Hennebel Avocats

PRAXIS · GUIDE

Transnational criminal investigations: a practical guide

Hennebel Avocats Modus Operandi

BY LUDOVIC HENNEBEL

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INTERNATIONAL INVESTIGATIONS, TRANSNATIONAL CRIME AND CRISIS MANAGEMENT

Before you read: if a measure is under way, contact the firm in confidence.

Crisis Room - Praesidium
If a search is under way, someone is in police custody, a person has been summoned at short notice, assets have been frozen or a foreign authority has requested cooperation, seek an immediate confidential assessment before reading the guide in full. Urgent situations receive priority (Crisis Room). Encrypted channels available: Signal, Threema. WhatsApp for rapid coordination. Secure upload for sensitive documents. *This guide offers guidance. It cannot take the place of a consultation or determine what you should do.*

Urgent contact

Operational summary

Transnational criminal investigations have become the usual means of addressing serious economic crime. A company operating in several jurisdictions, an executive who travels or a payment routed through a foreign financial centre can give a domestic case an international dimension - and expose the legal entity and the individuals simultaneously to authorities that coordinate only to the extent they choose. More institutions now take part: national prosecutors specialising in economic and financial crime, the European Public Prosecutor's Office established by Regulation (EU) 2017/1939 for offences affecting the Union's financial interests, US authorities whose extraterritorial prosecutions rely in particular on the Foreign Corrupt Practices Act of 1977, UK authorities equipped with the Bribery Act 2010 and, since 1 September 2025, the offence of failure to prevent fraud created by the Economic Crime and Corporate Transparency Act 2023, competition authorities and sectoral regulators. Each has its own coercive powers, mechanisms of negotiated justice and understanding of legal professional privilege. This guide treats the subject as it must be treated: as a system in which every decision taken on one front affects all the others.

The guide advances two propositions. The first concerns the defence: the fatal error in a transnational investigation is a fragmented response - answering each authority as though it were acting alone, disclosing in one jurisdiction what one intends to withhold in another, handing over here what will be seized elsewhere. The defence begins by assessing the situation as a whole (step 01), preserving immediate safeguards during coercive measures (step 02), mapping the jurisdictions and the reach of transnational ne bis in idem (step

03), safeguarding legal professional privilege, whose scope varies radically between systems - in Akzo Nobel (C-550/07 P, 2010), the Court of Justice of the European Union reaffirmed that communications with in-house counsel do not enjoy protection under EU competition law, whereas US practice under Upjohn protects communications made in an internal investigation directed by lawyers (step 04) - and examining the lawfulness of mutual legal assistance and transfers of electronic evidence, and the application of the French blocking statute of 26 July 1968 (step 05).

The second proposition concerns taking the initiative: the company or individual under investigation need not simply await the authorities' findings - they can conduct their own investigation. This entails deciding whether to open an internal investigation, defining its scope and terms of reference, and securing its independence (step 06), conducting it to standards that make its findings usable and defensible - data processing in accordance with Regulation (EU) 2016/679, fairness in interviews and a chain of custody for digital evidence (step 07) - and, where the case requires it, establishing the facts in accordance with authoritative international protocols: the Berkeley Protocol on Digital Open Source Investigations (2020) for online investigations, the revised 2022 Istanbul Protocol for documenting torture and ill-treatment, and the Minnesota Protocol (2016) for potentially unlawful deaths (step 08). An investigation conducted to these standards helps establish the truth and strengthens the company's position in any negotiations with the authorities.

The final four steps address decision-making and the longer term: choosing between cooperation, self-reporting and a contested defence by comparing the approaches underlying the French public interest judicial agreement under Article 41-1-2 of the Code of Criminal Procedure, the UK deferred prosecution agreement and US negotiated prosecution practice (step 09), coordinating the defences of the company and its executives, whose interests diverge sooner than many expect (step 10), managing the aftermath - fair trial safeguards, post-agreement monitoring, recovery, reputation and banking relationships (step 11) - and applying the lessons learned by building a demonstrably effective compliance framework that reduces future exposure at its source (step 12). The same rule applies at every step: positions taken in the first hours - an unsolicited statement, a document handed over, an email sent in panic - carry more weight than months of subsequent proceedings.

Executive brief: a decision in ten minutes

Executive decision. Establish how the investigation fits together before making any statement. A search, a document request or a summons often reveals only one part of an investigation involving several prosecutors, regulators and jurisdictions. The first few hours shape the parties' positions for the duration of the case: preserve data, obtain assistance for those involved, record objections to seizures and control communications. Depending on the facts and applicable obligations, the defence may also require an independent, proportionate internal investigation conducted under confidentiality arrangements tailored to each jurisdiction.

Intended outcome. Preserve safeguards, establish the facts before the authorities do and make a documented choice between cooperation, self-reporting, negotiation and a contested defence.

Sequence of action

- **Urgency** Identify the authorities, facts, procedural status of those involved and measures taken. Involve counsel, issue a legal hold, make an independent internal record and review seizures. Deliverable: safeguards preserved.
- **Mapping** Trace the connections between proceedings, mutual legal assistance, transfers of evidence, privileges and the risk of parallel prosecutions. Deliverable: an overview across jurisdictions.
- **Investigation** Define governance, scope, collection and interview procedures, chain of custody and evidential standards. Deliverable: documented facts.
- **Decision** Compare cooperation options, CJIPs and DPAs, the implications for the executives' defence and the civil, banking and reputational consequences. Deliverable: an exit strategy.

Critical errors

- Making statements on the substance before assessing every front.
- Responding directly to a foreign authority without examining mutual legal assistance, the GDPR and the blocking statute.
- Opening an internal investigation without independent oversight or written terms defining its scope.
- Negotiating a criminal settlement without assessing its civil, cross-border and banking consequences.

Questions for management

- Which team has a consolidated view of all proceedings and documents produced?
- What information is protected, in which jurisdiction and for whose benefit?
- What outcome does the organisation seek: an internal finding of fact, cooperation, an agreement or a trial?

This summary provides guidance. It cannot replace an assessment of the case or verification of the law applicable on the date of the proposed action. The twelve steps below give the details.

01

Assess the threat posed by the investigation

Timing: **immediate** · Objective: establish who is investigating, what they are investigating and at what stage - before responding

A transnational investigation almost never reveals its full scope at the outset. It becomes apparent in fragments: a search at head office, a summons addressed to a manager, a document request received by a foreign subsidiary, a bank letter referring to checks, a press report citing "judicial sources", a request for mutual legal assistance whose existence becomes known only through its effects. The first task for the defence is to reconstruct the investigation behind those fragments: which authorities are involved, in which jurisdictions, on what facts, at what procedural stage, and with what exposure for the legal entity and the individuals respectively. This assessment is no formality. Every subsequent decision depends on it, from whether to speak or remain silent to whether to open an internal investigation.

The assessment begins with the authorities. A national prosecutor specialising in economic and financial crime, an investigating judge, the European Public Prosecutor's Office - established by Regulation (EU) 2017/1939 and operational since 1 June 2021 for offences affecting the Union's financial interests, with an integrated structure allowing it to conduct investigations under a single direction in participating Member States, the list of which must be checked as at the date of the measure - a US prosecuting authority, a securities regulator, a competition authority and an anti-corruption agency all differ in their rules of procedure, standards of proof and criteria for exercising discretion. Some seek a conviction, others a settlement, and others the company's cooperation against its own executives. Identifying the authority means understanding how it operates - and anticipating what it will do with information supplied or withheld.

Next, establish the procedural stage. A preliminary investigation, a judicial investigation that has formally opened, foreign proceedings at the grand jury stage and a regulatory investigation carry different rights and risks. Each person's procedural status - a mere holder of documents, a witness, an assisted witness, a person under formal investigation, or a target or subject in US terminology - determines the scope of their rights. That status can change abruptly: an executive interviewed as a witness today may be a suspect tomorrow, and their initial statements will follow them. Finally, assess the facts themselves: bribery of a foreign public official, money laundering, tax fraud, market manipulation, sanctions violations or offences against the person - each legal characterisation engages different grounds of jurisdiction, limitation periods and cooperation mechanisms.

What to gather

- **A copy of every formal document received**: summonses, compulsory requests, document requests and orders, with their precise legal basis
- **The precise identity of the authorities** involved or mentioned in each jurisdiction
- **A dated timeline** of events: formal measures, visits, calls, press reports and banking incidents
- **A list of individuals at risk** and their apparent procedural status in each set of proceedings
- **An outline of the group entities** concerned and where their data are held

What not to do

- **Make a statement on the substance** before assessing the situation as a whole, or refuse to give evidence without checking your status and obligations
- **Contact the authority "to understand what is happening"** without a strategy or legal advice - every exchange may be recorded and placed on the case file
- **Destroy, move or "clean up" anything**: in France, making evidence disappear with the intention of preventing the truth from being established may give rise to separate proceedings for obstruction.
- **Circulate information widely within the organisation**: everyone informed is a potential witness and a possible source of a leak

> *Key takeaway*
> Assessment means answering five questions before acting: **who is investigating** (authorities and jurisdictions), **what is being investigated** (facts and legal characterisations), **at what stage, against whom** (the legal entity, individuals or both), and **with what powers of coercion and means of negotiation**. Any response before those five questions are answered is a response made in the dark.

02

Manage the immediate response: search, interview, arrest and legal hold

Timing: **immediate** · Objective: preserve safeguards that can be lost within hours and that years of proceedings cannot restore

Coercive measures - searches, seizures, compulsory interviews, police custody and arrest - put a transnational investigation to the test. A measure executed on behalf of a foreign authority is in principle governed by the law of the executing jurisdiction - which, in the case of a European Investigation Order, must nevertheless observe the formalities expressly indicated by the issuing authority unless they are contrary to its fundamental principles (Article 9(2) of Directive 2014/41/EU). Systems committed to a fair trial share a core of safeguards - although their scope and the point at which they apply vary considerably between jurisdictions: legal assistance, interpretation, the privilege against self-incrimination, the protection of the home and correspondence under Article 8 of the European Convention on Human Rights, and the fairness of proceedings guaranteed by Article 6. These safeguards have one feature in common: they can be lost without anyone saying so. A person who answers without a lawyer, volunteers documents beyond the scope of the seizure or fails to have an irregularity recorded will generally be unable to recover later what they have given up.

