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Four Years and Almost $4 Billion: Airbus Corruption Investigations End with Sky-High Fine

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In the largest and most closely watched corruption enforcement action in history, multinational aerospace company Airbus Group S.E. has managed to make a costly landing after four turbulent years of investigations. On Friday, January 31, 2020, courts in France, the United Kingdom, and the United States approved analogous versions of a deferred prosecution agreement (DPA) between prosecutors and Airbus that include a combined fine of $3.96 billion for the aircraft manufacturer. The resolution ends multi-year investigations by the French National Financial Prosecutor's Office (Parquet National Financier or PNF), the U.K. Serious Fraud Office (SFO), and the U.S. Department of Justice (DOJ) into the second-largest aerospace company in the world and its considerable baggage. The agreements describe large-scale corruption, fraud, bribery, and export-related misconduct, in violation of the U.K. Bribery Act, France's Sapin II, the U.S. Foreign Corrupt Practices Act (FCPA), and the U.S. International Traffic in Arms Regulations (ITAR).

Background

The SFO's investigation into Airbus took off in August 2016 after the company self-reported irregularities in payments made to its third-party consultants, and the potentially questionable use of those funds by the consultants. In March 2017, the PNF came on board, announcing, in a rare show of cooperation, that it would work alongside the SFO to investigate the France-based company. Airbus subsequently disclosed to the DOJ that the inaccuracies in its reports about payments to third-party intermediaries likely violated the ITAR. The ITAR require Airbus and other parties seeking approval to deal in defense articles and services controlled under the ITAR to report information regarding certain political contributions, fees, and commissions paid by the applicant, or any third-party agents, in connection with the underlying sales transactions.[1] The DOJ opened its investigation into Airbus in December 2018.

Over the course of the nearly four-year investigation, Airbus repeatedly declared its full cooperation with investigating authorities.[2] The company turned over millions of documents, instituted a new compliance program, prohibited the use of third-party consultants, terminated more than one hundred employees, and made significant personnel changes in its executive leadership, including a change in CEO, and the elimination of the aircraft giant's marketing wing, the Strategy and Marketing Organization.

Deferred Prosecution Agreements

UNITED STATES

According to the U.S. DPA[3] and its supporting Information[4], Airbus employees, executives, and agents facilitated a massive criminal conspiracy between 2008 and 2015 to offer and pay bribes to decision-makers and foreign officials in

[1] Airbus first reported potential issues in November 2016, followed by a formal voluntary disclosure of the results of its investigation at the end of July 2017. As the provisions of the ITAR relating to political contributions, fees, and commissions relate to transparency and the use of third parties, violations often (though not always) accompany FCPA charges.
[2] *See, e.g.*, https://www.airbus.com/newsroom/press-releases/en/2020/01/airbus-reaches-agreement-in-principle-with-french-uk-and-us-authorities.html; https://www.airbus.com/newsroom/press-releases/en/2017/03/Airbus-cooperate-France-Parquet-National-Financier.html.
[3] https://www.justice.gov/opa/press-release/file/1241466/download.
[4] https://www.justice.gov/opa/press-release/file/1241491/download.

multiple countries in order to gain improper business advantages and secure contracts with private and state-controlled entities. The DPA highlights a particularly egregious bribery scheme involving Chinese officials, including lavish trips to Hawaii for executives of China's state-controlled airlines, as well as Airbus's establishment of a purported "educational" fund that was, in reality, used to host a golf invitational and other social and leisure events for government officials.

The U.S. DPA also states that Airbus violated the ITAR by willfully concealing political contributions, fees, and commissions it paid to third-party business partners in at least forty transactions in conjunction with the sale or transfer of defense articles and services. Airbus allegedly used these third-party intermediaries in multiple countries, including Ghana, Indonesia, Vietnam, and Austria. According to prosecutors, Airbus personnel engaged in criminal conduct at the company's headquarters in France and at its subsidiaries in Germany, Spain, and the U.S., with the direct involvement, knowledge, and approval of Airbus management.

