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the French version will prevail over the translation.

**Procedural notice
of 15 December 2023
on the French leniency programme**

I – Background

1. The principle and outlines of the French leniency programme (the “leniency programme”) are set out in IV of Article L. 464-2 of the French Commercial Code (*Code de commerce*), which, as amended by Law 2020-1508 of 3 December 2020, states that:

“Total or partial immunity from fines may be granted to an undertaking or association of undertakings that has, with others, implemented a practice prohibited by the provisions of Article L. 420-1 if said undertaking or association of undertakings helped to establish the reality of the prohibited practice and identify its perpetrators, by providing information not previously known to the Autorité de la concurrence or authority. To this end, the undertaking or association of undertakings may submit the statements made under this procedure in French or another official language of the European Union agreed between itself and the Autorité de la concurrence or authority. If the undertaking or association of undertakings asks the General Rapporteur for a place in the leniency queue in order to receive immunity from fines, such application may be submitted in French or another official language of the European Union agreed between itself and the Autorité de la concurrence or authority. The General Rapporteur informs the representative of the Minister of the Economy of the procedure undertaken by the undertaking. They inform the undertaking in writing, where applicable, of its eligibility for full or partial immunity from the fines incurred and indicate the cooperation conditions defined by the Autorité de la concurrence. When making a decision pursuant to I of this Article, the Autorité de la concurrence may, if such conditions have been met, grant immunity from fines proportionate with the contribution made to establishing the infringement. A decree (décret en Conseil d’Etat) sets out the rules relating to the organisation and application of this procedure.

When full immunity from fines has been granted to an undertaking or association of undertakings in application of the procedure provided for in this IV and when it considers that the facts warrant the application of Article L. 420-6, the Autorité de la concurrence informs the Public Prosecutor and forwards the file to them, mentioning, where applicable, the individuals whom it considers eligible for exemption from penalties.”

2. On 11 April 2006, the *Conseil de la concurrence* (the “*Conseil*”) adopted a procedural notice on the French leniency programme, setting out how it implemented the provisions of the French Commercial Code (*Code de commerce*) in force at that time relating to this procedure.
3. The *Autorité de la concurrence* (the “*Autorité*”) has been a member of the European Competition Network (“ECN”) created by Regulation 1/2003 since 1 May 2004¹. On 29 September 2006, the ECN agreed on a model leniency programme (the “model programme”) prepared by a working group co-chaired by the French and UK competition authorities. One of the aims of this model programme was to ensure that undertakings likely to apply for leniency were not deterred from doing so by discrepancies between the leniency programmes applicable within the ECN and, to this end, to establish common principles for the processing of leniency applications, with which such undertakings could expect any competition

¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJEU L 1 of 4 January 2003, p. 1)

authority that is a member of the ECN to comply. These authorities committed to do everything possible, within the limits of their jurisdiction, to bring their respective leniency programmes into line with the model programme.

4. On 17 April 2007, the *Conseil* adopted a revised version of the 2006 procedural notice, in order to meet the commitment made within the ECN.
5. On 2 March 2009, the *Autorité*, created by Law 2008-776 of 4 August 2008 *on the modernisation of the economy*, adopted a new procedural notice.
6. Following a review of the ECN model leniency programme on 22 November 2012, the *Autorité* published a new version of its procedural notice on 3 April 2015.
7. Directive 2019/1 of 11 December 2018 *to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market*, known as the ECN+ Directive, includes a Chapter VI dedicated to leniency programmes, which are therefore, for the first time, the subject of harmonisation in positive law between Member States. Articles 17 to 22 of the ECN+ Directive were primarily transposed into domestic law by Decree 2021-568 of 10 May 2021 *on the procedure for total or partial immunity from fines provided for in IV of Article L. 464-2 of the French Commercial Code (Code de commerce)*. The leniency procedure used in litigation proceedings before the *Autorité* is now governed primarily by said regulatory text, codified in Articles R. 464-5 *et seq.* of the French Commercial Code (*Code de commerce*).
8. This document repeals and replaces the previous procedural notice in order to take account of the latest legislative and regulatory developments.