Three rules apply during a search. First, verify the legal framework: the legal basis of the measure, its substantive and geographical scope, the authority ordering it - and, where it is executed by way of mutual legal assistance, the identity of the underlying foreign request, whose lawfulness is examined in step 05. Second, safeguard legal professional privilege: identify correspondence with lawyers as such at the time of seizure and raise objections immediately in the manner prescribed in the jurisdiction - in France, the enhanced safeguards introduced by Law No. 2021-1729 of 22 December 2021 on confidence in the justice system, examined in step 04, provide a specific procedure for challenging the seizure of protected documents. In proceedings concerning tax fraud, corruption, trading in influence, terrorist financing or the laundering of

the proceeds of those offences, privilege attaching to legal advice cannot be asserted against investigative measures, including those ordered in a judicial investigation, only where the legal advice, correspondence or other materials themselves establish that they were used to commit or facilitate those offences (Article 56-1-2 of the Code of Criminal Procedure). The exception is narrow - privilege should therefore be claimed for each document it covers. Where the client's premises are searched, the person whose premises are being searched may object to the seizure of a document they consider protected. The document is then placed under seal and the objection referred to the judge of liberties and detention. According to the Criminal Chamber, protection requires a connection with the exercise of the rights of the defence (Article 56-1-1 of the Code of Criminal Procedure). An appeal with suspensive effect against the ruling of the judge of liberties and detention on the disputed seizure may be brought within twenty-four hours before the president of the investigating chamber (Articles 56-1 and 56-1-1 of the same Code). As the legislation does not specify when the period begins, the prudent course is to appeal within twenty-four hours of the decision, without awaiting notification. Third, keep a record: the members of the search team, times, locations visited, documents and media seized, incidents and statements made - the authority's official record will not cover everything, and an independent internal record made at the time is often the defence's only account.

When a person is interviewed, the cardinal rule is to distinguish procedural statuses. A witness does not have the rights of a suspect, which is precisely why some investigators question people at length "as witnesses" even when their exposure is plain. Preparation is essential in every case: reconstruct the facts with counsel beforehand, identify the documents the authority is likely to hold and avoid speculation. The right to remain silent, however, depends on status and jurisdiction: ascertain immediately whether the person may decline to answer, whether their status must change or whether they may invoke the privilege against self-incrimination. In France, a person attending a voluntary interview or held in police custody is informed of the right to remain silent and may receive legal assistance - in a voluntary interview, where the suspected offence is a serious crime or another offence punishable by imprisonment (Articles 61-1 and 63-3-1 of the Code of Criminal Procedure). By contrast, a witness summoned before an investigating judge must appear, take the oath and give evidence, subject to legal professional privilege (Article 109 of the same Code), on pain of a fine of EUR 3,750 (Article 434-15-1 of the Criminal Code). A person interviewed solely as a witness in a preliminary investigation has no right to legal assistance at the interview (Court of Cassation, Criminal Chamber, 23 May 2024, No. 23-85.888). A witness at risk has other protections: an investigating judge may not hear as a witness a person against whom there is serious and corroborating evidence (Article 105 of the Code of Criminal Procedure), assisted witness status confers the right to legal assistance and the right to remain silent (Article 113-1 et seq.), and, at the police investigation stage, once plausible grounds for suspicion arise the person may no longer be treated as a witness (Article 62). Arrest, finally, sets in motion a distinct process - review of detention, possible surrender and protective measures - beyond the scope of this guide. Its international cooperation aspects are addressed in the Praxis guide to INTERPOL and extradition.

There remains the least visible and most decisive immediate step: the legal hold, an internal preservation instruction issued without delay to all persons and applied to all systems holding potentially relevant data - email systems, servers, work phones, backups and outsourced IT service providers. It serves two purposes: to prevent the destruction, even in the ordinary course, of data whose disappearance would be construed as obstruction, and to preserve the material needed for the company's own investigation. A late or incomplete legal hold is one of the most costly findings an authority can make.

What to gather

- **A copy of the warrant or order** and of every document provided by the investigators
- **An inventory checked by both sides** of the documents, media and data seized
- **An independent internal record**: times, locations, team members, incidents and objections raised
- **A list of items covered by legal professional privilege** that were identified or seized, with any reservations recorded
- **Written confirmation of the legal hold**: scope, recipients, systems covered, date and time

What not to do

- **Dispense with a lawyer or interpreter** "to save time"
- **Volunteer** documents beyond the scope of the measure
- **Allow a manager to improvise answers** on the company's behalf during the search
- **Delete anything after the first measure**, including "personal" or "unrelated" data

Common mistake
Assuming that apparent cooperation during a search - handing everything over, commenting on everything, explaining everything - will "ease the situation". Investigators record the statements made, whatever the speaker's good intentions. Courtesy during the proceedings requires discipline. **Saying too much is a mistake.**

> *Key point*
> Issuing a legal hold is more than an act of cooperation with the authority: it is an assertion of **control over one's own information**. It protects against suspicion of obstruction and preserves the company's ability to establish the facts for itself - a prerequisite for every strategic decision that follows.

03

Map the jurisdictions and parallel proceedings

Timing: **first few days** · Objective: treat the case as a whole - and invoke ne bis in idem where it actually applies

A transnational investigation must be addressed as a whole, across all jurisdictions. Map every existing or foreseeable proceeding - criminal, administrative, regulatory or civil - the authority responsible, its stage, its deadlines and, above all, the channels through which information travels from one front to another: mutual legal assistance, joint investigation teams, exchanges between regulators, police cooperation and informal channels - the press, complainants, competitors and former employees. This exercise determines the order in which to act. A document voluntarily produced to a regulator may reach a prosecutor. A statement made in foreign civil proceedings may support a criminal prosecution. A settlement in one jurisdiction may serve as an admission in another. The operational rule is easy to state and demanding to observe: make no statement, produce no document and enter into no settlement in one jurisdiction without first assessing the effects in all the others.

The risk of multiple prosecutions for the same acts requires precise legal analysis. The principle of ne bis in idem, which precludes trying or punishing the same person twice for the same acts, is not universal: between States, it applies only where a legal instrument or domestic law so provides. In Europe, two provisions frame the issue. Article 54 of the Convention implementing the Schengen Agreement bars fresh proceedings against a person whose case has been finally disposed of in another Contracting State, subject to its stated conditions, in particular that any penalty imposed has been enforced, is being enforced or can no longer be enforced. This is subject to declarations under Article 55 by which a State may decline to be bound, in particular for acts committed wholly or partly in its territory, unless they were committed partly in the territory of the State that gave judgment, or for acts affecting its essential interests - France sought to make such a declaration, and whether it can be relied on, and to what extent, must be checked in each case. The Court of Justice has held that a declaration concerning offences against a State's security or other equally essential interests (Article 55(1)(b)) is compatible with Articles 50 and 52(1) of the Charter and may, under certain conditions,

apply to a prosecution concerning a criminal organisation engaged exclusively in financial crime (CJEU, 23 March 2023, MR, C-365/21). Article 50 of the Charter of Fundamental Rights of the European Union enshrines the principle in EU law. The Court of Justice focuses on whether the material acts are identical and whether there has been a final decision. Under Article 52(1) of the Charter, it nevertheless permits a duplication of proceedings and penalties of a criminal nature - in particular administrative and criminal - where provided for by law, directed towards complementary objectives, subject to coordination rules and proportionate (CJEU, Grand Chamber, 20 March 2018, *Menci*, C-524/15). Outside that area, no general rule precludes parallel or successive prosecutions - major economic crime cases show that authorities in several jurisdictions can sanction the same conduct, with any coordination of penalties depending more on their discretion than on legal obligation. French law provides a narrow qualification: where jurisdiction rests on the nationality of the offender or the victim (Articles 113-6 and 113-7 of the Criminal Code), or on the provisions on extraterritorial jurisdiction in the Code of Criminal Procedure (Article 692), no prosecution may be brought against a person who establishes that they were finally tried abroad for the same acts and, if convicted, that the sentence was served or its enforcement is time-barred (Article 113-9). This qualification does not apply where the offence is deemed to have been committed in the territory of the Republic because one of its constituent acts took place there (Article 113-2), a frequent occurrence in transnational corruption and money laundering cases. The defence must therefore plead ne bis in idem where it is binding law and negotiate for foreign penalties to be taken into account where it is only an argument of fairness.

The mapping must also cover surrender and alert mechanisms: the European arrest warrant governed by Framework Decision 2002/584/JHA, including the scrutiny the Court of Justice has progressively developed in respect of deficiencies in the issuing State, extradition requests outside the Union, and notices and diffusions in police cooperation systems, addressed in the Praxis guide to INTERPOL. For an executive at risk, freedom of movement itself becomes a legal question: assess each journey jurisdiction by jurisdiction, taking account of possible alerts and applicable extradition treaties. Overlooking this issue can turn a technical stopover into involuntary surrender proceedings in a jurisdiction the executive did not choose.

ILLUSTRATIVE CASE · SIMULTANEOUS PROCEEDINGS

Simultaneous searches in *two jurisdictions*

An anonymised scenario drawn from the publicly documented practice of economic and financial crime prosecutors.

Profile

An industrial group has its parent company in a European State and its sales subsidiary in a third State. Both authorities are investigating the same public contract.

Mechanism

Coordinated searches on the same day at head office and at the subsidiary. Large-scale seizures of email accounts. Managers immediately interviewed in both jurisdictions under different procedural statuses. The sealed exhibits incidentally reveal a request for mutual legal assistance.

Analysis

The timing indicates prior coordination between the authorities: the case is more advanced than either set of proceedings suggests in isolation. Statements made in one jurisdiction will be read in the other. Different rules of legal professional privilege govern the seized documents. The risk of parallel prosecutions must be addressed from the outset, as Article 54 of the Convention implementing the Schengen Agreement operates only between States within its scope and subject to Article 55. In dealings with the third State, it is also necessary to check the applicable treaty and the effect each State's law gives to the foreign judgment.

Model answer

Immediately put counsel in both jurisdictions under a single coordination arrangement. Consolidate seizure inventories. Make no substantive statement without preparation and verification of each person's status. Compare privilege rules before producing any material. Identify the legal basis of the underlying request for mutual legal assistance and the means of challenging it (step 05).

Key point

Transnational ne bis in idem has a **territorially variable scope**: it applies in the Schengen area and under EU law (Article 54 of the Implementing Convention, Article 50 of the Charter), subject to the conditions of those provisions and the declarations permitted under Article 55 of the Implementing Convention. Between most other jurisdictions it serves only as an argument. Defence strategy must reflect the legal position: parallel prosecutions are possible.

