

Client Alert: Airbus agrees to pay more than £3bn to resolve bribery charges in France, UK and US

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Last week the UK's Serious Fraud Office (SFO) agreed a Deferred Prosecution Agreement (DPA) with Airbus. This is part of a consolidated settlement by Airbus with the authorities in France, the UK and the US.

Airbus will pay a €991m fine in the UK (£840m) which makes it the largest bribery fine in UK history exceeding Rolls-Royce's DPA fine of around £497m in January 2017. You can read more about the Rolls-Royce case here <https://www.corderycompliance.com/client-alert-rolls-royce-case-sends-a-strong-signal/> In addition, Airbus agreed to pay France €2.1bn (£1.78bn) and the US \$527m (£405m).

In addition to paying fines Airbus will enter into three-year agreements to show good behaviour and improve its compliance practices. Court documents show a bribery scheme that reached into multiple countries around the world.

The case is also a first in that, at roughly the same time in their respective time zones, judges in the three countries approved settlements. This was a significant investigation involving the collection of more than 30 million documents. Since 2015 as a result of the investigation, Airbus has parted company with 63 top and senior managers. In addition, Airbus previously settled with authorities in Germany in February 2018 relating to sales in Austria.

What was this about?

Airbus was charged with maintaining an extensive network throughout the world from 2008 to 2015 in which employees and third-party agents bribed foreign officials and others to obtain civilian and military sales. Some of those sales included aircraft that contained defence parts of US origin that were regulated by the US government, giving rise to US arms control charges.

How did this case come about?

As part of its business, Airbus obtained export credit financing from Export Credit Agencies including UK Export Finance (UKEF), a UK government body. In April 2015, UKEF wrote to Airbus regarding UKEF's compliance due diligence procedures and raised some concerns. Subsequently, UKEF said that it felt it appropriate to contact the SFO and it said its strong preference was that Airbus also contact the SFO. As a result both UKEF and Airbus reported this to the SFO on 1 April 2016 and Airbus met with the SFO on 6 April 2016. On 15 July 2016 the SFO opened a criminal investigation and Airbus was told of this on 5 August 2016. This then led to them making a disclosure to the financial markets.

What was the US case about?

The US action came as part of a DPA agreed between Airbus and the US Department of Justice (DOJ).

The US imposed a \$527m penalty, split almost evenly between fines for Foreign Corrupt Practices Act (FCPA) and arms control offences. However, the DOJ will credit Airbus for payments made to France.

The US criminal information said that Airbus executives hired a consultant to bribe Chinese officials in order to obtain and retain aviation business. It said Airbus funnelled money to this consultant through a Hong Kong bank account controlled by other consultants employed by Airbus. The US information also said that Airbus provided Chinese officials with trips to Hawaii as part of the scheme.

What was the UK case about?

The SFO detailed other countries in which Airbus pursued its bribery scheme. "*The SFO's bribery offences in Malaysia, Sri Lanka, Taiwan, Indonesia and Ghana*," said the UK's judgment against Airbus. Airbus engaged in widespread bribery over decades involving employees and agents, the SFO said in documents submitted to the court. It faced five counts of failing to prevent bribery under the UK's Bribery Act 2010 for offences occurring between July 2011 and June 2015.

Ten meetings were held with the SFO whilst further meetings were held with US prosecutors from March 2019 onwards. As many as 40 Airbus employees, agents and intermediaries were interviewed as part of the process.

It is important to remember that this settlement does not cover the case involving a former Airbus unit, GPT Special Project Management, which has been under investigation by the SFO since 2012. It is alleged that this unit paid bribes to secure a deal worth £2bn to upgrade Saudi National Guard communications systems on behalf of the UK's Ministry of Defence. The SFO has confirmed that this is still being investigated separately.

The fact that the charges were brought under the Section 7 Bribery Act 2010 provisions of failure to prevent bribery is significant. This new offence first came into UK law in the 2010 Act and does not bring mandatory debarment unlike the so called hard-core offences in the Act. The court heard of independent reports from accountants which showed that thousands of jobs would be at risk in the UK, US, Germany, France and Spain if Airbus was debarred from having contracts. Evidence was given that that could lower the GDP in each country by over €100bn. There was also concern about the fact that Boeing and Airbus are effectively for many contracts, a duopoly, and removing Airbus from tenders may lead to increased prices for governments.

In addition to the financial penalties, Airbus also agreed to pay the SFO costs of around £5.9m.

The judge was critical of Airbus' compliance procedures saying "*Notwithstanding such policies and that compliance review, as it later emerged, there were serious weaknesses within Airbus' compliance and oversight structure.*"

What was the French case about?

