Newsletter

Insurance

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In this issue

JUDICIAL CONCILIATION

Promoting Amicable Settlement — on Pain of a Fine!

Paris Judicial Court, 4th Chamber, 2nd Section,5 February 2026, No. 24/09128

Background:

Since 1 September 2025, a party that refuses to comply with an injunction to meet with a conciliator or a mediator may be sanctioned by a civil fine of up to €10,000.

New Article 1533 of the French Code of Civil Procedure now provides:

"At any stage of the proceedings, the judge may order the parties, within a time limit set by the judge, to meet with a justice conciliator or a mediator, who will inform them about the purpose and the conduct of conciliation or mediation."

Article 1533-3 further adds:

"The justice conciliator or the mediator shall inform the judge of a party's absence from the meeting. A party who, without legitimate reason, fails to comply with the injunction provided for in the first paragraph of Article 1533 may be ordered to pay a civil fine of up to €10,000."

In a recent case relating to an insurance coverage dispute, the court ordered the parties (including a mutual insurance company) to meet with a mediator for an information session.

While the insurer was represented by its lawyer during the meeting, the claims handler was unable to attend and had apologised to the mediator for their absence.

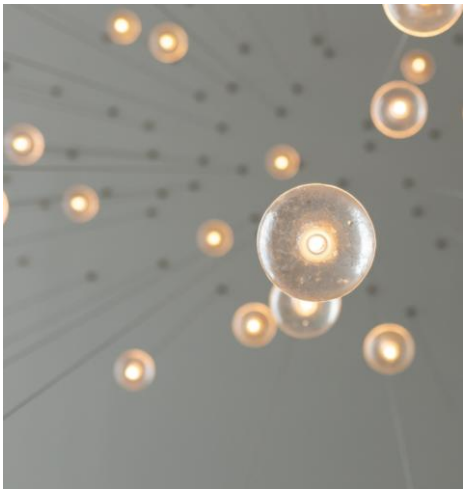
Relying on Article 1533 of the Code of Civil Procedure, the judge in charge of case management invited the insurer to explain the "legitimate reason" justifying the absence from the mediation information meeting.

In response, the insurer stated that this absence resulted from a policy decision aimed at preserving the anonymity of claims handlers and ensuring their safety.

Outcome:

Rejecting this "general position" as justification in the specific case, the judge sanctioned the insurer by ordering it to pay a €3,000 civil fine.

The judge specified that a legitimate reason for failing to comply with such an injunction may include, in particular, "*coercion, violence, illness, or the existence of another mediation process already underway of which the court had not been informed.*"



Scope:

On the one hand, one may question whether the effectiveness of alternative dispute resolution mechanisms should rely on sanctions.

On the other hand, while an information meeting may be useful for non-specialists, the same cannot necessarily be said for insurance claims handlers, who have been well-versed in these mechanisms for many years.

Requiring them to attend such meetings — which are becoming increasingly frequent — appears counterproductive, as it represents a time-consuming obligation that detracts from their core professional responsibilities.

Romain Dupeyré

INSURANCE AND EXCLUSION OF COVER

Disappearance of the fortuitous nature of the risk: the clause that hits the mark

Cass. 2nd Civil Chamber, 12 March 2026, No. 24-14.340, published in the Bulletin

Background:

A company operating a catering business in a block of flats has suffered repeated water damage since 2012.

A court-appointed expert report concluded that there had been a failure to maintain the property attributable to the co-ownership association and the landlord-owners, the latter being aware of the need for waterproofing works.

After the operating company was placed in administration, it sued its insurer to obtain compensation for its loss of business.

The co-owners' association sought indemnity from its own insurer, which invoked the following exclusion clause based on the absence of ***fortuitous*** risk: ***"non-fortuitous events are excluded: damage where the triggering event is not of a fortuitous nature for the insured***".

In a judgment of 22 February 2024, the Colmar Court of Appeal applied the exclusion clause, holding that the loss was not of a fortuitous nature.