Pursuant to the terms of the U.S. DPA, Airbus will pay U.S. authorities a total of approximately $527 million to resolve its criminal violations of the FCPA ($294 million) and the ITAR ($233 million). This penalty is being assessed in addition to the $2.3 billion the company will pay to France and the $1.1 billion it will pay the U.K., resulting in a total global monetary penalty of over $3.9 billion, the largest in FCPA enforcement history. In addition to the criminal fines, the DPA requires the following:

- The civil forfeiture and transfer to the U.S. of Airbus's ownership interest in a bond worth $55 million, the proceeds of which are traceable to the ITAR-related conduct;
- A $5 million civil penalty assessed by the U.S. State Department's Directorate of Defense Trade Controls for the ITAR violations;
- The continued implementation of a compliance and ethics program;
- Corporate compliance reporting; and
- Cooperation in ongoing investigations and individual prosecutions.

During Airbus's U.S. hearing on Friday, Judge Thomas Hogan of the U.S. District Court for the District of Columbia observed that the facts alleged in this case constitute "a pervasive and pernicious bribery scheme in various divisions of Airbus S.E. that went on for a number of years." He added that it was "unfortunate that an established company like this" would engage in this type of conduct for so long.

UNITED KINGDOM

The SFO focused on Airbus's misconduct in South Korea, Indonesia, Sri Lanka, Malaysia, Taiwan, Ghana, and Mexico. According to the U.K. DPA, much of the conduct covered by the resolution related to the actions of the business partners acting on Airbus's behalf. Although Airbus had policies and controls governing relationships with, and payments to, third parties, over a period of years, there "were serious weaknesses within Airbus's compliance and oversight structure."[5] Two entities at the center of the misconduct bore responsibility within Airbus for ensuring that third-party relationships complied with company policy. To facilitate decision-making, the Company Development and Selection Committee, which had primary approval responsibility for business partners, delegated authority to a sub-committee led by the Strategy and Marketing Organization (SMO) International, a division in an Airbus subsidiary. SMO International guaranteed that business partners were independent of Airbus's customers, conducted compliance risk assessments,

[5] https://www.judiciary.uk/wp-content/uploads/2020/01/Director-of-the-Serious-Fraud-Office-v-Airbus-SE.pdf

executed agreements with, and facilitated payments to, third parties. However, information provided to the committees was often inaccurate, and some committee members were aware of, or involved in, the misconduct.

The first count relates to $50 million paid to directors and employees of AirAsia and AirAsiaX as sponsorship for a sports team in order to obtain sales in Malaysia between 2011 and 2015. In 2013, Airbus engaged a third party, associated with the wife of a "person concerned with the purchase of aircraft" in order to pay $2 million in bribes to influence government-owned Sri Lankan Airlines to purchase Airbus aircraft. U.K. Export Finance (UKEF) reported its concerns to the SFO in 2016. Between 2010 and 2013, Airbus used business partners associated with employees of Taiwan's TransAsia Airways, channeling in total nearly $15 million. Between 2011 and 2014, an Airbus business partner in Indonesia paid $3.3 million for employees and family members of PT Garuda and Citilink using a variety of mechanisms.

Between 2009 and 2015, Airbus made or promised success-based payments of €5 million to a business partner who was a close relative of an influential Ghanaian government official. According to the DPA, a due diligence report flagged the government connection and the business partner also lacked experience in the aerospace industry. Compliance controls failed to prevent retention of, and payment to, a different company with ties to the original business partner.

In addition to the €3.6 billion ($3.96 billion) fine, the U.K. DPA requires the following:

- Airbus to continue to implement and review its compliance improvements
- The appointment of the French Anti-Corruption Agency (Agence Française Anticorruption) to act as monitor of Airbus's compliance program; and
- Airbus to continue to cooperate with the SFO and other agencies for the duration of the agreement. Airbus further agrees that it will promptly report to the SFO any evidence or allegation of fraud that comes into its knowledge.