II – Objective and area

9. Under the terms of the leniency programme, the *Autorité* may grant full or partial immunity from the fines incurred by an undertaking or association of undertakings (together, an “undertaking”) participating in a cartel if said undertaking helps to establish the existence of the cartel. The practices in question are, in principle, cartels between undertakings to fix prices and production or sales quotas, and to share markets, including during calls for tender, or any other similar anticompetitive behaviour between competitors, in particular concerted practices implemented through players that are vertically related to the perpetrators of the practice (“*hub and spoke*”). All such infringements fall within the scope of Article L. 420-1 of the French Commercial Code (*Code de commerce*) and, where applicable, Article 101 of the Treaty on the Functioning of the European Union (TFUE).
10. The legislator considered that it was in the interests of the French economy, and in particular those of consumers, to give favourable treatment to undertakings that inform the *Autorité* of the existence of illegal agreements and cooperate with the *Autorité* to put an end to them. Such agreements are harmful to national economies: they seriously harm consumer interests, in particular when they lead to an artificial increase in prices or a limitation in supply on the market, and remove the pressure on undertakings to innovate. The benefit to consumers and citizens of ensuring that cartels are more reliably and frequently detected and prohibited is greater than the benefit of imposing fines on all the undertakings that participated in the cartel, in particular those that disclosed the cartel and thus enabled the *Autorité* to identify and fine such practices.
11. To encourage undertakings to cooperate with the *Autorité*, the *Autorité* grants full immunity from the fines incurred in the event of a breach of Article L. 420-1 of the French Commercial Code (*Code de commerce*) and, where applicable, Article 101 of the TFEU to the undertaking that is the first to apply for leniency and to be found by the *Autorité* to meet the conditions set out in III.1 below. In other cases, the *Autorité* may also grant partial immunity from fines to any undertaking that applies for leniency and meets the conditions set out in III.2 below.

12. Lastly, to ensure equal access to the leniency programme for undertakings that have not been inspected and those that have been inspected as part of a dawn raid, the *Autorité* publishes a press release at the end of such raids, except in special circumstances, in accordance with the terms of Article L. 463-6 of the French Commercial Code (*Code de commerce*). This press release, which must be published in strict compliance with the presumption of innocence of the undertakings concerned, does not mention their identity. If, after publication of this press release, the *Autorité* decides that there are no grounds to continue the investigation, it publishes a new press release.

III – Eligibility conditions

III.1 – Full immunity from fines (Type 1 case)

A – Type 1 A cases (Article R. 464-5-1. I, 3°, *a*) of the French Commercial Code [*Code de commerce*])

13. A Type 1 A case is a case where, when the application is received:
 - neither the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (“DGCCRF”) nor the *Autorité* already have in their possession information that they consider sufficient to carry out dawn raids;
 - or such dawn raids or other inspections in the context of criminal proceedings have not already been carried out in relation to the practice in question.
14. In a Type 1 A case, the *Autorité* grants full immunity from fines to the undertaking that is the first to provide information enabling dawn raids to be carried out, for example information allowing for the places, dates and purposes of contacts or meetings between the participants in the alleged cartel to be identified.

B – Type 1 B (Article R. 464-5-1. I, 3°, *b*) of the French Commercial Code [*Code de commerce*])

15. A Type 1 B case is a case where neither the DGCCRF nor the *Autorité* already have in their possession information that the *Autorité* considers sufficient to establish the existence of the practice in question.
16. In a Type 1 B case, the *Autorité* grants full immunity from fines to the undertaking that is the first to provide sufficient information for the *Autorité* to establish the existence of the practice in question, provided that no other undertaking has already met the conditions for obtaining full immunity from fines in a Type 1 A case.