The co-owners' association lodged an appeal with the Court of Cassation, arguing in particular that:

- such an exclusion clause would be void in the absence of intentional or fraudulent misconduct;
- the clause would be neither formal nor limited within the meaning of Article L. 113-1 of the Insurance Code.

Outcome:

In a judgment dismissing the appeal published in the Bulletin, the Court of Cassation upheld the Court of Appeal's ruling, holding that:

"the insurance contract may include a clause excluding cover in the event of the risk ceasing to exist during the term of the contract, without it being necessary for the insured party's conduct, which is contractually excluded, to constitute intentional or fraudulent misconduct; the sole requirement imposed by this provision being that the clause be formal and limited".

Scope:

In this judgment, the Court of Cassation confirms that the disappearance of the fortuitous nature of the risk may, in itself, constitute an independent ground for exclusion of cover, distinct from wilful misconduct or fraud within the meaning of Article L. 113-1 of the Insurance Code.

Once the insured is aware of a defect rendering the loss foreseeable or inevitable, the insurance transaction loses its element of chance, which justifies the contractual exclusion of cover.

This approach is consistent with established case law, supported by the courts of first instance, notably by a judgment of the Versailles Court of Appeal of 29 January 2026, which also applied an exclusion of cover in the presence of known and unrepaired defects, leading to the removal of the element of chance.

It is regrettable that the challenge to the formal and limited nature of the exclusion clause was not raised before the Court of Appeal. This argument, which was not strictly a point of law, was therefore not examined by the Court of Cassation, leaving open the dispute regarding the drafting of this type of clause.

Souleymane Simpara

PROPERTY INSURANCE AND MISREPRESENTATION

After the fire, forfeiture

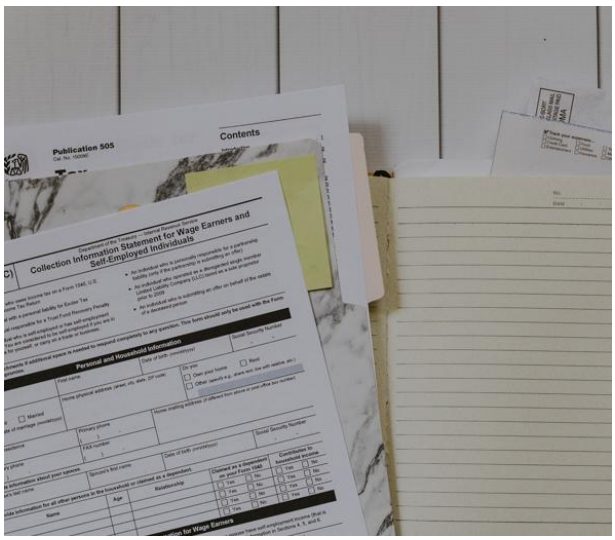
Cass. 2nd Civil Chamber, 12 February 2026, No. 24-18.594, published in the Bulletin

The judgment handed down by the 2nd Civil Chamber of the Court of Cassation on 12 February 2026, published in the Bulletin, sets out its position on clauses for forfeiture of cover invoked by the insurer in the event of a false declaration by the insured regarding the claim.

Background:

In this case, as an insured person's property had been destroyed by fire, their property insurer had paid immediate compensation to settle the claim. Following this payment, the insurer considered that its insured had made false statements regarding the consequences of the claim and therefore invoked a clause for forfeiture of cover provided for in the policy, seeking reimbursement of the compensation already paid.

The Amiens Court of Appeal had, however, dismissed the insurer's claim for reimbursement, and the insurer lodged an appeal on a point of law with the Court of Cassation.



Outcome:

The High Court quashed the appeal judgment, citing Articles 1103 and 1104 of the Civil Code, relating to the binding nature of contracts and contractual good faith, holding that:

"the forfeiture of cover in the event of a false declaration regarding the claim, which the parties are free to stipulate in ***clearly visible terms*** *in an insurance contract and which is incurred by the insured only* ***in so far as the insurer establishes their bad faith, cannot constitute a disproportionate penalty***".

