

James Thomas  
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View of Geneva (Credit: commons.wikimedia.org/Ork.ch)

Swiss lawyers have expressed their disappointment at revisions to the country's criminal procedure that will make it harder for prosecutors to offer settlements to foreign

companies.

The Federal Assembly of Switzerland voted to harden the requirements needed to offer settlements to individuals and companies under article 53 of the Swiss Code of Criminal Procedure on 14 December. The amendments will come into effect on 1 July.

Under the amendments, prosecutors will only be able to offer individuals a settlement for offences carrying a one-year prison sentence or less. Prosecutors will also only be able to offer settlements to individuals and companies who "objectively and subjectively declare themselves guilty of the alleged facts" prosecutors put before them.

Before the amendments, prosecutors could offer the settlements to individuals for offences attached to a prison sentence of up to two years. Prosecutors could also offer settlements to individuals and companies so long as they made a reasonable effort to compensate victims or the state for the harm the alleged misconduct has caused, provided there is a minimal public interest in continuing the proceedings.

Lawyers GIR spoke to said they were disappointed in the changes the Swiss parliament has made to article 53.

Clara Poglia at Schellenberg Wittmer in Geneva said that limiting the application of the article will not necessarily have a positive impact on criminal policy.

"The article is an important tool, particularly in the frame of financial crimes," she said. "It enables damage to the victims to be repaired more effectively and often in a relatively shorter period of time compared to standard proceedings."

Article 53 had been under scrutiny since 2017, when the Swiss Committee on Legal Affairs of the National Council [accepted public submissions](#) on whether the provision should be amended, following criticism about the way it was applied.

Lawyers told GIR that public opinion in Switzerland has seen article 53 as a privilege for the wealthy who can buy their way out of trouble.

However, Poglia said that, even though some may consider the provision a potential way to buy your way out of criminal proceedings,

its usefulness could not be disputed, especially as a tool for negotiations.

Andrew Garbarski at Bär & Karrer in Geneva took issue with the new requirement for individuals and companies to “objectively and subjectively declare themselves guilty of the alleged facts”.

He said that while the requirement looked similar to a guilty plea, the exact meaning would need to be clarified by the courts, adding that it will be interesting to see how authorities interpret article 53 in light of the amendment.

Practitioners previously told GIR that article 53 [needed to be changed](#) because it was used as an aggressive tactic by prosecutors to put pressure on companies.

However, Garbarski said that while he understood the backlash against the use of article 53, he said he did not believe the settlement tool has been misused by prosecutors.

“Ultimately, it’s a business call for the prosecutors to make and if the accused is unhappy about settling, they can refuse to accept it – there is no obligation to do so,” he said.

The changes to article 53 will probably affect the Geneva prosecutor’s office, which has been an enthusiastic proponent of the settlement tool, more than any other cantonal prosecutor’s office in the country.

Geneva prosecutors most recently used article 53 to close [a money laundering investigation](#) into the son of Equatorial Guinea’s president, Teodor Nguema Obiang Mangué. The prosecutors there have also used the tool to settle tax evasion allegations [with HSBC in 2015](#) and in 2017 in a [settlement with Chinese oil company Addax](#) to resolve foreign bribery allegations.

The Geneva Public Prosecutor’s Office did not immediately respond to a request for comment. However Yves Bertossa, the head of its complex affairs unit, [reportedly told](#) Swiss newspaper Le Temps that changes to article 53 will not create an “insurmountable obstacle” to prosecutors at his office.

The Swiss Office of the Attorney General, which has [famously shunned](#) article 53 settlements, said in an emailed statement that it had taken note of the changes to the tool but that, for the time being, its practice as described in its [2017 annual report](#) remains unchanged.

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