III.2 – Partial immunity from fines (Type 2 case)

17. Undertakings that do not meet the conditions for Type 1 A or 1 B immunity may, however, receive partial immunity from fines under certain conditions.
18. To be eligible for such partial immunity, an undertaking must provide the *Autorité* with information on the existence of the practice in question that represents significant added value relative to the information already known to the *Autorité* or the DGCCRF. The concept of added value refers to the extent to which the information provided enhances, by its very nature and/or its level of detail, the *Autorité*’s ability to establish the existence of the practice. In assessing this added value, the *Autorité* may also take into account the existence, on the date on which the leniency application is submitted, of any judicial investigation into the practices in question, the documents of which may subsequently be sent to the *Autorité* pursuant to Article L. 463-5 of the French Commercial Code (*Code de commerce*).

19. In principle, the *Autorité* considers that:
- written information contemporaneous with the practices in question is of greater value than information established subsequently;
 - information directly related to the facts in question is of greater value than information indirectly related to them; and
 - information that is self-contained is of greater value than information that must be corroborated in the event of a dispute.
20. Partial immunity from fines granted to an undertaking that has provided significant added value cannot, in principle, exceed 50% of the amount of the fine that would have been imposed if said undertaking had not received leniency. To offer greater legal certainty to Type 2 leniency applicants while ensuring that the significant added value of applications is adequately taken into account, fine reduction bands are applied based on the order in which applications arrive:
- first undertaking to provide significant added value: reduction of between 25% and 50%;
 - second undertaking to provide significant added value: reduction of between 15% and 40%;
 - any subsequent undertaking to provide significant added value: maximum reduction of 25%.
21. Furthermore, if the undertaking is the first to provide compelling information that enables the *Autorité* to establish additional facts likely to increase the fines incurred by the participants in the practice in question, compared to the fines that would have been incurred in the absence of such information, the *Autorité* does not take the information into account in setting the amount of the fine imposed on the applicant that provided the information.

IV – Substantive conditions

22. In addition to the eligibility conditions set out above, the following cumulative conditions must be met in all cases to qualify for full or partial immunity from fines:
- (i) the undertaking must end its involvement in the prohibited practice immediately, and at the latest straight after submitting its application, except for what would, in the opinion of the General Rapporteur of the *Autorité*, be reasonably necessary to preserve the integrity of the investigation; such opinion must be recorded in a report;
- (ii) the undertaking must cooperate genuinely, fully, on a continuous basis and expeditiously with the *Autorité* from the submission of its application and throughout the investigation procedure, which means in particular:
- providing the *Autorité* promptly with any additional information concerning the practice in question that may come into its possession or to which it may have access, including in particular a detailed description of the practice and its nature, the nature and use of the products or services in question, the territories likely to be affected by the practice and an estimate of the duration of its implementation,
 - remaining at the disposal of the *Autorité* to respond promptly to any request to help to establish the facts constituting the practice in question,
 - making its current legal representatives and employees available to the *Autorité*, and making reasonable efforts to do the same with its former legal representatives and employees,
 - not destroying, falsifying or concealing information or evidence relating to the practice in question,
 - not disclosing the fact of, or any of the content of, its application before the *Autorité* has communicated its objections to the parties, unless it has the prior consent of the General Rapporteur,

- not calling into question before the *Autorité*, at any time before the end of the procedure, the information that it has disclosed in the course of the procedure, in particular regarding the materiality of the facts that it has denounced or the very existence of the practice itself;
- (iii) when considering making an application to the *Autorité*, the undertaking must not have destroyed or falsified evidence of the practice in question, nor disclosed its intention to make an application or any of the content thereof, except to other competition authorities.
23. Full immunity from fines may not be granted under the leniency programme to an undertaking that has taken steps to coerce other undertakings to participate or continue to participate in the practice in question.