Scope:

The solution thus adopted serves as a highly useful reminder of the consistent position of the Court of Cassation regarding forfeiture clauses penalising fraudulent conduct by the insured in relation to the declaration of the circumstances surrounding the occurrence of the loss or its consequences, viewed through the lens of proportionality.

Indeed, Article L. 112-4 of the Insurance Code stipulates that any forfeiture clause must be set out in clearly visible characters, a point which the Court of Cassation has already had occasion to emphasise (Civ. 2e , 27 March 2014, No. 13-15.835) and reiterates in the judgment under discussion.

Similarly, the Second Civil Chamber had indicated a few years ago that, in the event of the invocation of the forfeiture clause for a false declaration relating to the claim, the insurer was required to prove the bad faith of its insured (Civ. 2nd, 16 September 2021, No. 19-25.278; Civ. 2nd, 5 July 2018, No. 17-20.491) – a principle restated in the aforementioned grounds.

On the basis of these points, the Court of Cassation held in the judgment under consideration that the forfeiture clause does not constitute a disproportionate penalty, thereby following the line taken in a previous ruling (Civ. 2e , 15 December 2022, No. 20-22.836) and which constitutes the most significant contribution of the judgment.

Consequently, the Court of Cassation implicitly emphasises that the forfeiture clause, provided that its formal requirements (clear visibility) and substantive requirements (proof of the insured's bad faith) have been met and established by the insurer, constitutes a formidable contractual penalty in the event of a false statement by the insured regarding the claim, depriving the latter of any compensation or even obliging them to reimburse the compensation paid – without the disproportionate nature of this contractual provision being validly invoked to prevent the application of the said clause.

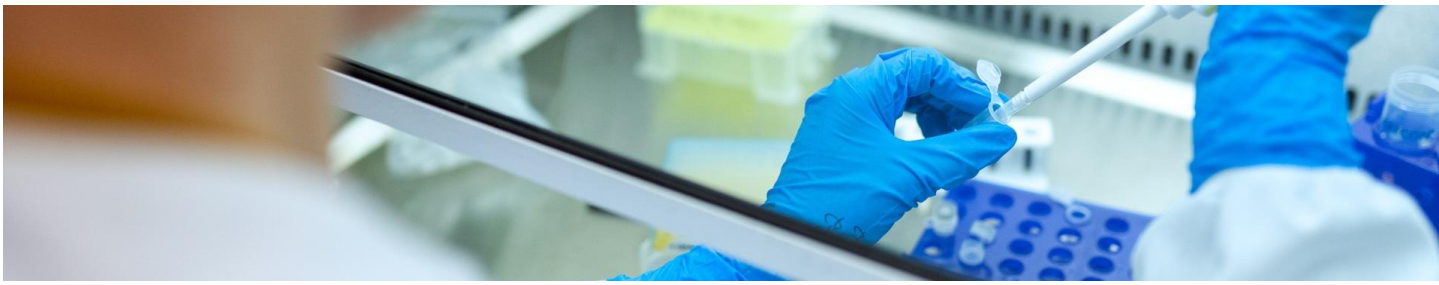
It is therefore, quite simply, as provided for in the articles of the Civil Code referred to in the grounds, a matter of the application of the law of the parties and the performance of contracts in good faith.

Matthieu Lohr

MEDICAL LIABILITY INSURANCE

New Iris, old contract: a serial claim to keep an eye on

Cass. 2nd Civil Chamber, 12 February 2026, No. 24-10.913, published in the Bulletin



The facts:

In this judgment, an ophthalmologist had, from 2008 onwards, implanted intraocular devices known as *'New* Iris', intended to change the colour of his patients' eyes. From 2012 onwards, several of them developed serious ophthalmological complications (glaucoma, inflammation, corneal oedema), leading to a series of claims for compensation.