04

Safeguard legal professional privilege and other privileges across jurisdictions

Timing: **first few days, then ongoing** · Objective: know, document by document, what is protected and where - before a seizure decides the question

Few concepts are more misleading in a transnational case than the "confidentiality of communications with lawyers". Every system recognises it, but each defines its scope differently. In France, legal professional privilege covers correspondence between a lawyer and their client. Law No. 2021-1729 of 22 December 2021 on confidence in the justice system enshrined in the Code of Criminal Procedure the protection of privilege in defence work and legal advice, regulated searches involving lawyers and seizures of protected correspondence, and provided specific avenues of challenge - a genuine strengthening of protection, with express limits. The legislature precluded reliance on privilege attaching to legal advice in the face of investigative measures, including those ordered in a judicial investigation, concerning an exhaustive list of offences - tax fraud, corruption, trading in influence, terrorist financing and the laundering of the proceeds of those offences - but only where the advice, correspondence or other materials themselves establish that they were used to commit or facilitate those offences (Article 56-1-2 of the Code of Criminal Procedure) - precisely the offences that predominate in the cases discussed in this guide. According to the Criminal Chamber, protection also requires a connection between the material and the exercise of the rights of the defence. A person facing such an investigation in France should neither overestimate the protection afforded to documents containing legal advice nor relinquish it. The position of in-house counsel in France has also changed: Law No. 2026-122 of 23 February 2026, which the Constitutional Council upheld subject to interpretative reservations (Decision No. 2026-900 DC of 18 February 2026), establishes confidentiality for legal advice prepared by in-house counsel, subject to strict conditions concerning the author's qualifications, the recipient of the advice and the formal marking it must bear. Confidentiality may be asserted in civil, commercial and administrative

proceedings, including against a French or foreign administrative authority, subject to judicial challenge or lifting of protection. It cannot be asserted in criminal or tax matters or against EU authorities exercising their supervisory powers. Decree No. 2026-1054 of 17 November 2026, published in the Official Journal on 18 November, sets 1 January 2027 as the date when this protection takes effect. Until then, the regime does not apply, and companies should prepare to train their in-house counsel in the ethical rules in accordance with the arrangements laid down in the Decree. In common law systems, legal professional privilege belongs to the client and comprises legal advice privilege and litigation privilege, with detailed rules governing who within an organisation constitutes "the client". In the United States, the case law deriving from the Supreme Court's decision in Upjohn (1981) protects communications made in an internal investigation directed by lawyers, including communications with employees, where their purpose is to enable legal advice to be given to the company - substantial but fragile protection, since it may be waived, particularly when the company shares its findings with the authorities.

EU law introduces a further distinction that international groups routinely underestimate: in EU competition proceedings, the Court of Justice held in Akzo Nobel (C-550/07 P, 2010) that communications with in-house counsel do not enjoy the protection of confidentiality, which is confined to exchanges with an independent lawyer, meaning one who is not in an employment relationship with the client. The judgment is specific to EU competition law, but its lesson applies more broadly: the same email from the general counsel may be protected in one jurisdiction, open to seizure in another and produced in a third. In practice, this calls for mapping documents: for each category of sensitive document - risk assessments, interview records, internal investigation reports, exchanges with in-house counsel and correspondence with external counsel in each jurisdiction - identify the protection available in every current or foreseeable proceeding and organise the creation, circulation and retention of documents accordingly.

Three practical rules follow. First, arrange for sensitive documents to be created under the most protective regime reasonably available - in most cases, this means that independent lawyers direct the internal investigation and that high-risk analyses pass through them. In-house counsel retain an essential coordinating role, while the most exposed documents should have another final recipient. Second, control circulation - each transmission of a protected document to a jurisdiction that does not protect it, to a third party (auditor, insurer, banker or consultant) or to an unnecessarily wide internal audience weakens or destroys the protection. In negotiating any partial waiver for an authority as part of cooperation, assess its effects in other jurisdictions. Third, prepare for challenges - systematically mark protected documents, establish internal procedures for responding to seizures and identify the remedies in each jurisdiction that allow privilege to be determined before the authority uses the material.

What to gather

- **A map of the protections** applicable in each jurisdiction concerned, by category of document
- **An inventory of existing sensitive documents**: who created them, under what regime and who holds them
- **A disclosure log**: to whom each protected document was disclosed, when and subject to what reservation
- **A written protocol for creating documents** for the remainder of the case: who writes what and under whose direction

What not to do

- **Assume that French or US protection "travels with" a document** abroad - each jurisdiction applies its own rules
- **Entrust the most sensitive analyses exclusively to in-house counsel** in a case involving EU competition law
- **Circulate internal investigation findings** beyond those who strictly need to receive them
- **Mark documents "confidential - legally privileged" when they do not qualify**: improper marking undermines valid claims

Key takeaway

Privilege is more than an argument to raise after a seizure: its **foundations are laid before the document is created**. Who writes it, under whose direction, for what purpose and for which recipients - these four choices, made at the right time, determine what authorities in each jurisdiction will be able to read. At the time of seizure, objections must be raised immediately in the form required by the jurisdiction.

Spotlight

The lesson of **Akzo Nobel** extends beyond competition law: the author's status, together with the nature of the proceedings, determines the protection afforded to what is written - as confirmed in France by the Law of 23 February 2026, whose confidentiality regime takes effect on 1 January 2027 under the Decree of 17 November 2026 and will protect advice from in-house counsel only outside criminal and tax matters. In an international group, deciding how legal information moves - internally or externally, jurisdiction by jurisdiction - is a strategic choice with consequences beyond administrative convenience.

Further assistance from the firm

A guide alone cannot assess a transnational investigation. If a measure is under way or several jurisdictions are already involved, coordination must be in place before the next decision - afterwards is too late.

Have your situation assessed

05

Review the lawfulness of mutual legal assistance and cooperation

Timing: **from the first request** · Objective: establish whether a foreign request may be executed - cooperation outside formal channels requires still closer scrutiny

Evidence moves across borders through specific legal channels, each with its own conditions, grounds for refusal and avenues of challenge. The European treaty framework continues to rest on the 1959 European Convention on Mutual Assistance in Criminal Matters, supplemented by its protocols and, within the Union, by instruments of mutual recognition. For investigative measures, the most developed of these is the European Investigation Order (Directive 2014/41/EU of 3 April 2014). For computer evidence, the 2001 Budapest Convention on Cybercrime provides for expedited preservation and disclosure of data. Its Second Additional Protocol, concerning electronic evidence and opened for signature on 12 May 2022, provides for definitive signature, ratification, acceptance or approval. It will enter into force on the first day of the month following the expiry of three months after the fifth expression of consent to be bound (Article 16). The Council of Europe records four ratifications. The treaty's status should be checked as at the date of the measure. Regulation (EU) 2023/1543 and Directive (EU) 2023/1544 - the "e-evidence" package - establish European Production Orders and European Preservation Orders addressed directly to service providers established or represented in the Union. This regime - the Regulation has applied since 18 August 2026 and

the Directive was due to be transposed by 18 February 2026, with the status of transposition in each Member State to be checked as at the date of the measure - changes a fundamental feature of the process: within the scope of the Regulation, electronic evidence can now be requested without going through the authority of the State where the provider is located. Review of lawfulness therefore shifts to new mechanisms that the defence will need to master. The prudent course is to verify in each case which regime actually applied on the date of each measure. On receipt of a European Production Order Certificate (EPOC), the addressee must preserve the data. Outside emergencies, if notification to the enforcing State is not required, the addressee must transmit the data within ten days of receipt. If notification is required, the addressee must transmit the data when the ten days expire, provided no ground for refusal has been raised. If the authority confirms earlier that it will not object, the addressee must transmit the data as soon as possible and no later than the end of the ten days. In an emergency, the addressee must transmit the data without delay and no later than eight hours after receipt. The notified authority has ninety-six hours from notification to object to use of the data or to make their use subject to conditions (Articles 10 and 12). A challenge to a production order must be brought before a court in the issuing State (Article 18).

Where a request for mutual legal assistance is executed in France or another requested State, the defence should systematically examine the legal basis invoked and its applicability, the scope of the request and the sometimes wider scope of its execution, dual criminality where required for coercive measures, proportionality, the grounds for refusal available to the requested State - sovereignty, public policy or the political or fiscal nature of the conduct, depending on the instrument - and observance of fundamental safeguards. Article 6 of the European Convention on Human Rights can, however, be invoked against assistance given to foreign proceedings only within narrow limits. The remedies available to the person concerned vary by jurisdiction and are rarely direct. They nevertheless exist - challenges to seizures, appeals against decisions to transmit material, and subsequent exclusion of unlawfully obtained evidence - and each irregularity should be documented as soon as it becomes apparent. Admissibility depends on the remedy concerned. In France, where material is placed on the case file after a privilege-based challenge to its seizure, the parties may still apply subsequently to have the seizure annulled (Article 56-1 of the Code of Criminal Procedure). Where a European Investigation Order is executed in France, its execution may be challenged through the remedy available against the equivalent domestic measure, whereas the substantive grounds for issuing it may be challenged only in the issuing State (Article 694-41 of the Code of Criminal Procedure and Article 14 of Directive 2014/41/EU).

The most sensitive issue is cooperation outside mutual legal assistance: a foreign authority addresses a request directly to the company - a questionnaire, a subpoena or a “voluntary” document request - bypassing inter-State channels. Here French Law No. 68-678 of 26 July 1968, known as the blocking statute, takes on its full significance. Subject to international treaties or agreements and to the laws and regulations in force, it prohibits any person from requesting, seeking or communicating documents or information of an economic, commercial, industrial, financial or technical nature for the purpose of gathering evidence for or in the course

of foreign judicial or administrative proceedings - whether the request comes from a public authority or a private party. The offence carries six months' imprisonment and a fine of EUR 18,000, rising to EUR 90,000 for legal entities. Article 2 of the Law requires the competent minister to be informed without delay. Since 1 April 2022, Articles 2 to 4 of Decree No. 2022-207 of 18 February 2022 have provided for referral to the Strategic Information and Economic Security Service (SISSE) of requests from a foreign public authority or a person acting on its behalf or with a view to responding to its request. The company forwards the request without delay and then files its supporting materials as soon as possible. SISSE issues its opinion within one month of the complete submission. There is no separate penalty for failure to notify. The opinion does not bind the foreign authority or extend its deadline. Long regarded as rarely enforced, the blocking statute was revitalised by the regulatory reform that took effect on 1 April 2022 as a means of directing foreign requests through the appropriate channels, with administrative support for the companies receiving them. For the company, the blocking statute cuts both ways: it provides legitimate grounds to decline direct transmission and insist on mutual legal assistance, while leaving in place the pressure from the foreign authority, which may attach procedural consequences to the refusal in its own jurisdiction. The choice - to transmit through formal channels, negotiate the scope or invoke the blocking statute - is a matter of litigation strategy. It calls for an assessment of exposure in both jurisdictions together and should never be dictated solely by the requesting authority's timetable. Personal data impose a further constraint: Regulation (EU) 2016/679 governs transfers to authorities in third States. Under Article 48, recognition of a foreign decision requiring a transfer is in principle conditional on an international agreement in force, such as a mutual legal assistance treaty, without prejudice to other grounds for transfer under Chapter V. These include the narrowly construed derogations under Article 49, for which justification must be documented case by case. The processing must also have a legal basis under Article 6 (European Data Protection Board Guidelines 02/2024).

