations. Moreover, it has already been judged that the Enforcement Committee has the right to draw any useful inferences from a person's voluntary silence during an interview.<sup>30</sup>

When summoned for an interview by the AMF's investigators, any person has the right to be assisted by the counsel of his or her choice<sup>31</sup> and investigators must inform the person of this right. This counsel does not have to be a lawyer.

### **Protection of whistleblowers**

Since Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of the economy, also known as the Sapin II Law, entered into force, a specific plan of action has been put in place to allow the AMF to receive and process alerts raised by whistleblowers.

The system aims to ensure the protection of the author of the alert and is governed by Articles L. 634-1 to L. 634-4 of the Monetary and Financial Code.

Since this reform, whistleblowers are becoming a more important source of information for such investigations. Pursuant to the AMF's 2017 Annual Report, in 2017, the authority investigated more than 90 alerts received from whistleblowers.

### **What remedies and sanctions are available to government authorities?**

Before closing the investigation, the investigators will provide the person whose conduct is in question with a 'detailed letter' setting out their analysis of the factual and legal information gathered during the investigation. The recipient has one month to respond.<sup>32</sup> This period provides an opportunity to shed some light on the investigators' suspicions and try to convince the AMF's Board that there is no basis to bring sanction proceedings or that a settlement procedure would be preferable. It can also be used to explain what corrective measures might have been taken since the investigation.

However, at this stage, the respondent does not have access to the whole file but is solely provided with the key evidence selected by the investigators on a discretionary basis. It is advisable to be very careful with the explanations provided in response as they could be disproved by evidence the respondent is not aware of.

The AMF's Board is the prosecutorial body of the authority and, therefore, is entitled, in light of the investigation report, to instigate sanction proceedings and select charges.

If the investigation does not reveal any violation of securities laws, the AMF's Board may (1) issue a letter of observation reminding the person under investigation of his or her legal obligations or (2) close the case. In the latter instance, the person being investigated will obtain confirmation that the investigation is closed, either after the Board's decision or, where other persons are charged, once the AMF's Enforcement Committee has rendered its decision.

If the Board deems that the investigation has revealed a violation of securities laws, it will have the choice of (1) opening sanction proceedings by notifying a statement of objections

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30 AMF, 21 September 2009, SAN 2009-32.

31 Article L. 621-11 of the Monetary and Financial Code.

32 Article 144-2-1 of AMF General Regulation.



to the respondent, together with the AMF's Enforcement Committee,<sup>33</sup> or (2) issuing a statement of objections and proposing a settlement.<sup>34</sup> In the first instance, the respondent has two months to submit observations to the Enforcement Committee in response to the statement of objections.

The Board will decide what charges must be selected on a discretionary basis and will do so whenever it deems that the evidence is sufficient to constitute a violation of securities laws.

When confronted with a securities law violation, the AMF's Enforcement Committee has the power to issue a financial penalty or a disciplinary sanction, or both, the severity of which is assessed at its sole discretion. However, the French legislature has set out a non-exhaustive list of factors that can be considered when assessing the severity of the penalty to be imposed,<sup>35</sup> namely:

- the seriousness and duration of the breach;
- the status and extent of involvement of the person concerned;
- the financial position and capacity of the person concerned, notably in light of annual income (for a natural person) or total turnover (for a legal person);
- the importance of the profits generated, or of any losses or costs avoided by the violation, insofar as they can be determined;
- any losses incurred by third parties as a result of the violation, insofar as they can be determined; and
- the cooperation of the respondent with the AMF.

Pursuant to Article L. 621-15 of the Monetary and Financial Code, financial intermediaries acting under the AMF's supervision can be sentenced to pay a financial penalty of up to €100 million or 10 times the amount of gains generated. The same sanction can be issued for any other person (issuer, executive, individual) who commits market abuse. For individuals acting under the authority or on behalf of a financial intermediary, the maximum financial sanction incurred can be up to €15 million or 10 times the amount of the profit earned.

Even if not provided by law, in market abuse cases, the sanctions pronounced by the AMF's Enforcement Committee generally represent two or three times the profits earned.

According to the AMF 2020 Annual Report, in 2020, the Enforcement Committee imposed financial penalties ranging from €10,000 to €15 million, and totalling €29,655,000. In 2019, the total was €32.3 million and in 2018 it was €7.18 million. The total for 2018 was very low compared with the totals imposed in past years – for example, in 2017, the Enforcement Committee imposed a penalty of €35 million against a French bank in a single decision,<sup>36</sup> which was ultimately reduced by the Council of State to €20 million.<sup>37</sup>

Pursuant to Article L. 621-15, III *ter* of the Monetary and Financial Code, 'the extent to which the person concerned has cooperated with the financial markets authorities' can be taken into account by the AMF's Enforcement Committee when assessing the amount of the penalty to be pronounced. Moreover, a settlement procedure is more easily considered if there

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33 Article L. 621-15 of the Monetary and Financial Code.

34 Article L. 621-14-1 of the Monetary and Financial Code.

35 Article L. 621-15 of the Monetary and Financial Code.

36 AMF, 25 July 2017, SAN-2017-07.

37 CE, 23 October 2019, No. 414659.

is cooperation during the investigation. The AMF Investigation Guide explains what behaviour is expected of persons who are asked to cooperate with an investigation. In accordance with this Guide, the person concerned should answer the investigator's questions fairly; supply documents, files and explanations within a reasonable time frame; and remain impartial, professional and courteous throughout the investigation.