The first two claims were made whilst an initial professional indemnity insurance policy was in force. This policy included, in particular, a cover exclusion relating to medical procedures performed for purely cosmetic purposes, as well as procedures prohibited by the regulations in force.

Following these claims, the insurer terminated the policy. A new policy, which did not include certain exclusions, subsequently came into force.

In 2015, a third patient, in turn, brought a claim based on the insertion of the same type of implant. The insurer refused cover, arguing that this new claim formed part of a series of claims, which should be linked to the policy in force at the time of the first claim, and was therefore subject to the exclusions it contained.

Having been unsuccessful both on appeal and at first instance, the practitioner unsuccessfully lodged an appeal to the Court of Cassation.

Outcome:

The Court of Cassation dismissed the appeal lodged by the practitioner and upheld the analysis adopted by the Court of Appeal, both regarding the classification of the case as a serial claim and the consequences to be drawn from this in terms of insurance cover.

Pursuant to Article L. 251-2 of the Insurance Code, the High Court noted that, in the context of medical malpractice insurance, a claim constitutes any damage or set of damages resulting from a harmful event or a set of events having the **same technical cause**.

In this case, it notes that the various claims brought by the patients all concerned the same intraocular implant, identified as the cause of serious harm and exhibiting identical design defects. Both the amicable and judicial expert reports had established that these implants, which lacked CE marking and did not comply with regulatory requirements, were harmful and unsuitable for the patients' anatomical variations.

The Court of Cassation thus endorses the lower courts' finding that there was a **single technical cause, notwithstanding the inherently individualised nature of the medical procedure**. It implicitly rejects the appeal's argument based on case law concerning breaches of the duty to inform or advise, holding that the practitioner's liability did not stem from such a personalised obligation, but rather from a technical fault arising from the repeated use of the same defective medical device.

On this basis, the High Court draws the necessary conclusions regarding the temporal scope of the guarantee. It points out that, in the event of a series of claims, the insurance contract in force at the time of the first claim is intended to apply to all subsequent claims arising from the same technical cause. Consequently, the claim made by the third patient had to be linked to the original contract, even though a new contract, with different terms, was in force at the time it was made.

Finally, the Court upheld the application of the **exclusion clause** contained in that first contract, which excluded from cover ***"the consequences of any acts prohibited by the regulations in* force**". It ruled that this exclusion was explicit, as it specifically targeted the prohibition on using uncertified medical devices, and noted that the practitioner had, in full knowledge of the facts, implanted a device lacking the mandatory CE marking. The insurer was therefore justified in refusing cover.

Scope:

The judgment of 12 February 2026 first provides an important clarification of the concept of technical cause in the context of medical malpractice insurance. The Court of Cassation confirms that, where the damage arises from the repeated use of the same defective product, the technical cause may be identified in the intrinsic defect of that product, irrespective of the individualised nature of the medical act. This approach clearly distinguishes cases of technical fault from those based on a breach of the duty to inform or advise, which are excluded from the scope of globalisation.

Finally, the decision is further distinguished by the scope accorded to the effects of the aggregation of claims. This is not limited to determining the reference year or applying a cover limit but also allows all claims in a series to be subject to the exclusions set out in the contract applicable to the first claim. In practice, globalisation thus becomes a tool capable of depriving the insured of all cover, including for claims which, taken in isolation, might have been covered by a subsequent contract.

Juliette Doebeli

CIVIL LIABILITY

Ultra-trail, ultra-demanding: the organiser's duty to provide information on the insurance policies taken out

Cass. 1st Civ., 28 Jan. 2026, No. 24-20.866, published in the Bulletin

Background:

Following an accident during the ***'La Diagonale des* Fous'** ultra-trail race, held annually on Réunion Island, a participant who was seriously injured in a fall sought to hold the organising association liable, claiming a breach of its **duty to provide information regarding insurance**.