What to gather

- **The full text of each request** received, with the legal basis asserted and its precise scope
- **An assessment of the channel used**: formal mutual legal assistance, a mutual recognition instrument, an e-evidence order or a direct request outside formal channels
- **An inventory of the data requested**: location, nature and presence of personal data and protected documents
- **A timeline of execution** and of any measure exceeding the scope of the request

What not to do

- **Respond directly to a foreign authority** without examining the blocking statute, the GDPR and applicable privileges
- **Go beyond the scope of the request** "to show good faith"
- **Leave an irregularity in execution undocumented**: recording reservations when the measure is taken makes the irregularity easier to prove. A subsequent challenge depends on the conditions governing the applicable remedy.
- **Overlook the deadlines**: some challenges are subject to short time limits - in France, twenty-four hours to appeal a ruling by the judge of liberties and detention on a seizure challenged on grounds of privilege (Article 56-1 of the Code of Criminal Procedure does not specify when time begins to run: as a precaution, appeal within twenty-four hours of the decision, without awaiting notification), and four months for applications to annul measures taken in a judicial investigation (Article 173-1 of the Code of Criminal Procedure, for applications made on or after 23 October 2026. Step 11 explains when time begins to run and the period available under Article 175). Once the relevant period expires, a challenge by that route is inadmissible. Expiry of the twenty-four hours bars the appeal with suspensive effect, although a subsequent application to annul the seizure remains possible subject to its own conditions (Article 56-1 of the Code of Criminal Procedure). The four-month time bar does not apply where the person could not have known the ground of challenge. A reasoned application must be lodged by declaration at the registry of the investigating chamber, with a copy sent to the investigating judge (Article 173 of the Code of Criminal Procedure)

ILLUSTRATIVE CASE · COOPERATION OUTSIDE FORMAL CHANNELS

A foreign authority approaches a company *directly*

An anonymised scenario drawn from the publicly documented practice of prosecutors and regulators.

Profile	A French company, a subsidiary of a group listed abroad, receives a document production request directly from a foreign prosecuting authority investigating its parent company.
Mechanism	A "voluntary" request with a short deadline states that failure to cooperate will be taken into account. The documents requested include employee emails, sensitive commercial data and communications with in-house counsel.
Analysis	Law No. 68-678 of 26 July 1968 prohibits direct transmission outside mutual legal assistance channels in principle. Regulation (EU) 2016/679 governs transfers of personal data. Some documents enjoy protection that varies by jurisdiction. The requesting authority nevertheless exerts real pressure, since its cooperation policy gives credit for voluntary production.
Model answer	**Provide a structured written response** invoking the French legal framework and proposing mutual legal assistance. Notify SISSE without delay and engage with the competent French authorities on the application of the blocking statute. Negotiate scope and timing. Review privilege and ensure GDPR compliance before transmitting material through formal channels. Coordinate with counsel defending the parent company in the requesting jurisdiction.

Spotlight

The blocking statute is neither a guarantee of protection nor an empty formality: it is a **means of directing requests through the proper channels**. Used effectively, it can lead a foreign authority to use a reviewable mutual legal assistance procedure - with grounds for refusal, negotiable scope and safeguards - although the authority assesses the request under its own law and is under no obligation to do so. Used poorly, it can lead to a confrontation with an authority that has other means at its disposal.

06

Decide whether to open an internal investigation: scope, terms of reference and independence

Timing: first few weeks · Objective: treat an internal investigation as a major strategic decision - it should never be an automatic compliance response

Internal investigations have become central to transnational cases: authorities expect them, mechanisms of negotiated justice give credit for them, and they are often the company's only means of discovering what actually happened before it takes a decision. Precisely because they have become standard practice, it bears recalling that opening one is a decision - and a serious one. An internal investigation creates material: interview records, analyses and findings that may be seized, requested by authorities or demanded by civil parties or shareholders, and whose protection depends entirely on how the investigation was structured (step 04). A poorly framed investigation may document the company's liability without enabling it to obtain credit for cooperation. A well-framed investigation informs decisions, protects what can be protected and strengthens the company's negotiating position.

Four considerations govern the decision. The trigger may be an internal report, an audit, a press article, a search or a request from an authority. The European framework protects reporting persons against retaliation. In France, an entity required to establish an internal reporting channel must acknowledge receipt in writing within seven working days of receipt. It must inform the reporting person in writing of the measures envisaged or taken and the reasons for them within a reasonable period of no more than three months from acknowledgement of receipt or, if there was no acknowledgement, from the expiry of the seven working days following the report (Decree No. 2022-1284, Article 4). Next comes scope: which facts, period, entities and people are covered - an unduly narrow scope undermines the investigation's credibility with the authorities, whereas an unduly broad one makes it open-ended and creates material on matters no one had asked to investigate. The initial scope and the reasons for it must be recorded in writing, and

any extension formally approved. The third consideration is the terms of reference: who commissions the investigation - senior management, the audit committee or an ad hoc committee of independent directors - and who conducts it. Where executives may be implicated, they cannot commission the investigation. Its governance must be documented with the same care as its findings, because authorities will assess how it was governed before evaluating its results. The final consideration is independence: in sensitive cases, external lawyers should direct the investigation to protect its work and secure its credibility, with teams separate from those defending the company where the circumstances require. Specialists in forensics, accounting and data should work under counsel's direction so that their work benefits from the strongest protection available.

Timing also matters: an internal investigation proceeds under the pressure of official proceedings. Opening one after a search carries a different meaning and value from opening one before any proceedings begin. French and foreign authorities assess under their published cooperation policies whether the company acted voluntarily, promptly and in good faith (step 09). A decision is therefore needed quickly - but deciding means setting the terms before acting, identifying who is in charge, what the investigation will cover and what purpose it will serve.

> *Key takeaway*
> Before opening an internal investigation, answer four questions in writing: **who is commissioning it** (oversight free from conflicts of interest), **what it will cover** (a scope supported by reasons), **who will conduct it** (independence and protection of the work), **what purpose it will serve** (internal decision-making, cooperation or defence). If the purpose of an investigation is left undefined, others will decide how its documents are used.

07

Conduct the internal investigation to the applicable standards

Timing: **weeks to months** · Objective: produce usable findings through a method that withstands scrutiny - evidence, interviews, data and the GDPR

An internal investigation is only as sound as its methods. Accurate findings obtained by questionable means are vulnerable: those implicated may challenge them, a court may exclude them - in French civil proceedings, the court balances the right to adduce evidence against the infringement caused in obtaining it (Court of Cassation, Plenary Assembly, 22 December 2023, No. 20-20.648) - and they may be used against the company in the employment and civil litigation that often follows. The investigation must therefore meet several cumulative requirements, each of which is essential.

The first concerns documentary and digital evidence. Collection builds on the legal hold put in place at step 02. Specialists use methods that preserve data integrity - forensic copies, cryptographic hashes and access logs - and document the chain of custody so that, years later, it is possible to establish that the item produced is the one collected, where, when and by whom. Written review protocols set out the keywords, time periods, custodians and procedures for dealing with privileged documents identified during review. These requirements reflect the international fact-finding protocols examined in step 08: verification, traceability and preservation are prerequisites for evidential weight.

The second requirement concerns interviews. Interviewees must know who is conducting the interview and on whose behalf. Under the practice derived from the US decision in Upjohn, employees are told that the lawyer represents the company, that privilege over the interview belongs to the company, and that the company alone may decide to disclose its contents. More generally, fairness requires informing the person of the purpose of the interview, allowing them assistance where their situation warrants it and recording their statements accurately. Under French law, interviews must also comply with employment law - managerial authority, disciplinary rules and protection against unfair methods - and with the professional practices governing lawyer-led internal investigations. One deadline must be monitored from the outset: in France, misconduct cannot of itself give rise to disciplinary proceedings more than two months after the employer learned of it, unless criminal proceedings in respect of it were instituted within the same period (Article L. 1332-4 of the Labour Code) - this requires the institution of a public prosecution, and merely lodging a complaint does not suffice. An internal investigation postpones the starting point only if it is necessary to

establish the reality and extent of the facts. A disciplinary sanction based on proceedings commenced out of time has no legal basis in the absence of criminal proceedings instituted within that period. An interview conducted aggressively or sprung on the interviewee puts the entire investigation at risk: it becomes the principal ground of challenge.

The third requirement concerns personal data. An internal investigation involves the processing of data within the meaning of Regulation (EU) 2016/679, and all its principles apply: a legal basis for processing - most often legitimate interests, assessed through a documented balancing exercise, supplemented, where the investigation concerns suspected offences, by the restrictive rules on data relating to offences (Article 10 of the Regulation and, in France, the Data Protection Act), which limit who may process them - data minimisation, which prohibits indiscriminate collection and requires email accounts to be filtered rather than collected wholesale, purpose limitation, information for data subjects under Articles 13 and 14 of the GDPR, with any deferral supported by documented grounds, defined retention periods, data security, and strict controls on transfers outside the European Economic Area - a critical issue whenever an investigation supports a defence or cooperation in a third State. In that situation, the Regulation's chapter on transfers, Article 48 on decisions of foreign authorities and the blocking statute examined in step 05 all come into play. GDPR compliance is integral to the investigation: unlawful collection exposes the company to further litigation and gives those implicated substantial grounds for challenge.

What to gather

- **A written investigation protocol**: governance, scope, collection and review methods, and procedures for privileged material
- **A chain of custody** for each storage medium collected: source, date, operator, hash and storage arrangements
- **Interview outlines** and warnings given, with interview records in a consistent format
- **GDPR documentation**: legal basis, balancing exercise, information given to data subjects, processing records and transfer assessment

What not to do

- **Collect "everything, just in case"**: minimisation is mandatory, and excessive collection is a risk in its own right
- **Conduct interviews without explaining** counsel's role and who holds the privilege
- **Promise absolute confidentiality** to an employee being interviewed - the company may have to disclose the contents
- **Transfer investigation data outside the European Economic Area** without first assessing the legal grounds for the transfer

ILLUSTRATIVE CASE · AN INVESTIGATION USED AGAINST THE COMPANY

An internal investigation whose findings are *seized*

An anonymised scenario drawn from the publicly documented practice of courts hearing challenges to seizures.