V – Procedure

V.1 – Submission of the leniency application

24. The *Autorité* agrees to have prior and anonymous contact with any potential leniency applicant or their counsel that would like to obtain general information on the implementation of the leniency procedure. The Leniency Officer of the *Autorité* can be contacted for this purpose by telephone (+33 (0).1.55.04.02.00)
25. The undertaking sends its leniency application to the General Rapporteur.
26. The application can be sent:
- by registered post with acknowledgement of receipt to:

Autorité de la concurrence
11, rue de l’Echelle
75001 Paris, France
 - in person at the *Autorité*’s premises at the above address, between 9 a.m. and 7 p.m.;
 - using a secure electronic form, available on the *Autorité*’s website;
 - orally, by contacting the Leniency Officer by telephone (+33 (0)1.55.04.02.00).
27. The application must include the following information as a minimum:
- the name and address of the undertaking;
 - the basis that led to the submission of the application;
 - the names of all the other undertakings or associations of undertakings that participate or participated in the practice in question;
 - the products or services and territories affected;
 - the duration and nature of the practice in question;
 - information on any other application for full or partial immunity from fines submitted in the past or likely to be submitted in the future to any other competition authority in relation to the practice in question.
28. If there are multiple applications, the place of each application in the leniency queue is marked as follows:
- for an application sent by registered letter, by the date and time of the acknowledgement of receipt;
 - for an application submitted in person at the *Autorité*’s premises, by the date and time of the receipt issued on submission;

- for an application sent by secure electronic form, by the date and time of the acknowledgement of receipt of the form;
 - for an application submitted by telephone, by the date and time of the telephone call, documented in a report.
29. If an undertaking submits its leniency application orally, a meeting is arranged with the Leniency Officer. In the event of multiple applications, the meetings are scheduled in chronological order, according to the order in which applications arrived.
If an undertaking submits its application by registered letter, in person at the *Autorité*'s premises or by secure electronic form, it may request a meeting with the Leniency Officer, in particular to obtain information about the practicalities of the leniency procedure.
30. The acknowledgement of receipt of an application sent by registered letter, the receipt issued when the application is submitted in person at the *Autorité*'s premises and the acknowledgement of receipt of an application sent by secure electronic form, are deemed to have been issued by the General Rapporteur.
31. An undertaking wanting to submit a leniency application while dawn raids are underway regarding the practice in question may contact the Leniency Officer orally under the conditions set out in point 27, in order to arrange a meeting to submit its application. The meeting is scheduled for after all such raids have taken place. In the event of multiple applications in the course of dawn raids, the meetings are scheduled in chronological order, according to the order in which applications arrived. The place of each application in the leniency queue is marked under the conditions set out in point 29.

V.2 – Application for a marker

32. An undertaking may request a period of time, during which the place of its application in the leniency queue is maintained, in order to collect information to support its application.
33. The information concerning the practice in question that is required for the *Autorité* to examine the leniency application is therefore submitted by the undertaking either at the same time as it submits its leniency application, or later if it has been granted a period of time for such purpose.
34. The marker may be requested:
- in the registered letter with acknowledgement of receipt;
 - in the application submitted in person at the *Autorité*'s premises;
 - in the secure electronic form; or
 - during the meeting with the Leniency Officer, if the leniency application is made orally.
35. The period granted is, in principle, one month. Any request for an extension must be submitted to the General Rapporteur, who may grant it on a case-by-case basis.

V.3 – Leniency statement

36. Within the period granted, or at the same time as its leniency application, the undertaking submits to the *Autorité* a leniency statement describing in detail the operation of the practice in question, together with all the information that it believes supports its statement. This information may include documents, electronic files, covert or overt recordings, and statements from managers and employees.

37. The leniency statement and the information are collected at the *Autorité*'s premises, or via a secure document exchange platform. They can also be sent by registered letter with acknowledgement of receipt. The submission of the declaration and the information is recorded in a report, together with a reminder of the conditions of the applicant's cooperation with the *Autorité*.
38. Provided that the undertaking has submitted the leniency statement and the information, either within the period granted or at the same time as its leniency application, the submission of the leniency application takes effect:
- for a leniency application sent by registered letter, at the date and time of the acknowledgement of receipt;
 - for an application submitted in person at the *Autorité*'s premises, at the date and time of the receipt issued on submission;
 - for a leniency application sent by secure electronic form, at the date and time of the acknowledgement of receipt of the form;
 - for a leniency application made orally, at the date and time of the meeting with the Leniency Officer, as recorded in the report.