The Court of Appeal of Aix-en-Provence had dismissed this claim on the basis of Article L. 321-4 of **the Sports Code**, ruling that the duty to inform participants of the benefits of taking out personal insurance applied only to sports associations and federations in relation to their members. As the participant was not a member of the organising association, no breach could therefore be attributed to the latter.

Outcome:

The Court of Cassation rejected this reasoning. Citing the former Article 1147 of **the Civil Code**, it affirmed that **the organiser of a sporting event is required to inform participants of the existence, scope and effectiveness of the insurance policies it has taken out**. This information must enable them to assess the advisability of taking out additional individual cover for their own personal injury or liability.

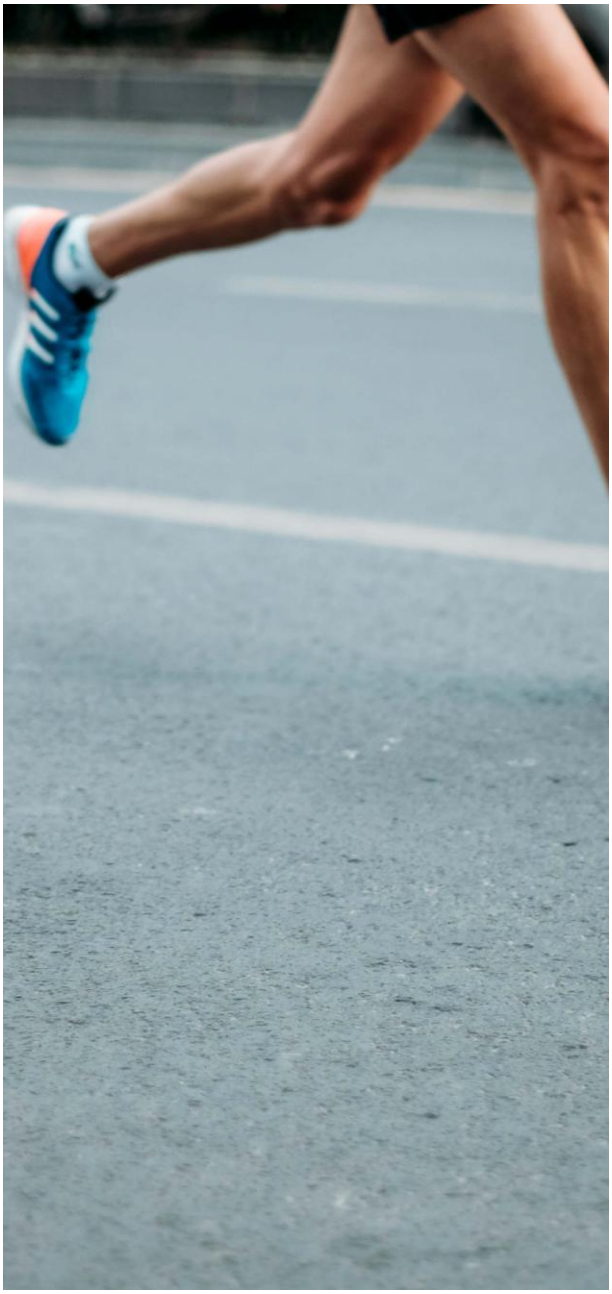
Scope:

The decision thus establishes an **independent duty to inform**, based on the general law of contractual liability, distinct from that provided for by the Sports Code. It applies to all organisers, regardless of their status and the existence of a standard-form contract.

The content of this obligation is **demanding**: a mere mention of the existence of insurance is not sufficient. The organiser must provide precise information on its scope, limits and effectiveness, in order to enable participants to make an informed choice. This approach is consistent with established case law requiring organisers to draw participants' attention to the actual scope of the cover taken out.

The judgment also confirms the cumulative nature of the information obligations. The legal obligation arising from Article L. 321-4 of the Sports Code does not preclude the existence of a more general obligation. In the event of a breach, the organiser may be held liable, in particular for **depriving** the participant of **the opportunity** to take out suitable insurance.