FRANCE

In the third installment of coordinated resolutions, Airbus entered into a corporate settlement mechanism known as a Judicial Public Interest Agreement (Convention Judiciaire d'Intérêt Public or CJIP) with French authorities to settle corruption charges.[6] The PNF focused on Airbus's conduct in the United Arab Emirates, China, South Korea, Nepal, India, Taiwan, Russia, Saudi Arabia, Vietnam, Japan, Turkey, Mexico, Thailand, Brazil, Kuwait, and Colombia. The CJIP calls out Airbus's activities in business dealings with certain airlines, including Air Arabia, Chinese airlines, Korean Air, Nepal Airlines, the Russian Satellites Communications Company, and Arabsat, as well as various executives, without naming them.

The PNF charges include bribery of foreign public officials, misuse of corporate assets, breach of trust, conspiracy to defraud, money laundering of the proceeds of these offenses, forgery, and use of forged documents. The CJIP discusses the misconduct of the SMO, coupled with management's involvement in approving its activities and the non-compliance or deliberate bypassing of internal procedures.

In accordance with French law, the public interest fine assessed is proportional to the benefits derived from the wrongdoing and is capped at 30% of the company's average annual turnover. Here, the theoretical maximum public interest fine was calculated to be €18.931 billion. The PNF also calculated the profit corruptly derived to be approximately €1.053 billion, which Airbus will pay as disgorgement. The PNF determined the relevant multiplier to be

[6] https://www.tribunal-de-paris.justice.fr/sites/default/files/2020-02/CJIP%20AIRBUS_English%20version.pdf.

275%, taking into account aggravating factors, including the repeated nature of the wrongdoing over an extended period, corruption of public officials, and use of Airbus's resources to conceal its misconduct. It noted mitigating factors that justified a 50% discount rate on the amount of the additional penalty, including "the exemplary level of cooperation" with the investigation, thorough internal investigation, and compliance-related remediation at the beginning of the investigation to prevent recurrence.

The CJIP's assessments ultimately include the following:

- An additional penalty of approximately €1.03 billion;[7]
- Public interest fine of approximately €2.083 billion; and
- In addition to completing the design of its compliance program to the AFA's satisfaction, Airbus has agreed to three-year compliance monitoring by the French Anti-Corruption Agency (Agence Française Anticorruption or AFA), which includes targeted audits of Airbus's compliance program and reporting requirements.[8] The CJIP indicates that the PNF will update the SFO and DOJ regarding the AFA's monitoring of Airbus.

Key Takeaways/Implications

The settlement signals several emerging trends in the context of corruption investigations.

1. The Aerospace Industry Remains a Hub for Enforcement

The Airbus settlement is particularly relevant for aviation and aircraft maintenance, repair, and overhaul (MRO) companies, as well as their employees. The industry has historically been the third-largest industry targeted in terms of number of FCPA enforcement actions (*e.g.*, Rolls-Royce plc, Embraer, BizJet International, LAN/LATAM Airlines, BAE Systems, among others), and has long been a concern of lawmakers and regulators. So much so, in fact, that congressional concern over an airline's payments to a political campaign is considered to have served as the impetus to pass the FCPA. What is more, the first FCPA action involved the sale of private jets that were secured through improper payments made by a third-party agent of an aircraft manufacturer.[9] This heavily regulated industry with global reach conducts business with state-owned entities and, as such, is particularly susceptible to FCPA enforcement actions. MROs, for example, interact heavily with state-owned and -controlled entities to secure aircraft maintenance and repair contracts for civil and military fleets. The historical and common use of foreign agents and consultants in high-risk jurisdictions to facilitate meetings and help win contracts from state-owned airlines and defense ministers also heightens risk.