Pursuant to Article L. 621-14-1 of the Monetary and Financial Code, when the AMF's Board decides to notify a statement of objections to a respondent, it has the power to propose an administrative settlement procedure as an alternative to the sanction proceedings. Since Law No. 2016-819 of 21 June 2016 entered into force, market abuse cases can be settled via this procedure.

Since 2010, approximately 75 settlements have been reached (the number of settlements generally increases each year; in 2020 the total was 13). Since the 2016 reform, several settlements have been reached in market abuse cases. For example, in July 2021, in a price manipulation case, the natural person concerned committed to paying a sum of €300,000 to the French Public Treasury, while the profit generated was calculated to be €38,290.<sup>38</sup> In another case, a natural person accused of insider dealing agreed to pay a penalty of €225,000, while the saving of loss was calculated to be €66,417.<sup>39</sup>

One of the main advantages of the settlement procedure for the person who is the subject of an investigation is that the agreement does not involve an admission of guilt. In this regard, it is often expressly stated in the settlement that its conclusion does not constitute a sanction or an admission of wrongdoing. However, the facts that led the AMF's Board to issue a statement of objections against the respondent are usually exposed in the agreement concluded.

With regard to criminal offences, the French Judicial Public Interest Agreement, inspired by the deferred prosecution agreement in the United States, is solely available for legal entities suspected of acts of bribery, influence peddling, tax fraud, laundering of tax fraud proceeds<sup>40</sup> or environmental offences. This settlement procedure is not available for market abuse.

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38 AMF, 7 July 2021, TRA-2021-05.

39 AMF, 22 July 2021, TRA-2021-06.

40 Article 41-1-2 of the Code of Criminal Procedure.

# Appendix 1

## About the Authors

### **Kiril Bougartchev**

Bougartchev Moyne Associés AARPI

Kiril Bougartchev studied at Panthéon-Assas University Paris II. He holds postgraduate diplomas in business law (*magistère*) and tax law (DESS). He first joined Gide Loyrette Nouel where, in 1999, he became partner of the litigation and white-collar crime department. He joined Linklaters LLP in June 2007, where he was made co-head of the dispute resolution practice in Paris and facilitator of the Linklaters LLP global white-collar crime group.

He has a great deal of experience in white-collar crime issues, particularly related to the financial sphere, and has advised on fraud, money laundering and criminal investigations. He also acts before the French authorities on behalf of a diverse roster of clients from industries such as energy, banking and aerospace, handling matters ranging from fraud to regulatory compliance.

In 2018, 2019, 2020 and 2021, Kiril was ranked by *Chambers Europe* Band 1 in white-collar crime and Band 3 in internal compliance and investigations. Since 2018, *Expert Guides* has ranked him among the best lawyers in France and *The Legal 500* has praised him for his 'strategic vision in complex cases'. *Décideurs Magazine* ranks Kiril among the 'Excellent' lawyers in commercial litigation and regulatory disputes ('AMF, ACPR and publicly traded transactions'), high-risk litigation, labour criminal law and tax criminal law. The magazine also ranks him among the 'Excellent' lawyers in international investigations, internal investigations and compliance programmes.

### **Emmanuel Moyne**

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Emmanuel Moyne began his career in 1997 as in-house counsel within asset management company White Gestion SARL, a subsidiary of Goldman Sachs, and was admitted to the Paris Bar in the same year. Emmanuel was elected *Secrétaire de la Conférence des Avocats* of

the Paris Bar in 2000. In that year, he defended about 70 individuals before the criminal and correctional courts as on-duty legal aid counsel.

Emmanuel is a member of the American Bar Association and of the International Bar Association. He was appointed Conference Quality Officer of the Criminal Law Committee of the International Bar Association for 2019–2020 and Conference Coordinator for 2021–2022. He is also a member of the working group of the National Bar Council, the national institution representing all practising lawyers in France, which released a best practices guide for lawyers involved in internal investigations (<https://www.cnb.avocat.fr/fr/actualites/presentation-du-guide-enquete-interne-du-crea>) and is currently working on cooperation with judicial and regulatory authorities.

Since 2019, Emmanuel has been ranked among the best lawyers in France in criminal defence, corporate governance, and compliance and litigation. He was elected Lawyer of the Year for 2021 by *Best Lawyers*, in the ‘Corporate Governance and Compliance Practice’ category.

*Décideurs Magazine* ranks him among the ‘Incontournable’ lawyers in white-collar crime and among the ‘Excellent’ lawyers in commercial litigation and regulatory disputes (AMF, ACPR and publicly traded transactions), high-risk litigation, labour criminal law and tax criminal law. The magazine also ranks him among the ‘Excellent’ lawyers in international investigations, internal investigations and compliance programmes.

## **Nathan Morin**

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Nathan Morin’s area of practice covers litigation with a focus on finance, particularly securities law, criminal financial law, banking law and bribery issues. He has extensive experience in regulatory litigation, having worked within the Enforcement Assistance Department of the Autorité des Marchés Financiers (AMF). More specifically, Nathan has been involved in market abuse matters and alleged failure to give proper information to the market. He recently defended the interests of a French portfolio management company before the AMF and obtained dismissal of the case. He also successfully represented a French leading bank before the French Prudential Supervision and Resolution Authority.

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