V.4 – Leniency application investigation

39. The Leniency Officer and the rapporteur (case officer) appointed to investigate the leniency application verify, based on the information and evidence submitted by the leniency applicant under the conditions set out above and, where appropriate, based on the clarifications provided, whether the conditions set by the *Autorité* for obtaining conditional full or partial immunity from fines are met, and report thereon to the General Rapporteur.

V.5 – Follow-up given by the General Rapporteur to leniency applications

40. If the General Rapporteur considers that the conditions have been met, they inform the undertaking in writing, as soon as possible, of its eligibility for total or partial immunity from the fines incurred, and reiterate the conditions of its cooperation, as set out in point 22. In particular, reference is made to the applicant's place in the leniency queue, upon which the granting of either full immunity or partial immunity, within a percentage band as set out in point 20 of this notice, is conditional.
41. If the General Rapporteur considers that the conditions have not been met, they inform the undertaking concerned in writing. If the undertaking so requests, all information provided is returned.
42. If the General Rapporteur considers that there are no grounds to open an investigation or to formulate a proposal to commence proceedings *ex officio*, they will inform the undertaking in writing, without ruling on whether the application is eligible for leniency. The General Rapporteur reserves the right to reconsider this position if the legal or factual circumstances change. In such event, the *Autorité* will assess the leniency application under the terms of this notice.
43. If the General Rapporteur considers that the facts revealed are clearly time-barred, they will inform the undertaking concerned in writing. If the undertaking so requests, all information provided is returned.

V.6 – The Board's decision

44. If, when examining the case on the merits, the *Autorité* considers that the undertaking concerned has met the conditions set out in point 22, it may grant full or partial immunity from fines.

45. To determine the level of partial immunity from fines to which the undertaking is entitled, the *Autorité* takes into account the rank of the application, the time at which it was submitted, and the degree of significant added value represented by the information provided by the undertaking.
46. If, when examining the case on the merits, the *Autorité* considers that the undertaking has not met the conditions set out in point 22, it draws the following conclusions:
 - in the case of serious breach, it may withdraw the full or partial immunity from fines;
 - in the case of less serious breach, it may reduce the amount of the immunity from fines that the undertaking could have received.

V.7 – Summary applications

47. Under the summary applications system, undertakings can submit a leniency application to a national competition authority of the ECN containing a limited set of information, if a main application has been submitted to the European Commission in relation to the same practice.

The *Autorité* accepts summary applications under the following conditions:

- the prohibited practice in question covers the territories of more than three EU Member States;
 - the undertaking has applied for immunity or a reduction of fines to the European Commission for the same alleged cartel as that subject to the summary application;
 - the undertaking provides the information listed in point 27 (with the exception of “the basis that led to the submission of the application”), together with an indication of the Member States in which evidence of the practice in question is likely to be found.
48. The summary application must be submitted by registered letter with acknowledgement of receipt, in person at the *Autorité*'s premises between 9 a.m. and 7 p.m., by secure electronic form, or orally by contacting the Leniency Officer by telephone. The place of the application in the leniency queue is marked in accordance with point 28. The application submission is dated in accordance with point 38.
 49. The General Rapporteur or the Leniency Officer confirms to the undertaking concerned, where appropriate, that it is the first to apply for immunity from fines. A summary application is deemed to constitute a leniency application under the conditions of this notice.
 50. Once a summary application has been submitted, the undertaking is still required to provide the *Autorité* with any additional information that it may request. The undertaking is also responsible for informing the *Autorité* of:
 - any new information provided to the European Commission which, before the *Autorité* decides to take action in relation to the case, is likely to significantly alter the summary application, in particular with regard to the nature, scope and duration of the alleged cartel;
 - the rejection of its main leniency application by the European Commission.
 51. Where the European Commission has informed the *Autorité* that it does not intend to pursue the case in whole or in part, the undertaking may supplement its leniency application to the General Rapporteur or the Leniency Officer. In such case, the General Rapporteur may set a maximum time limit for the undertaking to submit its full application, together with the corresponding information.