Finally, whilst this ruling forms part of an established line of case law, it is of particular interest in that it confirms and clarifies its scope. The Court of Cassation had in fact already adopted a similar formulation in a judgment of the Commercial Chamber of 25 November 2020 concerning a water sports event, requiring the organiser to inform participants of the insurance cover taken out (Cass. Com., 25 November 2020, No. 19-11.430).



Legal implications

- Establishment of an independent judicial duty of disclosure incumbent on all organisers of sporting events;
- Clarification of the content: information regarding the existence, scope and effectiveness of the cover taken out.

Mathilde Mevel

MARINE INSURANCE

War risks but ordinary conditions for standing to sue

Paris Court of Appeal, Division 5, Chamber 16, 28 October 2025, Case No. 23/02403

Background:

In this case, a **non-ferrous metals trader** sought cover from his insurer under a **"War and Similar Risks" policy** following **the seizure** of **shipments** of copper and aluminium by the judicial authorities of the People's Republic of China as a result of allegations of **fraud** attributable to Chinese warehouse operators operating in two ports, Qingdao and Penglai. The Chinese courts had, subsequently, convicted port officials and employees and directors of local warehousers of document fraud.

The metals trade is typically subject to complex contractual arrangements between buyers, sellers and companies financing these acquisitions. In this case, the trader entered into several contracts for the sale and repurchase of metals, known **as "Sales and Purchase Agreements" or Repos (repurchase agreements)**, with several credit institutions operating on the "London Metal Exchange" (LME). These contracts involve selling a specified quantity of non-ferrous metals to the credit institutions, which are to be held in the premises of Chinese warehouses, with a concurrent undertaking to repurchase these metals at an agreed future date at the sale price plus interest.

Procedure:

Following the seizures, disputes arose between the trader and the credit institutions, which were resolved through settlements.

The Chinese courts, which convicted the perpetrators of the fraud, also ruled that all the seized assets would be sold and the proceeds redistributed to the victims of the fraud, including the trader, who received 15.6% of these sums.

The trader also reached a settlement with his "Ordinary Risks" insurers.

The "War and Similar Risks" insurer denied coverage, citing:

- The trader's lack of standing to claim compensation arising from the transaction entered into with the "Ordinary Risks" insurers;
- The trader's lack of standing to claim compensation due to lack of capacity and interest to bring proceedings, as the credit institutions were the owners of the goods at the time of the incidents;
- The conditions for cover under the policy were not met.

By judgment of 13 October 2022 (Case No. 2020023567), the Paris Commercial Court ruled that the trader had standing to bring the action but dismissed his claim for cover, applying the exclusion of cover for "dispossession or unavailability resulting from seizure or detention by a legal or de facto authority, **following a fraudulent transaction**" (which includes third-party fraud and is not restricted to fraud by the insured).

The question of the trader's standing to claim insurance compensation

The Paris Court of Appeal, in its judgment of 25 October 2025, overturned the judgment of the court of first instance, ruling that the dealer was not entitled to bring proceedings on account of the interests of the credit institutions.

The insurer argued that the disputed metals had been resold by the dealer to the credit institutions in performance of the Repo contracts at the time both the documentary fraud and the seizures occurred, and that **the risks relating to the goods had been transferred to the credit institutions**, so that the latter were the sole creditors of the insurance indemnity and had an interest in claiming payment of the insurance indemnity.

The Court of Appeal held that:

- The credit institutions were insured parties under the disputed insurance policy;
- Furthermore, following an analysis of the repo agreements, that, between the date of the sale of the metals to the credit institutions and the date of their repurchase by the dealer, **only the credit institutions were the owners of the metals, bore the risk of their loss or damage, and had an economic interest in their preservation**. They are therefore the sole beneficiaries of the insurance indemnity for insured losses and damage occurring during that period;
- In the present case, the alleged loss, which is said to have been caused by the seizures of metals carried out by the Chinese judicial authorities in warehouses at Chinese ports, occurred after the conclusion of the sales of metals to the credit institutions and before any repurchase by the dealer took place;
- The credit institutions did not assign their right of action to the trader.