Profile	A services group conducted an internal investigation into suspected corruption at a subsidiary through an audit firm engaged directly by senior management. The final report was circulated to the executive committee and several departments.
Mechanism	A subsequent search at head office led to the seizure of the report, interview records and preparatory correspondence. The prosecution used the report as a guide to its investigation, and the executives implicated used it as evidence that the company "knew".

Analysis

Lawyers did not direct the work and the results were widely circulated, making protection difficult to claim in several jurisdictions. Interviews took place without warnings, giving rise to challenges to their fairness. Potentially implicated executives oversaw the investigation, calling its independence into question. Although factually accurate, the investigation became evidence for the prosecution beyond the company's control.

Model answer

Challenge the seizures to the extent permitted in the jurisdiction. Reconstitute the investigation under counsel's direction with independent oversight. Reconsider the cooperation strategy to regain the initiative in presenting the facts. For the future, adopt a protocol for structuring every sensitive investigation before it begins (steps 04 and 06).

> *Common mistake*
> Entrusting a sensitive investigation "to the internal teams, to retain control". The opposite often happens: the work can be seized, interviews challenged and findings left unprotected. The rules governing a document vary by jurisdiction (protection for in-house legal advice in the United States under *Upjohn*-, exclusion of employed lawyers under EU competition law following *Akzo Nobel*). Control over an investigation comes from **putting the right protections in place**, however close the team may be to management.

08

Establish the facts in accordance with international protocols

Timing: **depending on the circumstances of the case** · Objective: produce evidence by methods that can be verified against international standards, giving it greater weight before international bodies and in negotiations, subject to each forum's rules of admissibility

Some cases require more than an internal investigation. They require findings of fact that can withstand challenge - because States dispute the facts, because the findings will support an application to an international body, because they document serious human rights violations or because the company or individual under investigation must present an account capable of answering that of a hostile authority. Published international standards exist for this work. They have been tested in practice and are recognised by international bodies. There is every reason to incorporate them into a transnational criminal defence: fact-finding in this context is a method of establishing proof, independent of advocacy.

Three protocols provide the framework. The Berkeley Protocol on Digital Open Source Investigations, published in 2020 (HR/PUB/20/2, print edition 2022) by the Office of the United Nations High Commissioner for Human Rights and the Human Rights Center of the University of California, Berkeley, sets out a methodology for online investigations: identifying and preserving content before it disappears - time-stamped archiving, cryptographic hashes and a log of the steps taken - verifying information by cross-checking sources, establishing where and when images were captured, assessing reliability, keeping a record sufficient for a third party to retrace the entire process, and minimising risks to people appearing in the material. The Istanbul Protocol, in its revised version published in 2022, is the United Nations standard for the effective investigation and documentation of torture and ill-treatment. It sets out how to document allegations medically and psychologically, assess consistency between clinical findings and the person's account, and safeguard the independence of the examination. The 2016 Minnesota Protocol governs the investigation of potentially unlawful deaths: the obligation to investigate promptly, effectively, independently and transparently, preservation of scenes and evidence, autopsies meeting the applicable standards, and witness protection. The latter two protocols inform the case law of international human rights bodies, which refer to them when assessing the quality of domestic investigations.

These protocols have three practical uses for the reader of this guide. First, in taking the initiative: documenting violations to these standards - the arbitrary detention of an executive abroad, ill-treatment or fabricated proceedings - gives subsequent applications to international bodies an evidential basis grounded in recognised methods that human rights bodies are accustomed to evaluating. It also deprives the respondent State of the easy objection that the evidence is merely advocacy. Second, in defending a case: answering the prosecution's account with an independent investigation conducted to published standards - verified sources, chain of custody and documented methodology - moves the dispute from competing assertions to methods of proof, where a rigorous defence has an advantage. Third, in scrutinising the opposing evidence: the protocols provide criteria against which to assess it. An unverified digital item, a screenshot without metadata or a medical report that falls short of the Istanbul standards can be challenged more effectively by someone who understands the standard it should have met. In every case, the rule for digital evidence is the same: collect early - online content disappears - preserve integrity - hashes, time-stamping and archiving - and document everything - the method determines the evidential weight. Counsel must also set the parameters for any independent defence investigation conducted during criminal proceedings. Contact with witnesses, collection of personal data and use of online content are subject to criminal law and data protection requirements. Breaching them would undermine the evidence and expose the investigator to liability.

Spotlight

Fact-finding protocols do for evidence what accounting standards do for accounts: they cannot guarantee the truth, but they make the basis for a finding **auditable**. Before an international body or in negotiations with an authority, evidence that can be audited carries inherently more weight than an assertion.

Before deciding to cooperate, opening a sensitive internal investigation, responding to a foreign authority or producing documents across jurisdictions.

When to contact Hennebel Avocats

Choosing between cooperation and a contested defence, setting the terms of an internal investigation and deciding how to proceed across jurisdictions all commit the case to a course that is difficult to reverse. The firm can advise directly or act as co-counsel alongside criminal and tax lawyers, forensic specialists and crisis communications advisers, as the circumstances require. Urgent situations receive priority.

Contact the firm

09

Weigh cooperation and self-reporting: CJIPs, DPAs and comparative approaches

Timing: assess the conditions for disclosure as soon as suspicions are credible. Negotiate once the facts have been established · Objective: negotiated justice rewards cooperation, but each system does so differently - and the benefit of voluntary self-disclosure diminishes with time

In the major jurisdictions, negotiation has become central to the enforcement of economic criminal law. Since the Law of 9 December 2016, known as "Sapin II", France has had the public interest judicial agreement under Article 41-1-2 of the Code of Criminal Procedure: for the offences specified in that Article and related offences, a prosecutor may conclude an agreement with a legal entity imposing one or more obligations, without an admission of guilt and subject to judicial approval. Any fine must be proportionate to the benefits derived from the breaches and is capped at 30% of average annual turnover, calculated on the basis of the last three annual turnover figures known when the breaches were established. The agreement may also require a compliance programme supervised by the French Anti-Corruption Agency or the relinquishment of seized assets to the State. The National Financial Prosecutor's Office guidelines of 16 January 2023 take account of cooperation and voluntary self-disclosure within a reasonable time after the facts become known. For the fine ceiling, they use group turnover where the accounts of the companies concerned have been consolidated under the applicable accounting rules. Providing the internal investigation report or giving a detailed account of its contents is an indication of cooperation. During the criminal investigation, informing the prosecutor of planned interviews helps avoid interference. When establishing the terms of the internal investigation (step 06), the company and its lawyer determine which facts to communicate and which documents remain protected as discussed in step 04. The guidelines impose no general requirement to waive privilege. Where a judicial investigation has been opened, the parties have three months from the transfer of the proceedings to the prosecutor to reach an agreement, failing which the case returns to the investigating judge (Article 180-2 of the Code of Criminal Procedure). Following approval, the legal entity may withdraw within ten days of the date of approval by registered letter with acknowledgement of receipt addressed to the public prosecutor. If it does not withdraw, the obligations under the agreement become enforceable. England and Wales use the deferred prosecution agreement introduced by the Crime and Courts Act 2013 (Schedule 17): proceedings for eligible offences are instituted and then suspended subject to conditions, with substantive judicial scrutiny - the judge considers whether the agreement is in the interests of justice and whether its terms are fair, reasonable and proportionate. The Serious Fraud Office guidelines of 24 April 2025 state that a

company which promptly self-reports and cooperates fully will, save in exceptional circumstances, be invited to negotiate such an agreement in preference to prosecution. In the United States, negotiated resolutions have become the norm: the "corporate enforcement" policy issued on 10 March 2026 covers Department of Justice corporate criminal matters, except offences under Title 15, sections 1 to 38, of the United States Code. In principle it provides for a declination where a company voluntarily discloses to the appropriate component conduct previously unknown to the Department, has no pre-existing obligation to report it, cooperates fully, including in relation to the individuals involved whatever their seniority, and takes timely remedial action. Aggravating circumstances leave room for prosecutorial discretion. The declination is public and requires payment of the sums due by way of disgorgement, forfeiture and victim compensation, in a system with more limited judicial oversight. In relation to transnational bribery, Executive Order 14209 of 10 February 2025 instructed the Attorney General to pause the opening of new matters, subject to individual exceptions, and to review existing cases. The guidelines of 9 June 2025 subsequently redirected Foreign Corrupt Practices Act enforcement towards harm to US interests, including harm to US businesses that lose business because a foreign competitor pays bribes: for a non-US group, the exposure shifts but remains. These policies undergo frequent revision. The latest version published by the Department of Justice must be checked at the time of the decision.

All three models have a common premise - cooperation may open the way to a negotiated resolution - but differ on fundamental points. The judge's role differs: substantive in the United Kingdom, significant but concentrated at the approval stage in France, and more limited in the United States. They differ in their treatment of admissions: a CJIP does not entail a finding of guilt, which affects its significance in other jurisdictions and before civil courts. They differ in their treatment of individuals: the French CJIP and the deferred prosecution agreement in England and Wales apply to the organisation, and executives remain personally exposed. In the United States, information about the individuals involved is an important factor in assessing cooperation. The Justice Manual nevertheless makes provision for approved policies, including antitrust leniency, and for extraordinary circumstances in which written approval is required to release an individual from liability. Finally, the systems differ on voluntary self-disclosure: all three expressly recognise its value in published policies, but its actual worth depends on what the authority would have discovered unaided - at that point the choice requires an assessment of the available intelligence as much as of the law. Self-reporting means judging what the authorities already know, what they will learn and what it is worth to be the first to tell them.