52. Where the undertaking submits its full application within the time limit, said application is deemed to have been submitted at the same time as the summary application, provided that the latter relates to the same products or services, the same territories and the same duration of the practice in question as the application submitted to the European Commission. The application may have been updated to meet the requirements of the national procedure.
53. To facilitate the processing of a summary application, and in particular any linguistic issues that may arise, the undertaking concerned is advised to contact the Leniency Officer in advance.

VI – General considerations relating to the guarantees provided to leniency applicants

54. Aware of the fact that undertakings cooperating under the leniency programme may want to keep their cooperation confidential, the *Autorité* ensures, within the limits of its obligations under domestic and European law, that the identity of leniency applicants remains confidential throughout the procedure, until the statement of objections is sent to the parties concerned.
55. The *Autorité* also protects the statements made by leniency applicants, within the limits of its obligations under domestic and European law.
56. Competition authorities cooperate closely within the ECN. Rules on the efficient division of work and establishing cooperation mechanisms for the purpose of case allocation and assistance between authorities have been adopted. These rules, which include principles relating to the protection of leniency applicants, were set out by the European Commission in its Notice on Cooperation², with which the *Autorité* has committed to comply. In addition, in accordance with VI of Article L. 462-9-1 of the French Commercial Code (*Code de commerce*), the *Autorité* will only transmit statements made under the leniency procedure to other competition authorities of the ECN, pursuant to Article 12 of Regulation 1/2003, if the undertaking concerned agrees to such transmission or if it has also submitted a leniency application to such other authority concerning the same infringement and, at the time the statement is transmitted, it no longer has the right to obtain the withdrawal of the information provided in support of its application. The decision on the merits refers to the undertaking's cooperation with the *Autorité* during the procedure, in order to explain the reasons for the full or partial immunity from fines granted to the undertaking.
57. Full or partial immunity from fines, granted by the *Autorité* to an undertaking, only protects said undertaking from the civil consequences that may result from its participation in an infringement of Article L. 420-1 of the French Commercial Code (*Code de commerce*) and/or Article 101 of the TFEU under the conditions set out in Title VIII of Book IV of the French Commercial Code (*Code de commerce*), in particular Articles L. 481-11 and L. 483-5.
58. Pursuant to paragraph 2 of Article L. 462-6 of the French Commercial Code (*Code de commerce*), the *Autorité* may refer the case to the Public Prosecutor if it considers that the facts warrant the application of Article L. 420-6 of the said Code, which imposes criminal penalties on “*any individual who fraudulently plays a personal and decisive role in the design, organisation or implementation of practices*” referred to in Article L. 420-1.
59. However, Article L. 420-6-1 of the French Commercial Code (*Code de commerce*) provides that such individuals are exempt from such penalties if the undertaking of which they are directors, managers or employees has received full immunity from fines, and if it is established that they actively cooperated with the *Autorité* and the Public Prosecutor.

² Commission Notice 2004/C 101/03 of 27 April 2004 on cooperation within the Network of Competition Authorities (OJEU C 101 of 27 April 2004, p. 43).

60. In such case, in accordance with paragraph 2 of IV of Article L. 464-2 of the French Commercial Code (*Code de commerce*), when the *Autorité* has granted the undertaking concerned full immunity from fines, it “*informs the Public Prosecutor and forwards the case file to them, mentioning, where appropriate, the individuals whom it considers eligible for exemption from penalties.*”
61. This procedural notice replaces the procedural notice of 3 April 2015. It applies, from the date of its publication on the *Autorité*'s website, to the processing of all leniency applications for which a leniency notice has not yet been adopted.