At first instance, the Paris Commercial Court had reached the opposite conclusion by focusing on **the insurable interest** and ruling, in this case, that the seizure and unavailability of the goods caused loss to the trader, due to his firm obligation to repurchase from the credit institutions, an obligation which he fulfilled.

We welcome the fact that the Court of Appeal has restored the essential distinction between insurable interest (the trader did indeed have an interest in insuring the goods, as he was bound by an obligation to insure the goods in favour of the credit institutions under his contracts with them) and the status of creditor to the insurance indemnity.

The existence of an insurable interest does not automatically confer the status of creditor of the insurance indemnity in the event of a claim.

Such a solution is not specific to insurance against "war and similar risks" but is applicable to any claim for payment of insurance compensation.

Arnaud Attias

Reform of the confidentiality of legal opinions by in-house counsels – a French-style privilege

Law No. 2026-122 of 23 February 2026 on the confidentiality of legal opinions by in-house counsels

More than three years after the Constitutional Council struck down Article 49 of Law No. 2023-1059, deemed to be a legislative rider, the confidentiality of legal consultations conducted by in-house lawyers has now been enshrined in law.

Indeed, in a decision dated 18 February 2026 (No. 2026-900 DC), the Constitutional Council validated Article 1 of Law No. 2026-122 of 23 February 2026, which enshrines said confidentiality.

An overview of this new regime, which is shaking up the regulated legal professions.

I. The conditions for confidentiality

The confidentiality thus enshrined requires that certain conditions relating to the consultation to be protected, its author and its recipient be met.

With regard to the legal opinion, **firstly**, and pursuant to section 58-1 of the aforementioned Act, only intellectual (1) and personalised (2) services may be classified as a legal opinion.

Automated services characterised by a particular neutrality will therefore necessarily be excluded.

This involves formulating **an *'opinion or advice based on the application of a rule of law'***.

The absence of either of these characteristics precludes the service from being classified as legal opinion and, *a fortiori,* from benefiting from confidentiality.

It should be noted, however, that whilst the initial version of the text provided for extended protection to *'preparatory documents',* only *'successive* versions' – that is, the finalised versions of the document – are now covered.

Secondly, consultations must be subject to a specific three-step process, as they must:

- include the following full wording: *'confidential – legal consultation – in-house* lawyer',
- expressly identify the author;
- be distinguished from other company documents by means of a *'special filing system*'.

The in-house lawyer must nevertheless be particularly vigilant: such document handling must not be undertaken lightly.

Indeed, a document classified in this way that does not meet the criteria for legal consultation would expose its author to the penalties set out in Article 433-17 of the Criminal Code, namely one year's imprisonment and a fine of €15,000.

Conversely, the legal professional is advised to ensure that all these conditions are met, including the various successive versions, so that none of them falls outside the scope of confidentiality.

As regards the drafter of the consultation, this can only be a corporate lawyer or a member of their team, provided they hold a Master's degree in law or an equivalent qualification.

Not all lawyers are, however, affected. Only those who have undergone **specific training on ethical rules** will be entitled to confidentiality regarding their actions.

Implementing regulations are awaited regarding training in ethical rules, since these must be *"established by a framework defined by a joint order of the Minister of Justice and the Minister responsible for the economy, issued on the proposal of a commission whose composition and operating procedures are laid down by decree*".

As regards the recipient of the consultation, confidentiality will only apply to the consultation if it is addressed to certain recipients listed exhaustively.

Thus, the recipients of a confidential consultation may only be members of the management, administrative or supervisory bodies of:

- The company employing the author;
- The company that controls the author's employer;
- The company controlled by the company employing the drafter.

II. The enforceability of confidentiality

The confidentiality of consultations is enforceable in the context of a dispute between the parties in civil, commercial and certain administrative proceedings. It is, however, **excluded in the context of criminal or tax proceedings**.