Above all, the decision spans jurisdictions. A self-report in one jurisdiction may reach all the others without qualifying as voluntary self-disclosure in each: authorities communicate, agreements are public or become public, and facts disclosed to one authority may support prosecution by another - as step 03 explains, transnational ne bis in idem offers only territorially limited protection. The order of action is therefore decisive: which jurisdictions to approach, in what order, what to disclose, what protections to negotiate for documents produced, and how to maintain a consistent position so that cooperation offered in one

place does not become an admission used elsewhere. Two timetables must nevertheless be distinguished. Voluntary self-disclosure requires speed: the Department of Justice policy of 10 March 2026 requires disclosure within a reasonably prompt time after the facts become known and before an imminent threat of disclosure or investigation, with the company bearing the burden of demonstrating promptness. The policy encourages disclosure even before completion of the internal investigation. Under the pilot programme, a declination remains possible if the company reports before the Department contacts it, as soon as possible and no later than one hundred and twenty days after receiving an internal report also made to the DOJ, subject to the policy's other conditions. The Serious Fraud Office expects prompt disclosure and the National Financial Prosecutor's Office expects disclosure within a reasonable time. Waiting until all the facts have been established may therefore forfeit the benefit sought, and that choice is difficult to reverse. Substantive negotiations, however, require sufficient knowledge of the facts gained through the company's own investigation (steps 06 to 08): a company may report early, but it cannot negotiate a resolution without knowing the ground on which it stands.

What to gather

- **Consolidated internal findings of fact**: scope, individuals, timeline and preliminary quantification
- **A map of the negotiated resolutions** available in each jurisdiction concerned and their published conditions
- **An assessment of what each authority is likely to know** already, and through which channels
- **A matrix of cross-jurisdictional effects**: consequences of disclosure in each jurisdiction for all the others, including civil and employment consequences

What not to do

- **Self-report in the emotional aftermath** of an internal discovery without first assessing the facts and mapping the jurisdictions - yet waiting until the end of the internal investigation may also forfeit the voluntary character of the disclosure
- **Negotiate in one jurisdiction while ignoring the others** - an agreement in one is evidence in another
- **Promise executives that the company's agreement will protect them**: each remains exposed, subject, in the United States, to any individual protection expressly applicable to that person.
- **Hand over internal investigation materials without negotiating** how they will be treated and the limits of any waiver of protection - bearing in mind that the National Financial Prosecutor's Office regards delivery of the report or a detailed account of its contents as an indication of cooperation

Key takeaway

The CJIP, the DPA and US practice offer three distinct **approaches to negotiation** - no finding of guilt and no cover for executives in France, judicial supervision in the United Kingdom, and prosecutorial control in the United States. These differences shape the cooperation strategy.

IO

Coordinate the defences of the company and its executives

Timing: **ongoing - from the first measure** · Objective: interests diverge sooner than many expect, and an unmanaged divergence undermines both defences

In a transnational investigation, the company and its executives almost invariably start from the belief that their interests coincide: the same facts, the same opponent and the same account. That belief lasts until the first real choice - which comes quickly. The company has an interest in cooperating, attributing the conduct to a small number of individuals and showing that its procedures were circumvented. The executive has an interest in showing that the organisation knew, that the practices were systemic and that nothing was done without approval. Mechanisms of negotiated justice sharpen this divergence by design: the legal entity can secure a resolution - the public interest judicial agreement is available only to legal entities - while individuals

remain exposed. In US practice, the value of the company's cooperation is measured precisely by what it discloses about individuals. The conflict of interests is therefore an inherent feature of the case that requires active management from the outset.

Three principles govern the arrangements. First, separate representation: as soon as an individual can be identified as at risk, they should have counsel of their own, separate from company counsel - in France, a lawyer may not represent conflicting interests and, where there is a serious risk of conflict, joint representation requires the parties' consent (Article 4.1 of the National Rules of Professional Conduct for Lawyers). In internal investigation interviews, employees are expressly reminded that the company's lawyer does not represent them (step 07). Funding for executives' defence - payment by the company, directors' and officers' liability insurance or repayable advances - should be settled early by agreement, since the question becomes contentious at precisely the point when funding is needed. Second, coordination: separately represented parties may coordinate their defences - through joint defence agreements where the jurisdictions permit them, carefully controlled information sharing and an agreed timetable - for as long as their interests remain compatible. Counsel should organise that coordination, document it in the form required in the jurisdiction and review it whenever the case changes. In France, where the legal representative is personally prosecuted for the same or related acts, they may apply to the president of the judicial court for the appointment of a judicial representative to act for the legal entity (Article 706-43 of the Code of Criminal Procedure), a precaution to consider as soon as interests diverge. Only the legal representative facing prosecution may make that application. Subject to the law and the articles of association, the competent governing bodies may require that representative to apply, revoke their authority to represent the entity, appoint another representative or delegate that authority (Decision No. 2020-865 QPC of 19 November 2020). Third, anticipation: the points at which interests may break apart are foreseeable - a decision to cooperate, disclosure of internal investigation findings, negotiation of an agreement or the placing of an executive under formal investigation. Prepare for each: who will know what, who will speak to whom and how the parties can maintain consistency in their public positions without engaging in unlawful collusion.

The most delicate case is that of the executive summoned as a witness. Authorities are under no obligation to reveal their strategy, and interviewing someone "as a witness" when their exposure is foreseeable is a routine investigative technique. Statements obtained without counsel, preparation or awareness of the risk shape the subsequent proceedings. Under French law, by contrast, a voluntary interview is governed by the rules applicable to suspects: the interviewee must be informed of the suspected offence, the right to remain silent and, for offences punishable by imprisonment, the right to legal assistance (Article 61-1 of the Code of Criminal Procedure) - rights it is for the interviewee to exercise. The prudent rule is simple: anyone whose position in the organisation makes them liable to be implicated should prepare as though they already were - reconstruct the facts with their own counsel, review their documents and understand their precise procedural status and the rights attached to it in the jurisdiction concerned.

ILLUSTRATIVE CASE · A CHANGE IN PROCEDURAL STATUS

An executive summoned as a witness becomes a *suspect*

An anonymised scenario drawn from the publicly documented practice of prosecuting authorities.

Profile

The chief financial officer of a group under investigation for payments to foreign intermediaries is summoned "to help investigators understand how payments are organised".

Mechanism

A lengthy interview without counsel traces the chain of approvals. Questions become increasingly specific about the executive's own sign-offs. A second summons follows a few weeks later, this time under a procedural status permitting coercive measures.

Analysis

Witness status does not carry the safeguards available to a suspect, and the initial statements - precise, technical and confidently given - are already on the record. The boundary between the two statuses is permeable and when it is crossed depends on the evidence the authority has gathered. An unlawful interview may be challenged, and the overall fairness of the proceedings is assessed under Article 6 of the European Convention on Human Rights. Under French law, interviewing as a witness a person whom there were already plausible grounds to suspect (Article 62 of the Code of Criminal Procedure), or against whom, before an investigating judge, there was serious and corroborating evidence (Article 105), breaches those provisions. The interview may be challenged by an application for annulment within the time limits in Article 173-1 or, in the absence of a judicial investigation, by a plea of nullity raised before any defence on the merits and filed by written submissions at the registry three days before the scheduled hearing, on pain of inadmissibility subject to the exceptions in Article 385. Although no information derived from annulled measures may be used against the parties (Article 174 of the Code of Criminal Procedure), annulment cannot erase what investigators have learned.

Model answer

Retain separate personal counsel from the first summons to prepare for the interview and, where procedural status and jurisdiction permit, to assist at it. Prepare fully as though the executive were already implicated. Review their own documents and email accounts before the interview. Coordinate with the company's defence under a documented agreement. Clarify early how the executive's defence will be funded.

> *Common mistake*
> Waiting until a conflict of interests has materialised before arranging separate representation. By then, joint counsel holds confidences from both parties, separation disrupts the proceedings and the authority will draw its own conclusions from the timing: a defence team that separates late has **shared information for too long.**

II

Manage the aftermath: safeguards, monitoring, recovery and reputation

Timing: ongoing, until the last proceedings have ended · Objective: recognise that an agreement or judgment opens the implementation phase - the case continues

A transnational investigation comes to an end one set of proceedings at a time, and each resolution has consequences of its own. The first are procedural. Safeguards invoked during the investigation - the lawfulness of seizures, respect for legal professional privilege, fairness in obtaining evidence and fairness under Article 6 of the European Convention on Human Rights - must be asserted within narrow procedural windows. In France, a person placed under formal investigation must raise grounds for annulment of measures taken in the judicial investigation within four months of being notified of that status - or of receiving the first copy of the documents in the case file if they requested it within seven clear days of being placed under formal investigation. The same conditions apply to assisted witnesses and civil parties from their first and then their subsequent interviews. For measures taken after the examination on first appearance, the four-month period runs from the date of each subsequent examination or from notification of the measures in accordance with the Code. An application made out of time is inadmissible unless the person could not have known the ground of challenge (Article 173-1 of the Code of Criminal Procedure, as amended by Law No. 2026-651 of 23 July 2026, which took effect on 23 October 2026. The previous period was six months). The Law applies the new time limit to applications made on or after 23 October 2026 (Article 12(V) of the Law). The relevant date is that of the application. A person placed under formal investigation before that date whose former six-month period was still running is therefore subject to the four-month period when applying, and risks inadmissibility if it has expired. They should act without delay and, if the four months have already expired, argue that the period already running continues to apply to them or, at the very least, that the shorter period could only have started when the Law took effect. No Court of Cassation decision identified as at 29 October 2026 had resolved that question. Before the criminal trial court, pleas of nullity must be raised before any defence on the merits and, except in proceedings under Articles 395 to 397, filed by written submissions at the registry three days before the scheduled hearing, on pain of inadmissibility, unless the party could not have known of the grounds of nullity or was served with a summons or notice to appear less than twenty days before the hearing (Article 385 of the same Code). Where a case is referred for trial by order of the investigating judge, the trial court can no longer declare earlier procedural measures invalid, subject to statutory exceptions including non-compliance with Article 175 or a ground the party could not have known

before the investigation closed. Challenges must therefore be dealt with during the judicial investigation. Dispatch of the notice of completion of the investigation opens a period of one month if a person under formal investigation is in detention, or three months in other cases. Applications for annulment may still be made during that period, but only if they are not already inadmissible under Articles 82-3 and 173-1. The remedy ceases to be available when the period expires (Article 175 of the same Code). References to the Code of Criminal Procedure use the numbering in force on 29 October 2026. A recodification of the Code applies from 1 January 2029 (Ordinance No. 2025-1091 of 19 November 2025). Evidence obtained through irregular channels of mutual legal assistance must be challenged within the same periods - before the investigating court within the time limits under Article 173-1 of the Code of Criminal Procedure or, where the matter goes directly to the trial court, before any defence on the merits and, except in proceedings under Articles 395 to 397, by written submissions lodged at the registry three days before the scheduled hearing, on pain of inadmissibility, unless the party could not have known of the grounds of nullity or was served with a summons or notice to appear less than twenty days before the hearing (Article 385 of the same Code) - without waiting until the evidence is used. A person whose premises have been searched and against whom no proceedings have been brought before an investigating or trial court has the remedy provided for in Article 802-2. It may be exercised no earlier than six months after the measure and within one year of learning of it, by declaration at the registry of the court where the proceedings took place or, failing that, of the court for the place where the measure was carried out. It does not suspend the police or judicial investigation. An appeal against the order of the judge of liberties and detention may be lodged within ten days of notification. Ne bis in idem must be raised in each new jurisdiction in which proceedings are opened, subject to the territorial limits described in step 03. This is where the records made in the first hours - inventories, independent internal records and reservations - prove their worth: when deadlines are measured in months and sometimes hours, an effective challenge depends on what was recorded at the time.