2. The Enforcement Agencies Value Early and Strong Remediation Efforts

The DOJ's Criminal Division has encouraged companies to make strong remedial investments in their compliance programs once misconduct is identified. The April 2019 Evaluation of Corporate Compliance Programs[10] guidance explains that the hallmark of an effective compliance program is the extent to which the company is able to conduct a root cause analysis of misconduct and remediate those causes. Prosecutors are asked to consider the extent and pervasiveness of the misconduct, and understand the failures of existing controls. Remedial efforts include disciplinary

[7] The CJIP notes that approximately €266 million was deducted from the fine for Airbus's agreement with U.S. authorities to settle FCPA charges for conduct that took place during the sales campaigns in China.
[8] Airbus has also agreed to bear the costs of the AFA's monitoring, up to a total of €8.5 million, for the AFA's potential use of qualified experts or authorities for testing.
[9] https://www.scribd.com/document/63128841/SEC-v-Page-Airways-et-al.
[10] https://www.justice.gov/criminal-fraud/page/file/937501/download.

actions against wrongdoers (as well as those in supervisory positions), acceptance of responsibility for misconduct, and implementation of measures to reduce the risk of recurrence. The guidance also highlights that consideration should be given to whether the company has made improvements to its corporate compliance program and internal controls systems.

The DPA highlights remedial measures taken by Airbus, including termination and disciplinary action against former employees, severing ties with third parties involved in misconduct, freezing payments to third parties and employing enhanced due diligence procedures, employing new legal and compliance leadership, enhancing internal controls and its compliance program, and providing additional trainings on compliance topics. It also noted specific measures Airbus took to enhance its compliance program and internal controls, which include ongoing reviews and risk assessments.

Likewise, the joint PNF and AFA guidelines—issued in mid-2019 to discuss CJIP settlement considerations—emphasize an effective compliance program and implementation of remediation measures as mitigating factors when determining fine amounts under CJIPs. Indeed, as noted in the CJIB, the AFA complimented Airbus's compliance program, saying, "Airbus has worked from 2015 to 2019 on designing a compliance programme worthy of the highest standards in this area. Its development was based on several in-depth audits, conducted by both the Independent Compliance Review Panel as well as an audit firm instructed by the export credit agencies and by the AFA itself, as part of an own-initiative audit that was completed in July 2018. The company took into account the resulting recommendations to strengthen its compliance programme, which the AFA described as 'successful.'" It highlights the compliance program's code of conduct, whistleblowing mechanism, risk mapping, due diligence procedures, internal and external accounting controls, training program, and disciplinary system.

3. The DOJ Flies in Formation with Aligned Export and FCPA Policies

The Airbus settlement reveals the fruits of the DOJ's recent efforts to align policies across divisions. On December 13, 2019, the DOJ released its Export Control and Sanctions Enforcement Policy for Business Organizations,[11] which is similar in structure and effect to DOJ's FCPA Corporate Enforcement Policy. The Export Control and Sanctions Policy was promulgated to further clarify prior guidance issued in 2016, and to incentivize company cooperation. The new policy provides that, when a company (i) voluntarily self-discloses export control or sanctions violations; (ii) fully cooperates; and (iii) timely and appropriately remediates, there is a presumption that the company will receive a non-prosecution agreement and pay no fine, absent aggravating factors. Even where aggravating factors exist (including the involvement of senior management and significant profits), the policy provides that companies may face significantly reduced fines and be able to avoid the imposition of a monitor.

The Airbus settlement is the first to be announced that involves the ITAR and FCPA issues since publication of the policy. Previously, the DOJ settled an investigation into BAE Systems PLC in 2010 that involved apparent violations of the ITAR and FCPA, which required the company to pay a $400 million criminal fine and retain an independent monitor. The work required within the Criminal Division to investigate the various Airbus issues and coordinate a resolution may have helped to inform the new export policy, and may serve as a catalyst for further alignment of DOJ policies. To the extent that the Airbus settlement signals a renewed interest by DOJ in prosecuting the ITAR violations, this could have a significant impact, particularly for companies in the aerospace industry that may deal in defense articles and services and rely upon third-party intermediaries. And the U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI) New York may have been signaling just that, with Special Agent in Charge Peter C. Fitzhugh quoted in the DOJ's press release on the Airbus settlement as saying, "The global threats facing the U.S. have never been greater than they are today, and HSI New York is committed to working with our federal and international partners to

[11] https://www.justice.gov/nsd/ces_vsd_policy_2019/download.

assure sensitive U.S. technologies are not unlawfully and fraudulently acquired. As this investigation reflects, national security continues to be a top priority not just for Department of Homeland Security, but for HSI New York."[12]

The U.S. DPA provides the Company credit for voluntarily disclosing the ITAR violations, and further credits Airbus for providing cooperation concerning the investigation and committing to additional investigation of the ITAR-related conduct. The DPA also notes that Airbus engaged in remedial measures, including identifying and implementing corrective actions to remediate past misconduct and improve the export compliance program and associated internal controls going forward.