Furthermore, whilst confidentiality is presumed, it may be waived, albeit under strictly defined conditions.

Prior to any lifting *in the strict sense*, the question arises as to the seizure of the consultation.

Procedurally, this access is subject to strict rules, as it aims to protect information whose confidentiality could quickly prove indisputable.

This security is ensured by the involvement of a judicial officer (1), who is accompanied by a representative of the company (2) and the applicant (3).

The consultation is handled with particular care, as it is placed under seal at the judicial officer's office whilst its admissibility is examined.

Two options are available to the company benefiting from confidentiality:

- To lift the confidentiality at the time of seizure or subsequently;
- Maintain the objection to disclosure.

In the latter case, the judge may rule on whether to maintain or lift confidentiality, in particular by examining whether the necessary conditions are met.

In civil and commercial matters, the president of the court hearing the application for interim relief has jurisdiction and shall rule within 15 days of the seizure on whether to maintain or lift confidentiality.

In administrative matters, the judge responsible for liberty and detention proceedings has jurisdiction to assess the seizure of a document claimed to be confidential.

Regardless of the court before which the application is made, legal representation is mandatory.

Yasmine Bouchoucha

DWF becomes a member of APREF

DWF is pleased to announce its membership of **APREF** – the Association of Reinsurance Professionals in France, which brings together the main players in the reinsurance market.

This membership is part of DWF's commitment to strengthening its engagement with insurance and reinsurance professionals, and to contributing to the technical and strategic discussions led by APREF.

DWF at Paris Arbitration Week 2026

DWF was honoured to participate in the 10th edition of PAW 2026.

Yolanda Walker (Head of Construction Disputes UK & Ireland) took part in the conference organised by FTI Consulting, dedicated to the theme "Contract Termination: Untangling Quantum in Construction Arbitration".

Yolanda Walker spoke alongside Loïc Valognes, Gabriel Armanet (Construction, Projects & Assets – FTI Consulting), Gabriele Ruscella (Le 16 Law), Lucy Preston (Mantle Law) and Zelda Hunter (White & Case).

The panel of experts discussed termination for contractor default, addressing the rise in major non-conformities, key quantum issues, post-termination claims, and the difficulties associated with calling on performance bonds.

We would like to extend our warmest thanks to FTI Consulting for this excellent opportunity for discussion and knowledge-sharing, as well as to all the participants.

As part of the Arias France conference on the theme "Insurance and Enforceability of Dispute Resolution Clauses", **Arnaud Attias** spoke on the specificities of the enforceability of dispute resolution clauses in insurance matters, alongside Héloïse Meur, Claire Debourg and Irène Leger.

Many thanks to Arias France for their hospitality and the quality of the discussions, as well as to all the participants for their contributions and the richness of the discussions.

Arnaud Attias accredited as an arbitrator on the ARIAS France lists

Arnaud Attias has been accredited as an arbitrator on the ARIAS France lists, a leading centre for arbitration and mediation in the fields of insurance and reinsurance.

This recognition acknowledges his expertise in insurance and arbitration and reinforces DWF's commitment to alternative dispute resolution methods serving the insurance market.

Upcoming event: DWF Insurance Global Week

From 18 to 21 May 2025, DWF will host its now traditional Insurance Week. Representatives from the insurance law teams across our various offices will gather in London to visit our clients and friends and to set out our plans for the coming year:

- The **DWF Claims** teams will be hosting their summer **drinks reception** at Drappers' Hall on Wednesday 20 May 2025 at 5.30 pm
- On 21 May at 10.00 am, the marine and insurance teams will host **DWF's Marine & Global Risks Team Lloyd's pre-match breakfast** aboard the Peggy Jean on the Thames
- DWF will be fielding a team at the **Lloyd's Rugby and Netball Tournament** on 21 May and looks forward to welcoming clients and friends to its stand

Please do let us know if you'd like to attend any of these events!

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