The French authorities took action under France's new Sapin II regime. You can find out about Sapin II here <https://www.corderycompliance.com/france-adopts-new-sapin2-anti-corruption-law/> . Prior to the passing of that law there had been concerns that the majority of prosecutions against large French corporations for bribery were under FCPA by the French authorities. Whilst Airbus' structure is complex involving Dutch and French holding companies, the case would seem to be a significant sign of change in France. The agreement saw Airbus commit to paying French prosecutors €2.1bn in a plea deal known as a Convention Judiciaire d'Intérêt Public (CJIP). Its compliance procedures will also face scrutiny by the French anti-corruption agency for the next three years.

According to the French judgment the French Parquet National Financier investigation related to bribery and corruption offences in China, Colombia, Nepal, South Korea, the United Arab Emirates, Saudi Arabia, Taiwan and Russia. A joint investigation team between the UK and France probed corruption by Airbus in Colombia.

What about the Arms Violations?

Simultaneously, the US State Department, through an administrative agreement, imposed a \$10m fine on Airbus for violations of Part 130 of the International Traffic in Arms Regulation (known as ITAR), which requires disclosure of political contributions, commissions and some other payments.

The US State Department said it would credit \$5m of the fine for the money Airbus spends on remedial measures. The DOJ's DPA said it would credit Airbus \$5m, against the \$527m, for any payments made to the US State Department.

The US DPA said that Airbus violated ITAR rules for sales in China, Ghana, Indonesia and Vietnam.

Is that the end of the story?

Most probably not. The DPA leaves the way open for individuals to be prosecuted. Under UK law this could include both bribe givers and receivers. The track record of prosecuting individuals after a DPA is not great however. No prosecutions were brought in the UK after the Rolls-Royce DPA and individual prosecutions failed in the Guralp Systems case in December. It is likely that the investigations will now continue in other countries and it is common in cases like this for the victims of the bribe scheme, particularly governments, to claim compensation using so-called carbon-copy prosecutions.

In addition, as we have said the GPT investigation will continue.

What types of activity were involved?

It is important to remember that from our experience sophisticated bribery schemes often involve far more than cash payments to officials. Here the bribes included:

1. Sponsorship for a sports team connected with executives of an airline purchasing planes in Malaysia;
2. Payments to a shell company controlled by the wife of an airline official in Sri Lanka;
3. Payments to a notary in Indonesia to buy property for a relative of an airline executive;
4. Coded emails referring to Van Gogh paintings when discussing bribes;
5. Coded emails referring to bribes as prescriptions with exact dosages set out in emails corresponding to bribes paid.

DPAs are here to stay

One of the lessons from this case is that DPAs are here to stay. It's a relatively new process in the UK and in France. In addition to Rolls-Royce we've looked at the DPA system in connection with two other cases ICBC Standard Bank (<http://www.corderycompliance.com/uks-first-dpa/>) and XYZ (<http://www.corderycompliance.com/recent-developments-in-bribery-and-corruption/>). Clearly this case is more significant and shows that, whilst unloved by some, DPAs are here to stay.

Lessons to be learned

The case illustrates a number of points including:

1. Rumours of the death of the UK Bribery Act 2010 were premature – the Act does have teeth and the case shows the SFO's intention to play their role in investigating and prosecuting corrupt conduct. Here, whilst the main HQ operations of Airbus were not in the UK and the payments took place outside of the UK, the UK still played a significant role in the investigation and the prosecution;
2. Companies need to supervise those they do business with properly – this will include their sales channel. We predicted this as a key trend in compliance in 2017 and this case illustrates those concerns. You can find out more in our video here – <http://www.corderycompliance.com/predictions-for-2017-the-rise-of-the-digital-world/>
3. Management is expected to help stamp out corruption too – if they do not there may be personal consequences;
4. Proper policies, procedures and training must be put in place. Here much had been made of the investment Airbus had made in its policies and in an external audit of its policies but that was not good enough. There were conflicts with some individuals in compliance roles which seemed to compromise some of the procedures set down; and
5. Companies must properly investigate bribery promptly – this will enable them to secure some resolution without the need for court proceedings if appropriate. Here Airbus did get some credit for their co-operation even though report was prompted by a Government agency because they acted quickly and thoroughly to get to the bottom of what had gone on.

There are details of Cordery's work in this area here:

<http://www.corderycompliance.com/bribery-corruption/>

and here:

<http://www.corderycompliance.com/internal-investigations/>

You can find more details of the issues with Airbus' compliance procedures and the conflicts involved in the article by Tom Fox here <http://bit.ly/2Ov3avl>

For more information please contact Jonathan Armstrong or André Bywater who are lawyers with Cordery in London where their focus is on compliance issues.

image courtesy of Airbus

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