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The AMF to call for an amendment of the law on obstructing investigations and inspections

Taking into account the decision of the French Conseil Constitutionnel of 28 January 2022, the Autorité des Marchés Financiers (AMF) will propose modifications to the French Monetary and Financial Code in order to end the possibility of dual prosecution for obstructing investigations and inspections.

Ruling on a priority preliminary question of constitutionality raised in the context of an appeal against a decision handed down by the AMF Enforcement Committee, the Conseil Constitutionnel found that a provision of the Monetary and Financial Code, sanctioning obstruction to AMF inspections and investigations, was contrary to the Constitution, in its version applicable at the time of the alleged breach. This text enables the AMF Enforcement Committee to sanction any person who, in the context of an investigation or inspection, refuses to allow access to a document, to provide a copy thereof, to communicate information, to respond to a summons or to give access to professional premises.

In its decision, the Conseil Constitutionnel does not call into question the possibility of sanctioning such facts, and indeed states that *"by introducing a financial penalty that is intended to ensure the effectiveness of the AMF's investigations and inspections, the law is aiming at maintaining economic public order"*. However, it points out that this administrative breach of obstruction and the criminal offence of interfering with an AMF investigation or inspection, provided for in another provision of the Monetary and Financial Code, *"are intended to punish the same facts qualified in an identical manner, by penalties of the same nature, for the purpose of protecting the same social interests"*, which accumulation was not possible.

This decision of the Conseil Constitutionnel was expected, in view of a previous similar decision in the field of competition law, and has no impact on ongoing proceedings for obstruction, in the absence of the prior prosecution of cases of obstruction brought before the judicial authority.

The AMF will propose legislative amendments in order to bring the Monetary and Financial Code in line with the decision of the Conseil Constitutionnel as soon as possible by ending the possibility of dual prosecution for obstructing investigations and inspections.

About the AMF


The AMF is an independent public authority responsible for ensuring that savings invested in financial products are protected and that investors are provided with adequate information. The AMF also supervises the orderly operations of markets. Visit our website <https://www.amf-france.org>. URL = [https://www.amf-france.org/]

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