Separately, Airbus entered into a Consent Agreement[13] with the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) for a term of three years to settle its civil liability for violations of the ITAR.[14] Without admitting or denying the allegations in DDTC's proposed charging letter, Airbus agreed to appoint an independent monitor for the term of the Consent Agreement;[15] enhance its compliance policies, procedures, and training; submit to two audits; and pay a $10 million penalty (with half of the penalty suspended and earmarked towards remedial compliance measures). While DDTC addressed the possibility of administrative debarment, DDTC determined not to debar Airbus, owing to Airbus's agreement to the other commitments and remedial measures set forth in the Consent Agreement.

4. The DOJ and SFO Signal Turbulence for Individual Wrongdoers

In December 2019, Assistant Attorney General Brian Benczkowski, speaking at the American Conference Institute's 36th International Conference on the Foreign Corrupt Practices Act, highlighted the DOJ's continued focus on individual culpability.[16] In 2019, the Criminal Division's FCPA Unit brought charges against more individuals than in prior years, with charges against 34 individuals by December. Last year's increase reveals a continuing pattern, as the two prior years each saw a rise over the previous year in the number of corruption prosecutions against individuals.

The Airbus settlement will almost certainly spawn investigations by authorities in the U.S., U.K., and France (and possibly also further afield) into individuals' and third parties' alleged involvement in its worldwide corruption scheme, particularly because Airbus has agreed to cooperate to expose other actors, including "information about the individuals involved in the misconduct" to the extent permitted under foreign law.

In fact, the DPA requires Airbus to fully cooperate in any investigation (both foreign and domestic) concerning its "affiliates, or any of its present or former officers, directors, employees, agents and consultants, or any other party, in any and all matters relating to the conduct." Airbus will also be required to furnish to U.S. authorities a report on all brokers it used with specified U.S. connections (including those who used certain banks).

However, in the U.K., the substantial assistance cooperating corporate organizations have been required to provide under DPAs to date has not made convictions for individual former executives implicated in wrongdoing a foregone

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[12] https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case.

[13] https://www.pmddtc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=136d4db3db6204907ede365e7c9619ea.

[14] While the DOJ and DDTC coordinate investigations, DDTC is responsible for the civil enforcement of the ITAR, whereas DOJ handles criminal enforcement. Accordingly, parties that have violated the ITAR typically must settle any civil liability with DDTC, regardless of whether DOJ is involved. Consent agreements with DDTC often involve monetary penalties, the requirement to implement remedial measures, and, in some cases, monitoring requirements.

[15] After two years of having an independent monitor (termed a Special Compliance Officer) in place, Airbus may request that an Internal Special Compliance Officer replace the independent monitor for the final year.

[16] https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-american-conference.

conclusion. The extent to which the SFO has learned the lessons of challenges pursued by individuals and judicial criticism in some cases in relation to difficult issues such as the interplay between evidence gathering at the DPA negotiation stage and disclosure in subsequent criminal proceedings against individuals, will become clearer in ongoing prosecutions against former executives (of Airbus and/or other corporate entities that have entered into settlements in the U.K.).

The U.K. Approved Judgment notes that investigations are ongoing in the U.K. and other jurisdictions with respect to a number of individuals at the intermediary companies. The identities of the individuals were not revealed, citing concerns with fair trial and human rights in their home jurisdictions.