The second set of consequences concerns agreements: a negotiated agreement must be implemented, and implementation carries risks of its own. A compliance programme imposed under a public interest judicial agreement is carried out under the supervision of the French Anti-Corruption Agency. Foreign agreements may provide for monitoring - an independent monitor within the company, periodic reporting obligations and final certification - although, in a memorandum of 12 May 2025, the Criminal Division of the Department of Justice made the appointment of a monitor subject to a more exacting assessment of necessity and cost. This period requires dedicated oversight. The monitor exercises supervisory functions and reports findings to the authority. Breaches of the agreement may lead to its termination and the resumption of prosecution. Information produced for monitoring purposes circulates - its protection must be planned as rigorously as at step 04. The financial consequences unfold in parallel: enforcement of financial penalties, coordination of fines between jurisdictions where authorities agree to give credit for amounts already paid, freezing and confiscation, and, where the company is a victim - misconduct by executives, misappropriation or third-party fraud - asset recovery through civil and criminal channels, including international cooperation

on confiscation and restitution under the United Nations conventions against organised crime and against corruption.

The third set of consequences arises outside the courts and often determines whether the business survives the case. Banks and insurers follow investigations: public allegations damage compliance ratings, trigger relationship reviews and sometimes lead to termination - each unchallenged termination becomes a precedent for the next institution to invoke. Private compliance databases and the press retain everything. Applicable data protection law provides means to secure updates and put information in context, which require systematic work. Communications must also be coordinated with legal strategy: every public statement is potential evidence, and silence at the wrong time can appear to be an admission. Maintain a single factual account over time, managed by one point of contact. Employment consequences - disciplinary proceedings, employment tribunal claims by employees implicated or dismissed, and information for employee representative bodies - and corporate consequences - shareholder actions and directors' and officers' liability - complete a picture the defence must have mapped before concluding any agreement. A poorly framed criminal settlement may supply the basis for subsequent civil litigation.

> *Key point*
> A negotiated agreement puts a **regime** in place. Compliance obligations, monitoring, reports and certification - the post-agreement period is a procedure in its own right, and failure reopens what the agreement had closed. Responsibility for implementation must be settled before signature.

12

Apply the lessons: turn the investigation into a demonstrably effective compliance framework

Timing: as soon as the crisis has passed - and again once there has been time for reflection · Objective: ensure the same organisation cannot give rise to the same case twice

Organisations exhausted by years of proceedings are most tempted to skip the final step: putting their experience to lasting use. Going through a transnational investigation amounts to an involuntary audit of a depth no voluntary review achieves. It reveals where controls failed, which subsidiaries escaped head-office oversight, which flows of legal information were unprotected, which data could not be found and which

immediate responses were missing. Applying those lessons means systematically translating each finding into a practical measure - and documenting it so that a future authority can verify that the change is genuine.

The first task is to build a compliance framework in the full sense: update the risk map using the actual facts of the case, establish procedures for checking third parties and sensitive transactions, provide an internal reporting mechanism that people use and that protects them, target training at exposed functions, and give those responsible for compliance adequate resources and access to the board. For companies subject to them, these measures fall within the French framework established by the Sapin II Law and the published standards of the French Anti-Corruption Agency. For international groups, they also address the documented expectations of foreign authorities assessing compliance programmes when deciding whether to prosecute. The evidence lies in the records: dated decisions, budgets, effectiveness tests, monitoring indicators and remediation of identified weaknesses - in the eyes of an authority, a programme that leaves no evidence of how it operates exists only on paper.

The second task is to preserve the institutional memory of the case: maintain a structured, protected archive of the timeline, formal measures, seizure inventories, positions taken and reasons for them. Preserve the chains of custody established. Incorporate the procedural lessons - which responses worked and which were missing - into updated response protocols: a search response plan, a procedure for issuing legal holds, a crisis contact directory, a protocol for creating privileged documents (step 04) and a governance model for internal investigations (step 06). The third task is forward-looking: monitor legal developments that alter exposure - as at 21 November 2026, the growing role of the European Public Prosecutor's Office, implementation of the e-evidence regime applicable since 18 August 2026, preparations for the regime on advice from in-house counsel to take effect on 1 January 2027 under the Decree of 17 November 2026, revisions to US corporate prosecution policies and developments in negotiated justice in relevant jurisdictions - and periodically reassess the jurisdictions posing a risk. The crisis has shown the organisation where it was vulnerable. The one irretrievable strategic error would be to forget.

> *Key takeaway*
> A compliance framework developed after a crisis derives its value from **traceability**: dated decisions, documented tests and evidence that weaknesses were corrected. In the next case, that record will change the company's negotiating position in a way a binder of procedures alone cannot.

TWELVE MISTAKES TO AVOID

Mistakes that *compromise the defence*

Transnational investigation cases are rarely lost on a point of law. They are lost through errors in the sequence of decisions, in statements or in the handling of evidence, most of them made in the first few weeks. The mistakes listed here are the most costly ones to emerge from the publicly documented practice in this field.

01 Making statements on the substance - to an authority, to the press or internally - before assessing the case as a whole, without prejudice to obligations to attend and give evidence attaching to each procedural status. Initial statements shape the account for the duration of the case and circulate between jurisdictions.

02 Treating each jurisdiction in isolation, with uncoordinated counsel and divergent positions. Inconsistencies between proceedings are the first thing authorities look for when comparing accounts.

03 Delaying or restricting the legal hold. Destruction of data after the first investigative measure, even if routine and inadvertent, may be interpreted as obstruction and come at a very high price in negotiations, even though the offence under Article 434-4 of the Criminal Code requires an intention to prevent the truth from being established.

04 Assuming that legal professional privilege in the home jurisdiction protects documents everywhere. Each jurisdiction applies its own rules, and a document created under protection in one may be seized in another.

05 Responding directly to a foreign authority outside mutual legal assistance channels without examining the blocking statute, the GDPR and applicable privileges. Unlawful transmission creates exposure without even securing the resolution sought.

06 Opening an internal investigation without oversight, a written scope or direction by independent counsel - only to discover that its findings, once seized or demanded, form part of the prosecution's case.

07 Conducting internal interviews without warnings or procedural fairness. A challenge can undermine the interview itself and the credibility of the entire investigation.

08 Collecting data without a method - no chain of custody, no minimisation, ad hoc transfers outside the Union. Poorly collected evidence is open to challenge and creates further litigation.

09 Self-reporting in one jurisdiction without mapping the others. Voluntary self-disclosure is imprudent unless it forms part of a cross-jurisdictional strategy: facts disclosed to one authority may reach them all without qualifying as voluntary self-disclosure to each.

10 Allowing the same counsel to defend the company and its executives until a conflict has materialised. Separating representation late may oblige counsel to withdraw and alert the authority to the divergence of interests. French legal professional privilege continues to cover confidences already received.

11 Negotiating an agreement without assessing its civil, employment, banking and foreign consequences. A poorly framed criminal settlement becomes the basis for subsequent litigation.

12 Emerging from the crisis without applying its lessons: no institutional record of the case, no revised protocols and no demonstrably effective compliance framework. An organisation that fails to learn from one case lays the groundwork for the next.

What to expect from an initial discussion with Hennebel Avocats

The initial discussion with the firm is confidential and entails a commitment only to assessing the situation. It takes place by encrypted videoconference, over a secure channel (Signal, Threema) or in person, depending on the circumstances. Legal professional privilege applies regardless of what follows, subject to the limits of that privilege in the jurisdictions concerned (step 04).

The discussion covers three areas: the precise nature of the measures and proceedings under way - authorities involved, jurisdictions, stage and procedural status of each person concerned - the timeline of the case and its early indications - formal documents received, searches, interviews, banking incidents and direct approaches by foreign authorities - and the preliminary legal strategy: safeguards to preserve, applicable privileges, whether to conduct an internal investigation and on what terms, and cooperation options and their sequencing across jurisdictions. Following the initial discussion, the firm may provide, on terms agreed in advance, a written assessment setting out the defence options, their recommended sequence and the scope of a possible engagement.

Urgent situations - an ongoing search, police custody, an imminent interview under summons, an asset freeze or a cooperation request with a short deadline - receive priority (Crisis Room · Praesidium). In such cases, the firm can coordinate with local counsel the legal response in the jurisdictions concerned, measures to secure data and communications, and approaches to the relevant authorities and institutions.

ANNEX - TABLE OF AUTHORITIES CITED

Instruments and decisions cited in this guide

The principal authorities relied on throughout the twelve steps, with their subject matter and practical implications for transnational enquiries and investigations. Other legislation and public documents used are listed under Main sources.

REFERENCE	SUBJECT	PRACTICAL TAKEAWAY
ECMA 1959	European Convention on Mutual Assistance in Criminal Matters	Treaty basis for mutual legal assistance within the Council of Europe: conditions, grounds for refusal and a procedure for scrutiny of requests. Within the Union, the European Investigation Order (Directive 2014/41/EU of 3 April 2014) governs most investigative measures and requires observance of the formalities indicated by the issuing authority unless they are contrary to the fundamental principles of the executing State (Article 9(2)).
Budapest 2001	Convention on Cybercrime	Framework for expedited preservation and disclosure of computer data. A reference instrument for cooperation on digital evidence. Second Additional Protocol (2022) concerning electronic evidence: the Council of Europe had reported four ratifications as at 15 April 2026, with no announcement of entry into force. Check the status with the Treaty Office.

EU 2023/1543 · 2023/1544	"E-evidence" Regulation and Directive - European Production Orders and European Preservation Orders for electronic evidence	Direct access to data held by service providers in the Union, outside conventional inter-State channels. The Regulation has applied since 18 August 2026. The Directive was due to be transposed by 18 February 2026 (check the status of transposition in each Member State). Verify the applicable regime for each measure.
Framework Decision 2002/584/JHA	Framework Decision on the European arrest warrant	Rules governing surrender between Member States and the checks that may be invoked. Relevant to the freedom of movement of an executive at risk.
EU 2017/1939	Regulation establishing the European Public Prosecutor's Office	Integrated prosecuting authority for offences affecting the Union's financial interests, operational since 1 June 2021. It conducts investigations under a single direction in participating Member States only.
Law 68-678 (1968)	French Law of 26 July 1968, as amended, known as the "blocking statute"	Subject to applicable treaties, requesting, seeking or communicating economic information for the purpose of gathering evidence for foreign proceedings is prohibited and attracts criminal penalties. SISSE must be informed without delay (Decree No. 2022-207 of 18 February 2022). The statute directs requests through the proper channels.

Article 41-1-2, Code of Criminal Procedure	Public interest judicial agreement introduced by Law No. 2016-1691 of 9 December 2016, known as "Sapin II". National Financial Prosecutor's Office guidelines of 16 January 2023	French negotiated justice for legal entities: an agreement without an admission of guilt, judicial approval, a fine capped at 30% of average annual turnover calculated on the basis of the last three known annual turnover figures, and a compliance programme supervised by the AFA. Voluntary self-disclosure is expected within a reasonable time, and providing the internal investigation report or a detailed account of its contents counts towards cooperation. Legal representatives remain personally exposed. If prosecuted for the same acts, they may request that a judicial representative act for the legal entity (Article 706-43 of the Code of Criminal Procedure and Decision No. 2020-865 QPC).

Law 2021-1729	Law of 22 December 2021 on confidence in the justice system	Strengthens legal professional privilege in criminal proceedings and regulates searches and seizures involving protected documents. For investigative measures, including those ordered in a judicial investigation, concerning the exhaustive list of offences in Article 56-1-2 of the Code of Criminal Procedure, privilege attaching to legal advice may be set aside only where the materials establish that they were used to commit or facilitate those offences. According to the Criminal Chamber, protection also requires a connection with the exercise of the rights of the defence. An appeal with suspensive effect may be brought within twenty-four hours against the ruling of the judge of liberties and detention (Articles 56-1 and 56-1-1 of the Code of Criminal Procedure).

Law 2026-651	Law No. 2026-651 of 23 July 2026 on criminal justice and respect for victims - time limits for annulment (Articles 173-1 and 385 of the Code of Criminal Procedure)	A four-month period (previously six) applies to applications by a person under formal investigation, an assisted witness or a civil party to annul measures taken in a judicial investigation, for applications made on or after 23 October 2026 (Article 12(V)). Written submissions raising grounds of nullity must be lodged at the registry three days before the scheduled criminal trial hearing, on pain of inadmissibility, except in proceedings under Articles 395 to 397 or where the ground could not have been known or a summons or notice to appear was served less than twenty days before the hearing. The period under Article 175 of the Code of Criminal Procedure after notice of completion of the judicial investigation (one month if a person under formal investigation is in detention, otherwise three months) does not revive applications already time-barred under Articles 82-3 and 173-1. References use the numbering of the Code of Criminal Procedure in force on 29 October 2026. Recodification applies from 1 January 2029.

CJEU C-550/07 P (14 September 2010)	Akzo Nobel Chemicals and Akcros Chemicals v. Commission - confidentiality of communications with in-house counsel	Under EU competition law, protection is confined to exchanges with independent lawyers, a significant distinction when assessing privilege across jurisdictions. In France, Law No. 2026-122 of 23 February 2026 (Decision No. 2026-900 DC) establishes confidentiality for advice from in-house counsel. It excludes criminal and tax matters and cannot be asserted against EU authorities. Decree No. 2026-1054 of 17 November 2026 sets 1 January 2027 as the date when the confidentiality regime takes effect. Its preparatory provisions on ethics and training have applied since 19 November 2026.
Upjohn Co. v. United States, 449 U.S. 383 (1981)	Supreme Court of the United States - privilege and internal investigations	Protects communications made in an internal investigation directed by lawyers for the purpose of advising the company. The decision underpins the warnings given to employees during interviews.

FCPA 1977	Foreign Corrupt Practices Act (United States)	Criminalises transnational bribery with extraterritorial reach. Historically a driver of major investigations across jurisdictions. Executive Order 14209 of 10 February 2025 temporarily suspended the opening of new Department of Justice investigations or enforcement actions under the Act, subject to individual exceptions authorised by the Attorney General, and required review of existing cases, before the change of direction on 9 June 2025. On 10 March 2026, the Department of Justice extended its "corporate enforcement" policy to all its criminal components, except for offences under Title 15, sections 1 to 38, of the United States Code, including those outside the antitrust leniency programme. The memorandum of 12 May 2025 restricted the use of monitors (position as at 29 October 2026, to be checked against the latest published version).
Bribery Act 2010	UK legislation on bribery	Broad offences, including failure to prevent bribery. A basis for UK prosecutions and negotiated agreements, supplemented by the failure to prevent fraud offence under the Economic Crime and Corporate Transparency Act 2023, in force since 1 September 2025.

Crime and Courts Act 2013	Introduction of the deferred prosecution agreement in the United Kingdom	In England and Wales, proceedings for eligible offences are suspended subject to conditions (Schedule 17), with substantive judicial scrutiny of the interests of justice and the fairness of the terms. The Serious Fraud Office guidelines of 24 April 2025 provide for an invitation to negotiate an agreement, save in exceptional circumstances, where the company promptly self-reports and cooperates fully.
GDPR 2016/679	General Data Protection Regulation - in particular minimisation, data relating to offences (Article 10), transfers and Article 48	Governs processing in internal investigations, including the restrictive rules on data relating to offences (Article 10), implemented in France by the Data Protection Act. Under Article 48, absent an international agreement, a decision of an authority of a third State requiring a transfer cannot of itself have effect. Other grounds under Chapter V remain available, including the narrowly construed derogations under Article 49 (EDPB Guidelines 02/2024).
Article L. 1332-4, Labour Code	Labour Code - limitation period for disciplinary action	Disciplinary proceedings must be instituted within two months of the employer learning of the facts, unless criminal proceedings are instituted within that period. An internal investigation postpones the starting point only if necessary to establish the reality and extent of the facts.

ECHR Articles 6 and 8	European Convention on Human Rights - fair trial, private life and correspondence	Core safeguards that may be invoked during coercive measures. Limited scrutiny of foreign proceedings supported by mutual legal assistance. Under French law, these safeguards depend on procedural status (Articles 61-1, 62, 63-3-1, 105, 109 and 113-1 et seq. of the Code of Criminal Procedure, Article 434-15-1 of the Criminal Code, and Court of Cassation, Criminal Chamber, 23 May 2024, No. 23-85.888) and are subject to time bars (Articles 173-1 and 385 of the Code of Criminal Procedure, as amended by Law No. 2026-651 of 23 July 2026, effective on 23 October 2026, with the four-month period in Article 173-1 applying to applications made on or after that date. Article 175 of the Code provides one or three months following notice of completion of the judicial investigation, without reviving challenges already time-barred).

CISA Article 54	Convention implementing the Schengen Agreement - ne bis in idem	Bars fresh proceedings after a final judgment in another Contracting State, subject to conditions and to declarations under Article 55 (acts committed in the territory, essential interests), including that of France, whose applicability and scope must be checked. A declaration based on essential interests was held compatible with Articles 50 and 52(1) of the Charter (CJEU, 23 March 2023, C-365/21). Under French law, Article 113-9 of the Criminal Code (jurisdiction based on nationality under Articles 113-6 and 113-7) and Article 692 of the Code of Criminal Procedure (extraterritorial jurisdiction) provide a narrow qualification which does not apply where the offence is deemed to have been committed in France (Article 113-2).
Charter Article 50	Charter of Fundamental Rights of the European Union - ne bis in idem	Enshrines the principle in EU law. The Court of Justice examines whether the acts are identical and the decisions final. Duplication of proceedings and penalties of a criminal nature is permissible under the conditions in Article 52(1) (CJEU, 20 March 2018, *Menci*, C-524/15).
Berkeley 2020	Berkeley Protocol on Digital Open Source Investigations (UN / UC Berkeley)	Methodological standard for using OSINT as evidence: preservation, verification, traceability and risk minimisation.

Istanbul 2022	Istanbul Protocol, revised version - documentation of torture and ill-treatment	UN standard for the medico-legal documentation of allegations of torture. A reference for international bodies.
Minnesota 2016	Minnesota Protocol on the Investigation of Potentially Unlawful Death	Standard for prompt, effective, independent and transparent investigations. A framework for assessing domestic investigations.

Main sources

This guide draws on the instruments and decisions in the table of authorities above, together with the following public documents used as general sources: the National Financial Prosecutor's Office guidelines of 16 January 2023 on implementing public interest judicial agreements, which build on the joint guidelines of 26 June 2019 issued with the French Anti-Corruption Agency, and the Agency's publications on the assessment of compliance programmes. It also draws on the published policies of the US Department of Justice on corporate prosecutions and credit for cooperation, the Serious Fraud Office guidelines of 24 April 2025 and the published practice of UK authorities on deferred prosecution agreements, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption for international cooperation and asset recovery, the European framework for whistleblower protection (Directive (EU) 2019/1937 of 23 October 2019), and published guidance from data protection authorities on internal investigations and international transfers. The guide states the law as at 21 November 2026. Regimes whose entry into force or implementation still requires verification - in particular, confidentiality for advice from in-house counsel and the Second Additional Protocol to the Budapest Convention - are identified as such throughout. References to the Code of Criminal Procedure use the numbering in force on 29 October 2026. A recodification of the Code applies from 1 January 2029 (Ordinance No. 2025-1091 of 19 November 2025). The Praxis series does not use footnotes. The analyses in the Pacta series develop the matters covered in this guide and provide full references.

Verification. Law as at 21 November 2026. References checked on that date against the legislation, instruments and decisions cited.

Keywords

transnational criminal investigation · international investigations · search · legal hold · legal professional privilege · Akzo Nobel · in-house counsel · mutual legal assistance · e-evidence · blocking statute · extraterritoriality · internal investigation · GDPR · digital evidence · OSINT · fact-finding protocols · CJIP · deferred prosecution agreement · self-reporting · ne bis in idem · executive conflicts of interest · monitorship · compliance · confidentiality of in-house legal advice · SISSE · voluntary self-disclosure · annulment · Hennebel Avocats

Hennebel Avocats

Pr. Ludovic Hennebel

global@hennebel.legal

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