5. The DOJ and SFO Have Provided Greater Visibility on Cooperation Credit

This case is the latest to underline the importance of corporate organizations that identify suspected misconduct proactively bringing matters to the attention of authorities, making early and meaningful commitments to remediation, and following up on such promises. In the U.K., the SFO and the Court have taken the opportunity to reinforce messages about what will amount to the "*genuine and proactive*" cooperation prescribed in the DPA Code of Practice (published jointly by the SFO and the Crown Prosecution Service). Their expectations of what corporate organizations must do in order to satisfy this standard have become clearer with each DPA agreed in the U.K., and with the publication by the SFO of guidance on co-operation and evaluating compliance programs in August 2019 and January 2020, respectively (see our Ropes & Gray alert here).

In November of last year, the DOJ announced subtle changes to its FCPA Corporate Enforcement Policy, including the breadth and extent of voluntary self-disclosure required to earn cooperation credit.[17] The changes highlight the DOJ's preference for prompt disclosure, recognizing that early disclosures may be limited in light of the preliminary nature of the company's initial investigations. Accordingly, the policy seeks "all relevant facts known [to the company] at the time of the disclosure." The policy also now requires companies to disclose facts "as to any individuals" who had a significant role in the "misconduct at issue." Another change recognizes the practical realities of compliance by simplifying the language of a prior requirement that a company must identify to the DOJ relevant evidence it is aware of that is not in the company's possession in order to receive full cooperation credit.

The Airbus settlement reveals how recent guidance policies have come together in practice. The first relevant consideration noted in the Airbus DPA is that the company did not receive voluntary disclosure credit for its FCPA-related conduct because it only disclosed relevant conduct to U.S. authorities after the SFO undertook and made public its investigation. However, the DPA notes that Airbus did disclose conduct within a "reasonably prompt time of becoming aware of corruption-related conduct that might have a connection to the United States." Airbus did receive full cooperation credit concerning the investigation of the misconduct by collecting evidence and conducting cross-border forensic data collections, proactively identifying issues and facts, and making factual representation to U.S. authorities. In line with the DOJ's recent guidance, the DPA notes that Airbus provided "all relevant facts known to it," including conduct of individuals.

With respect to its FCPA-related conduct, Airbus received full cooperation and remediation credit of 25% off the bottom of the applicable United States Sentencing Guidelines fine range, and for its ITAR-related conduct, the financial penalties were calculated in consideration of its self-disclosure, cooperation, and remediation. Moreover, the DOJ's press release announcing the Airbus settlement further emphasizes the importance of self-disclosure, with Principal Deputy Assistant Attorney General David P. Burns of the Justice Department's National Security Division (NSD) saying the resolution reflects the "significant benefits available under NSD's revised voluntary self-disclosure policy for companies that choose to self-report export violations, cooperate, and remediate as to those violations, even where there are

[17] https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#9-47.110.

aggravating circumstances." He also included a plea to other companies to follow suit, saying, "We hope other companies will make the same decision as Airbus to report potential criminal export violations timely and directly to NSD so that they too can avail themselves of the policy's benefits."[18]

With respect to the settlement with French authorities, although Airbus did not self-disclose its misconduct to the PNF, the CJIP too recognizes Airbus's "exemplary cooperation" with the Joint Investigation Team's investigation since March 2017, citing that Airbus has "committed to maintain this cooperation with the PNF," including by communicating any new relevant information.[19]

6. The DOJ Is Willing to Co-Pilot Corruption Investigations

France adopted its comprehensive anti-corruption framework, Sapin II, in December 2016. The framework covers familiar topics, including tougher penalties for violations, stringent compliance obligations (including robust compliance programs), and auditing by the AFA. In mid-2019, the PNF and the AFA published joint guidelines on France's CJIP(see our Ropes & Gray Alert here).

The DOJ's and PNF's first coordinated resolution in a foreign bribery case was in connection with French multinational investment bank and financial services company Société Générale S.A. The settlement was announced in June 2018 and concerned bribery of Libyan government officials and the manipulation of the London InterBank Offered Rate (LIBOR). That effort signified a notable shift in the relationship between authorities in the U.S. and France, as France began to enhance its anti-corruption framework. While it does not represent the first time the DOJ has investigated French companies for FCPA violations—it settled with Technip S.A. in 2010; Alcatel-Lucent S.A. in 2010; Total, S.A. in 2013; and Alstom S.A. in 2014—French authorities did not launch corresponding investigations. Instead, French officials criticized their U.S. counterparts for the actions taken against their companies.

The Airbus resolution will likely serve as a launch pad for building France's international profile in the anti-corruption space. The PNF's prominent role in the Airbus investigation showcases France's evolution, highlighting its capabilities as not only a partner in cross-border investigations, but a competent pilot in command. It also reveals the DOJ's continued willingness to allow foreign counterparts to take the lead in international investigations.

The Airbus DPA highlights the U.S.'s confidence in its foreign counterparts, as well as its recognition of their predominating interests in the resolution. Recognizing that the U.S.'s territorial jurisdiction over the corrupt conduct is limited and that "France's and the U.K.'s interests over the Company's corruption-related conduct, and jurisdictional bases for a resolution, are significantly stronger," the DOJ has "deferred to France and the United Kingdom to vindicate their respective interests as those countries deem appropriate." In the DOJ's press release announcing the Airbus settlement, AAG Benczkowski emphasized the cooperation among authorities in the U.S., U.K., and France, saying, "This coordinated resolution was possible thanks to the dedicated efforts of our foreign partners at the Serious Fraud Office in the United Kingdom and the PNF in France. The Department will continue to work aggressively with our partners across the globe to root out corruption, particularly corruption that harms American interests."[20]

7. The DOJ and SFO Will Let the AFA Steer Compliance Monitoring

The Airbus trilateral settlement follows the example of the first coordinated resolution between U.S. and French authorities with respect to monitorship. In that case, the DOJ determined that an independent monitor was not necessary

[18] https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case.
[19] https://www.tribunal-de-paris.justice.fr/sites/default/files/2020-02/CJIP%20AIRBUS_English%20version.pdf
[20] https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case.

for Société Générale because it was subject to ongoing monitoring by the AFA.[21] The absence of a monitoring requirement by the DOJ in this case may signal that France is successfully resisting what it perceives to be the U.S.'s longstanding extraterritorial overreach into France. The French have long been wary of the hefty penalties levied on French companies by U.S. authorities (*e.g.*, BNP Paribas and Alstom), with many French politicians publicly decrying the U.S.'s entanglement. While France has recently given every indication that it is willing to cooperate in cross-border investigations, it is likely affirmatively seeking a more significant role in probes that target French companies, especially state-owned entities like Airbus. The joint PNF/AFA 2019 guidance states that the appointment of a single monitor is preferable in multi-jurisdictional proceedings, which, according to the French Criminal Code, must be the AFA if the proceedings involve a company that is headquartered or conducts operations in French territory. The AFA has conducted around 100 audits since 2018, and has publicly revealed that it is willing to share the results of certain audits with French and foreign authorities. It will be worthwhile to see whether the DOJ adopts a practice of deferring to the AFA—as opposed to requiring an independently retained monitor—in French-led cross-border investigations, which could signal the DOJ's confidence in its French counterpart.

For its part, the SFO has not yet had an opportunity to put into practice one of the key indications in its recent guidance on evaluating compliance programs, where it stated that it will require the appointment of a monitor at the corporate organization's expense in cases where DPAs prescribe improvements to compliance programs. Here too, the DPA notes that Airbus will not be required to retain an independent monitor, and notes that the company will be entering into a separate resolution with the PNF and will be subject to oversight by authorities in France (*i.e.*, the AFA).

8. What Will Amount to "Adequate Procedures" Under the UK Bribery Act Remains Cloudy

Neither DPAs nor the few cases in which corporate organizations have been prosecuted have provided granular detail on what will amount to "adequate procedures" for the purposes of the corporate offense of failing to prevent bribery under Section 7 of the U.K. Bribery Act 2010. It does not appear that this case provides further clarity on this point.

[21] https://www.justice.gov/opa/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan.