
FCPA Year-in-Review: 2024 Developments and Predictions for 2025

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I. Introduction

Foreign Corrupt Practices Act (FCPA) enforcement activity increased overall in 2024, with a notable uptick in Department of Justice (DOJ) enforcement actions compared to 2023, despite a decrease in public Securities and Exchange Commission (SEC) enforcement actions. Collectively, the DOJ and SEC brought a total of 38 enforcement actions, including 14 corporate and 24 individual enforcement actions. The January 2025 change in administration brings some uncertainty as to the prioritization of anti-corruption enforcement going forward. Despite President Donald J. Trump's prior vocal criticism of the law,¹ FCPA enforcement during Trump's first term was robust, averaging more than 40 DOJ enforcement actions and 14 SEC enforcement actions per year between 2017 and 2020. Early actions in President Trump's second term, however, indicate that priorities may be recalibrated this time around, and it is unclear how these changes may affect anti-corruption and other white collar enforcement efforts.

Below are five notable takeaways concerning FCPA enforcement in 2024:

1. **Volume of DOJ Trials.** FCPA trials are rare and resource-intensive given the complex nature of international bribery schemes. In 2024, the DOJ brought—and secured convictions—in four trials. Two defendants were convicted for their roles in separate bribery schemes involving state-owned oil and gas companies in Latin America, including Petrobras, the Brazilian state-owned petroleum corporation, Petroecuador, the Ecuadorian state-owned oil company, and

¹ In a 2012 interview on CNBC's "Squawk Box," Mr. Trump called the FCPA a "horrible law" that "put [the U.S.] at a huge disadvantage." Peter W. Klein, *How will a new Trump administration prosecute corruption?*, NBC NEWS (Nov. 16, 2024), <https://www.nbcnews.com/politics/national-security/trump-administration-prosecute-corruption-rcna179281>.

PEMEX Procurement International (PPI), a subsidiary of PEMEX, the Mexican state-owned oil and gas company, which have been at the heart of numerous FCPA matters in recent years. The other two trials involved defendants who were high-ranking foreign officials in Mozambique and Ecuador. Currently, five trials are scheduled for 2025.

2. **Whistleblower Pilot Programs.** The DOJ's Criminal Division launched two pilot programs to incentivize self-policing and disclosure in 2024. In April, the DOJ announced the Pilot Program on Voluntary Self-Disclosures for Individuals, which provides clarity concerning scenarios in which the DOJ will offer non-prosecution agreements (NPAs) to individuals who voluntarily disclose criminal misconduct.² To be eligible, whistleblowers must disclose the extent of their involvement in the misconduct and cannot be the chief executive officer or chief financial officer of the organization. Separately, in August, the DOJ launched the Corporate Whistleblower Awards Pilot Program.³ This program is designed to close gaps in other agencies' whistleblower programs, which do not cover the full scope of corporate crimes investigated and prosecuted by the DOJ.
3. **Temporary Amendment to the Corporate Enforcement Policy.** In connection with the announcement of the Corporate Whistleblower Awards Pilot Program, the DOJ also temporarily amended the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP). Of significant note, pursuant to the amendment, companies that receive an internal report of misconduct from a whistleblower who also makes a whistleblower submission to the DOJ are able to obtain the full benefits of the CEP, as long as the company self-reports to the DOJ within 120 days after receiving the whistleblower allegation, and the disclosure takes place before the DOJ reaches out to the company.⁴
4. **Scope of the Internal Accounting Controls Provision.** The SEC was dealt a significant blow by the Southern District of New York limiting the scope of the internal accounting controls provisions of Section 13(b)(2)(B) of the Securities Exchange Act of 1934, which were enacted as part of the FCPA in 1977 and

² *Criminal Division's Voluntary Self-Disclosures Pilot Program for Individuals*, U.S. DEPARTMENT OF JUSTICE: ARCHIVES (Apr. 22, 2024), <https://www.justice.gov/archives/opa/blog/criminal-divisions-voluntary-self-disclosures-pilot-program-individuals>.

³ *Criminal Division Corporate Whistleblower Awards Pilot Program*, U.S. DEPARTMENT OF JUSTICE: CRIMINAL DIVISION (last visited Jan. 28, 2025) <https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-program>.

⁴ U.S. Department of Justice, 9-47.120 - Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, available at <https://www.justice.gov/criminal/criminal-fraud/file/1562831/dl>; U.S. Department of Justice, Temporary Amendment to the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (Aug. 1, 2024), available at <https://www.justice.gov/criminal/media/1362316/dl?inline>.

have been used to charge companies in both foreign bribery and non-bribery related matters. In *SEC v. SolarWinds Corp.*, the court held that those provisions do not cover a company's cybersecurity controls, stating that Section 13(b)(2)(B) applies to a "system of internal accounting controls," which means "a company's financial accounting" and "does not govern every internal system a public company uses to guard against unauthorized access to its assets, but only those qualifying as 'internal accounting' controls."⁵ This is arguably narrower than the SEC's typical interpretation of these provisions, which they have used broadly to sweep in controls such as third-party procedures, training, and other compliance processes that do not strictly relate to financial accounting. This decision may provide a basis to push back on the SEC's expansionist views of the FCPA accounting control provisions in other contexts.

5. **Updates to the DOJ's Evaluation of Corporate Compliance Programs.** The DOJ announced a number of updates to the Evaluation of Corporate Compliance Programs (ECCP) in September 2024, certain of which were aimed at addressing emerging risks in artificial intelligence (AI).⁶ The updates require prosecutors to assess whether companies have conducted adequate risk assessments of technologies they deploy and implemented controls to mitigate those risks. The practical impact of this guidance remains uncertain.

II. 2024 Enforcement Trends and Priorities

A. Level of Enforcement Activity in 2024

This past year witnessed some of the highest levels of publicly announced FCPA enforcement activity since 2020, although enforcement actions still remained far below the high-water mark seen in 2016.

Compared to 2023, for example, the number of enforcement actions increased in 2024, due to an increase in cases against individuals. Total enforcement actions rose from 27 in 2023 to 38 in 2024,

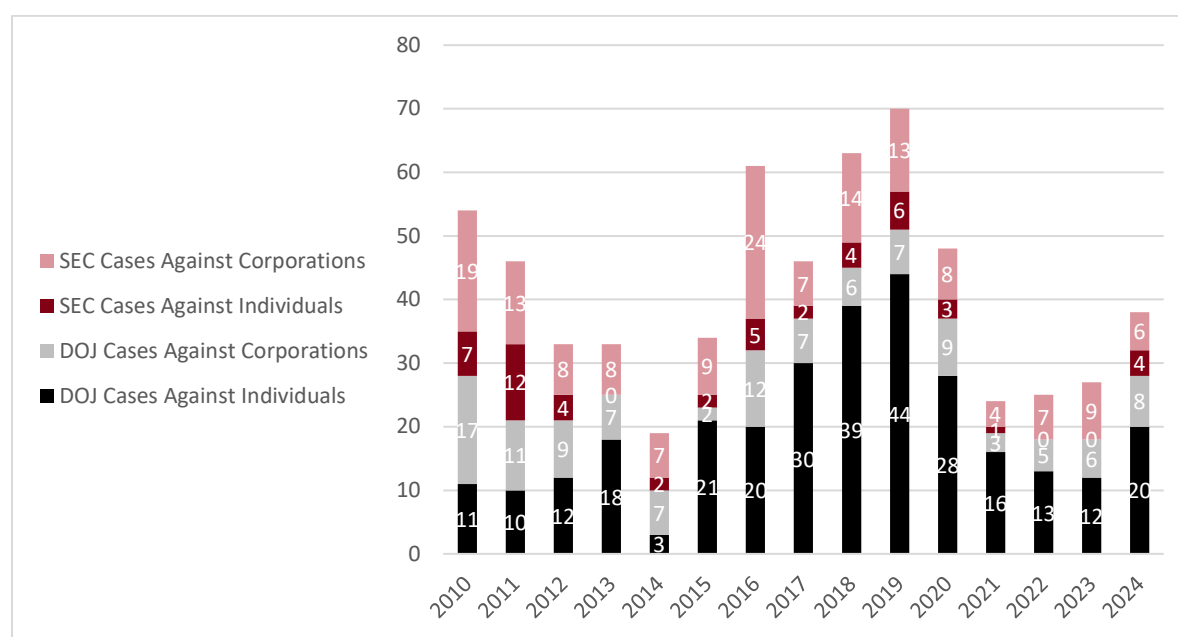
⁵ *Sec. & Exch. Comm'n v. SolarWinds Corp.*, 2024 WL 3461952 at *49, *51 (S.D.N.Y. July 18, 2024) (citations omitted) (emphasis in original).

⁶ U.S. Department of Justice: Criminal Division, *Evaluation of Corporate Compliance Programs* (updated Sept. 2024), available at <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl?inline=>.

although the number of SEC actions against companies declined.⁷ After a multi-year decline in charges against individuals, both the DOJ and SEC brought more individual enforcement actions in 2024. The DOJ's 20 public individual FCPA enforcement actions in 2024 reversed a three-year decline from 16 in 2021, 13 in 2022, and 12 in 2023. And the SEC's four individual FCPA enforcement actions in 2024 reversed a four-year decline from six in 2019, to three in 2020, one in 2021, and none in 2022 and 2023.

Although the number of corporate resolutions was slightly down from 15 in 2023 to 14 in 2024, the total fines paid to U.S. authorities resulting from these 2024 corporate resolutions was approximately \$440 million more than such fines in 2023.⁸

B. DOJ and SEC Enforcement Actions 2010-2024⁹



⁷ We recognize that other commentators may present slightly different numbers depending on their methodology. To determine the number of corporate enforcement actions for the year, we counted enforcement actions brought by the SEC and DOJ separately (e.g., parallel settlements with the same entity by the SEC and DOJ count as two actions). However, actions brought by a single agency against related corporate entities (e.g., a parent and subsidiary) for the same core conduct count as only one action. Declinations and case closures are not included within this metric. To determine the number of enforcement actions against individuals for the year, we counted the number of individuals charged in the year that charges were filed, not the year they were announced (i.e., criminal charges unsealed at a later date are included in the count for the year they were originally filed). As a result, the numbers reported for previous years in this alert are updated and therefore may be different from prior reports. In addition to charges alleging violations of the substantive FCPA provisions, we also included non-FCPA charges for which the allegations relate to international bribery schemes. These non-FCPA charges included, but are not limited to, conspiracy to violate the FCPA, money laundering, and conspiracy to commit money laundering.

⁸ See WilmerHale, *Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024*, at 4 (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

⁹ For a description of our methodology for counting corporate and individual enforcement actions, see n.7, above.

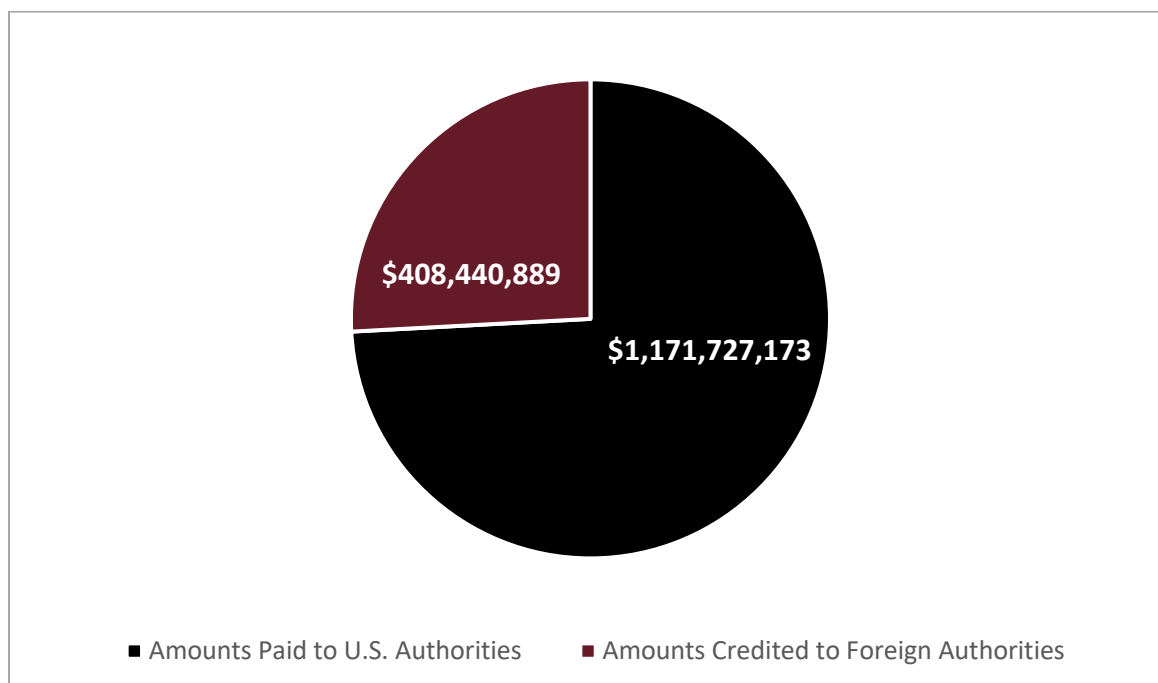
FCPA-related resolution payments imposed on companies in 2024 totaled approximately \$1.58 billion,¹⁰ which is over double the approximately \$776 million imposed in 2023, and higher than the \$1.56 billion imposed on companies in 2022.¹¹ As in 2022, where the high total penalty amount was largely driven by the DOJ's resolution with Glencore—which amounted to approximately 45% of the total resolution payments from that year—2024's total penalty amount was also largely due to a single DOJ resolution: Gunvor S.A.'s guilty plea. As part of its plea with the DOJ, Gunvor agreed to pay over \$661 million¹²—which represents approximately 42% of the total resolution payments for 2024.

¹⁰ To calculate the total resolution amounts imposed in FCPA-related actions against companies, we counted the amounts set out in resolution papers that a settling party could be liable to pay to U.S. enforcement agencies, even if those penalties were ultimately offset by payments to foreign authorities. We believe that the total penalty number, regardless of offsets to foreign authorities, most accurately represents the scope of FCPA liability because U.S. authorities retained the right to collect those amounts. Furthermore, even if in some cases settling parties agreed to larger penalties based on the understanding that there would be an offset, payments made to non-U.S. government agencies can still be traced back to FCPA-related conduct to some degree. In other words, it is unlikely that foreign authorities would have received the same amount without U.S. enforcement activity or the specter of FCPA liability. It is of course impossible to determine how much of a global resolution would have occurred without FCPA enforcement. But because some of those payments are at least partly attributable to FCPA enforcement, we have included them to provide a complete picture of overall FCPA-related liability.

¹¹ See WilmerHale, *Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024*, at 4 (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>; WilmerHale, *Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023*, at 5 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>.

¹² See Plea Agreement, *United States v. Gunvor S.A.*, No. 24-CR-00085, ¶ 7k (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

1. Total FCPA Resolution Payments by Companies in 2024¹³



2. Enforcement Trends

a. High-Risk Industries

In 2024, the DOJ and SEC continued to bring cases against companies doing business in high-risk industries, such as energy, telecommunications, technology, and defense. These industries attract FCPA enforcement attention due to their broad geographic reach, reliance on third parties, and heavy government interaction and regulation.

1. **Energy and Commodities.** In 2024, U.S. authorities continued to bring cases connected to the energy sector—a high-risk industry given its exposure to markets perceived to have increased levels of corruption and frequent contact with foreign officials. Three of the 14 total corporate resolutions in 2024 involved

¹³ For purposes of this graph, we factor in the offsets to foreign authorities discussed in n.10 when calculating the total amount of FCPA-related resolution payments—including criminal and civil fines, interest, forfeiture, and disgorgement—that were ultimately paid to both U.S. and foreign authorities. In doing so, however, we only include payments to foreign authorities specifically credited in DOJ or SEC papers and do not count payments made pursuant to separate resolutions entered into by companies with foreign authorities that are not factored into DOJ and SEC figures.

allegations of bribing officials of state-owned energy companies.¹⁴ The government also brought several cases against individuals based on alleged bribery of foreign officials affiliated with the energy industry.¹⁵ In Latin America, this trend was especially pronounced.¹⁶ Two of the three energy-related corporate resolutions involved alleged corrupt conduct in Latin America: Gunvor (conspiracy to bribe Ecuadorian officials connected to Ecuador's state-owned oil company¹⁷) and Trafigura (conspiracy to bribe officials of Brazil's state-owned oil company¹⁸). Of note, both Gunvor and Trafigura are commodities trading companies. The DOJ has focused on this industry in recent years. In a speech in December 2024, then-DOJ Criminal Division Chief Counselor Brent Wible touted the focus on commodities trading companies, stating, "In total, since 2022, through its investigations of bribery schemes involving multiple commodities trading companies, the FCPA Unit, in partnership with MLARS [Money Laundering and Asset Recovery Section] and many U.S. attorney's offices, has secured six corporate resolutions with over \$1.7 billion in global penalties and convicted over 20 individuals."¹⁹

¹⁴ The three corporate resolutions involving allegations of bribing officials of state-owned energy companies are: Gunvor (conspiracy to bribe Ecuadorian officials connected to Ecuador's state-owned oil company); Trafigura Beheer (conspiracy to bribe officials of Brazil's state-owned oil company); and McKinsey Africa (conspiracy to bribe officials of South Africa's state-owned and state-controlled energy company). See Plea Agreement, *United States v. Gunvor S.A.*, No. 24-CR-00085 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>; Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>; Deferred Prosecution Agreement, *United States v. McKinsey and Company Africa (PTY) Ltd.*, No. 24-CR-669 (S.D.N.Y. Dec. 5, 2024) ECF No. 7, <https://www.justice.gov/opa/media/1379421/dl>.

¹⁵ The individual cases brought for bribing officials of state-owned energy companies are: Gautam Adani, Sagar Adani, Vneet Jaain, Ranjit Gupta, Cyril Cabanes, Saurabh Agarwal, Deepak Malhotra, and Rupesh Agarwal (indicted for allegedly bribing Indian government officials to obtain solar energy supply contracts), as well as Raul Gorrin Belisario (indicted for allegedly laundering money related to bribe payments made to Venezuela's state-owned and state-controlled energy company). See Indictment, *United States v. Gautam S. Adani, Sagar R. Adani, Vneet S. Jaain, Ranjit Gupta, Cyril Cabanes, Saurabh Agarwal, Deepak Malhotra, and Rupesh Agarwal*, No. 24-CR-433 (E.D.N.Y. Oct. 24, 2024) ECF No. 1, <https://www.justice.gov/usao-edny/media/1377806/dl?inline>; Indictment, *United States v. Raul Gorrin Belisario*, No. 24-CR-20468 (S.D. Fla. Oct. 23, 2024) ECF No. 1, <https://www.justice.gov/opa/media/1374811/dl>.

¹⁶ See U.S. Department of Justice Press Release No. 24-368: Justice Department's Investigation into International Commodities Trading Companies' Foreign Bribery Schemes Results in Six Corporate Resolutions and 20 Individuals Convicted (Mar. 28, 2024), <https://www.justice.gov/opa/pr/justice-departments-investigation-international-commodities-trading-companies-foreign>.

¹⁷ See Plea Agreement, *United States v. Gunvor S.A.*, No. 24-CR-00085 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁸ See Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁹ Brent Wible, Former Chief Counselor, DOJ, Keynote Speech at the American Conference Institute's International Conference on the Foreign Corrupt Practices Act (Dec. 5, 2024), available at <https://www.justice.gov/opa/speech/chief-counselor-brent-wible-delivers-keynote-speech-american-conference-institutes>.

2. **Telecommunications.** For the third year in a row, U.S. authorities resolved an FCPA action against a telecommunications company.²⁰ In November, Telefónica Venezolana, the Venezuelan-based subsidiary of the Spanish telecommunications company Telefónica S.A., entered into a deferred prosecution agreement (DPA) with the DOJ related to a conspiracy to bribe Venezuelan government officials connected to a government-sponsored currency auction.²¹ As we have previously noted, telecommunications companies, including foreign issuers like Telefónica, S.A., face increased corruption risk, as they (and their subsidiaries) have significant interaction with government officials and regularly bid for government contracts as a major source of business.²²
3. **Technology.** U.S. authorities also continued to bring enforcement actions in the technology sector, entering into a resolution with SAP regarding improper payments made to South African and Indonesian government officials,²³ and charging four individuals for their alleged roles in paying bribes to government officials in the Philippines in connection with business providing voting machines for the 2016 elections.²⁴ Technology companies face perennial corruption risks given the level of engagement with third parties and government end users.²⁵
4. **Defense.** Defense companies, too, often have direct involvement with foreign governments and frequently use third parties in countries with a perceived high risk of corruption. The elevated corruption risk for this industry was again highlighted this year with the DOJ's DPA with Raytheon Company, a defense contractor (for alleged conduct involving Qatari officials²⁶), and the SEC's resolution with Moog Inc., a motion-controls manufacturer that largely works in

²⁰ See, e.g., Plea Agreement, *United States v. Telefonaktiebolaget LM Ericsson*, No. 19-CR-00884 (S.D.N.Y. Mar. 20, 2023) ECF No. 33, <https://www.justice.gov/media/1283586/dl?inline>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of KT Corp.*, Rel. No. 94279, File No. 3-20780 (Feb. 17, 2022), <https://www.sec.gov/files/litigation/admin/2022/34-94279.pdf>.

²¹ See Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633 (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²² WilmerHale, *Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023*, at 7 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developmentsand-predictions-for-2023>.

²³ See Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-00202, ¶ 4 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

²⁴ See U.S. Department of Justice Press Release No. 24-989: Four Men Charged in Philippine Bribery and Money Laundering Scheme (Aug. 8, 2024), <https://www.justice.gov/opa/pr/four-men-charged-philippine-bribery-and-money-laundering-scheme>.

²⁵ See WilmerHale, *Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023*, at 7 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developmentsand-predictions-for-2023>.

²⁶ See Deferred Prosecution Agreement, *United States v. Raytheon Co.*, No. 24-CR-00399 (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://www.justice.gov/criminal/media/1373661/dl?inline>.

aerospace and defense (for allegedly funneling bribe payments to Indian government officials through third parties²⁷).

b. Fluctuations in SEC Corporate Resolutions

In 2024, the SEC's six corporate resolutions marked the second-lowest number of corporate resolutions in a year over the past 15 years (2021 saw just four SEC resolutions). This decrease comes on the heels of a brief uptick in SEC resolutions in 2023, but resolutions in 2024 returned to the lower levels of 2021 and 2022.²⁸ Despite the lower number of corporate SEC resolutions in 2024, we are aware from our own experience that the SEC is actively and aggressively investigating numerous foreign bribery matters, many of which commenced due to whistleblower allegations.

c. International Cooperation

As we noted in our 2023 Year-in-Review, "coordination between the United States and foreign authorities continues to remain a hallmark of corporate anti-corruption enforcement."²⁹ This year was no different, as U.S. authorities continued to cooperate with their international counterparts. As one illustration, in all but two corporate FCPA press releases this year (Raytheon and AAR Corp.), the DOJ mentioned the assistance of foreign authorities: SAP (South Africa³⁰); Gunvor (Cayman Islands, Colombia, Ecuador, Panama, Portugal, Singapore, and Switzerland³¹); Trafigura (Brazil, Switzerland, and Uruguay³²); Telefónica Venezolana (Panama, Switzerland, and Luxembourg³³);

²⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Moog Inc*, Rel. No. 101307, File No. 3-22237 (Oct. 11, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101307.pdf>.

²⁸ In 2023, there were nine SEC corporate resolutions involving FCPA charges while the previous two years only recorded seven (2022) and four (2021) resolutions. U.S. Securities and Exchange Commission, *SEC Enforcement Actions: FCPA Cases*, <https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases> (last visited Dec. 16, 2024).

²⁹ See WilmerHale, *Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024*, at 27-28 (Jan. 30, 2024), <https://www.wilmerhale.com/en/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³⁰ See U.S. Department of Justice Press Release No. 24-33: SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 11, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>.

³¹ See U.S. Department of Justice Press Release No. 24-237: Commodities Trading Company Will Pay Over \$661M to Resolve Foreign Bribery Case (Mar. 5, 2024), <https://www.justice.gov/opa/pr/commodities-trading-company-will-pay-over-661m-resolve-foreign-bribery-case>.

³² See U.S. Department of Justice Press Release No. 24-367: Swiss Commodities Trading Company Pleads Guilty to Foreign Bribery Scheme (Apr. 1, 2024), <https://www.justice.gov/opa/pr/swiss-commodities-trading-company-pleads-guilty-foreign-bribery-scheme>.

³³ See U.S. Department of Justice Press Release No. 24-1410: Telefónica Venezolana to Pay Over \$85M to Resolve Foreign Bribery Investigation (Nov. 12, 2024), <https://www.justice.gov/opa/pr/telefonica-venezolana-pay-over-85m-resolve-foreign-bribery-investigation>.

BIT Mining (Japan³⁴); and McKinsey Africa (South Africa³⁵). This year also marks the first full year of the DOJ's International Corporate Anti-Bribery Initiative Program (ICAB), which consists of four FCPA Unit prosecutors "who are focused on deepening and expanding our relationships with foreign authorities," particularly in Latin America, Africa, and Asia.³⁶ According to then-DOJ Criminal Division Chief Counselor Wible, the ICAB outreach has led to the DOJ "open[ing] multiple investigations as a direct result of referrals obtained through the efforts of our ICAB team," and the DOJ has in turn "referred multiple cases to foreign prosecutors."³⁷

d. Continued Focus on Conduct in Latin America

As in prior years, many of the corporate enforcement actions in 2024 involved conduct that occurred in Latin America, including (1) the DOJ's plea agreement with Gunvor related to a conspiracy to bribe officials connected to Ecuador's state-owned oil company³⁸; (2) the DOJ's plea agreement with Trafigura related to a conspiracy to bribe officials of Brazil's state-owned oil company³⁹; and (3) the DOJ's DPA with Telefónica Venezolana related to a conspiracy to bribe Venezuelan government officials connected to a government-sponsored currency auction.⁴⁰ In addition, four out of the 20 individual indictments announced in 2024 related to conduct in Latin America.⁴¹

e. Continued Use of Money Laundering Charges

Money laundering charges continue to be an important tool in the U.S. government's arsenal as it fights international corruption. The DOJ in recent years has emphasized that it views both the FCPA

³⁴ See U.S. Securities and Exchange Commission Press Release No. 2024-180: SEC Charges BIT Mining with FCPA Violations in Connection with Bribery Scheme to Influence Members of Japanese Parliament (Nov. 18, 2024), <https://www.sec.gov/newsroom/press-releases/2024-180>.

³⁵ See U.S. Department of Justice Press Release No. 24-1520: McKinsey & Company Africa to Pay Over \$122M in Connection with Bribery of Southern African Government Officials (Dec. 6, 2024), <https://www.justice.gov/opa/pr/mckinsey-company-africa-pay-over-122m-connection-bribery-south-african-government-officials>.

³⁶ Brent Wible, Former Chief Counselor, DOJ, Keynote Speech at the American Conference Institute's International Conference on the Foreign Corrupt Practices Act (Dec. 5, 2024), available at <https://www.justice.gov/opa/speech/chief-counselor-brent-wible-delivers-keynote-speech-american-conference-institutes>.

³⁷ Brent Wible, Former Chief Counselor, DOJ, Keynote Speech at the American Conference Institute's International Conference on the Foreign Corrupt Practices Act (Dec. 5, 2024), available at <https://www.justice.gov/opa/speech/chief-counselor-brent-wible-delivers-keynote-speech-american-conference-institutes>.

³⁸ See Plea Agreement, *United States v. Gunvor S.A.*, No. 24-CR-00085 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

³⁹ See Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

⁴⁰ See Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633 (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

⁴¹ Those four individuals are: Mauricio Gomez Baez; Abraham Cigarroa Cervantes; John Christopher Polit; and Raul Gorrin Belisario.

and anti-money laundering statutes as pillars of the DOJ's anti-corruption framework.⁴² In line with this two-pronged strategy, the DOJ simultaneously brought both FCPA and money laundering charges against at least two individuals in 2024.⁴³ The DOJ has also continued to rely heavily on money laundering charges as a means of pursuing enforcement action against corporations and individuals who do not meet the FCPA's jurisdictional requirements. During 2024, the DOJ charged at least five individuals with money laundering related to alleged bribery schemes, without bringing an accompanying FCPA charge.⁴⁴

f. Continued Focus on FCPA Criminal Trials

Due to the complex nature of international bribery schemes and the challenges associated with obtaining overseas evidence, FCPA trials are relatively rare. As detailed in Section V.D below, however, four FCPA-related trials began and concluded in 2024. All resulted in bribery-related convictions. In early 2024, Javier Aguilar was convicted by a federal jury in Brooklyn for his involvement in schemes to bribe Ecuadorian and Mexican officials.⁴⁵ In April, Carlos Ramon Polit Faggioni was convicted of charges related to his acceptance of bribery payments while Comptroller General of Ecuador.⁴⁶ In August, Manuel Chang was convicted of charges related to his acceptance of bribery payments while serving as Finance Minister of Mozambique.⁴⁷ And in September, Glenn Oztemel was convicted for a long-running scheme to bribe Brazilian officials.⁴⁸

⁴² Lisa O. Monaco, Former Deputy Att'y Gen., DOJ, Remarks at 2023 Summit for Democracy (Mar. 28, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-defending-rule-law-against-hostile>.

⁴³ Those two individuals are Rojer Alejandro Pinate Martinez and Jorge Miguel Vazquez.

⁴⁴ Those five individuals are: Elie Moreno, Juan Andrew Donato Bautista, Paulinus Iheanacho Okoronkwo; John Christopher Polit; and Raul Gorriñ Belisario.

⁴⁵ See U.S. Department of Justice Press Release No. 24-213: Oil and Gas Trader Convicted for Role in Foreign Bribery and Money Laundering Scheme (Feb. 23, 2024), <https://www.justice.gov/opa/pr/former-oil-and-gas-trader-convicted-role-foreign-bribery-and-money-laundering-scheme>; see also U.S. Attorney's Office, E.D.N.Y., Press Release, Ex-Energy Trader for Vitol Pleads Guilty to Second International Bribery Scheme (Dec. 3, 2024), <https://www.justice.gov/usao-edny/pr/ex-energy-trader-vitol-pleads-guilty-second-international-bribery-scheme>.

⁴⁶ See U.S. Department of Justice Press Release No. 24-502: Former Comptroller General of Ecuador Convicted for \$10M International Bribery and Money Laundering Scheme (Apr. 24, 2024), <https://www.justice.gov/opa/pr/former-comptroller-general-ecuador-convicted-10m-international-bribery-and-money-laundering>.

⁴⁷ See U.S. Department of Justice Press Release No. 24-995: Former Finance Minister of Mozambique Convicted of \$2B Fraud and Money Laundering Scheme (Sept. 20, 2024), <https://www.justice.gov/opa/pr/former-finance-minister-mozambique-convicted-2b-fraud-and-money-laundering-scheme>.

⁴⁸ See U.S. Department of Justice Press Release No. 24-1209: Former Connecticut-Based Energy Trader Convicted of International Bribery Scheme (Sept. 26, 2024), <https://www.justice.gov/opa/pr/former-connecticut-based-energy-trader-convicted-international-bribery-scheme>.

g. DOJ Focus on Whistleblowers

The DOJ also announced two new pilot programs in 2024, discussed further in Sections III.D-E—both highlighting the important role of individuals in identifying and reporting corrupt corporate conduct. In April 2024, the DOJ announced its Voluntary Self-Disclosures for Individuals Pilot Program, which provides the eligibility criteria for individuals to qualify for NPAs despite their role in corporate misconduct—namely voluntary self-disclosure, along with potential restitution, forfeiture, and disgorgement.⁴⁹ In August, the DOJ followed-up by announcing its Corporate Whistleblower Awards Pilot Program (along with, as noted above, a related amendment to the CEP), which offers financial rewards to individuals who voluntarily report on corporate misconduct.⁵⁰

h. Investment in Data Analytics

As in recent years, the DOJ has continued to focus on the importance of companies investing in data analytics to detect corruption and to enhance anti-corruption compliance.⁵¹ In September 2024, the DOJ announced an update to its ECCP guidance, focusing on data analytics in compliance programs, along with the threats posed by modern technologies like AI.⁵² Various DOJ officials subsequently issued public statements emphasizing the need for businesses to employ data-driven innovation in structuring and running compliance programs.⁵³

3. Changes in Relevant Personnel

The change in presidential administration will result in major personnel changes at both the DOJ and SEC. At the DOJ, President Trump has nominated Pam Bondi as Attorney General and announced his intent to nominate Todd Blanche as Deputy Attorney General.⁵⁴ On December 5, 2024, President Trump announced his intention to nominate former SEC Commissioner Paul Atkins

⁴⁹ U.S. Department of Justice, *The Criminal Division's Pilot Program on Voluntary Self-Disclosures for Individuals* (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl>.

⁵⁰ U.S. Department of Justice, *Criminal Division Corporate Whistleblower Awards Pilot Program* (Aug. 1, 2024), <https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-program>.

⁵¹ See WilmerHale, *Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023*, at 12 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developmentsand-predictions-for-2023>.

⁵² U.S. Department of Justice, *Evaluation of Corporate Compliance Programs* (Sept. 2024), <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl>.

⁵³ See Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>; Marshall Miller, Principal Deputy Att'y Gen., DOJ, Remarks at the New York City Bar Association Compliance Institute (Oct. 23, 2024), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-new-york-0>.

⁵⁴ Blanche was previously a counsel at WilmerHale. See NPR Washington Desk, *Trump picks his lawyer, Todd Blanche, as deputy attorney general*, NPR (Nov. 14, 2024), <https://www.npr.org/2024/11/14/g-s1-34264/trump-blanche-deputy-attorney-general-bove-sauer>.

to replace Gary Gensler as SEC Chair.⁵⁵ It remains an open question as to how the DOJ and SEC under the second Trump Administration will enforce anti-bribery laws. In 2012 and 2017, President Trump reportedly expressed disdain for the FCPA.⁵⁶ However, during his first administration, the DOJ and SEC did not exhibit any clear deviation from its typical enforcement levels with respect to the FCPA.⁵⁷ In fact, during the first Trump term, the DOJ's FCPA enforcement levels were higher on average than during the last six years of the Obama Administration.⁵⁸ Historically, enforcement activity generally does not fluctuate significantly over a four-year term because investigations and resolutions typically span multiple years, and many investigations and potential resolutions are already in the pipeline. That said, early actions in President Trump's second term indicate that there may be more significant changes in priorities and approach than we saw in President Trump's prior administration, and it remains unclear how these changes will affect anti-corruption and other white collar enforcement efforts.

III. Key Policy Announcements

A. Introduction

In 2024, the DOJ and SEC continued to emphasize their expectations for corporate cooperation, including the effects of cooperation on financial outcomes in resolutions. The DOJ made narrow but significant updates to the CEP to bolster incentives for corporate self-reporting. Other key updates include the formalization of the DOJ Fraud Section's authority to prosecute cases under the Foreign Extortion Prevention Act (FEPA), a DOJ whistleblower pilot program, a status report on the DOJ's Compensation Incentives and Clawbacks Pilot Program, and updates to the ECCP.

B. Then-Principal Deputy Assistant Attorney General Nicole Argentieri's Blog Post Describing Corporate Enforcement Policy Changes and Pilot Programs

In November 2024, then-Principal Deputy Assistant Attorney General (PDAAG) Nicole Argentieri published a blog post describing the results of various pilot programs and announcing significant revisions to the CEP.⁵⁹

⁵⁵ Alex Veiga, *Trump Nominates Cryptocurrency Advocate Paul Atkins as SEC Chair*, AP NEWS (Dec. 4, 2024), <https://apnews.com/article/sec-chair-atkins-gensler-investors-financial-markets-d1c544f1846071b33c75b9f2dd0c1ba4>.

⁵⁶ See Renae Merle, *Trump called global anti-bribery law 'horrible'*, WASH. POST (Jan. 31, 2020), <https://www.washingtonpost.com/business/2020/01/31/trump-fcpa/>.

⁵⁷ See WilmerHale, *Global Anti-Bribery Year-in-Review: 2020 Developments and Predictions for 2021* (Jan. 28, 2021), <https://www.wilmerhale.com/insights/client-alerts/20210126-2020-global-antibribery-yearinreview>.

⁵⁸ See WilmerHale, *Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

⁵⁹ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

Most notably, the DOJ amended the CEP to consider a company's good faith efforts to self-report, and to reflect that such efforts will be considered even when that disclosure does not meet the definition of "voluntary self-disclosure" as articulated in the policy.⁶⁰ Then-PDAAG Argentieri noted that this change was made to reflect the 2023 Albemarle resolution—which involved the largest reduction in an FCPA settlement, near the maximum possible percentage (50%) allowed under the CEP—and to incentivize companies to do the right thing.⁶¹ Then-PDAAG Argentieri highlighted that the revisions to the policy were aimed to "encourage companies to come forward at the earliest possible juncture so we can prosecute culpable individuals."⁶² The DOJ's changes address the implicit tension between incentivizing individual whistleblowers to report to the DOJ versus reporting through corporate compliance channels. Prior to the policy change, corporations had less incentive to self-report if a whistleblower likely had already reported to the DOJ. With these changes, the DOJ is seeking to balance corporate transparency incentives with individual incentive programs.

Additionally, then-PDAAG Argentieri indicated that two other current practices would be formalized in the CEP.⁶³ The first update clarified that, to qualify as a voluntary self-disclosure, the information must be original information, or information that prosecutors did not already know, though the DOJ "will consider a company's good faith disclosure of information that—unbeknownst to them—we already knew about." The second update removed one of the aggravating circumstances—"significant profit"—from the policy, in order to encourage companies to come forward even when they may be concerned that the amount of profits was significant.⁶⁴ Taken as a whole, the new revisions indicate that the DOJ has refined its view of what qualifies as voluntary self-disclosure of corporate misconduct, building on the DOJ's efforts to further entice companies to self-disclose.

In her blog post, then-PDAAG Argentieri also described two other policy changes aimed at increasing transparency that were implemented during her tenure: (1) accounting for a company's history of misconduct; and (2) crediting payments to other authorities as part of the DOJ's "no piling on" policy. Then-PDAAG Argentieri noted that, regardless of prior misconduct, when a company has committed two or more criminal schemes that it seeks to resolve concurrently, the Criminal

⁶⁰ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁶¹ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁶² Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁶³ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁶⁴ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

Division will account for multiple schemes by calculating a penalty above the bottom of the Guidelines.⁶⁵ Then-PDAAG Argentieri also announced the Criminal Division's plans to issue additional guidance to all Criminal Division prosecutors to formalize existing "no piling on" and victim assistance practices.⁶⁶ Specifically, she highlighted that, while agencies must coordinate prosecutions to avoid imposing duplicative penalties and fines, this policy does not apply when restitution or forfeiture can be used for remission payments to victims.⁶⁷ This indicates that, when pursuing corporate resolutions, companies should consider how victim compensation may affect the imposition of penalties and forfeiture.

C. FEPA Cases Assigned to DOJ FCPA Unit

On March 8, 2024, then-PDAAG Argentieri announced revisions to the Justice Manual that formalize the DOJ FCPA Unit's authority to prosecute cases brought under the FEPA. The FEPA, which became law in December 2023, makes it a crime for foreign government officials to solicit or accept bribes from companies and individuals when certain U.S. nexus requirements have been met (the "demand side" of foreign bribery), unlike the FCPA, which criminalizes payment of bribes (the "supply side").⁶⁸

The March 2024 revisions to the Justice Manual state that the Fraud Section of the DOJ's Criminal Division will "also handle cases brought under [the FEPA]."⁶⁹ Then-PDAAG Argentieri indicated that, while the DOJ's justifications for centralizing FEPA prosecution generally mirrored those for centralizing FCPA prosecution (*i.e.*, the Fraud Section has experience prosecuting complex matters across multiple jurisdictions, and centralization promotes consistent enforcement), there was an additional justification for centralization in the context of the FEPA—the national security and diplomatic concerns implicated by the "sensitivities of prosecuting a foreign government's

⁶⁵ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁶⁶ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁶⁷ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁶⁸ WilmerHale, *Congress Enacts the Foreign Extortion Prevention Act Targeting Foreign Officials' Conduct* (Dec. 21, 2023), <https://www.wilmerhale.com/insights/client-alerts/20231221-congress-enacts-the-foreign-extortion-prevention-act-targeting-foreign-officials-conduct>.

⁶⁹ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., DOJ, Keynote Speech at the American Bar Association's 39th National Institute on White Collar Crime (Mar. 8, 2024), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-speech-american>; U.S. DEPARTMENT OF JUSTICE, JUSTICE MANUAL § 9-47.110 (Mar. 2024), <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#9-47.100>.

officials.”⁷⁰ Accordingly, all FCPA and FEPA investigations and prosecutions must occur with the DOJ Criminal Division Fraud Section’s knowledge and under its express authorization and may not be undertaken independently by U.S. attorneys’ offices.⁷¹

The centralization of FEPA and FCPA prosecution suggests that the DOJ may increase its requests and expectations for cooperation from companies when investigating the “demand” side of foreign bribery. Historically, the DOJ relied on (and continues to rely on even since the enactment of the FEPA) other criminal laws, such as statutes that prohibit money laundering, to target the recipients of bribes, as the FCPA does not prohibit foreign officials from requesting or taking bribes from companies. DOJ can now rely on the FEPA to prosecute foreign officials directly.

D. DOJ Voluntary Self-Disclosure for Individuals Pilot Program

As noted above, on April 15, 2024, the DOJ Criminal Division announced its Pilot Program on Voluntary Self-Disclosures for Individuals.⁷² The Pilot Program provides clarity regarding the circumstances in which the DOJ will offer NPAs to individuals who voluntarily disclose criminal misconduct. Under the program, individuals with potential criminal liability may be eligible to enter into an NPA provided that they voluntarily report original, nonpublic, and previously unknown information to the DOJ about certain types of criminal misconduct involving corporations.⁷³ In the Pilot Program, the DOJ outlines several criteria that must be met in order for an individual to qualify for an NPA. The whistleblower must (1) specify the complete extent of their own role in the misconduct, (2) fully cooperate with authorities, and (3) pay any applicable victim compensation, restitution, forfeiture, or disgorgement, including returning any ill-gotten gains.⁷⁴ There are several limitations on eligibility for whistleblower immunity—notably including that qualifying whistleblowers

⁷⁰ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., DOJ, Keynote Speech at the American Bar Association’s 39th National Institute on White Collar Crime (Mar. 8, 2024), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-speech-american>; see U.S. DEPARTMENT OF JUSTICE, JUSTICE MANUAL § 9-47.110 (Mar. 2024), <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#9-47.100> (“[T]he investigation, arrest, or prosecution of a foreign government official may implicate national security or diplomatic interests and require coordination with other law enforcement and government agencies in the United States and abroad.”).

⁷¹ U.S. DEPARTMENT OF JUSTICE, JUSTICE MANUAL § 9-47.110 (Mar. 2024), <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#9-47.100>.

⁷² U.S. Department of Justice, *The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals* (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl>.

⁷³ U.S. Department of Justice, *The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals*, at 1 (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl>.

⁷⁴ U.S. Department of Justice, *The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals*, at 2-3 (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl>. Further, qualifying whistleblowers must be individuals who have not engaged in criminal conduct involving violence, use of force, threats or substantial patient harm; any sex offense involving fraud, force or coercion or relating to a minor; or any offense involving terrorism; are not elected or appointed foreign government officials; are not domestic government officials at any level, including any employee of a law enforcement agency; and do not have previous felony convictions or convictions of any kind for conduct involving fraud or dishonesty. *Id.* at 3.

cannot be the chief executive officer (or equivalent) or chief financial officer (or equivalent) of a public or private company or the organizer or leader of the scheme.⁷⁵ The Pilot Program applies to disclosures made on or after April 15, 2024.⁷⁶

Although the Pilot Program incentivizes individuals with potential criminal liability to come forward, the terms of the NPA come at a high price. Individuals must be willing to satisfy the rigorous cooperation and assistance required, including providing truthful and complete testimony and evidence—whether in interviews, before a grand jury, or at any trial or other court proceeding—producing documents, records, and other evidence when called on, and, if requested, working in a proactive manner under the supervision of and in compliance with U.S. law enforcement officers and agents.⁷⁷ Further, individuals face risks with self-reporting and may ultimately be deemed ineligible to enter an NPA, in which case they would very likely be prosecuted, including based on evidence that they provided to investigators. Because of these considerations, it is important for individuals to understand the process and attendant risks, including by potentially seeking advice from experienced counsel in this area.

The Pilot Program is the latest in a series of new Justice Department whistleblower programs rolled out in the past year, including the whistleblower rewards program previewed by then-Deputy Attorney General (DAG) Lisa Monaco at the National Institute on White Collar Crime,⁷⁸ as well as a whistleblower program launched in February 2024 by the U.S. Attorney's Office for the Southern District of New York that offers NPAs to individuals who provide timely information on corporate misconduct.⁷⁹ At least 12 other U.S. attorneys' offices have since followed suit, instating their own

⁷⁵ U.S. Department of Justice, *The Criminal Division's Pilot Program on Voluntary Self-Disclosures for Individuals*, at 3 (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl>.

⁷⁶ U.S. Department of Justice, *The Criminal Division's Pilot Program on Voluntary Self-Disclosures for Individuals*, at 1 (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl>. The DOJ specified that “truthful and complete” disclosures are ones that “include all information known to the individual related to any misconduct in which the individual has participated and/or of which the individual is aware, including the complete extent of the individual’s own role in the misconduct, and all matters about which the Department may inquire.” *Id.* at 3.

⁷⁷ U.S. Department of Justice, *The Criminal Division's Pilot Program on Voluntary Self-Disclosures for Individuals*, at 3 (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl>.

⁷⁸ Lisa Monaco, Former Deputy Att’y Gen., DOJ, Keynote Remarks at the American Bar Association’s 39th National Institute on White Collar Crime (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

⁷⁹ See U.S. Attorney’s Office, S.D.N.Y., SDNY Whistleblower Pilot Program (Feb. 13, 2024), https://www.justice.gov/d9/2024-02/sdny_wb_policy_effective_2-13-24.pdf.

whistleblower rewards programs.⁸⁰ The Pilot Program signals the value that the DOJ places on whistleblowers as sources of information. As then-PDAAG Argentieri stated, the Pilot Program aims “[t]o provide clear incentives and encourage individuals to come forward,” and makes clear to companies that the DOJ “will use every tool at our disposal to uncover criminal conduct.”⁸¹

As the DOJ continues to incentivize individuals to voluntarily self-report, companies should assess and enhance their compliance program to ensure effectiveness in detecting corporate misconduct and establishing internal reporting channels that encourage employees to report complaints.

E. DOJ Whistleblower Pilot Program

On August 1, 2024, the DOJ Criminal Division launched a three-year pilot program—the Corporate Whistleblower Awards Pilot Program (“Whistleblower Pilot Program”)—which provides financial rewards to whistleblowers who voluntarily disclose original and truthful information regarding corporate wrongdoing.⁸² According to then-DAG Monaco, the program aims to address existing gaps left by the whistleblower programs of other agencies (e.g., those at the SEC, Commodity Futures Trading Commission, Financial Crimes Enforcement Network, and the Internal Revenue Service), which do not cover the full scope of corporate crimes investigated and prosecuted by the

⁸⁰ *Whistleblower Policy*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE E.D.N.Y. (last updated Sept. 16, 2024), <https://www.justice.gov/usao-edny/whistleblower-policy>; *District of New Jersey Whistleblower Non-Prosecution Pilot Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE D.N.J. (last updated Sept. 13, 2024), <https://www.justice.gov/usao-nj/dnj-whistleblower>; *United States Attorney’s Office for the Southern District of Florida’s Whistleblower Non-Prosecution Pilot Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE S.D. FLA. (last updated Sept. 13, 2024), <https://justice.gov/usao-sdfl/sdfl-whistleblower-program>; *Whistleblower Non-Prosecution Pilot Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE E.D. Va. (last updated Sept. 18, 2024), <https://www.justice.gov/usao-edva/whistleblower-non-prosecution-pilot-program>; *District of Columbia Whistleblower Non-Prosecution Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE D.D.C. (last updated Sept. 16, 2024), <https://www.justice.gov/usao-dc/district-columbia-whistleblower-non-prosecution-program>; *SDTX Whistleblower Non-Prosecution Pilot Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE S.D. TEX. (last updated Sept. 16, 2024), <https://www.justice.gov/usao-sdtx/sdtx-whistleblower-non-prosecution-pilot-program>; U.S. Department of Justice Press Release: U.S. Attorney’s Office in Chicago Announces Individual Self-Disclosure Pilot Program (Sept. 16, 2024), <https://www.justice.gov/usao-ndil/pr/us-attorneys-office-chicago-announces-individual-self-disclosure-pilot-program>; *NDCA Whistleblower Pilot Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE N.D. CAL. (last updated May 3, 2024), <https://www.justice.gov/usao-ndca/whistleblower-program>; *Whistleblower Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE W.D.N.C. (last updated Oct. 21, 2024), <https://www.justice.gov/usao-wdnc/whistleblower-program>; *EDNC Whistleblower Pilot Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE E.D.N.C. (last updated Nov. 8, 2024), <https://www.justice.gov/usao-ednc/ednc-whistleblower-pilot-program>; *AZ Whistleblower Non-Prosecution Pilot Program*, U.S. DEPARTMENT OF JUSTICE: U.S. ATTORNEY’S OFFICE D. ARIZ. (last updated Oct. 22, 2024), <https://www.justice.gov/usao-az/az-whistleblower-non-prosecution-pilot-program>; U.S. Department of Justice Press Release: United States Attorney Martin Estrada Announces Implementation of New Whistleblower Pilot Program to Facilitate Increased Prosecutions of High-Level Wrongdoers (Aug. 23, 2024), <https://www.justice.gov/usao-cdca/pr/united-states-attorney-martin-estrada-announces-implementation-new-whistleblower-pilot>.

⁸¹ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., Criminal Division’s Voluntary Self-Disclosures Pilot Program for Individuals, U.S. DEPARTMENT OF JUSTICE (Apr. 22, 2024), <https://www.justice.gov/opa/blog/criminal-divisions-voluntary-self-disclosures-pilot-program-individuals>.

⁸² U.S. Department of Justice, *Criminal Division Corporate Whistleblower Awards Pilot Program* (Aug. 1, 2024), <https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-program>.

DOJ.⁸³ Under the program, a qualifying whistleblower is entitled to receive a portion of the net proceeds that are forfeited by a company if the information that the whistleblower provides relates to at least one of four areas of corporate crime identified by the DOJ, and if the information provided results in a civil or criminal forfeiture of \$1 million or more in net proceeds forfeited.⁸⁴ To be eligible for an award, the whistleblower must meet several criteria, including not having “meaningfully participated” in the reported misconduct.⁸⁵

The Whistleblower Pilot Program and accompanying amendment to the CEP, noted above, ease the pressure on companies to be “first in line” to self-disclose misconduct already reported to the DOJ by a whistleblower. At the same time, however, companies face increasing pressure to ensure they have robust compliance programs that encourage internal reporting of complaints and have the investigative capabilities to review and self-report the misconduct within the 120-day timeframe. According to the Whistleblower Pilot Program, the amount of the whistleblower’s award will be

⁸³ See Sarah Jarvis, *DOJ Unveils Whistleblower Pilot, But Garners Atty Criticism*, LAW360 (Aug. 1, 2024), <https://www.law360.com/corporate/articles/1864715/doj-unveils-whistleblower-pilot-but-garners-atty-criticism>.

⁸⁴ The information provided by whistleblowers under the program must pertain to one of four areas of corporate crime:

1. Violations by financial institutions, their insiders or agents (including schemes involving money laundering, anti-money laundering compliance violations, registration of money transmitting businesses or fraud) and fraud against or noncompliance with financial institution regulators.
2. Violations related to foreign corruption and bribery by, through or related to companies (including violations of the FCPA, the FEPA, and the money laundering statutes).
3. Violations committed by or through companies related to the payment of bribes or kickbacks to domestic public officials (including federal, state, territorial or local elected or appointed officials, and officers or employees of any government department or agency).
4. Violations related to (a) federal healthcare offenses and related crimes involving private or other nonpublic healthcare benefit programs, where the overwhelming majority of claims are submitted to private or other nonpublic healthcare benefit programs, (b) fraud against patients, investors and other nongovernmental entities in the healthcare industry, where the overwhelming majority of the actual or intended loss was to patients, investors and other non-governmental entities, or (c) any other federal violations involving conduct related to healthcare not covered by the Federal False Claims Act.

U.S. Department of Justice, *Corporate Whistleblower Awards Pilot Program*, at 5-6 (Aug. 1, 2024), <https://www.justice.gov/criminal/media/1362321/dl?inline>.

⁸⁵ U.S. Department of Justice, *Corporate Whistleblower Awards Pilot Program*, at 2-3 (Aug. 1, 2024), <https://www.justice.gov/criminal/media/1362321/dl?inline>. The DOJ specified that individuals are not eligible for an award if they “meaningfully participated in the criminal activity they reported, including by directing, planning, initiating, or knowingly profiting from that criminal activity,” but noting in a footnote that an individual remains eligible if the Department determines, in its discretion, that the individual’s minimal role in the reported scheme was sufficiently limited that the individual could be described as “plainly among the least culpable of those involved in the conduct of a group.” *Id.* (citing U.S. Sentencing Guidelines § 3B1.2 cmt. n.4 (defining “minimal participant”)).

determined in part by whether the whistleblower timely reported the conduct through the company's internal compliance structure.⁸⁶

F. Status Updates on Compensation and Clawbacks Pilot Program

In September 2024, then-PDAAG Argentieri provided remarks at the Society of Corporate Compliance and Ethics' 23rd Annual Compliance & Ethics Institute, which included an update on the DOJ's Compensation Incentives and Clawbacks Pilot Program.⁸⁷ And in November 2024, DOJ also provided a "first-of-its-kind" status report on the Compensation Incentives and Clawbacks Pilot Program, indicating that the Department viewed the Pilot Program as a success and will continue its focus on executive compensation.⁸⁸

Rolling out in March 2023, the program includes two key components.⁸⁹ First, during the pilot program, every corporate resolution will now include a requirement that the resolving company develop compliance-promoting criteria within its compensation and bonus structure; second, the program provides potential fine reductions to companies that seek to claw back corporate compensation from wrongdoers.⁹⁰ In her November 2024 blog post, discussed above, then-PDAAG Argentieri also noted that the DOJ made clear that it will award fine reductions not only to companies that recoup compensation from qualifying employees, but also to those that withhold the money from being paid to those employees in the first place.⁹¹ She also noted that Criminal Division prosecutors "should make sure companies know early during an investigation" that fine

⁸⁶ Although timely reporting through internal compliance or reporting systems is a factor, it is one of three considerations, alongside significance of the information and assistance provided by the whistleblower. See U.S. Department of Justice, *Corporate Whistleblower Awards Pilot Program*, at 9-10 (Aug. 1, 2024), <https://www.justice.gov/criminal/media/1362321/dl?inline>.

⁸⁷ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

⁸⁸ Argentieri emphasized that the report serves as "an example of how the division can continue to be transparent about trends or issues that span more than a single resolution." Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁸⁹ U.S. Department of Justice, *The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks*, at 1 (Mar. 3, 2023), <https://www.justice.gov/file/1571416/download>.

⁹⁰ U.S. Department of Justice, *The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks*, at 1 (Mar. 3, 2023), <https://www.justice.gov/file/1571416/download>; WilmerHale, *DOJ Announces Significant Guidance on Compliance, Compensation, Communications and Cooperation* (Mar. 3, 2023), <https://www.wilmerhale.com/en/insights/client-alerts/20230303-doj-announces-significant-guidance-on-compliance-compensation-communications-and-cooperation>.

⁹¹ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

reductions may be available for both recouping and withholding compensation from culpable individuals.⁹²

Then-PDAAG Argentieri reported that, under the program—which is now more than halfway through its three-year trial period—16 companies have incorporated compliance criteria into their compensation structures as part of their corporate resolutions with the DOJ.⁹³ As an example, then-PDAAG Argentieri noted that one company adopted a performance review metric relating to how the employee demonstrates the company’s “core values,” which would factor in the employee’s compensation and promotion decisions.⁹⁴ With respect to clawbacks, then-PDAAG Argentieri discussed how the Pilot Program impacted the DOJ’s resolutions with Albemarle in 2023 and SAP in 2024, highlighting that both companies received reductions in their criminal monetary penalty equal to the amount of bonuses or compensation withheld. Then-PDAAG Argentieri also noted that Albemarle’s and SAP’s actions with respect to compensation factored into the government’s decision to award significant fine reductions—beyond the amount equal to the withheld compensation—in both cases. The former PDAAG’s remarks highlight the importance, in the DOJ’s view, for companies to hold culpable individuals, including executives, financially accountable in order to send a clear message that there will be consequences for those who do not stand against misconduct.⁹⁵ Then-PDAAG Argentieri’s comments echoed then-DAG Monaco’s remarks in March 2024 at the American Bar Association’s White Collar Crime Conference, in which she noted that clawbacks “ensure[] . . . the wrongdoers are actually paying for their misconduct.”⁹⁶

G. DOJ and SEC Statements on Enforcement Priorities

1. Then-DOJ Deputy Attorney General Monaco’s Remarks on

⁹² Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>.

⁹³ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., Transparency in Criminal Division Enforcement, U.S. DEPARTMENT OF JUSTICE (Nov. 22, 2024), <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>; *see also* Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

⁹⁴ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

⁹⁵ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

⁹⁶ Lisa Monaco, Former Deputy Att’y Gen., DOJ, Keynote Remarks at the American Bar Association’s 39th National Institute on White Collar Crime (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

Recidivism and Self-disclosure

In a March 2024 speech at the American Bar Association's White Collar Crime Conference, then-DAG Monaco discussed the DOJ's emphasis on combatting recidivism and increasing self-disclosure.⁹⁷ Then-DAG Monaco underscored that "[a] history of misconduct matters" because "penalties exist, in part, to deter future misconduct."⁹⁸ She explained that the cost of committing another violation is "far higher than the cost of preventing one," citing two examples of recidivists, Ericsson and Teva Pharmaceuticals, which both received more substantial penalties following breaches of DPAs.⁹⁹ Put differently, companies that fail to invest in strong compliance and remediation measures will face increased enforcement costs if there is a subsequent violation.

Additionally, as discussed earlier in this section, then-DAG Monaco highlighted the DOJ's focus on self-disclosure programs, previewing the DOJ's Pilot Program on Voluntary Self-Disclosure for Individuals, which was announced the following month.¹⁰⁰ Then-DAG Monaco noted that U.S. attorneys are experimenting with incentives for self-disclosures.¹⁰¹ She specifically cited pilot initiatives in the Southern District of New York and Northern District of California "that are, in essence, voluntary self-disclosure programs for individuals,"¹⁰² suggesting that companies may benefit from closely watching self-disclosure programs in jurisdictions in which they operate. As noted, at least eleven other U.S. attorneys' offices have similar pilot programs.

⁹⁷ Lisa Monaco, Former Deputy Att'y Gen., DOJ, Keynote Remarks at the American Bar Association's 39th National Institute on White Collar Crime (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

⁹⁸ Lisa Monaco, Former Deputy Att'y Gen., DOJ, Keynote Remarks at the American Bar Association's 39th National Institute on White Collar Crime (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

⁹⁹ Lisa Monaco, Former Deputy Att'y Gen., DOJ, Keynote Remarks at the American Bar Association's 39th National Institute on White Collar Crime (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

¹⁰⁰ See Section III.D, "DOJ Voluntary Self-Disclosure for Individuals Pilot Program"; U.S. Department of Justice, *The Criminal Division's Pilot Program on Voluntary Self-Disclosures for Individuals* (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl>.

¹⁰¹ Lisa Monaco, Former Deputy Att'y Gen., DOJ, Keynote Remarks at the American Bar Association's 39th National Institute on White Collar Crime (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

¹⁰² Lisa Monaco, Former Deputy Att'y Gen., DOJ, Keynote Remarks at the American Bar Association's 39th National Institute on White Collar Crime (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

2. Former SEC Director Grewal's Remarks on Effective Cooperation

In his remarks at the Securities Enforcement Forum West in May 2024, Gurbir Grewal, then-SEC Director of the Division of Enforcement, outlined five principles for effective cooperation with the SEC that are keys to earning cooperation credit with the Commission:¹⁰³

1. **Self-policing**, which starts “well before the SEC gets involved,” “begins with the tone at the top,” and includes “staying up-to-date on developments and risks”;
2. **Self-reporting**, which can occur even before all the facts are known and prevent delays in reporting that can raise questions about supervisory and compliance systems;
3. **Remediation**, which should be proactive, timely, and meaningful;
4. **Cooperation**, which includes helping make the investigation more efficient, or going beyond “simply complying with subpoenas”; and
5. **Collaboration**, which requires communicating “early, often, and substantively” with enforcement staff.¹⁰⁴

While then-Director Grewal noted that adherence to these principles would not guarantee a no-penalty resolution or declination, he highlighted that companies and individuals are likely to “experience better outcomes with cooperation than without it.”¹⁰⁵ Unlike the DOJ, the SEC has not issued guidance with particular standards for providing benefits to companies for self-disclosure, cooperation, and remediation. Indeed, while companies often factor the DOJ's guidance into self-disclosure decisions, it is important to keep in mind that the DOJ guidance does not bind the SEC and that even where a DOJ declination might be likely under the DOJ's guidance, an SEC resolution may still result.

3. Then-PDAAG Argentieri's Remarks on Declinations

In September 2024, then-PDAAG Argentieri discussed the DOJ's approach to declinations, emphasizing the DOJ's focus on self-disclosure, remediation, and cooperation.¹⁰⁶ As one example, then-PDAAG Argentieri pointed to a declination in an investigation involving Boston Consulting

¹⁰³ Gurbir S. Grewal, Former Director, Division of Enforcement, SEC, Remarks at Securities Enforcement Forum West 2024 (May 23, 2024), <https://www.sec.gov/newsroom/speeches-statements/grewal-remarks-securities-enforcement-forum-west-052324>.

¹⁰⁴ Gurbir S. Grewal, Former Director, Division of Enforcement, SEC, Remarks at Securities Enforcement Forum West 2024 (May 23, 2024), <https://www.sec.gov/newsroom/speeches-statements/grewal-remarks-securities-enforcement-forum-west-052324>.

¹⁰⁵ Gurbir S. Grewal, Former Director, Division of Enforcement, SEC, Remarks at Securities Enforcement Forum West 2024 (May 23, 2024), <https://www.sec.gov/newsroom/speeches-statements/grewal-remarks-securities-enforcement-forum-west-052324>.

¹⁰⁶ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

Group, noting that the company timely disclosed a potential FCPA violation, provided “full and proactive cooperation,” and implemented “timely and appropriate remediation.”¹⁰⁷ She also cited the example of SAP for its proactive cooperation and quick remediation of misconduct, including terminating culpable employees and imposing compensation-based penalties.¹⁰⁸ Then-PDAAG Argentieri further highlighted that proactive cooperation can reduce penalties in instances where declinations are unlikely. For example, she noted that SAP’s voluntary and prompt disclosure of evidence of a potential FCPA violation after news reports publicized allegations involving foreign bribery factored into the DOJ’s decision to award a 40% criminal penalty reduction.¹⁰⁹ Conversely, then-PDAAG Argentieri cited commodities company Trafigura as being on the “other end of the spectrum,” because, in the DOJ’s view, it “failed to preserve and produce certain evidence in a timely manner” and caused “significant delays.”¹¹⁰ These examples serve as helpful guideposts for companies considering cooperation and self-disclosure measures.

4. DOJ Artificial Intelligence (AI) Policy Announcement

In September 2024, the DOJ updated the ECCP, which is used by prosecutors to assess the effectiveness of a corporation’s compliance program.¹¹¹ The DOJ’s revisions, in large part, were aimed at addressing emerging risks related to AI and similar rapidly developing technologies, both in a company’s commercial business and in its compliance program.¹¹² The revised ECCP requires prosecutors to assess whether companies have conducted thorough risk assessments of the technologies they use, incorporated these risks into their broader enterprise risk management

¹⁰⁷ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

¹⁰⁸ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

¹⁰⁹ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>; U.S. Department of Justice Press Release No. 24-33: SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 11, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>.

¹¹⁰ Nicole M. Argentieri, Former Principal Deputy Assistant Att’y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

¹¹¹ U.S. Department of Justice, *Evaluation of Corporate Compliance Program* (updated Sept. 2024), <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl>.

¹¹² The ECCP adopts the definition of “artificial intelligence” set out in the White House March 28, 2024 Memorandum for the Heads of Executive Departments and Agencies, M-24-10. U.S. Department of Justice, *Evaluation of Corporate Compliance Program*, at 24 n.4 (updated Sept. 2024), <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl>.

(ERM) strategies, and implemented controls to mitigate risks associated with these innovations.¹¹³ It is unclear how much impact this AI guidance will have on FCPA cases.

IV. Key Investigation Related Developments

This year saw a slight decrease in the number of corporate FCPA settlements by U.S. enforcement authorities after a significant uptick last year. In total, 10 corporations—SAP, Gunvor, Trafigura, Deere & Company (John Deere), Moog, Raytheon, Telefónica Venezolana, BIT Mining Ltd., McKinsey Africa, and AAR—entered into 14 FCPA settlements with the DOJ, SEC, or both. Last year, 13 corporations entered into 15 settlements, while eight companies entered into 12 settlements in 2022, and four companies entered into seven settlements in 2021.

A. Notable Features of Corporate Resolutions

1. Application of DOJ's Pilot Program Regarding Compensation Incentives and Clawbacks

This year marked the second year of the DOJ's Pilot Program Regarding Compensation Incentives and Clawbacks, see Section III.F for additional details.¹¹⁴ In 2024, the DOJ applied the clawback element of the program in relation to one resolution: SAP paid a \$118.8 million criminal penalty, which reflected a reduction of \$109,141 for bonuses that SAP withheld from qualifying employees.¹¹⁵ The relatively trivial reduction applied to SAP's penalty may diminish the incentive for companies to pursue the credit, which may explain, in part, why no other DOJ resolution included a reduction under the clawback portion of the pilot program in 2024. Then-PDAAG Argentieri, however, remarked that SAP's decision to withhold compensation was "an important aspect ... that supported our decision to award a 40% fine reduction," suggesting that the fine reduction applied for withholding compensation should not be assessed in isolation.¹¹⁶ Further, every DOJ resolution in 2024 included the new compensation compliance requirements element of the pilot program, described above.

¹¹³ Questions the ECCP suggests asking include, "What baseline of human decision-making is used to assess AI?"; "How is accountability over use of AI monitored and enforced?"; and "How does the company train its employees on the use of emerging technologies such as AI?" See U.S. Department of Justice, *Evaluation of Corporate Compliance Program*, at 3-4 (updated Sept. 2024), <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl>.

¹¹⁴ U.S. Department of Justice, *The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks*, at 1 (Mar. 3, 2023), <https://www.justice.gov/file/1571416/download>; WilmerHale, *DOJ Announces Significant Guidance on Compliance, Compensation, Communications and Cooperation* (Mar. 3, 2023), <https://www.wilmerhale.com/en/insights/client-alerts/20230303-doj-announces-significant-guidance-on-compliance-compensation-communications-and-cooperation>.

¹¹⁵ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶ 4(f) (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹¹⁶ Nicole M. Argentieri, Former Principal Deputy Assistant Att'y Gen., DOJ, Remarks at the Society of Corporate Compliance and Ethics 23rd Annual Compliance & Ethics Institute (Sept. 23, 2024), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society>.

2. Continued Cross-Border Cooperation with Foreign Authorities

Four corporate resolutions announced in 2024 by U.S. authorities involved the DOJ potentially crediting penalties paid to foreign authorities. The Gunvor resolution was announced in conjunction with a parallel resolution brought by the Office of the Attorney General of Switzerland and involved the DOJ's crediting penalties paid to the Swiss authorities as well as allowing for crediting of payments made to the Ecuadorian authorities within one year of the DOJ resolution.¹¹⁷ The DOJ included provisions allowing for crediting of payments made to South African authorities in both the SAP and McKinsey Africa resolutions¹¹⁸ and allowing for crediting of payments made to Brazilian authorities in connection with the Trafigura resolution.¹¹⁹ In addition to the potential penalty crediting in connection with these resolutions, U.S. authorities also noted, in press releases relating to almost all of the corporate resolutions of 2024, the cooperation of foreign authorities, including authorities in Brazil, the Cayman Islands, Colombia, Ecuador, Japan, Luxembourg, Panama, Portugal, Singapore, South Africa, Switzerland, and Uruguay.¹²⁰

3. Focus on Off-Channel Messages

In 2024, the SEC continued to scrutinize off-channel communications for companies such as broker-dealers that have regulatory obligations to preserve business documents. For the SEC to have enforcement authority over off-channel communications, a company must have an independent obligation to preserve business documents under the applicable recordkeeping

¹¹⁷ U.S. Department of Justice Press Release No. 24-237: Commodities Trading Company Will Pay Over \$661M to Resolve Foreign Bribery Case (Mar. 1, 2024), <https://www.justice.gov/opa/pr/commodities-trading-company-will-pay-over-661m-resolve-foreign-bribery-case>.

¹¹⁸ U.S. Department of Justice Press Release No. 23-1072: SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 10, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>; U.S. Department of Justice Press Release No. 24-1520: McKinsey & Company Africa to Pay Over \$122M in Connection with Bribery of South African Government Officials (Dec. 5, 2024), <https://www.justice.gov/opa/pr/mckinsey-company-africa-pay-over-122m-connection-bribery-south-african-government-officials>.

¹¹⁹ U.S. Department of Justice Press Release No. 24-367: Swiss Commodities Trading Company Pleads Guilty to Foreign Bribery Scheme (Mar. 28, 2024), <https://www.justice.gov/opa/pr/swiss-commodities-trading-company-pleads-guilty-foreign-bribery-scheme>.

¹²⁰ U.S. Department of Justice Press Release No. 23-1072: SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 10, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations> (noting coordination with South Africa authorities); U.S. Department of Justice Press Release No. 24-237: Commodities Trading Company Will Pay Over \$661M to Resolve Foreign Bribery Case (Mar. 1, 2024), <https://www.justice.gov/opa/pr/commodities-trading-company-will-pay-over-661m-resolve-foreign-bribery-case> (acknowledging assistance from authorities in the Cayman Islands, Colombia, Ecuador, Panama, Portugal, Singapore, and Switzerland); U.S. Department of Justice Press Release No. 24-367: Swiss Commodities Trading Company Pleads Guilty to Foreign Bribery Scheme (Mar. 28, 2024), <https://www.justice.gov/opa/pr/swiss-commodities-trading-company-pleads-guilty-foreign-bribery-scheme> (noting authorities in Brazil, Switzerland, and Uruguay provided assistance); U.S. Department of Justice Press Release No. 24-1410: Telefónica Venezolana to Pay Over \$85M to Resolve Foreign Bribery Investigation (Nov. 12, 2024), <https://www.justice.gov/opa/pr/telefonica-venezolana-pay-over-85m-resolve-foreign-bribery-investigation>; U.S. Securities and Exchange Commission Press Release No. 2024-180: SEC Charges BIT Mining with FCPA Violations in Connection with Bribery Scheme to Influence Members of Japanese Parliament (Nov. 18, 2024), <https://www.sec.gov/newsroom/press-releases/2024-180>.

rules.¹²¹ The cooperation and remediation sections of the DOJ's CEP, discussed in Section III.B above, also include general guidance concerning off-channel communications, however, the DOJ does not appear to have reduced a company's credit under the CEP specifically for failing to have adequate procedures concerning off-channel communications. That said, numerous DOJ and SEC resolutions have cited the use of personal communications as evidence of efforts to hide improper conduct. For example, the DOJ noted the use of personal email accounts by Raytheon and McKinsey employees in furtherance of the schemes alleged in those cases.¹²² Additionally, in evaluating a company's cooperation, the DOJ has considered the efforts companies made to collect, review, and share relevant communications stored on employees' personal devices.¹²³ Likewise, the SEC noted that SAP's Indonesian subsidiary discussed bribes with a corrupt reseller over third-party messaging apps.¹²⁴ In our experience, both the DOJ and the SEC frequently focus intently on companies' off-channel policies and employees' compliance with them, as well as, in connection with investigations, companies' collection and preservation of business-related communications contained on personal devices and on off-channel platforms.

4. Broad Consideration of Prior Misconduct

In 2024, the DOJ considered a broad spectrum of prior misconduct in assessing potential criminal penalties for recidivists. Three corporate resolutions—SAP, Gunvor, and Telefónica Venezolana— noted the companies' or related entities' prior misconduct related to anti-bribery offenses. The SAP resolution specifically noted a 2016 resolution with the SEC in connection with charges that it violated the FCPA.¹²⁵ Similarly, Gunvor's resolution cited a 2019 resolution of bribery allegations with Swiss authorities.¹²⁶ Other resolutions considered prior misconduct outside the realm of bribery. For example, the DOJ's resolution with Trafigura also noted a prior 2006 guilty plea for false statements and a conviction in the Netherlands for violating the country's export and

¹²¹ See e.g., Books and Records to be Maintained by Investment Advisers, 17 C.F.R. § 275.204-2 and Records to be Preserved by Certain Exchange Members, Brokers and Dealers, 17 C.F.R. § 240.17a-4.

¹²² Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-399, ¶¶ 24, 25, 29, 31, 33, 47, 48, 49, 52, 55 (E.D.N.Y. Oct. 16, 2024) ECF No. 15; Information, *United States v. McKinsey and Company Africa (PTY) LTD*, No. 24-CR-00669, ¶ 21 (S.D.N.Y. Dec. 5, 2024) ECF No. 1, <https://www.justice.gov/criminal/media/1379471/dl?inline>. The SEC order against Raytheon also noted that employees communicated with Qatari officials using “personal computers and mobile devices, personal email, and other off-channel communications in violation of Raytheon’s policies.” Order Instituting Cease-and-Desist Proceedings, *In the Matter of RTX Corporation*, Rel. No. 101353, File No. 3-22256, ¶ 24 (Oct. 16, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101353.pdf>.

¹²³ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶ 4(c) (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline> (noting SAP’s efforts to preserve and review communications sent on mobile applications in its internal investigation).

¹²⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, ¶¶ 25-31 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹²⁵ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶ 4(i) (E.D. Va. Jan. 10, 2024), <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹²⁶ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, ¶ 7(h) (E.D.N.Y. Mar. 1, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1341011/dl?inline>.

environmental laws.¹²⁷ Additionally, the Raytheon resolution cited three prior civil and regulatory enforcement actions.¹²⁸

B. Corporate Resolutions

1. SAP

In January 2024, SAP, a Germany-based software company, settled allegations with the DOJ and the SEC regarding violations of the FCPA's anti-bribery and accounting provisions.¹²⁹ The settlement resolved claims that SAP made improper payments to government officials in South Africa and Indonesia to secure software and services contracts with government entities.¹³⁰ SAP agreed to pay the DOJ and the SEC collectively over \$220 million and entered into a three-year DPA with the DOJ. As noted above, the U.S. authorities also coordinated their resolutions with prosecutors in South Africa.¹³¹

The DOJ alleged that, from 2013 to 2018, SAP and its subsidiaries paid bribes to government officials in South Africa and Indonesia to secure business advantages.¹³² These bribes—made directly and through intermediaries—included cash, political donations, electronic transfers, and luxury items.¹³³ For example, SAP allegedly approved a \$215,800 payment to a South African government official through an intermediary, a South African company that worked with SAP in its efforts to provide software and services to South African government entities. SAP had conducted minimal due diligence on the intermediary and only later discovered that the intermediary lacked

¹²⁷ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶ 7h (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹²⁸ Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-399, ¶¶ 4h, 4i (E.D.N.Y. Oct. 16, 2024), <https://www.justice.gov/d9/2024-10/dpa.pdf>.

¹²⁹ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶ 4 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>; U.S. Department of Justice Press Release No. 23-1072: SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 10, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>; U.S. Securities and Exchange Commission Press Release No. 2024-4: SEC Charges Global Software Company SAP for FCPA Violations (Jan. 10, 2024), <https://www.sec.gov/newsroom/press-releases/2024-4>.

¹³⁰ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, Attachment A ¶ 12 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, ¶ 1 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹³¹ U.S. Department of Justice Press Release No. 23-1072: SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 10, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>; U.S. Securities and Exchange Commission Press Release No. 2024-4: SEC Charges Global Software Company SAP for FCPA Violations (Jan. 10, 2024), <https://www.sec.gov/newsroom/press-releases/2024-4>.

¹³² Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, Attachment A ¶ 12 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹³³ Deferred Prosecution Agreement, *United v. SAP SE*, No. 23-CR-202, Attachment A ¶ 13 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

financial records.¹³⁴ SAP also allegedly created false records related to bribes in South Africa, which were included in SAP's filings with the SEC.¹³⁵ These activities allegedly helped SAP obtain business that yielded over \$103 million in profits for the company.¹³⁶

As part of its DPA with the DOJ, SAP agreed to pay \$118.8 million in criminal penalties and over \$103 million in forfeiture, with an offset of up to \$55.1 million for payments made to the SEC or to the South African government in connection with its parallel investigations into the same conduct.¹³⁷ Of note, and as noted above in Section IV.A.1, SAP's penalty was reduced by \$109,141 under the DOJ's Compensation Incentives and Clawbacks Pilot Program for withholding bonuses of the employees engaged in the scheme and certain of their supervisors who knew of or were willfully blind to the misconduct. SAP also received an overall 40% reduction for its cooperation and remediation efforts.¹³⁸ The company did not receive voluntary disclosure credit and has prior criminal and civil resolutions with authorities, including a 2021 NPA with the DOJ's National Security Division, a 2016 resolution with the SEC regarding alleged FCPA violations in Panama, and administrative agreements with the Departments of Commerce and Treasury regarding self-disclosed potential export law violations.¹³⁹ The 40% credit that the company received is thus below the 50-75% reduction that the DOJ CEP recommends for a company that has voluntarily self-disclosed and fully cooperated and is not a criminal recidivist.¹⁴⁰ The DOJ also calculated the discount from "the tenth percentile above the low end" of the applicable fine range, rather than the low end that is standard when companies receive full cooperation credit. The DOJ highlighted that SAP had promptly cooperated with the DOJ; produced relevant documents to the DOJ from multiple foreign countries while navigating foreign privacy laws; provided document translation; granted interview access; imaged the phones of relevant custodians at the beginning of the company's internal investigation to preserve relevant business communications sent on mobile

¹³⁴ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, Attachment A ¶¶ 34, 36 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹³⁵ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, Attachment A ¶¶ 14, 39-40 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹³⁶ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, Attachment A ¶ 14 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹³⁷ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶ 8 (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹³⁸ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶ 4(f) (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹³⁹ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶¶ 4(b), 4(i) (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹⁴⁰ The DOJ FCPA Corporate Enforcement Policy notes, "If a criminal resolution is warranted for a company that has voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated, the Criminal Division: will accord ... a reduction of at least 50% and up to 75% off of the low end of the U.S. Sentencing Guidelines (U.S.S.G.) fine range, except in the case of a criminal recidivist[.]" U.S. DEPARTMENT OF JUSTICE, JUSTICE MANUAL § 9-47.120 ¶ 2 (Nov. 2024), <https://www.justice.gov/criminal/criminal-fraud/file/1562831/dl>; see also, U.S. DEPARTMENT OF JUSTICE, JUSTICE MANUAL § 9-47.120 (Nov. 2019), <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#9-47.120> (noting the same reduction amount in the Corporate Enforcement Policy in place at the time of the SAP DPA).

messaging applications; and engaged in compliance improvements, such as a global ban on third-party sales commissions, increased compliance budgets, and adjustments to compensation incentives.¹⁴¹

Despite SAP's prior resolutions, including an FCPA resolution, the DOJ (and the SEC) did not impose a monitor, finding it unnecessary based on the company's remediation and the state of its compliance program, as well as the company's agreement to periodically self-report to the DOJ.¹⁴²

In a parallel resolution, the SEC found that, from 2014 to 2018, SAP—through third-party intermediaries, including business partners, consultants, resellers, and value-added resellers—paid bribes to government officials to secure business in South Africa, Indonesia, Ghana, Kenya, Malawi, and Tanzania.¹⁴³ SAP also failed to keep accurate records and maintain adequate accounting controls, recording bribes as legitimate business expenses.¹⁴⁴ The SEC noted that SAP's Indonesian subsidiary collaborated with a reseller with a history of corrupt practices, using third-party messaging apps to discuss bribes.¹⁴⁵ SAP agreed to pay over \$85 million in disgorgement and \$13 million in prejudgment interest to the SEC.¹⁴⁶ The SEC did not impose a civil penalty due to the fine imposed by the DOJ.¹⁴⁷ Like the DOJ, the SEC allowed a potential offset of up to \$59 million for any payments made to South African authorities in related cases.¹⁴⁸ The SEC order noted that SAP cooperated by timely providing key documents and facts developed from its own internal investigation and by making current or former employees available to the Commission staff.¹⁴⁹ It also highlighted remedial efforts undertaken by SAP including termination of employees responsible for the misconduct, implementation of analytics to identify and review high-risk transactions and third party controls, and establishment of an enhanced whistleblower platform.¹⁵⁰

¹⁴¹ Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶ 4(c) (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹⁴² Deferred Prosecution Agreement, *United States v. SAP SE*, No. 23-CR-202, ¶ 4(h) (E.D. Va. Jan. 10, 2024) ECF No. 17, <https://www.justice.gov/opa/media/1332661/dl?inline>.

¹⁴³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, ¶ 1 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹⁴⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, ¶¶ 1, 8 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹⁴⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, ¶¶ 25-31 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹⁴⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, Section IV (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹⁴⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, ¶ 41 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹⁴⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, Section IV (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹⁴⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, ¶ 39 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

¹⁵⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824, ¶ 40 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>.

It does not explain how or if SAP's cooperation and remediation were factored into any credit provided by the agency.

2. Gunvor S.A.

In March 2024, Gunvor S.A. (Gunvor), a Switzerland-based international commodities trading company, pleaded guilty to conspiring to violate the anti-bribery provisions of the FCPA.¹⁵¹ The resolution includes a criminal monetary penalty of approximately \$374.5 million and forfeiture of approximately \$287 million in ill-gotten gains, with potential credits of up to one-quarter of the criminal fine for certain payments made to Swiss and Ecuadorian authorities within one year of the DOJ resolution.¹⁵² As is typical in DOJ resolutions, Gunvor agreed to provide annual reports to the DOJ regarding the status of remediation and implementation of compliance measures for the term of the agreement.¹⁵³ Gunvor is not publicly traded in the U.S., and the SEC was not involved.

Gunvor's guilty plea arose from an alleged scheme to pay substantial bribes to Ecuadorian government officials to secure business with Ecuador's national oil company, Empresa Publica de Hidrocarburos del Ecuador (Petroecuador).¹⁵⁴ Between 2012 and 2020, Gunvor allegedly funneled more than \$97 million to intermediaries, knowing that the funds would be used to bribe officials at the Ecuadorian Ministry of Hydrocarbons and Petroecuador.¹⁵⁵ According to the DOJ, the funds were routed through a complex network of shell companies and offshore bank accounts, including U.S.-based accounts.¹⁵⁶ The DOJ alleged that, in return for the bribe payments, senior Ecuadorian officials assisted various state-owned entities with which Gunvor had partnered, that were acting as fronts for the company, in securing oil-backed loan contracts with Petroecuador.¹⁵⁷ The DOJ alleged that this arrangement enabled Gunvor to bypass the competitive bidding process and

¹⁵¹ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, ¶ 3 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>; U.S. Department of Justice Press Release No. 24-237: Commodities Trading Company Will Pay Over \$661M to Resolve Foreign Bribery Case (Mar. 1, 2024), <https://www.justice.gov/opa/pr/commodities-trading-company-will-pay-over-661m-resolve-foreign-bribery-case>.

¹⁵² Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, ¶ 22 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>; U.S. Department of Justice Press Release No. 24-237: Commodities Trading Company Will Pay Over \$661M to Resolve Foreign Bribery Case (Mar. 1, 2024), <https://www.justice.gov/opa/pr/commodities-trading-company-will-pay-over-661m-resolve-foreign-bribery-case>.

¹⁵³ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, ¶ 8(j) (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁵⁴ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁵⁵ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, Attachment A ¶ 21 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁵⁶ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, Attachment A ¶¶ 22, 25 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁵⁷ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, Attachment A ¶¶ 24-28 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

secure favorable contract terms it otherwise would not have obtained.¹⁵⁸ Additionally, according to the DOJ, Gunvor gained access to confidential Petroecuador information in exchange for the bribes.¹⁵⁹ The DOJ alleged that, in 2018, Gunvor executives and compliance personnel became aware that payments totaling tens of millions of dollars were being made to consultants without adequate supporting documentation for their business activities on Gunvor's behalf.¹⁶⁰ The DOJ alleged that Gunvor continued to make payments to consultants serving as intermediaries despite the consultants' repeated failures to provide supporting documentation or attend requested meetings with Gunvor executives and compliance personnel.¹⁶¹ The plea agreement states that the bribes yielded over \$384 million in profits for Gunvor.¹⁶²

Gunvor received credit for its cooperation with the DOJ's investigation, including by producing documents from multiple foreign countries while navigating foreign data privacy and criminal laws, sharing findings from its internal investigation with the government, facilitating the interview of an employee outside of the U.S., and collecting, analyzing, and organizing complex financial information.¹⁶³ Additionally, Gunvor implemented significant remedial measures, such as ending the use of third-party agents for business origination, enhancing its compliance program and due diligence processes, establishing a risk-based communications policy, and strengthening internal controls on business transactions.¹⁶⁴ Despite this cooperation, the DOJ noted Gunvor's history of related misconduct, specifically the resolution of bribery allegations related to Gunvor's business in Congo-Brazzaville and Cote d'Ivoire with Swiss authorities in 2019.¹⁶⁵ Taking into account Gunvor's remediation, cooperation, and recidivism, the DOJ applied a 25% reduction to the criminal monetary penalty.¹⁶⁶

¹⁵⁸ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, Attachment A ¶¶ 24, 27 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁵⁹ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, Attachment A ¶ 41 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁶⁰ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, Attachment A ¶ 52 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁶¹ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, Attachment A ¶ 52 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁶² Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, Attachment A ¶ 23 (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁶³ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, ¶ 7(c) (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁶⁴ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, ¶ 7(e) (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁶⁵ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, ¶ 7(h) (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

¹⁶⁶ Plea Agreement, *United States v. Gunvor S.A.*, No. 24-85, ¶ 7(k) (E.D.N.Y. Mar. 1, 2024) ECF No. 9, <https://www.justice.gov/opa/media/1341011/dl?inline>.

3. Trafigura

In March 2024, Trafigura Beheer B.V. (Trafigura), a Swiss commodities trading company, pleaded guilty to one count of conspiring to violate the anti-bribery provisions of the FCPA.¹⁶⁷ Trafigura agreed to pay nearly \$127 million to the DOJ, including a total criminal fine of \$80.5 million and forfeiture of \$46.5 million.¹⁶⁸ The DOJ agreed to credit Trafigura with up to \$26,829,346 of the criminal fine against amounts that the company agreed to pay to resolve an investigation into related conduct by law enforcement authorities in Brazil.¹⁶⁹ Trafigura further agreed to self-report on the status of its enhanced anti-corruption compliance for a term of three years.¹⁷⁰

According to the DOJ's papers, Trafigura's plea arose from a scheme spanning from 2003 to 2014 in which Trafigura and its co-conspirators—a Houston-based oil trader, an agent of Trafigura Singapore, and a Brazilian illicit-market money dealer—paid bribes to officials of Brazil's state-owned oil company, *Petróleo Brasileiro S.A.-Petrobras* (Petrobras), in order to obtain and retain business with Petrobras.¹⁷¹ Trafigura and its co-conspirators allegedly met in Miami at various times between 2009 and 2014 to discuss the bribery scheme, which involved making bribery payments to Brazilian officials of up to \$0.20 per barrel of oil products either bought from Petrobras or sold to Petrobras by Trafigura.¹⁷² Trafigura and its co-conspirators allegedly attempted to conceal the bribe payments through the use of shell companies and by funneling payments through intermediaries who used offshore bank accounts to deliver cash to Petrobras officials.¹⁷³ In total, prosecutors estimated that Trafigura made approximately \$19.7 million in bribe payments and profited by approximately \$61 million from the bribery scheme.¹⁷⁴

Trafigura received a 10% reduction in penalties for its cooperation with the DOJ's investigation, affirmative acceptance of responsibility, and remedial efforts.¹⁷⁵ In calculating the criminal penalty,

¹⁶⁷ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶ 2 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>;

¹⁶⁸ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶¶ 22a, 22c (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁶⁹ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶ 22b (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷⁰ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, Attachment D ¶ 1 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷¹ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, Attachment A ¶ 14 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷² Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, Attachment A ¶¶ 20, 26-27 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷³ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, Attachment A ¶¶ 21-22, 29-30, 33 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷⁴ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, Attachment A ¶¶ 14, 40 (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷⁵ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶ 7k (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

the DOJ highlighted Trafigura's commitment to enhancing its internal controls and compliance program, including discontinuing the use of third-party agents for business origination.¹⁷⁶

The DOJ also considered the prior misconduct of Trafigura Group entities, including Trafigura AG's 2006 guilty plea with DOJ for entry of goods by means of false statements and Trafigura's 2010 conviction in the Netherlands for violating Netherlands export and environmental laws.¹⁷⁷ In explaining its decision to only reduce Trafigura's fine by 10%—a relatively small reduction despite Trafigura's cooperation—the DOJ stated that, during the early stages of the investigation, Trafigura had “failed to preserve and produce certain documents and evidence in a timely manner” and, at times, acted in a way that DOJ deemed “inconsistent with full cooperation.”¹⁷⁸ The plea agreement did not elaborate further on how Trafigura's stated lack of full cooperation impeded the DOJ's investigation.

DOJ also credited Trafigura with up to \$26.8 million against amounts that the company agreed to pay to Brazilian authorities to resolve an investigation into related conduct.¹⁷⁹ Like the Gunvor resolution discussed above, the Trafigura plea agreement is part of a prolonged DOJ anti-bribery campaign targeting commodities trading companies.¹⁸⁰

4. Deere & Company

In September 2024, the SEC filed an order alleging that Deere & Company (“John Deere”) violated the books-and-records provisions of the FCPA and failed to maintain a sufficient system of internal accounting controls.¹⁸¹ The company consented to the entry of the order without admitting or denying the findings.¹⁸² The order states that, from 2017 to 2020, Wirtgen Thailand, a subsidiary of John Deere, paid bribes to government officials in Thailand to obtain government contracts; it also found that the subsidiary paid bribes to a private company for sales to that company.¹⁸³ The SEC

¹⁷⁶ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶ 7e (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷⁷ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶ 7h (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷⁸ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶ 7c (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁷⁹ Plea Agreement, *United States v. Trafigura Beheer B.V.*, No. 23-CR-20476, ¶ 22b (S.D. Fla. Mar. 29, 2024) ECF No. 33, <https://www.justice.gov/opa/media/1346006/dl?inline>.

¹⁸⁰ U.S. Department of Justice Press Release No. 24-368: Justice Department's Investigation into International Commodities Trading Companies' Foreign Bribery Schemes Results in Six Corporate Resolutions and 20 Individuals Convicted (Mar. 28, 2024), <https://www.justice.gov/opa/pr/justice-departments-investigation-international-commodities-trading-companies-foreign>.

¹⁸¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Deere & Co.*, Rel. No. 100984, File No. 3-22102, ¶ 2 (Sept. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-100984.pdf>.

¹⁸² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Deere & Co.*, Rel. No. 100984, File No. 3-22102, at 1 (Sept. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-100984.pdf>.

¹⁸³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Deere & Co.*, Rel. No. 100984, File No. 3-22102, ¶ 1 (Sept. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-100984.pdf>.

alleged that the bribes were paid in the form of cash payments, massage parlor visits, and international travel, which were then recorded in the company's books and records as legitimate expenses.¹⁸⁴ John Deere acquired Wirtgen Thailand in 2017 and, according to the SEC, "failed to timely integrate it into its existing compliance and controls environment, resulting in these bribery schemes going unchecked for several years."¹⁸⁵ Pursuant to the order, John Deere agreed to pay \$5.4 million in disgorgement with prejudgment interest and \$4.5 million in civil penalties.¹⁸⁶

5. Moog Inc.

In October 2024, the SEC filed an order finding violations of the internal accounting provisions of the FCPA by an Indian subsidiary of Moog Inc., which manufactures motion control systems used in aerospace, defense, industrial, and medical markets.¹⁸⁷ The SEC found that, from 2020 to 2022, Moog's subsidiary engaged a third party to pay bribes to the government-owned railway in order for Moog to be added to the railway's list of approved suppliers and to remove one of Moog's competitors from that list.¹⁸⁸ The SEC also alleged that the Indian subsidiary paid bribes to officials at a government-owned aerospace company in order to obtain a contract with the company.¹⁸⁹ The agency alleged that the bribe was facilitated by a distributor that sent the subsidiary a fake invoice for the agreed-upon bribe amount.¹⁹⁰ The SEC order alleged that, using the same third parties as it did in the railway and aerospace company schemes, employees at the subsidiary "engaged in several other attempts to rig the tender bidding process for government contracts by seeking to have Indian officials exclude competitors."¹⁹¹

Despite direct allegations of bribery, the SEC's order alleged only that the conduct violated the books-and-records and internal accounting controls provisions of the FCPA.¹⁹² The company consented to the entry of the order without admitting or denying the findings. Pursuant to the order,

¹⁸⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Deere & Co.*, Rel. No. 100984, File No. 3-22102, ¶ 2 (Sept. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-100984.pdf>.

¹⁸⁵ U.S. Securities and Exchange Commission Press Release No. 2024-124: SEC Charges John Deere with FCPA Violations for Subsidiary's Role in Thai Bribery Scheme (Sept. 10, 2024), <https://www.sec.gov/newsroom/press-releases/2024-124>.

¹⁸⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Deere & Co.*, Rel. No. 100984, File No. 3-22102, at 9 (Sept. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-100984.pdf>.

¹⁸⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Moog Inc.*, Rel. No. 101307, File No. 3-22237, ¶ 3 (Oct. 11, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101307.pdf>.

¹⁸⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Moog Inc.*, Rel. No. 101307, File No. 3-22237, ¶¶ 8-12 (Oct. 11, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101307.pdf>.

¹⁸⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Moog Inc.*, Rel. No. 101307, File No. 3-22237, ¶¶ 13-16 (Oct. 11, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101307.pdf>.

¹⁹⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Moog Inc.*, Rel. No. 101307, File No. 3-22237, ¶¶ 17-19 (Oct. 11, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101307.pdf>.

¹⁹¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Moog Inc.*, Rel. No. 101307, File No. 3-22237, ¶ 20 (Oct. 11, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101307.pdf>.

¹⁹² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Moog Inc.*, Rel. No. 101307, File No. 3-22237, ¶¶ 27-29 (Oct. 11, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101307.pdf>.

Moog Inc. agreed to pay disgorgement and prejudgment interest totaling nearly \$600,000, and a civil penalty of \$1.1 million.¹⁹³

6. Raytheon Company

In October 2024, the Raytheon Company (Raytheon), a subsidiary of Virginia-based defense contractor RTX (formerly Raytheon Technologies Corporation), agreed to pay more than \$950 million to federal authorities to resolve allegations encompassing two separate schemes: (1) allegations that Raytheon made improper payments to Qatari officials and violated federal arms trafficking laws and (2) allegations that Raytheon overbilled the United States government in negotiations for military contracts.¹⁹⁴ The resolution imposed two independent compliance monitorships: one for the alleged FCPA violations and one for the alleged overbilling.¹⁹⁵ This is the first independent compliance monitorship imposed for alleged FCPA violations since the 2022 Glencore resolution.

In October 2024, Raytheon entered into a three-year DPA in connection with a criminal information filed in the Eastern District of New York to resolve charges that Raytheon conspired to (i) violate the anti-bribery provision of the FCPA and (ii) commit an offense against the United States in violation of the AECA and the International Traffic in Arms Regulations (ITAR) for failing to disclose the fees and commissions paid in connection with Qatari subcontracts associated with the alleged scheme.¹⁹⁶ Raytheon also resolved SEC charges that it violated the FCPA's anti-bribery, books-and-records, and internal accounting controls provisions stemming from the same conduct.¹⁹⁷

The DOJ and SEC alleged that Raytheon employees and agents made improper payments to an official in the Qatar Emiri Air Force to expand existing and obtain new defense contracts with the

¹⁹³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Moog Inc.*, Rel. No. 101307, File No. 3-22237, at 7 (Oct. 11, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101307.pdf>.

¹⁹⁴ U.S. Department of Justice Press Release No. 24-1310: Raytheon Company to Pay Over \$950M in Connection with Defective Pricing, Foreign Bribery, and Export Control Schemes (Oct. 16, 2024), <https://www.justice.gov/opa/pr/raytheon-company-pay-over-950m-connection-defective-pricing-foreign-bribery-and-export>.

¹⁹⁵ U.S. Department of Justice Press Release No. 24-1310: Raytheon Company to Pay Over \$950M in Connection with Defective Pricing, Foreign Bribery, and Export Control Schemes (Oct. 16, 2024), <https://www.justice.gov/opa/pr/raytheon-company-pay-over-950m-connection-defective-pricing-foreign-bribery-and-export>.

¹⁹⁶ Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-00399, ¶ 1 (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

¹⁹⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of RTX Corporation*, Rel. No. 101353, Rel. No. 4534, File No. 3-22256, ¶¶ 1, 12-52 (Oct. 16, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101353.pdf>; U.S. Securities and Exchange Commission Press Release No. 2024-171: SEC Charges Virginia-Based RTX Corp. with Violating Foreign Corrupt Practices Act in Connection with Efforts to Obtain Contracts with the Qatari military (Oct. 16, 2024), <https://www.sec.gov/newsroom/press-releases/2024-171>.

Qatar Armed Forces between 2012 and 2016.¹⁹⁸ The DOJ and SEC alleged that the payments were made via subcontracts and a teaming agreement with a Qatari company.¹⁹⁹ The SEC also alleged that Raytheon paid a Qatari agent who was a relative of the Qatari Emir and a member of the Council of the Ruling Family “under circumstances that created a significant anticorruption risk,” leading to inaccurate records and a breakdown in internal accounting controls.

Raytheon agreed to pay a criminal penalty of \$230.4 million to the DOJ to resolve the FCPA charge and a forfeiture of \$36.7 million.²⁰⁰ In addition, Raytheon agreed to retain an independent compliance monitor for a term of three years.²⁰¹ To resolve the SEC charges, Raytheon agreed to pay a civil penalty of \$75 million, disgorgement of \$37.4 million, and \$11.8 million in prejudgment interest.²⁰²

Raytheon received a 20% reduction in penalties for its cooperation with the DOJ.²⁰³ The DOJ observed that while the company has no prior criminal history, it has been the subject of three prior civil or regulatory enforcement actions, including a 2013 consent agreement concerning civil ACEA and ITAR violations.²⁰⁴

On the same day as the resolution with the Eastern District of New York, Raytheon entered into a three-year DPA with prosecutors from the District of Massachusetts and reached an FCA

¹⁹⁸ Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-00399, Attachment A ¶ 14 (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

¹⁹⁹ Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-00399, Attachment A ¶¶ 16, 20 (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

²⁰⁰ The company also agreed to pay a financial penalty of \$21.9 million resolve the ACEA and ITAR charge. Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-00399, ¶ 4t (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

²⁰¹ Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-00399, ¶¶ 4q, 16-19 (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

²⁰² The SEC credited \$22.5 million of Raytheon’s criminal penalty paid to the DOJ, and DOJ credited \$7.4 million of the disgorgement paid to the SEC towards the criminal forfeiture owed. Order Instituting Cease-and-Desist Proceedings, *In the Matter of RTX Corporation*, Rel. No. 101353, Rel. No. 4534, File No. 3-22256, Section IV ¶ C (Oct. 16, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101353.pdf>; Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-00399, ¶ 11 (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

²⁰³ Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-00399, ¶ 4t (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

²⁰⁴ Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-00399, ¶¶ 4h, 4i (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

settlement with the DOJ's Civil Division in connection with separate conduct unrelated to the FCPA matter.²⁰⁵

7. Telefónica Venezolana

In November 2024, Telefónica Venezolana C.A. (Telefónica Venezolana), the Venezuela-based subsidiary of the Spanish global telecommunications operator Telefónica S.A., entered into a DPA with prosecutors in connection with a criminal information filed in the Southern District of New York to resolve one count of conspiring to violate the anti-bribery provisions of the FCPA.²⁰⁶ Telefónica Venezolana agreed to pay a criminal penalty of \$85.3 million.²⁰⁷ Telefónica Venezolana and Telefónica S.A. also agreed to self-report on the status of the enhanced anti-corruption compliance program.²⁰⁸

In or around 2014, Telefónica Venezolana allegedly recruited two suppliers, which were subsidiaries of two different multinational telecommunications equipment and systems companies,²⁰⁹ to make approximately \$28.9 million in bribe payments to Venezuelan government officials through a Venezuelan private citizen who had held themselves out as a third-party consultant to Telefónica Venezolana²¹⁰. The bribe payments were allegedly used to secure preferential access to U.S. dollars in a government-sponsored currency auction where Telefónica Venezolana was permitted to exchange its Venezuelan bolivars for over \$110 million in U.S. dollars (which accounted for approximately 65% of the total currency awarded in the auction).²¹¹ The payments to Venezuelan officials took the form of a “lavish vacation” worth approximately \$500,000

²⁰⁵ Deferred Prosecution Agreement, *United States v. Raytheon Company*, No. 24-CR-10319, ¶ 4a (D. Mass. Oct. 16, 2024) ECF No. 15, <https://www.justice.gov/d9/2024-10/dpa.pdf>; U.S. Department of Justice, Raytheon, and RTX Settlement Agreement, t ¶ 1 (Oct. 16, 2024), <https://www.justice.gov/opa/media/1373636/dl> (the executed Settlement Agreement is posted publicly on the U.S. Department of Justice website, but is not publicly available on the United States District Court for the District of Massachusetts docket).

²⁰⁶ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, ¶ 1 (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>; U.S. Department of Justice Press Release No. 24-1410: Telefónica Venezolana to Pay Over \$85M to Resolve Foreign Bribery Investigation (Nov. 8, 2024), <https://www.justice.gov/opa/pr/telefonica-venezolana-pay-over-85m-resolve-foreign-bribery-investigation>.

²⁰⁷ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, ¶ 4k (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²⁰⁸ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, Attachment D (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²⁰⁹ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, Attachment A ¶¶ 4, 7 (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²¹⁰ However, the DPA states that “At no time did ... Intermediary-1 in fact perform any consultancy services for Telefónica.” Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, Attachment A ¶¶ 12-13, 16, 29-30 (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²¹¹ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, Attachment A ¶¶ 15, 19 (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

and luxury watches and jewelry worth approximately \$605,000.²¹² In an effort to conceal the payments, Telefónica Venezolana used a portion of the U.S. dollars it obtained at auction to re-pay the suppliers by purchasing their equipment at inflated prices.²¹³

Telefónica Venezolana's \$85.3 million criminal penalty included a 20% reduction off the fifth percentile of the Sentencing Guidelines range due to the company's cooperation with the DOJ's investigation, affirmative acceptance of responsibility, and remedial efforts.²¹⁴ The DPA noted, however, that Telefónica Venezolana's cooperation was limited because it hindered the DOJ's investigation in its initial phases by failing to "timely identify, collect, produce, and disclose certain records and important information."²¹⁵ In particular, the DOJ considered Telefónica Venezolana's effort to build and empower an independent compliance function, overhaul its processes for transactions involving non-standard pricing, and strengthen its processes for vetting, engaging, and monitoring third parties.²¹⁶ In addition, the DOJ noted Telefónica Venezolana had no prior criminal enforcement history and only one past civil enforcement matter—a 2019 resolution with the SEC for alleged violations of the FCPA's accounting provisions stemming from hospitality provided by a subsidiary to Brazilian officials in 2013-2014.²¹⁷

Telefónica Venezolana's direct involvement of third-party suppliers in the bribery scheme underscores the need for strong internal controls and compliance practices to perform due diligence on third parties and review third-party transactions.

8. BIT Mining Ltd.

In November 2024, BIT Mining Ltd. (formerly 500.com), a cryptocurrency mining company, entered into a DPA with the DOJ regarding payments made to Japanese government officials while the

²¹² Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, Attachment A ¶¶ 47-48 (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²¹³ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, Attachment A ¶ 16 (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²¹⁴ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, ¶¶ 4c, 4k (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²¹⁵ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, ¶ 4c (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²¹⁶ The improved compliance processes also included: appointing a Chief Compliance Officer with direct access to the Audit Committee of the Board of Directors; employing a forensic accounting firm to review and test its internal controls for pricing and other transactions; implementing additional controls concerning payments made to third parties through a "proprietary software tool"; and establishing risk assessment and audit processes to regularly review and update its compliance program. Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, ¶ 4c (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

²¹⁷ Deferred Prosecution Agreement, *United States v. Telefónica Venezolana, C.A.*, No. 24-CR-00633, ¶¶ 4h, 4i (S.D.N.Y. Nov. 8, 2024) ECF No. 4, <https://www.justice.gov/criminal/media/1376656/dl>.

company was trying to open a casino hotel in Japan.²¹⁸ According to the criminal information filed with the DPA, these payments were made in the form of a lecture fee to a public official who spoke at a symposium hosted by the company, in wire transfers to consultants who later delivered cash to public officials, and in trips, shopping, and entertainment for various officials.²¹⁹ The DOJ charged the company with (1) conspiracy to violate the FCPA and to falsify books and records and (2) violation of the books-and-records provisions of the FCPA.²²⁰

Under the Sentencing Guidelines, the criminal penalty assessed against the company would be \$54 million.²²¹ After determining that the company could not pay a penalty of that amount, however, the parties agreed to a penalty of \$10 million.²²² It is uncommon, although not without precedent, for the DOJ to reduce a penalty due to inability to pay.²²³ The DOJ credited the \$4 million civil penalty that BIT Mining agreed to pay the SEC as a result of that agency's concurrent investigation and resolution.²²⁴ The SEC alleged that the company violated the bribery, books-and-records, and internal accounting controls provisions of the FCPA.²²⁵

As discussed below, in Section V.A.1, in June 2024, the DOJ filed an indictment against the company's former CEO, Zhengming Pan, charging him with four criminal counts related to the payments.²²⁶

9. McKinsey Africa

In December 2024, McKinsey and Company Africa (Pty) Ltd. (McKinsey Africa), a wholly-owned subsidiary of McKinsey & Company (McKinsey), entered into a three-year DPA and will pay over

²¹⁸ Deferred Prosecution Agreement, *United States v. BIT Mining Ltd.*, No 2:24-CR-744 (D.N.J. Nov. 18, 2024) ECF No. 5, <https://www.justice.gov/criminal/media/1377531/dl?inline>.

²¹⁹ Deferred Prosecution Agreement, *United States v. BIT Mining Ltd.*, No 2:24-CR-744, at 64-72 (D.N.J. Nov. 18, 2024) ECF No. 5, <https://www.justice.gov/criminal/media/1377531/dl?inline>.

²²⁰ Deferred Prosecution Agreement, *United States v. BIT Mining Ltd.*, No 2:24-CR-744, at 60, 76 (D.N.J. Nov. 18, 2024) ECF No. 5, <https://www.justice.gov/criminal/media/1377531/dl?inline>.

²²¹ Deferred Prosecution Agreement, *United States v. BIT Mining Ltd.*, No 2:24-CR-744, ¶ 8 (D.N.J. Nov. 18, 2024) ECF No. 5, <https://www.justice.gov/criminal/media/1377531/dl?inline>.

²²² Deferred Prosecution Agreement, *United States v. BIT Mining Ltd.*, No 2:24-CR-744, ¶ 9 (D.N.J. Nov. 18, 2024) ECF No. 5, <https://www.justice.gov/criminal/media/1377531/dl?inline>.

²²³ In 2022, the DOJ reduced GOL Linhas Aéreas Inteligentes S.A.'s \$41 million fine to \$17 million citing "GOL's financial condition and demonstrated inability to pay the penalty." U.S. Department of Justice Press Release No. 22-978: GOL Linhas Aereas Inteligentes S.A. Will Pay Over \$41 Million in Resolution of Foreign Bribery Investigations in the United States and Brazil (Sept. 15, 2022), <https://www.justice.gov/opa/pr/gol-linhas-reas-inteligentes-sa-will-pay-over-41-million-resolution-foreign-bribery>.

²²⁴ Deferred Prosecution Agreement, *United States v. BIT Mining Ltd.*, No 2:24-CR-744, ¶ 10 (D.N.J. Nov. 18, 2024) ECF No. 5, <https://www.justice.gov/criminal/media/1377531/dl?inline>.

²²⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of BIT Mining, Ltd.*, Rel. No. 101649, File No. 3-22324, ¶¶ 37-40 (Nov. 18, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101649.pdf>.

²²⁶ Indictment, *United States v. Zhengming Pan*, No. 2:24-CR-402 (D.N.J. June 18, 2024) ECF No. 1, <https://www.justice.gov/criminal/media/1377541/dl?inline>.

\$122 million to resolve a DOJ investigation into a scheme to pay bribes to government officials at two state-owned companies in South Africa.²²⁷ The guilty plea of Vikas Sagar, a former McKinsey senior partner who participated in the bribery scheme, was also unsealed.²²⁸

The Information, filed December 5, 2024, alleged that between 2012 and 2016, McKinsey Africa agreed to pay bribes to officials at the South African infrastructure company Transnet, and energy company, Eskom Holdings Limited (“Eskom”).²²⁹ During that time period, McKinsey Africa obtained sensitive confidential and non-public information from Transnet and Eskom regarding the award of consulting contracts and submitted proposals for multimillion-dollar consulting contracts to Transnet and Eskom, along with partner firms, knowing that a portion of the proposed fees would be used to pay bribes to foreign officials.²³⁰ In total, DOJ alleged that McKinsey and McKinsey Africa earned profits of approximately \$85 million as a result of the bribery scheme.²³¹

McKinsey Africa was required to pay a criminal penalty of \$122 million. Up to half of the penalty amount will be credited to payments to the government of South Africa in connection with any resolution related to the same conduct.²³² McKinsey and McKinsey Africa have also agreed to enhance their compliance programs and report to the DOJ regarding the remediation and implementation of compliance measures detailed in the DPA.²³³

The DOJ gave McKinsey Africa credit for cooperating with the investigation, including for “immediately and proactively” cooperating with investigators, “making numerous factual presentations to the Offices,” collecting documents abroad and reporting newly discovered documents in real time, and collecting the personal email and bank account information of Vikas

²²⁷ U.S. Department of Justice Press Release No. 24-1520: McKinsey & Company Africa to Pay Over \$122M in Connection with Bribery of South African Government Officials (Dec. 5, 2024), <https://www.justice.gov/opa/pr/mckinsey-company-africa-pay-over-122m-connection-bribery-south-african-government-officials>.

²²⁸ U.S. Department of Justice Press Release No. 24-1520: McKinsey & Company Africa to Pay Over \$122M in Connection with Bribery of South African Government Officials (Dec. 5, 2024), <https://www.justice.gov/opa/pr/mckinsey-company-africa-pay-over-122m-connection-bribery-south-african-government-officials>.

²²⁹ Information, *United States v. McKinsey and Co. Afr. (PTY) LTD*, No. 24-CR-00669, ¶ 13 (S.D.N.Y. Dec. 5, 2024) ECF No. 1, <https://www.justice.gov/opa/media/1379416/dl>.

²³⁰ Information, *United States v. McKinsey and Co. Afr. (PTY) LTD*, No. 24-CR-00669, ¶ 13 (S.D.N.Y. Dec. 5, 2024) ECF No. 1, <https://www.justice.gov/opa/media/1379416/dl>.

²³¹ Information, *United States v. McKinsey and Co. Afr. (PTY) LTD*, No. 24-CR-00669, ¶ 14 (S.D.N.Y. Dec. 5, 2024) ECF No. 1, <https://www.justice.gov/opa/media/1379416/dl>.

²³² Deferred Prosecution Agreement, *United States v. McKinsey and Co. Afr. (PTY) LTD*, No. 24-CR-00669, Attachment C ¶ 9 (S.D.N.Y. Dec. 5, 2024) ECF No. 7, https://www.justice.gov/d9/2024-12/mckinsey_dpa_0.pdf.

²³³ Deferred Prosecution Agreement, *United States v. McKinsey and Co. Afr. (PTY) LTD*, No. 24-CR-00669, Attachment C ¶¶ 11-14 (S.D.N.Y. Dec. 5, 2024) ECF No. 7, https://www.justice.gov/d9/2024-12/mckinsey_dpa_0.pdf.

Sagar, the former McKinsey partner involved in the bribery scheme.²³⁴ Additionally, the DOJ credited McKinsey and McKinsey Africa for putting Sagar on leave during the investigation and firing him after discovering his efforts to delete evidence, and requiring him to cooperate post-separation from McKinsey.²³⁵

10. AAR Corp.

In December 2024, AAR Corp. entered into an 18-month NPA with the DOJ and agreed to pay \$55 million to resolve investigations by the DOJ and the SEC into violations of the FCPA.²³⁶ AAR agreed to pay \$26 million in criminal penalties to the DOJ and \$29 million in disgorgement to the SEC.²³⁷ It also agreed to pay \$18.6 million in administrative forfeiture to the DOJ, but the DOJ credited the disgorgement paid to the SEC against this amount.²³⁸ The NPA characterized the conduct of AAR as a conspiracy to pay bribes to government officials in Nepal and South Africa.²³⁹ The statement of facts attached to the NPA alleged that the aviation services company conspired to pay bribes to government officials in Nepal and South Africa from 2015-2020 in exchange for potential contracts with state-owned airlines in both countries.²⁴⁰ It alleged that an executive of the company's subsidiary in Nepal used a lobbyist as an intermediary to facilitate payments to Nepali officials through various affiliated companies.²⁴¹ This executive pleaded guilty to a conspiracy to violate the FCPA in August 2024.²⁴² The NPA alleged that the company used a third-party agent in

²³⁴ Deferred Prosecution Agreement, *United States v. McKinsey and Co. Afr. (PTY) LTD*, No. 24-CR-00669, ¶ 4(c) (S.D.N.Y. Dec. 5, 2024) ECF No. 7, https://www.justice.gov/d9/2024-12/mckinsey_dpa_0.pdf.

²³⁵ Deferred Prosecution Agreement, *United States v. McKinsey and Co. Afr. (PTY) LTD*, No. 24-CR-00669, ¶ 4(e) (S.D.N.Y. Dec. 5, 2024) ECF No. 7, https://www.justice.gov/d9/2024-12/mckinsey_dpa_0.pdf.

²³⁶ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp. (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²³⁷ U.S. Department of Justice Press Release No. 24-1616: AAR CORP to Pay Over \$55M To Resolve Foreign Corrupt Practices Act Investigation (Dec. 19, 2024), <https://www.justice.gov/opa/pr/aar-corp-pay-over-55m-resolve-foreign-corrupt-practices-act-investigation>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of AAR Corp.*, Rel. No. 101987, File No. 3-22369 (Dec. 19, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-101987.pdf>.

²³⁸ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp., ¶ 3 (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²³⁹ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp., ¶ 21 (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²⁴⁰ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp., Attachment A, ¶¶ 21-22, 46 (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²⁴¹ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp., Attachment A, ¶¶ 24, 35 (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²⁴² U.S. Department of Justice Press Release No. 24-1616: AAR CORP to Pay Over \$55M To Resolve Foreign Corrupt Practices Act Investigation (Dec. 19, 2024), <https://www.justice.gov/opa/pr/aar-corp-pay-over-55m-resolve-foreign-corrupt-practices-act-investigation>.

the South Africa scheme to facilitate payments as well.²⁴³ This agent pleaded guilty to conspiracy to violate the FCPA in July 2024.²⁴⁴

Although the company self-reported the conduct covered in the NPA, the DOJ concluded that it did not qualify as a voluntary self-disclosure under DOJ policy because several English-language articles had already been published in media outlets in both countries about potential irregularities in the relevant contracts.²⁴⁵ The company did not receive voluntary self-disclosure credit, but the DOJ “gave significant weight” to the company’s self-report when evaluating the appropriate disposition of the matter.²⁴⁶ When all factors were taken into consideration, the company ultimately received a 45% reduction off the applicable guidelines range.²⁴⁷ In addition, its 18-month NPA term was shorter than most FCPA NPAs. Under the NPA, AAR also agreed to self-report on the status of its enhanced anti-corruption compliance during the 18-month term of the NPA.²⁴⁸

C. Declinations Under the Corporate Enforcement Policy

There were two declinations under the CEP in 2024, compared to three in 2023, two in 2022, one in 2020, two in 2019, and four in 2018.²⁴⁹ One of the two declinations relates to a non-FCPA case involving motor vehicle safety fraud and is not discussed here.²⁵⁰

1. Boston Consulting Group

In August, the DOJ issued its only FCPA-related declination of 2024 to Boston Consulting Group, Inc. (BCG), emphasizing BCG’s voluntary self-disclosure and proactive cooperation.²⁵¹ The DOJ

²⁴³ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp., Attachment A, ¶ 51 (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²⁴⁴ U.S. Department of Justice Press Release No. 24-1616: AAR CORP to Pay Over \$55M To Resolve Foreign Corrupt Practices Act Investigation (Dec. 19, 2024), <https://www.justice.gov/opa/pr/aar-corp-pay-over-55m-resolve-foreign-corrupt-practices-act-investigation>.

²⁴⁵ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp., ¶ 2(b) (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²⁴⁶ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp., ¶ 2(b) (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²⁴⁷ U.S. Department of Justice Press Release No. 24-1616: AAR CORP to Pay Over \$55M To Resolve Foreign Corrupt Practices Act Investigation (Dec. 19, 2024), <https://www.justice.gov/opa/pr/aar-corp-pay-over-55m-resolve-foreign-corrupt-practices-act-investigation>.

²⁴⁸ Non-Prosecution Agreement between U.S. Department of Justice and AAR Corp., Attachment D (Dec. 19, 2024), <https://www.justice.gov/opa/media/1381656/dl>.

²⁴⁹ The DOJ issues declinations following investigations in which the Department believes charges could be brought, however, it chooses not to bring a case based on factors enumerated in the CEP, often emphasizing voluntary self-disclosure. The DOJ publicly announces declinations, as opposed to matters that the DOJ investigates, but it determines not to bring charges because of insufficient evidence or for other factors that the DOJ does not find pertinent to publicize.

²⁵⁰ U.S. Department of Justice Letter declining to prosecute Proterial Cable America, Inc. (Apr. 12, 2024), <https://www.justice.gov/criminal/media/1348111/dl?inline>.

²⁵¹ U.S. Department of Justice Letter declining to prosecute Boston Consulting Group, Inc. (Aug. 27, 2024), <https://www.justice.gov/criminal/media/1365431/dl?inline>.

declination letter stated that the DOJ found evidence that BCG's Lisbon, Portugal office had made commission payments totaling \$4.3 million to an agent in Angola, who then sent a portion of the commissions to Angolan government officials to help BCG secure 11 contracts with the Angolan Ministry of Economy and one with the National Bank of Angola.²⁵²

According to the DOJ's announcement, a number of factors weighed in favor of a declination under DOJ policy, including BCG's timely and voluntary self-disclosure of the potential misconduct, significant enhancements made to its compliance program, and BCG's agreement to disgorge the \$14 million in alleged ill-gotten profits associated with the 12 contracts. In reaching its decision to decline prosecution, the DOJ also noted that—beyond terminating personnel involved in the misconduct—BCG withheld bonus compensation and required implicated BCG partners in Portugal to forfeit their equity. This emphasis is consistent with the DOJ's recent announcement on its Compensation Incentives and Clawbacks Pilot Program, discussed above, which incentivizes companies to withhold or claw back compensation from individuals involved in misconduct and supervisors with knowledge, whether they are actually aware of the misconduct or willfully blind to it.²⁵³

D. Notable Developments in Monitorships

1. Monitorships Ending

a. Ericsson

In June 2024, Telefonaktiebolaget LM Ericsson (Ericsson), a multinational telecommunications company headquartered in Sweden, announced that it had fulfilled the terms of an independent compliance monitorship imposed in 2019 under agreements with the DOJ and SEC.²⁵⁴ The monitorship was originally set to last three years. In October 2021, however, the DOJ notified Ericsson that the company had “breached its obligations under the DPA by failing to provide certain documents and factual information.”²⁵⁵ In December 2022, Ericsson announced that it had reached

²⁵² U.S. Department of Justice Letter declining to prosecute Boston Consulting Group, Inc. (Aug. 27, 2024), <https://www.justice.gov/criminal/media/1365431/dl?inline>.

²⁵³ U.S. Department of Justice, The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks (Mar. 3, 2023), <https://www.justice.gov/criminal/criminal-fraud/file/1571941/dl>, at 2; *see also*, U.S. Department of Justice Memo re Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group (Sept. 15, 2022), https://www.justice.gov/d9/pages/attachments/2022/09/15/2022.09.15_ccag_memo.pdf, at 9 (“[P]rosecutors should consider how the corporation has incentivized or sanctioned employee, executive, and director behavior, including through compensation plans, as part of its efforts to create a culture of compliance.”); <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-society#:~:text=Principal%20Deputy%20Assistant%20Attorney%20General%20Nicole> (“[E]ach of our corporate resolutions now requires that the company include criteria related to compliance in its compensation and bonus system.”).

²⁵⁴ Telefonaktiebolaget LM Ericsson Press Release: Ericsson Announces Conclusion of Monitorship (June 3, 2024), <https://www.ericsson.com/en/press-releases/2024/6/ericsson-announces-conclusion-of-monitorship>.

²⁵⁵ Telefonaktiebolaget LM Ericsson Press Release: Update on Deferred Prosecution Agreement (Oct. 21, 2021), <https://www.ericsson.com/en/press-releases/2021/10/update-on-deferred-prosecution-agreement>.

an agreement with the DOJ and SEC to extend the term of the monitorship by one year, to June 2024.²⁵⁶ As an additional result of breaching its 2019 DPA, Ericsson agreed to plead guilty and pay more than \$206 million in further penalties.²⁵⁷

In the same June 3, 2024 press release, Ericsson stated that it is “continuing to cooperate fully with DOJ and SEC investigations on historical conduct,” referring to a separate investigation by the authorities into corruption-related misconduct in Iraq during the period 2011 to 2019 that was not resolved by the 2019 DPA.²⁵⁸

2. Monitorship Announcements

a. Raytheon Company

In October 2024, the U.S. government imposed two separate three-year monitorships on Raytheon, a subsidiary of the U.S.-based aerospace and defense conglomerate RTX.²⁵⁹ As discussed above, these monitorships stem from the resolution of two separate matters.²⁶⁰ One monitor will focus on Raytheon’s compliance with anti-bribery and federal arms trafficking laws,²⁶¹ while the other monitor will focus on Raytheon’s compliance with government contracting laws.²⁶² Notably, as discussed above, this was the only FCPA resolution in 2024 that included the imposition of a monitor.

3. Other Monitorship Considerations

a. Boeing Company

In July 2024, the DOJ announced a proposed plea agreement with The Boeing Company (Boeing) concerning representations by two Boeing employees to the Federal Aviation Administration’s

²⁵⁶ Telefonaktiebolaget LM Ericsson Press Release: Ericsson Announces Extension of Compliance Monitorship (Dec. 14, 2022), <https://www.ericsson.com/en/press-releases/2022/12/ericsson-announces-extension-of-compliance-monitorship>.

²⁵⁷ U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

²⁵⁸ Telefonaktiebolaget LM Ericsson Press Release: Update: Iraq media inquiries (Feb. 15, 2022), <https://www.ericsson.com/en/press-releases/2022/2/update-iraq-media-inquiries>.

²⁵⁹ U.S. Department of Justice Press Release No. 24-1310: Raytheon Company to Pay Over \$950M in Connection with Foreign Bribery, and Export Control Schemes (Oct. 16, 2024), <https://www.justice.gov/opa/pr/raytheon-company-pay-over-950m-connection-defective-pricing-foreign-bribery-and-export>.

²⁶⁰ See Section IV.B.6.

²⁶¹ Deferred Prosecution Agreement, *United States v. Raytheon Co.*, No. 24-CR-00399, ¶ 3 (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

²⁶² Deferred Prosecution Agreement, *United States v. Raytheon Co.*, No. 24-CR-00399, ¶ 3 (E.D.N.Y. Oct. 16, 2024) ECF No. 15, <https://files.lbr.cloud/public/2024-10/Raytheon%20DPA.pdf?VersionId=O35MpSp7jklQMTJC66kk3YTwwFzyxNBp>.

(FAA) Aircraft Evaluation Group with respect to the 737 MAX.²⁶³ The DOJ's announcement followed its determination that Boeing breached a DPA that the company entered into on January 7, 2021.²⁶⁴

The proposed agreement would have required Boeing to retain an independent compliance monitor for a term of three years.²⁶⁵ Notably, the government proposed an uncommon monitor selection scheme where the government would select monitor candidates and retain final selection of the monitor, albeit with Boeing's feedback.²⁶⁶

Under the terms of the agreement, the government would have solicited applications and selected six candidates for the monitorship.²⁶⁷ Boeing would have the opportunity to interview the six candidates to determine if any of the candidates were not qualified to meet the requirements set out in the monitorship agreement. If the government agreed with Boeing's assessment, the government could replace the candidate until there was a final pool of six candidates.²⁶⁸ Boeing would then have the opportunity to strike one candidate from the final candidate pool.²⁶⁹ The government would select an independent compliance monitor from the remaining pool of at least five candidates.²⁷⁰ This is markedly different from the typical selection process under which the company recommends a pool of three qualified monitor candidates and identifies one of the three candidates as a first choice before the Department ultimately chooses the candidate.²⁷¹

In December 2024, a judge rejected the proposed plea agreement because it "require[d] the parties to consider race when hiring the independent monitor" and "marginalize[d] the Court in the selection and monitoring of the independent monitor."²⁷² The court expressed skepticism that a monitor would be selected based solely on merit, referring to what the judge characterized as

²⁶³ Proposed Plea Agreement, *United States v. Boeing Co.*, No. 21-CR-00005 (N.D. Tex. July 24, 2024) ECF No. 221-1, <https://www.justice.gov/criminal/media/1361546/dl?inline>.

²⁶⁴ Proposed Plea Agreement, *United States v. Boeing Co.*, No. 21-CR-00005, Attachment A-1 (N.D. Tex. July 24, 2024) ECF No. 221-1.

²⁶⁵ Proposed Plea Agreement, *United States v. Boeing Co.*, No. 21-CR-00005, ¶ 14 (N.D. Tex. July 24, 2024) ECF No. 221-1.

²⁶⁶ Proposed Plea Agreement, *United States v. Boeing Co.*, No. 21-CR-00005, ¶¶ 14, 31-33 (N.D. Tex. July 24, 2024) ECF No. 221-1.

²⁶⁷ Proposed Plea Agreement, *United States v. Boeing Co.*, No. 21-CR-00005, ¶¶ 31-32 (N.D. Tex. July 24, 2024) ECF No. 221-1.

²⁶⁸ Proposed Plea Agreement, *United States v. Boeing Co.*, No. 21-CR-00005, ¶¶ 31-32 (N.D. Tex. July 24, 2024) ECF No. 221-1.

²⁶⁹ Proposed Plea Agreement, *United States v. Boeing Co.*, No. 21-CR-00005, ¶¶ 31-33 (N.D. Tex. July 24, 2024) ECF No. 221-1.

²⁷⁰ Proposed Plea Agreement, *United States v. Boeing Co.*, No. 21-CR-00005, ¶ 33 (N.D. Tex. July 24, 2024) ECF No. 221-1.

²⁷¹ United States Attorneys' Offices, Monitor Selection for Corporate Criminal Enforcement, at 5, <https://www.justice.gov/usao/file/1572011/dl?inline>.

²⁷² Order, *United States v. Boeing Co.*, No. 21-CR-00005, at 1 (N.D. Tex. Dec. 5, 2024) ECF No. 282, <https://www.justice.gov/criminal/media/1379296/dl?inline>.

“racial quotas” discussed on Boeing’s former website and language in DOJ policies that required monitor selections to be made in keeping with the DOJ’s commitment to diversity and inclusion.²⁷³ The order also rejected the proposed agreement because the proposed agreement’s conditions of probation did not require Boeing to comply with the independent compliance monitor’s anti-fraud recommendations.²⁷⁴

V. Notable Individual Resolutions

In 2024, the DOJ charged 20 individuals in FCPA enforcement actions, reversing a four-year trend of a decrease in the number of enforcement actions brought against individuals. The SEC also brought enforcement actions against four of these 20 individuals, marking the first SEC FCPA enforcement actions against individuals since 2022. While several of these enforcement actions were connected to ongoing corporate prosecutions involving the commodities sector, certain other defendants charged in 2024 were allegedly involved in bribery schemes connected to voting machines, casino contracts, solar energy, and the aviation industry. Finally, 2024 was a banner year for the DOJ in FCPA trials, with the Department taking four individuals to trial and securing convictions in all four cases.

A. Enforcement Actions Involving Notable Industries

1. Zhengming Pan

In June 2024, the DOJ filed under seal a criminal indictment in the District of New Jersey against Zhengming Pan for his role in a scheme to pay bribes to Japanese officials to win a contract to open a lucrative resort and casino.²⁷⁵ As discussed in Section IV.B.8 above, Pan is the former CEO of BIT Mining, which entered into a DPA with the DOJ and consented to a cease-and-desist order with the SEC in November 2024. The four-count indictment against Pan was unsealed the same day as the announcement of the DPA and SEC order for BIT Mining, and it charges him with two counts of violating the books-and-records provision of the FCPA, one count of violating the anti-bribery provision of the FCPA, and one count of conspiracy to violate the anti-bribery and books-and-records provisions of the FCPA.²⁷⁶ Between March 2017 and December 2019, Pan allegedly caused BIT Mining to pay more than \$1.9 million USD in bribes to Japanese government officials in the form of cash and luxury trips, including private jet travel, shopping sprees, five-star

²⁷³ Order, *United States v. Boeing Co.*, No. 21-CR-00005, at 5, 8 (N.D. Tex. Dec. 5, 2024) ECF No. 282, <https://www.justice.gov/criminal/media/1379296/dl?inline>. It should be noted that the Trump Administration has signaled that it will roll back government diversity and inclusion efforts, including those at the DOJ.

²⁷⁴ Order, *United States v. Boeing Co.*, No. 21-CR-00005, at 11 (N.D. Tex. Dec. 5, 2024) ECF No. 282, <https://www.justice.gov/criminal/media/1379296/dl?inline>.

²⁷⁵ U.S. Department of Justice Press Release No. 24-1450: Former CEO Indicted for Role in Bribing Japanese Officials and BIT Mining Ltd. Resolves Foreign Bribery Investigation (Nov. 18, 2024), <https://www.justice.gov/opa/pr/former-ceo-500com-now-bit-mining-ltd-indicted-role-bribing-japanese-officials-and-bit-mining>.

²⁷⁶ Indictment, *United States v. Zhengming Pan*, No. 24-CR-402, at 1–24 (D.N.J. June 18, 2024) ECF No. 1.

accommodations, gambling chips, ski equipment and lift tickets, meals, and entertainment.²⁷⁷ According to the indictment, Pan attempted to conceal the illicit payments as legitimate consulting expenses and signed false Sarbanes-Oxley certifications in connection with the bribery scheme.²⁷⁸ Pan has not been arraigned on these charges.

2. Deepak Sharma and Julian Aires

On August 1, 2024, Deepak Sharma, a UK citizen who previously served as the head of the international supply chain team for AAR, an American provider of aircraft maintenance services, pleaded guilty to a bribery scheme involving the Nepalese aviation industry.²⁷⁹ According to plea agreement documents, from November 2015 to August 2018, Sharma collaborated with Nepali officials, company officials, and intermediaries to manipulate the process by which AAR would be selected for a contract to supply aircraft for Nepal Airlines.²⁸⁰ Sharma admitted to working with a Nepali official to draft a request for proposals so that AAR would be the most likely to succeed in the contract bid.²⁸¹ Once AAR received the contract to supply the aircraft, Sharma and an intermediary facilitated the payment of bribes to Nepali officials through companies registered in Hong Kong and the United Arab Emirates.²⁸² On December 19, 2024, Sharma consented to an SEC finding that he violated the anti-bribery, recordkeeping, and internal accounting controls provisions of the FCPA.²⁸³ As part of that order, Sharma agreed to pay \$184,597 in disgorgement and prejudgment interest.²⁸⁴

As part of his guilty plea, Sharma also admitted to his role in a separate plot to bribe South African officials so AAR could win a lucrative parts servicing contract with South African Airways (SAA).²⁸⁵

The scheme in South Africa involved Julian Aires, a third-party agent of AAR, who pleaded guilty in June 2024 to a single-count information in the District of Columbia, alleging a conspiracy to violate

²⁷⁷ Indictment, *United States v. Zhengming Pan*, No. 24-CR-402, at 9–17 (D.N.J. June 18, 2024) ECF No. 1.

²⁷⁸ Indictment, *United States v. Zhengming Pan*, No. 24-CR-402, at 17-18, 20-21 (D.N.J. June 18, 2024) ECF No. 1.

²⁷⁹ Plea Agreement, *United States v. Deepak Sharma*, No. 24-CR-00302, at 1-2 (D.D.C. Aug. 1, 2024) ECF No. 14.

²⁸⁰ Statement of Offense, *United States v. Deepak Sharma*, No. 24-CR-00302, ¶ 13 (D.D.C. June 24, 2024) ECF No. 15.

²⁸¹ Statement of Offense, *United States v. Deepak Sharma*, No. 24-CR-00302, ¶¶ 15-18 (D.D.C. Aug. 1, 2024) ECF No. 15.

²⁸² Statement of Offense, *United States v. Deepak Sharma*, No. 24-CR-00302, ¶¶ 19-35 (D.D.C. Aug. 1, 2024) ECF No. 15.

²⁸³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Deepak Sharma*, Rel No. 101988, 4551 File No. 3-22370 (Dec. 19, 2024).

²⁸⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Deepak Sharma*, Rel No. 101988, 4551 File No. 3-22370 (Dec. 19, 2024).

²⁸⁵ Statement of Offense, *United States v. Deepak Sharma*, No. 24-CR-00302, ¶ 36 (D.D.C. Aug. 1, 2024) ECF No. 15.

the anti-bribery provisions of the FCPA.²⁸⁶ According to court filings submitted along with his plea agreement, between 2016 and 2020, Aires conspired with other individuals to bribe officials of SAA and SAA's subsidiaries to obtain and retain business for several aviation services companies.²⁸⁷ In furtherance of the conspiracy, Aires arranged for payments to South African officials to secure business agreements with an SAA subsidiary and frequently traveled to South Africa with cash that was used to bribe the South African officials.²⁸⁸ Aires also admitted to participating in a separate scheme in which a Swiss airport services company bribed South African officials to obtain and retain a contract to provide airport ground handling services for SAA.²⁸⁹ Court filings indicate that Sharma and Aires have been cooperating with the ongoing DOJ investigations.²⁹⁰

3. Roger Alejandro Pinate Martinez, Jorge Miguel Vasquez, Elie Moreno, and Juan Andres Donato Bautista

In August 2024, the DOJ filed a four-count indictment in the Southern District of Florida against Roger Alejandro Pinate Martinez, Jorge Miguel Vasquez, Elie Moreno, and Juan Andres Donato Bautista for their roles in an alleged bribery and money laundering scheme to retain and obtain business related to the 2016 Philippine elections.²⁹¹ Donato Bautista was the Chairman of the Commission on Elections (COMELEC) of the Republic of the Philippines. Pinate Martinez, Vasquez, and Moreno are reportedly executives of Smartmatic, an election voting machine and service provider company. Beginning in October 2014, COMELEC opened the bidding process for election voting machines and related services for the 2016 Philippine elections.²⁹² According to the DOJ, Pinate Martinez, Vasquez, and Moreno allegedly created and used slush funds to pay bribes to Donato Bautista, including by over-invoicing or inflating the cost per voting machine for the May 2016 Philippine elections with additional fees of \$50 and \$10 per unit, so that their company would be selected by COMELEC for the contracts.²⁹³ Pinate Martinez and Vasquez transferred funds to and from bank accounts and companies in Hong Kong, Singapore, the Philippines, Switzerland,

²⁸⁶ Waiver of Indictment, *United States v. Julian Aires*, No. 24-CR-00286, at 1 (D.D.C. July 15, 2024) ECF No. 13; Sealed Information, *United States v. Aires*, No. 24-CR-00286, at 4-6, 7-10 (D.D.C. June 11, 2024) ECF No. 1.

²⁸⁷ Statement of Offense, *United States v. Julian Aires*, No. 24-CR-00286, ¶ 12 (D.D.C. July 15, 2024) ECF No. 12.

²⁸⁸ Statement of Offense, *United States v. Julian Aires*, No. 24-CR-00286, ¶ 27 (D.D.C. July 15, 2024) ECF No. 12.

²⁸⁹ Statement of Offense, *United States v. Julian Aires*, No. 24-CR-00286, ¶ 27 (D.D.C. July 15, 2024) ECF No. 12.

²⁹⁰ Joint Status Report, *United States v. Deepak Sharma*, No. 24-CR-00302, ¶ 3 (D.D.C. Nov. 20, 2024) ECF No. 23; *United States v. Aires*, No. 24-CR-00286, ¶ 3 (D.D.C. Jan. 13, 2025), ECF No. 26.

²⁹¹ U.S. Department of Justice Press Release No. 24-989: Four Men Charged in Philippine Bribery and Money Laundering Scheme (Aug. 8, 2024), <https://www.justice.gov/opa/pr/four-men-charged-philippine-bribery-and-money-laundering-scheme>.

²⁹² Indictment, *United States v. Donato Bautista*, No. 24-CR-20343, at 3-5 (S.D. Fla. Aug. 8, 2024) ECF No. 12.

²⁹³ Indictment, *United States v. Donato Bautista*, No. 24-CR-20343, at 9-10 (S.D. Fla. Aug. 8, 2024) ECF No. 12.

and other countries, and disguised the payments using coded language.²⁹⁴ Pinate Martinez and Vasquez are each charged with one count of conspiracy to violate the FCPA and one substantive violation of the FCPA. Donato Bautista, Pinate Martinez, Vasquez, and Moreno are each charged with one count of conspiracy to commit money laundering and three counts of international laundering of monetary instruments.²⁹⁵ Trial is currently scheduled for October 2025.

4. Gautam S. Adani, Sagar R. Adani, Vneet S. Jaain, Ranjit Gupta, Rupesh Agarwal, Cyril Cabanes, Saurabh Agarwal and Deepak Malhotra

In November 2024, the DOJ unsealed a five-count criminal indictment in the Eastern District of New York against eight individuals, alleging their involvement in a scheme to pay \$250 million in bribes to officials in India to secure lucrative solar energy contracts. The charged individuals are Gautam S. Adani, Sagar R. Adani, and Vneet S. Jaain, executives of Adani Green Energy Ltd., (“Adani Green”) an Indian renewable energy company; Ranjit Gupta and Rupesh Agarwal, former executives of Azure Power Global Ltd. (“Azure”); and Cyril Cabanes, Saurabh Agarwal, and Deepak Malhotra, former employees of Canadian institutional investor, Caisse de dépôt et placement du Québec (“CDPQ”). The indictment charges Gupta, Rupesh Agarwal, Cabanes, Saurabh Agarwal, and Malhotra with conspiracy to violate the FCPA in connection with the bribes to Indian government officials and conspiracy to obstruct justice by allegedly deleting electronic messages and other documents related to the bribery scheme and lying to the FBI, DOJ, and SEC.²⁹⁶

The DOJ also brought charges against Gautam Adani, Sagar Adani, and Vneet Jaain for conspiracy to commit securities fraud, conspiracy to commit wire fraud, and one count of substantive securities fraud. According to the DOJ, these three executives of Adani Green allegedly schemed to obtain \$2 billion in loans for Adani Green and affiliated entities from U.S.-based asset management companies and international financial institutions and raise \$1 billion in bond offerings by making false and misleading statements, as well as material omissions regarding their company’s involvement in the bribery scheme.²⁹⁷

Separately, in parallel enforcement actions, the SEC charged Gautam Adani and Sagar Adani with violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5,

²⁹⁴ Indictment, *United States v. Donato Bautista*, No. 24-CR-20343, at 9-10 (S.D. Fla. Aug. 8, 2024) ECF No. 12.

²⁹⁵ U.S. Department of Justice Press Release No. 24-989: Four Men Charged in Philippine Bribery and Money Laundering Scheme (Aug. 8, 2024), <https://www.justice.gov/opa/pr/four-men-charged-philippine-bribery-and-money-laundering-scheme>.

²⁹⁶ U.S. Department of Justice Press Release: Billionaire Chairman of Conglomerate and Seven Other Senior Business Executives Indicted in Connection With Scheme to Pay Hundreds of Millions of Dollars in Bribes and Conceal Bribery Scheme From U.S. Investors (Nov. 20, 2024), <https://www.justice.gov/usao-edny/pr/billionaire-chairman-conglomerate-and-seven-other-senior-business-executives-indicted>.

²⁹⁷ Sealed Indictment, *United States v. Gautam Adani*, No. 24-CR-433, at 11, 26-28 (E.D.N.Y. Oct. 24, 2024) ECF No. 1.

and with aiding and abetting violations of Section 17(a)(2) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5(b).²⁹⁸ The SEC also charged Cabanes with violating the anti-bribery provisions of the FCPA.²⁹⁹

B. Notable Developments in Ongoing Bribery Prosecutions

1. Mauricio Gomez Baez and Abraham Cigarroa Cervantes

In February 2024, Mauricio Gomez Baez, a former Senior Vice President of the Latin American division of Stericycle Inc., pleaded guilty in the Southern District of Florida to a superseding information charging him with one count of conspiring to violate the anti-bribery provisions of the FCPA.³⁰⁰ (Stericycle settled FCPA charges with the DOJ and SEC in 2022.) Beginning in 2011, Gomez Baez communicated with other Latin American division executives about bribe payments paid in certain countries, including Mexico, Brazil, and Argentina.³⁰¹ According to the superseding information, vendors in those countries would submit fake invoices with descriptions of fabricated services that were then used to generate funds for bribe payments to government officials.³⁰² Gomez Baez conspired with others to pay approximately \$10.5 million in bribes to those officials to assist Stericycle with obtaining government contracts for medical waste collection in those countries.³⁰³ Gomez Baez signed certification documents asserting that there were no material or potential material events necessary to be disclosed in order to make Stericycle's financial reports with the SEC not misleading, despite his knowledge of the bribery scheme.³⁰⁴ In June 2024, Gomez Baez was sentenced to seven months of imprisonment, followed by three years of supervised release, and a \$250,000 fine.³⁰⁵

In March 2024, the DOJ also indicted the Finance Director for Stericycle LATAM, Abraham Cigarroa Cervantes, in connection with this bribery scheme.³⁰⁶ According to the indictment filed in the

²⁹⁸ Complaint, *SEC v. Gautam Adani*, No. 24-CV-8080, at 35-38 (E.D.N.Y. Nov. 20, 2024) ECF No. 1.

²⁹⁹ Complaint, *SEC v. Cyril Sebastien Dominique Cabanes*, No. 24-CV-8081, at 22 (E.D.N.Y. Nov. 20, 2024) ECF No. 1.

³⁰⁰ Gaspard Le Dem, *Former Stericycle VP to plead guilty to FCPA charge*, GLOB. INVESTIGATIONS REV. (Feb. 16, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/former-stericycle-vp-plead-guilty-fcpa-charge>.

³⁰¹ Superseding Information, *United States v. Mauricio Gomez Baez*, No. 24-CR-20050, at 5-6 (S.D. Fla. Feb. 13, 2024) ECF No. 7.

³⁰² Superseding Information, *United States v. Mauricio Gomez Baez*, No. 24-CR-20050, at 8 (S.D. Fla. Feb. 13, 2024) ECF No. 7.

³⁰³ Superseding Information, *United States v. Mauricio Gomez Baez*, No. 24-CR-20050, at 6 (S.D. Fla. Feb. 13, 2024) ECF No. 7.

³⁰⁴ Superseding Information, *United States v. Mauricio Gomez Baez*, No. 24-CR-20050, at 9 (S.D. Fla. Feb. 13, 2024) ECF No. 7.

³⁰⁵ Minute Entry, *United States v. Mauricio Gomez Baez*, No. 24-CR-20050 (S.D. Fla. June 21, 2024) ECF No. 42.

³⁰⁶ Indictment, *United States v. Cigarroa Cervantes*, No. 24-CR-20109, at 2 (S.D. Fla. Mar. 19, 2024) ECF No. 1.

Southern District of Florida, Cigarroa Cervantes and his co-conspirators allegedly caused hundreds of bribe payments to be made to government officials in Brazil, Mexico, and Argentina in order to obtain government contracts for medical waste collection.³⁰⁷ He has been charged with one count of conspiring to violate the anti-bribery provisions of the FCPA and one count of conspiring to violate the accounting provisions of the FCPA but has not yet been arraigned on these charges.

2. Luis Fernando Vuteff

In May 2024, Argentinian national Luis Fernando Vuteff pleaded guilty for his part in a money laundering scheme involving Alvaro Ledo Nass, the former General Counsel of Petróleos de Venezuela SA (PDVSA)—Venezuela’s state-owned oil and gas company—and Carmelo Antonio Urdaneta Aqui, the former legal counsel to Venezuela’s Ministry of Oil and Mining.³⁰⁸ In a factual proffer attached to his plea agreement, Vuteff admitted that from 2012 to 2018 he was contracted to launder funds received from foreign currency exchange schemes using loan contracts with PDVSA that were unlawfully obtained via bribes and kickbacks.³⁰⁹ The scheme resulted in the conspirators’ being owed the Euro equivalent of \$600 million for a loan worth approximately \$50 million, resulting in profits of the Euro equivalent of approximately \$550 million.³¹⁰ Vuteff was indicted in July 2022, along with co-defendant Ralph Steinmann, who owned and operated a European financial institution that laundered the proceeds of the scheme. Steinmann remains a fugitive.

3. Paulo Jorge Da Costa Casqueiro Murta

In May 2024, Portuguese and Swiss citizen Paulo Jorge Da Costa Casqueiro Murta pleaded guilty to a conspiracy to violate the FCPA in connection with a separate scheme to pay bribes to officials of PDVSA and PDVSA affiliates.³¹¹ Murta’s guilty plea ends a years-long legal battle that involved fighting extradition for several years, and winning two separate motions to dismiss his indictment—for lack of jurisdiction and Speedy Trial Act violations, before the U.S. Court of Appeals for the Fifth

³⁰⁷ U.S. Department of Justice Press Release: Former Finance Director Charged for Role in \$10M Foreign Bribery Scheme (Mar. 19, 2024), <https://www.justice.gov/opa/pr/former-finance-director-charged-role-10m-foreign-bribery-scheme>; Indictment, *United States v. Cigarroa Cervantes*, No. 24-CR-20109, at 5, 7-10 (S.D. Fla. Mar. 19, 2024) ECF No. 1.

³⁰⁸ Plea Agreement, *United States v. Luis Fernando Vuteff*, No. 22-CR-20306, at 1-2 (S.D. Fla. May 15, 2024) E.C.F. No. 147. For more on the prosecutions of Nass and Urdaneta, see WilmerHale, *2021 Global Anti-Bribery Year-in-Review: 2021 Developments and Predictions for 2022*, at 42 (Jan. 27, 2022), <https://www.wilmerhale.com/en/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>, and WilmerHale, *Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024*, at 48 (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³⁰⁹ Factual Proffer, *United States v. Luis Fernando Vuteff*, No. 22-CR-20306, at 2-3 (S.D. Fla. May 14, 2024) ECF. No. 146.

³¹⁰ Factual Proffer, *United States v. Luis Fernando Vuteff*, No. 22-CR-20306, at 3 (S.D. Fla. May 14, 2024) ECF. No. 146.

³¹¹ Plea Agreement, *United States v. Paulo Jorge Da Costa Casqueiro Murta*, No. 17-CR-514, at 1-2 (S.D. Tex. May 21, 2024) ECF No. 168.

Circuit reversed the district court's orders.³¹² In his plea agreement, Murta admitted to facilitating a bribery and kickback scheme involving officials from PDVSA between 2011 and 2013.³¹³ Twenty-five million nine hundred thousand dollars of illicit proceeds were laundered through bank accounts in Portugal that Murta helped open using the names of intermediaries, relatives, friends, close personal associates, or companies associated with the PDVSA officials.³¹⁴ Murta was sentenced to time served and a \$105,000 monetary penalty.³¹⁵

4. John Christopher Polit

In November 2024, John Christopher Polit pleaded guilty for his part in a multimillion-dollar international bribery and money laundering scheme.³¹⁶ From roughly 2010 to 2018, Polit helped his father, former Ecuadorian Comptroller General Carlos Ramon Polit Faggioni, launder money he received from separate bribery schemes that involved Brazilian construction conglomerate Odebrecht and Ecuadorian state insurance company Seguros Sucre.³¹⁷ John Polit allegedly hid proceeds of the bribery scheme by layering transactions through Panamanian accounts of intermediary companies and using Florida companies registered in the names of certain associates.³¹⁸ John Polit is scheduled to be sentenced in April 2025.³¹⁹

5. Vikas Sagar

On December 5, 2024, Judge Colleen McMahon of the Southern District of New York unsealed a December 2022 guilty plea by Vikas Sagar, a former Senior Partner at McKinsey & Company and

³¹² WilmerHale, *Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024*, at 62-64 (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³¹³ Plea Agreement, *United States v. Paulo Jorge Da Costa Casqueiro Murta*, No. 17-CR-514, 10-12 (S.D. Tex. May 21, 2024) ECF No. 638.

³¹⁴ Plea Agreement, *United States v. Paulo Jorge Da Costa Casqueiro Murta*, No. 17-CR-514, 12, 16 (S.D. Tex. May 21, 2024) ECF No. 638.

³¹⁵ Minute Entry, *United States v. Paulo Jorge Da Costa Casqueiro Murta*, No. 17-CR-514 (S.D. Tex. May 21, 2024).

³¹⁶ U.S. Department of Justice Press Release No. 24-1422: Ex-Banker Pleads Guilty in \$16M International Bribery and Money Laundering Scheme Involving Former Comptroller General of Ecuador (Nov. 13, 2024), <https://www.justice.gov/opa/pr/ex-banker-pleads-guilty-16m-international-bribery-and-money-laundering-scheme-involving>; Plea Agreement, *United States v. John Christopher Polit*, No. 24-CR-20390, ¶ 1 (S.D. Fla. Nov. 12, 2024) ECF No. 27.

³¹⁷ Factual Proffer Statement, *United States v. John Christopher Polit*, No. 24-CR-20390, at 2-3 (S.D. Fla. Nov. 12, 2024) ECF No. 26.

³¹⁸ Factual Proffer Statement, *United States v. John Christopher Polit*, No. 24-CR-20390, at 3-5 (S.D. Fla. Nov. 12, 2024) ECF No. 26.

³¹⁹ Minute Entry, *United States v. John Christopher Polit*, No. 24-CR-20390 (S.D. Fla. Nov. 12, 2024) ECF No. 24.

Indian national, for participating in a conspiracy to violate the FCPA.³²⁰ As discussed in Section IV.B.9 above, McKinsey Africa entered into a DPA with the DOJ which included a criminal penalty of \$122.85 million on the same day that Sagar's guilty plea was unsealed. According to the unsealed information attached to the guilty plea, Sagar agreed to pay bribes to then-officials at Transnet SOC Ltd., South Africa's state-owned and state-controlled custodian of ports, rails, and pipelines, and at Eskom, South Africa's state-owned and state-controlled energy company.³²¹ Sagar is scheduled to be sentenced in June 2025.

C. Other Enforcement Actions Against Individuals

1. Raul Gorrin Belisario

In October 2024, a federal grand jury in the Southern District of Florida indicted Raul Gorrin Belisario, a Venezuelan television news network owner, for his role in a \$1.2 billion scheme to launder funds corruptly obtained from PDVSA in exchange for hundreds of millions in bribe payments to Venezuelan officials.³²² Beginning in 2014, Gorrin Belisario allegedly worked with co-conspirators to pay bribes to officials in exchange for the approval of foreign exchange loan contracts with PDVSA, then laundered the proceeds through multiple channels, including through the purchase of luxury goods and real estate in Florida and shell companies in other countries.³²³ Gorrin Belisario remains a fugitive.

2. Paulinus Iheanacho Okoronkwo

On January 10, 2024, Paulinus Iheanacho Okoronkwo, a Los Angeles-based lawyer and dual U.S.-Nigerian citizen, was indicted in the Central District of California on three counts of money laundering, one count of tax evasion, and one count of obstruction of justice.³²⁴ According to the indictment, Okoronkwo accepted a bribe of approximately \$2.1 million while he was serving as general manager of a division of Nigeria's state-owned oil company in connection with negotiating favorable drilling rights for a subsidiary of a Chinese state-owned oil company, and that he made

³²⁰ U.S. Department of Justice Press Release No. 24-371: McKinsey & Company Africa To Pay Over \$120 Million In Connection With Bribery Of South African Government Officials (Dec. 5, 2024), <https://www.justice.gov/usao-sdny/pr/mckinsey-company-africa-pay-over-120-million-connection-bribery-south-african>; Letter, *United States v. Sealed*, No. 22-CR-710, ¶ 1 (S.D.N.Y. Dec. 13, 2024), ECF No. 12.

³²¹ U.S. Department of Justice Press Release No. 24-371: McKinsey & Company Africa To Pay Over \$120 Million In Connection With Bribery Of South African Government Officials (Dec. 5, 2024), <https://www.justice.gov/usao-sdny/pr/mckinsey-company-africa-pay-over-120-million-connection-bribery-south-african>; Sealed Information, *United States v. Sealed*, No. 22-CR-710, ¶ 1-4 (S.D.N.Y. Dec. 16, 2022), ECF No. 1.

³²² Indictment, *United States v. Raul Gorrin Belisario*, No. 24-CR-20468, at 5-8 (S.D. Fla. Oct. 23, 2024) ECF No. 1.

³²³ Indictment, *United States v. Raul Gorrin Belisario*, No. 24-CR-20468, at 5-6 (S.D. Fla. Oct. 23, 2024) ECF No. 1.

³²⁴ U.S. Department of Justice Press Release No. 24-006: Koreatown Lawyer Charged with Money Laundering, Tax Evasion and Obstructing Probe of \$2.1 Million Payment from Swiss Oil Company (Jan. 11, 2024), <https://www.justice.gov/usao-cdca/pr/koreatown-lawyer-charged-money-laundering-tax-evasion-and-obstructing-probe-21-million>.

false statements about these payments during an FBI interview.³²⁵ The DOJ further alleges that Okoronkwo facilitated the signing of an engagement letter between the subsidiary of the Chinese state-owned oil company and the law office of Okoronkwo, with the intent of concealing a bribe to Okoronkwo for his assistance in securing better financial terms related to its oil drilling activities in Nigeria.³²⁶ Trial is scheduled to begin in April 2025.³²⁷

D. Trials

In 2024, the DOJ brought four FCPA-related cases to trial—two in the Eastern District of New York, one in the District of Connecticut, and one in the Southern District of Florida—and secured convictions in all four. Two of the defendants, Javier Aguilar and Glenn Oztemel, were company executives who were convicted for their roles in separate Latin American petroleum company bribery schemes. The other two defendants, Manuel Chang and Carlos Ramon Polit Faggioni, were high-ranking foreign officials. As noted above, there are currently five FCPA-related trials scheduled for 2025.

1. United States v. Javier Aguilar, No. 20-CR-390 (E.D.N.Y.)

In February 2024, Javier Aguilar, an oil and gas trader, was convicted by a federal jury in the Eastern District of New York after a seven-week trial for his role in schemes to bribe Ecuadorean and Mexican government officials and to launder money in order to secure contracts for his then-employer, Vitol Inc., the U.S. affiliate of the largest independent energy trading firm in the world, which entered into a DPA relating to the underlying conduct with the DOJ in December 2020.³²⁸ According to a DOJ press release after the conviction, Aguilar paid more than \$1 million in bribes to officials of Petroecuador, the Ecuadorean state-owned oil and gas company, and PEMEX Procurement International (PPI), a subsidiary of PEMEX, the Mexican state-owned oil and gas company, to obtain lucrative contracts of \$300 million and \$200 million, respectively, for Vitol.³²⁹ Prosecutors presented evidence at trial that Aguilar and his co-conspirators used a series of fake contracts, sham invoices, shell entities, and alias email accounts to conceal the schemes.³³⁰

³²⁵ Indictment, *United States v. Okoronkwo*, No. 24-CR-00020, ¶¶ 13-15, 21 (C.D. Cal. Jan. 10, 2024) ECF No. 1.

³²⁶ Indictment, *United States v. Okoronkwo*, No. 24-CR-00020, ¶ 13 (C.D. Cal. Jan. 10, 2024) ECF No. 1.

³²⁷ Order, *United States v. Okoronkwo*, No. 24-CR-00020 (C.D. Cal. Sept. 6, 2024) ECF No. 109.

³²⁸ U.S. Department of Justice Press Release No. 24-213: Oil and Gas Trader Convicted for Role in Foreign Bribery and Money Laundering Scheme (Feb. 23, 2024), <https://www.justice.gov/opa/pr/former-oil-and-gas-trader-convicted-role-foreign-bribery-and-money-laundering-scheme>.

³²⁹ Austin Cope, *Former Vitol trader found guilty of FCPA, money laundering charges*, GLOBAL INVESTIGATIONS REV. (Feb. 23, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/former-vitol-trader-found-guilty-of-fcpa-money-laundering-charges>; U.S. Department of Justice Press Release No. 24-213: Oil and Gas Trader Convicted for Role in Foreign Bribery and Money Laundering Scheme (Feb. 23, 2024), <https://www.justice.gov/opa/pr/former-oil-and-gas-trader-convicted-role-foreign-bribery-and-money-laundering-scheme>.

³³⁰ U.S. Department of Justice Press Release No. 24-213: Oil and Gas Trader Convicted for Role in Foreign Bribery and Money Laundering Scheme (Feb. 23, 2024), <https://www.justice.gov/opa/pr/former-oil-and-gas-trader-convicted-role-foreign-bribery-and-money-laundering-scheme>.

Aguilar was convicted of conspiring to violate the FCPA, violating the FCPA, and conspiracy to commit money laundering.³³¹

Aguilar faced additional charges related to the Mexico scheme in the Southern District of Texas.³³² In August 2024, Aguilar pleaded guilty to those further charges, and as part of that guilty plea, he consented to transfer the Texas case to New York.³³³ In August, Aguilar pleaded guilty in front of Judge Vitaliano to conspiracy to violate the FCPA and to violating the Travel Act and agreed to forfeit \$7,129,938.³³⁴ Aguilar faces a maximum sentence of 40 years of imprisonment, but, in the plea agreement, prosecutors said they would not advocate for a combined prison sentence of more than 20 years.³³⁵ Aguilar's sentencing has not been scheduled.

2. United States v. Glenn Oztemel, Gary Oztemel, and Eduardo Inneco, No. 23-CR-26 (D. Conn.)

In September 2024, a federal jury in the District of Connecticut found Glenn Oztemel guilty for his role in a nearly eight-year long scheme to bribe Brazilian government officials at the Brazilian state-owned petroleum corporation Petrobras. According to the DOJ press release following the jury verdict, Glenn Oztemel was an oil and gas trader based in Houston who paid and laundered more than \$1 million in bribes to Petrobras employees between 2010 and 2018 to obtain lucrative contracts for Arcadia Flues Ltd. and for Freepoint Commodities LLC (Freepoint).³³⁶ During the

³³¹ U.S. Department of Justice Press Release No. 24-213: Oil and Gas Trader Convicted for Role in Foreign Bribery and Money Laundering Scheme (Feb. 23, 2024), <https://www.justice.gov/opa/pr/former-oil-and-gas-trader-convicted-role-foreign-bribery-and-money-laundering-scheme>.

³³² U.S. Department of Justice Press Release No. 24-1043: Former Energy Trader for Vitol Inc. Pleads Guilty to International Bribery Scheme (Aug. 22, 2024), <https://www.justice.gov/opa/pr/former-energy-trader-vitol-inc-pleads-guilty-international-bribery-scheme>. On May 31, 2023, Judge Vitaliano dismissed without prejudice two counts against Aguilar related to the Mexico bribery scheme for lack of venue in the Eastern District of New York, finding that the relevant conduct occurred in the Southern District of Texas. *See* Order Dismissing Charges on Venue, *United States v. Javier Aguilar*, No. 20-CR-390 (E.D.N.Y. May 31, 2023) ECF No. 120. Prosecutors refiled those charges in the Southern District of Texas, and, after he was found guilty in his Eastern District of New York trial, Aguilar consented to transfer the Southern District of Texas charges to New York to plead guilty. *See* Austin Cope, *Ex-Vitol trader pleads guilty to final set of bribery charges*, GLOBAL INVESTIGATIONS REV. (Aug. 21, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/ex-vitol-trader-pleads-guilty-final-set-of-bribery-charges>.

³³³ U.S. Department of Justice Press Release No. 24-1043: Former Energy Trader for Vitol Inc. Pleads Guilty to International Bribery Scheme (Aug. 22, 2024), <https://www.justice.gov/opa/pr/former-energy-trader-vitol-inc-pleads-guilty-international-bribery-scheme>.

³³⁴ U.S. Department of Justice Press Release No. 24-1043: Former Energy Trader for Vitol Inc. Pleads Guilty to International Bribery Scheme (Aug. 22, 2024), <https://www.justice.gov/opa/pr/former-energy-trader-vitol-inc-pleads-guilty-international-bribery-scheme>.

³³⁵ U.S. Department of Justice Press Release, *Ex-Energy Trader for Vitol Pleads Guilty to Second International Bribery Scheme* (updated Aug. 21, 2024), <https://www.justice.gov/usao-edny/pr/ex-energy-trader-vitol-pleads-guilty-second-international-bribery-scheme>; Austin Cope, *Ex-Vitol trader pleads guilty to final set of bribery charges*, GLOBAL INVESTIGATIONS REV. (Aug. 21, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/ex-vitol-trader-pleads-guilty-final-set-of-bribery-charges>.

³³⁶ U.S. Department of Justice Press Release No. 24-1209: Former Connecticut-Based Energy Trader Convicted of International Bribery Scheme (Sept. 26, 2024), <https://www.justice.gov/opa/pr/former-connecticut-based-energy-trader-convicted-international-bribery-scheme>.

three-week trial, the jury heard testimony from Rodrigo Berkowitz, one of the Petrobras officials who received bribes in this scheme, who pleaded guilty in 2019 and has been cooperating with the DOJ.³³⁷ Glenn Oztemel was found guilty of conspiracy to violate the FCPA, conspiracy to commit money laundering, three counts of violating the FCPA, and two counts of money laundering.³³⁸

Glenn Oztemel also was indicted for his role in the scheme in August 2023, along with his brother Gary Oztemel, the owner and president of a Connecticut-based company, Oil Trade & Transport S.A. ("OTT"), that was used to pay bribes to Petrobras, and Eduardo Innecco, an oil and gas broker in Brazil.³³⁹ Innecco was arrested in France in May 2023, and his extradition to the United States is pending,³⁴⁰ while Gary Oztemel pleaded guilty to money laundering in June 2024.³⁴¹ In December 2023, Freepoint entered into a three-year DPA and paid a criminal penalty of \$68 million and forfeiture of \$30.5 million to resolve the anti-bribery charges it faced in connection with this scheme involving Glenn Oztemel.³⁴²

3. United States v. Manuel Chang, No. 18-CR-681 (E.D.N.Y.)

In August 2024, a federal jury in the Eastern District of New York convicted the former Finance Minister of Mozambique, Manuel Chang, for his role in a \$2 billion fraud, bribery, and money laundering scheme.³⁴³ According to the DOJ, Chang received \$7 million in bribes in exchange for signing guarantees on behalf of the Republic of Mozambique to secure funding for three loans for maritime projects.³⁴⁴ Chang and his co-conspirators then falsely told banks and investors that the

³³⁷ Max Fillion, *Connecticut oil exec gets probation and fine for Petrobras bribery*, GLOB. INVESTIGATIONS REV. (Oct. 28, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/connecticut-oil-exec-gets-probation-and-fine-petrobras-bribery>; Minute Entry, *United States v. Rodrigo Garcia Berkowitz*, No. 19-CR-64 (E.D.N.Y. Feb. 8, 2019) ECF No. 10.

³³⁸ U.S. Department of Justice Press Release No. 24-1209: Former Connecticut-Based Energy Trader Convicted of International Bribery Scheme (Sept. 26, 2024), <https://www.justice.gov/opa/pr/former-connecticut-based-energy-trader-convicted-international-bribery-scheme>.

³³⁹ Superseding Indictment, *United States v. Oztemel*, No. 23-CR-00026, at 3-4 (D. Conn. Aug. 29, 2023) ECF No. 76.

³⁴⁰ U.S. Department of Justice Press Release No. 24-1209: Former Connecticut-Based Energy Trader Convicted of International Bribery Scheme (Sept. 26, 2024), <https://www.justice.gov/opa/pr/former-connecticut-based-energy-trader-convicted-international-bribery-scheme>.

³⁴¹ Max Fillion, *Connecticut oil exec gets probation and fine for Petrobras bribery*, GLOB. INVESTIGATIONS REV. (Oct. 28, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/connecticut-oil-exec-gets-probation-and-fine-petrobras-bribery>.

³⁴² U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

³⁴³ U.S. Department of Justice Press Release No. 24-995: Former Finance Minister of Mozambique Convicted of \$2B Fraud and Money Laundering Scheme (Aug. 8, 2024), <https://www.justice.gov/opa/pr/former-finance-minister-mozambique-convicted-2b-fraud-and-money-laundering-scheme>.

³⁴⁴ Third Superseding Indictment, *United States v. Chang*, No. 18-CR-00681, at 11 (E.D.N.Y. June 4, 2024) ECF No. 578.

loan proceeds would be used for the projects and not to pay bribes to government officials.³⁴⁵ At trial, prosecutors presented evidence that Chang and his co-conspirators diverted more than \$200 million of the loan proceeds that were used, among other things, to pay bribes and kickbacks to Chang and others.³⁴⁶ All three projects ultimately failed and defaulted on the loans, missing more than \$700 million in payments.³⁴⁷ Chang was convicted after three and one half weeks of trial of one count of conspiracy to commit wire fraud and one count of conspiracy to commit money laundering.³⁴⁸

In January 2025, U.S. District Judge Nicholas Garaufis imposed a sentence of eight and a half years of imprisonment and a forfeiture order of \$7 million.³⁴⁹ Chang's conviction and sentencing are the latest developments in the years-long prosecution of the "tuna bonds" scheme. In October 2021, Credit Suisse Securities (Europe) Limited pleaded guilty to conspiracy to commit wire fraud, Credit Suisse AG entered into a three-year DPA, and the two entities paid approximately \$475 million in penalties, fines, and disgorgement for their roles in this scheme.³⁵⁰ In 2019, Jean Boustani, a Lebanese shipbuilding executive who was alleged to have been involved in the scheme, was acquitted after a six-week trial on charges of wire fraud, securities fraud, and money laundering related to the scheme.³⁵¹

³⁴⁵ Third Superseding Indictment, *United States v. Chang*, No. 18-CR-00681, at 5 (E.D.N.Y. June 4, 2024) ECF No. 578.

³⁴⁶ U.S. Department of Justice Press Release No. 24-995: Former Finance Minister of Mozambique Convicted of \$2B Fraud and Money Laundering Scheme (Aug. 8, 2024), <https://www.justice.gov/opa/pr/former-finance-minister-mozambique-convicted-2b-fraud-and-money-laundering-scheme>.

³⁴⁷ Austin Cope, *Manuel Chang found guilty on all counts in "tuna bonds" trial*, GLOB. INVESTIGATIONS REV. (Aug. 8, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/manuel-chang-found-guilty-all-counts-in-tuna-bonds-trial>.

³⁴⁸ Austin Cope, *Manuel Chang found guilty on all counts in "tuna bonds" trial*, GLOB. INVESTIGATIONS REV. (Aug. 8, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/manuel-chang-found-guilty-all-counts-in-tuna-bonds-trial>.

³⁴⁹ U.S. Department of Justice Press Release: Former Finance Minister of Mozambique Sentenced to 102 Months' Imprisonment for His Role in \$2 Billion Fraud and Money Laundering Scheme (Jan. 17, 2025), <https://www.justice.gov/usao-edny/pr/former-finance-minister-mozambique-sentenced-102-months-imprisonment-his-role-2>.

³⁵⁰ U.S. Department of Justice Press Release No. 21-1024: Credit Suisse Resolves Fraudulent Mozambique Loan Case in \$547 Million Coordinated Global Resolution (Oct. 19, 2021), <https://www.justice.gov/opa/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global>; see also WilmerHale, *Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024*, at 90-91 (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³⁵¹ For more on the prosecution of Boustani, see WilmerHale, *Foreign Corrupt Practices Act Alert: Global Anti-Bribery Year-in-Review: 2019 Developments and Predictions for 2020*, at 42-43 (Jan. 30, 2020), <https://www.wilmerhale.com/en/insights/client-alerts/20200130-global-anti-bribery-year-in-review-2019-developments-and-predictions-for-2020>.

4. United States v. Carlos Ramon Polit Faggioni, No. 22-CR-20114 (S.D. Fla.)

In April 2024, a federal jury in Miami found the former Comptroller General of Ecuador, Carlos Ramon Polit Faggioni, guilty of accepting bribes and money laundering.³⁵² According to the DOJ, between 2010 and 2015 when Polit was Comptroller, he solicited and received over \$10 million in bribe payments from Odebrecht S.A., the Brazil-based construction conglomerate, to help the company avoid large fines linked to projects in Ecuador.³⁵³ Polit also was found to have received a bribe from an Ecuadorian businessman in exchange for assisting the businessman with obtaining certain contracts with the state-owned insurance company of Ecuador.³⁵⁴ Prosecutors alleged that Polit attempted to cover up these bribes by opening various U.S. shell companies in the names of friends and associates and investing the money in real estate, restaurants, and other businesses across the state and elsewhere.³⁵⁵ Polit was convicted in a two-week trial on all six counts of money laundering conspiracy, concealment and transacting in criminally derived property related to these bribes.³⁵⁶ In October 2024, U.S. District Judge Kathleen Williams sentenced Polit to 10 years in prison followed by three years of supervised release.³⁵⁷ Judge Williams also ordered Polit to forfeit roughly \$16.5 million in illegal proceeds from the bribery scheme.³⁵⁸ As noted in Section V.B.4 above, Polit's son, John Christopher Polit, pleaded guilty in November 2024 for his part in the scheme.

³⁵² Gaspard Le Dem, *Ex-comptroller of Ecuador convicted of Odebrecht bribery scheme*, GLOB. INVESTIGATIONS REV. (Apr. 24, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/ex-comptroller-of-ecuador-convicted-of-odebrecht-bribery-scheme>.

³⁵³ Indictment, *United States v. Carlos Ramon Polit Faggioni*, No. 22-CR-20114, at 4 (S.D. Fla. Mar. 25, 2022) ECF No. 1.

³⁵⁴ U.S. Department of Justice Press Release No. 24-502: Former Comptroller General of Ecuador Convicted for \$10M International Bribery and Money Laundering Scheme (Mar. 24, 2024), <https://www.justice.gov/opa/pr/former-comptroller-general-ecuador-convicted-10m-international-bribery-and-money-laundering>.

³⁵⁵ Gaspard Le Dem, *Ex-comptroller of Ecuador convicted of Odebrecht bribery scheme*, GLOB. INVESTIGATIONS REV. (Apr. 24, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/ex-comptroller-of-ecuador-convicted-of-odebrecht-bribery-scheme>; U.S. Department of Justice Press Release No. 24-502: Former Comptroller General of Ecuador Convicted for \$10M International Bribery and Money Laundering Scheme (Apr. 24, 2024), <https://www.justice.gov/opa/pr/former-comptroller-general-ecuador-convicted-10m-international-bribery-and-money-laundering>.

³⁵⁶ Gaspard Le Dem, *Ex-comptroller of Ecuador convicted of Odebrecht bribery scheme*, GLOB. INVESTIGATIONS REV. (Apr. 24, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/ex-comptroller-of-ecuador-convicted-of-odebrecht-bribery-scheme>; U.S. Department of Justice Press Release No. 24-502: Former Comptroller General of Ecuador Convicted for \$10M International Bribery and Money Laundering Scheme (Apr. 24, 2024), <https://www.justice.gov/opa/pr/former-comptroller-general-ecuador-convicted-10m-international-bribery-and-money-laundering>.

³⁵⁷ Judgment, *United States v. Carlos Ramon Polit Faggioni*, No. 22-CR-20114 (S.D. Fla. Oct. 3, 2024) ECF No. 263.

³⁵⁸ Gaspard Le Dem, *Ex-comptroller of Ecuador sentenced to decade in prison for Odebrecht bribery scheme*, GLOB. INVESTIGATIONS REV. (Oct. 2, 2024), <https://globalinvestigationsreview.com/just-anti-corruption/article/ex-comptroller-of-ecuador-sentenced-decade-in-prison-odebrecht-bribery-scheme>.

E. Sentencing Trends

Fifteen individuals were sentenced in FCPA-related cases in 2024, which is four more than in 2023. While extrapolating general trends from individual sentences can be misleading, primarily because of the significant impact cooperation can have on individual sentences, sentences imposed on FCPA defendants were shorter in 2024 than in 2023, with nine individuals avoiding jail time altogether, two others receiving sentences of less than a year of imprisonment, and one individual receiving a sentence of one year and one day. The highest sentences this year for FCPA defendants were issued to defendants in the Southern District of Florida: two and a half years for Luis Fernando Vuteff, who pleaded guilty to conspiracy to commit money laundering, and 10 years for Carlos Ramon Polit Faggioni, who was convicted at trial in the Southern District of Florida of six counts of money laundering or conspiracy to commit money-laundering.³⁵⁹ Financial penalties ranged from no penalty to \$10 million.

VI. Key Legal Developments

While DOJ did not issue any Opinion Procedure Releases in 2024, federal courts issued several significant opinions regarding the reach of the FCPA and the scope of investigative measures used to investigate potential FCPA violations. Additionally, Congress enacted modest revisions to the FEPA, which was passed last year, and drafted bipartisan legislation to establish a dedicated position on the White House National Security Council (NSC) focused on combating kleptocracy and foreign corruption.

A. DOJ Opinion Procedure Releases

In 2024, for the first time since 2021, the DOJ did not issue any Opinion Procedure Releases. While the DOJ published two releases in 2023, a year without any releases is not unprecedented—the DOJ did not issue a single Opinion Procedure Release between 2015 and 2019.

B. Litigation Regarding the FCPA and Related Statutes

1. The Scope of the FCPA's Accounting Provisions (*SEC v. SolarWinds Corp. et al.*)

In *SolarWinds*, the Southern District of New York dismissed as “ill-pled” the SEC’s claims that the company’s allegedly deficient internal cybersecurity controls violated the “internal accounting controls” provisions of the FCPA, holding that this provision is limited to a company’s internal “financial accounting” controls.³⁶⁰ Section 13(b)(2)(B) of the FCPA’s accounting provisions requires, in part, that public issuers “devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that ... access to assets is permitted only in accordance with

³⁵⁹ Jury Verdict, *United States v. Carlos Ramon Polit Faggioni*, No. 22-CR-20114, at 1-3 (S.D. Fla. Apr. 24, 2024) ECF No. 182.

³⁶⁰ *SEC v. SolarWinds Corp.*, 2024 WL 3461952, at *2, *48-*49 (S.D.N.Y. July 18, 2024) (emphasis in original).

management's general or specific authorization."³⁶¹ The SEC alleged that the company's cybersecurity deficiencies—including poor access controls, weak internal password policies, and VPN security gaps—failed to limit access to "its most vital assets ... only in accordance with management's ... authorization" by enabling access for external hackers.³⁶² The court rejected this broad reading and held that the "system of internal accounting controls" provision "clearly" "refers to a company's *financial accounting*" and "does not govern *every internal system* a public company uses to guard against unauthorized access to its assets, but only those qualifying as 'internal accounting' controls."³⁶³

The court found that the text and structure of the statutory scheme support a narrow reading of the "system of internal accounting controls" provision. The dictionary definition of "accounting" refers to recording "*business and financial* transactions," and surrounding terms like "transactions," "financial statements," "generally accepted accounting principles," and "books and records" "are uniformly consistent with *financial* accounting."³⁶⁴ Additionally, and "[u]nsurprisingly," "the few courts" that previously interpreted "internal accounting controls" "consistently construed it to address financial accounting."³⁶⁵ The court rejected the SEC's broad reading and found that it would have "sweeping ramifications," "empower[ing] the agency to regulate" everything from background checks to safety measures at water parks.³⁶⁶ The court definitively ruled that "[t]he text thus defeats the SEC's attempt to apply this provision to cybersecurity controls."³⁶⁷

Similarly, the court found that the purpose and history of the FCPA "confirm that cybersecurity controls are outside the scope" of Section 13(b)(2)(B).³⁶⁸ "Congress's explicit purpose as codified in the text, was to 'provide reasonable assurances that ... transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted *accounting principles*.'"³⁶⁹

This decision could provide a basis to push back on SEC charges related to the accounting control provisions in the future. The SEC has historically taken an extremely broad view of these

³⁶¹ *SEC v. SolarWinds Corp.*, 2024 WL 3461952 at *48 (S.D.N.Y. July 18, 2024).

³⁶² *SEC v. SolarWinds Corp.*, 2024 WL 3461952 at *48 (S.D.N.Y. July 18, 2024) (internal quotation marks omitted).

³⁶³ *Sec. & Exch. Comm'n v. SolarWinds Corp.*, 2024 WL 3461952 at *48-*52 (S.D.N.Y. July 18, 2024) (citations omitted) (emphasis in original).

³⁶⁴ *SEC v. SolarWinds Corp.*, 2024 WL 3461952, at *49 (S.D.N.Y. July 18, 2024) (citing cases) (emphasis in original).

³⁶⁵ *SEC v. SolarWinds Corp.*, 2024 WL 3461952, at *50 (S.D.N.Y. July 18, 2024).

³⁶⁶ *SEC v. SolarWinds Corp.*, 2024 WL 3461952, at *51 (S.D.N.Y. July 18, 2024).

³⁶⁷ *SEC v. SolarWinds Corp.*, 2024 WL 3461952, at *49 (S.D.N.Y. July 18, 2024).

³⁶⁸ *SEC v. SolarWinds Corp.*, 2024 WL 3461952, at *51 (S.D.N.Y. July 18, 2024).

³⁶⁹ *SEC v. SolarWinds Corp.*, 2024 WL 3461952, at *51 (S.D.N.Y. July 18, 2024) (emphasis in original).

provisions, including, for example, construing them to apply to hiring controls in the FCPA cases involving hiring of relatives of foreign government officials.³⁷⁰

2. The Scope of the FCPA's Affirmative Defense Regarding “Lawful” Payments Under Foreign Law (*U.S. v. Javier Aguilar*)

During the trial of Javier Aguilar, No. 20-CR-390 (E.D.N.Y.), District Judge Vitaliano in the Eastern District of New York grappled with the definition of “public servant” under the Mexican Penal Code, which was an element of the predicate offense for one of the money laundering counts that Aguilar faced and relevant to Aguilar’s affirmative “lawful” payment defense. The parties disagreed over whether the individuals whom Aguilar was alleged to have bribed—employees of PPI, a wholly-owned affiliate of PEMEX—were “public servants” pursuant to the relevant provision of the Mexican Penal code.³⁷¹ In a written ruling issued in February 2024, Judge Vitaliano found that these employees are not “public servants” as defined by the Mexican Penal Code because PPI is not a “majority state-owned company,” but rather a commercial entity incorporated and organized in accordance with Delaware law.³⁷²

Following this ruling on employees of PPI, Aguilar’s attorneys moved for a partial judgment of acquittal on the money laundering charge premised on the specific unlawful activity in Mexico, or in the alternative for a jury instruction on the “foreign law” affirmative defense under the FCPA, which requires that “the payment ... was lawful under the written laws and regulations of the foreign official’s ... country.”³⁷³ Judge Vitaliano quickly denied this motion, explaining that even though Aguilar could not be held criminally liable under Mexican law, he is not necessarily entitled to the FCPA’s affirmative defense that the payment was “lawful,” and he otherwise failed to identify a law or regulation “that makes lawful the payments at issue” as required.³⁷⁴

3. DOJ Jurisdiction to Prosecute Foreign Commercial Bribery – FIFA and the Honest Services Fraud List

In a notable development discussed in the 2023 Year-in-Review, in September of that year, Judge Chen of the Eastern District of New York granted motions for acquittal of the convictions of Full Play

³⁷⁰ See e.g., Order Instituting Cease-and-Desist Proceedings, *In the Matter of The Bank of New York Mellon Corp.*, Rel. No. 75720, File No. 3-16762, ¶¶ 14-15, 27, 31 (Aug. 18, 2015), <https://www.sec.gov/files/litigation/admin/2015/34-75720.pdf> (finding that Bank of New York Mellon violated the anti-bribery and internal accounting controls provisions of the FCPA, in part, by “corruptly providing valuable internships to relatives of foreign officials from the Middle Eastern Sovereign Wealth Fund in order to assist BNY Mellon in retaining and obtaining Business”).

³⁷¹ *United States v. Javier Aguilar*, 717 F. Supp. 3d 272, 275-76 (E.D.N.Y. 2024).

³⁷² *United States v. Javier Aguilar*, 717 F. Supp. 3d 272, 280-81 (E.D.N.Y. 2024).

³⁷³ 15 U.S.C. § 78dd-1(c)(1).

³⁷⁴ Order, *United States v. Javier Aguilar*, No. 20-CR-390 (E.D.N.Y. Feb. 20, 2024).

Group SA and two U.S. citizen executives of a subsidiary of Twenty-First Century Fox, Inc.,³⁷⁵ who had been found guilty by a jury of charges related to bribery and corruption in connection with international soccer tournaments.³⁷⁶ In reversing these convictions, the court reasoned that there was insufficient evidence to convict the defendants under the honest services fraud statute, because, consistent with recent intervening Supreme Court cases, the statute does not extend to foreign commercial bribery.³⁷⁷ Specifically, in *Percoco v. United States*, the Supreme Court held that the applicable fiduciary duty for a conviction under the honest services fraud statute “must be defined with the clarity typical of criminal statutes.”³⁷⁸ Applying *Percoco*, U.S. District Judge Pamela Chen found that there is no precedent for applying the honest services wire fraud statute to foreign commercial bribery schemes. The Government appealed the district court’s decision to vacate the convictions, and on January 8, 2025, the U.S. Court of Appeals for the Second Circuit held oral argument in the case. During oral argument, the Second Circuit judges asked several questions about how to understand the honest-services fraud statute’s role within the U.S.’s extra-territorial anti-bribery regime, especially as compared to the parameters of the FCPA and FEPA, and appeared focused on the U.S. touchpoints of the underlying schemes in assessing the relevant fiduciary duty of the defendants. The Second Circuit is expected to issue its ruling later this year.

C. Legislative Developments

1. Foreign Extortion Prevention Technical Corrections Act (FEPTCA)

On July 30, 2024, Congress enacted the Foreign Extortion Prevention Technical Corrections Act (FEPTCA), which amended the FEPA.³⁷⁹ Enacted in 2023, the FEPA amended the federal domestic bribery statute, 18 U.S.C. § 201, to address long-standing calls to criminalize the “demand side” of foreign bribery. Specifically, it prohibits foreign officials from soliciting or accepting bribes in exchange for official acts or improper business advantages, provided certain jurisdictional requirements are met.³⁸⁰

³⁷⁵ WilmerHale, Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024 (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³⁷⁶ WilmerHale, Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024 (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³⁷⁷ 4 WilmerHale, Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024 (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>. The two Supreme Court cases that the district court relied on are *Ciminelli v. United States*, 598 U.S. 306 (2023), and *Percoco v. United States*, 598 U.S. 319 (2023).

³⁷⁸ 598 U.S. at 328.

³⁷⁹ Foreign Extortion Prevention Technical Corrections Act, Pub. L. No. 118-78, 138 Stat. 1512 (2024).

³⁸⁰ For additional information regarding the FEPA, see WilmerHale, *Congress Enacts the Foreign Extortion Prevention Act Targeting Foreign Officials’ Conduct* (Dec. 21, 2023), <https://www.wilmerhale.com/insights/client-alerts/20231221-congress-enacts-the-foreign-extortion-prevention-act-targeting-foreign-officials-conduct>.

The 2024 revisions achieve two main objectives. First, they move the FEPA from 18 U.S.C. § 201, the domestic bribery statute, into its own standalone provision at 18 U.S.C. § 1352. This change addresses concerns about the ambiguity of the FEPA's definitions and scope in the context of the broader domestic bribery framework. Second, Congress sought to “harmonize”³⁸¹ the FEPA with the FCPA by (a) narrowing the FEPA's definition of “foreign official”³⁸²; (b) limiting its extraterritorial reach by requiring that the foreign official or agent be within U.S. territory when soliciting a bribe; and (c) expanding the conduct that qualifies as a “quo” to satisfy the statute's quid pro quo requirement, thus providing prosecutors with broader grounds—consistent with the FCPA—to charge foreign officials involved in corrupt practices.

2. Counter Kleptocracy Coordination Act

In July 2024, Senators Sheldon Whitehouse (D-RI) and John Cornyn (R-TX) introduced the Counter Kleptocracy Coordination Act, which would establish a dedicated position on the White House National Security Council (NSC) focused on combating kleptocracy and foreign corruption.³⁸³ This NSC staffer would be responsible for updating and coordinating the implementation of the U.S. Strategy on Countering Corruption, aligning and deconflicting anti-corruption and counter-kleptocracy efforts across the government, and informing NSC discussions by emphasizing the destabilizing impact of corruption on national security. The bill is currently pending before the Senate Committee on Homeland Security and Governmental Affairs.

VII. Collateral Actions

In 2024, companies resolving bribery-related and FCPA allegations and/or investigations continued to face private litigation, including shareholder lawsuits where allegations center on material misstatements or omissions related to alleged bribery, RICO, and fraud actions. Below are select civil collateral actions either brought in 2024 or that had important rulings in 2024.

³⁸¹ 170 Cong. Rec. H4656-02 (daily ed. July 22, 2024).

³⁸² Under the FEPTCA, the term “foreign official” now includes: (1) any official or employee of a foreign government or any department, agency, or instrumentality thereof; (2) any senior foreign political figure; (3) any official or employee of a public international organization; or (4) any person acting in an official capacity for or on behalf of a government, department, agency, instrumentality, or public international organization. 18 U.S.C. § 1352(a)(1). The amendments to FEPA removed reference to persons “acting in an unofficial capacity” for or on behalf of a government.

³⁸³ Senator Sheldon Whitehouse Press Release: Whitehouse, Cornyn Introduce Legislation to Create Permanent National Security Council Position to Counter Kleptocracy and Foreign Corruption (July 19, 2024), <https://www.whitehouse.senate.gov/news/release/whitehouse-cornyn-introduce-legislation-to-create-permanent-national-security-council-position-to-counter-kleptocracy-and-foreign-corruption/>.

A. Shareholder Suits

1. Ericsson

As discussed in our 2023 Year-in-Review, Swedish telecommunications company Ericsson, along with its former executives, were sued by Ericsson investors.³⁸⁴ Plaintiffs alleged that Ericsson and its former executives made false and misleading statements about Ericsson's anti-corruption policies and controls, its resolution of U.S. government FCPA-related investigations, and purported bribe payments made to ISIS to obtain a business advantage in Iraq.³⁸⁵ The Eastern District of New York granted defendants' motion to dismiss because plaintiffs failed to plead actionable misstatements and omissions. In particular, the court ruled that the disclosures were too general to support a claim of securities fraud or were not false when made, and plaintiffs also failed to sufficiently plead scienter.³⁸⁶

Plaintiffs appealed and, in September 2024, the Second Circuit affirmed.³⁸⁷ The Second Circuit determined that the purported misstatements concerning Ericsson's anti-corruption measures, compliance, and policies were generalized and mere puffery such that no reasonable investor would rely upon them.³⁸⁸ Concerning Ericsson's statements related to government FCPA investigations, their resolution, and the risk of future enforcement actions, the Second Circuit determined those statements were not misleading, in part because they were made in the context of warnings given to investors regarding the possibility of future compliance failures and investigations.³⁸⁹ The Second Circuit concluded plaintiffs' remaining allegations, including scienter, were insufficient.³⁹⁰

³⁸⁴ See WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³⁸⁵ See WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>; see also Compl., *Nyy v. Telefonaktiebolaget LM Ericsson*, No. 22-CV-01167 (E.D.N.Y. Mar. 3, 2022) ECF No. 1.

³⁸⁶ See WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³⁸⁷ Summ. Order, *Boston Retir. Sys. v. Telefonaktiebolaget LM Ericsson*, No. 23-CV-940 (2d Cir. Sept. 3, 2024) ECF No. 81.

³⁸⁸ Summ. Order, *Boston Retir. Sys. v. Telefonaktiebolaget LM Ericsson*, No. 23-CV-940, at 7-9 (2d Cir. Sept. 3, 2024) ECF No. 81.

³⁸⁹ Summ. Order, *Boston Retir. Sys. v. Telefonaktiebolaget LM Ericsson*, No. 23-CV-940, at 9-14 (2d Cir. Sept. 3, 2024) ECF No. 81.

³⁹⁰ Summ. Order, *Boston Retir. Sys. v. Telefonaktiebolaget LM Ericsson*, No. 23-CV-940, at 13-14 (2d Cir. Sept. 3, 2024) ECF No. 81.

2. Odebrecht

In June 2017, plaintiffs (related registered investment companies and their investment advisor that bought Odebrecht finance bonds) brought claims under Sections 10(b) and 20(a) of the Exchange Act against Odebrecht.³⁹¹ As discussed in our 2021, 2022, and 2023 Year-in-Reviews, Odebrecht is a Brazilian construction firm that pleaded guilty to paying hundreds of millions in bribes related to over 100 projects in 12 countries over an eight-year period.³⁹² During discovery, Odebrecht was sanctioned and ordered to pay related attorneys' fees for its failure to comply with a discovery order.³⁹³

Discovery in the case is still ongoing. Odebrecht moved to preclude plaintiffs' expert witness in June 2023.³⁹⁴ Specifically, Odebrecht sought to exclude plaintiffs' expert report and opinions related to loss causation and damages based on certain alleged flaws with the expert's methodology, benchmarks, and results.³⁹⁵ The Southern District of New York denied the motion in March 2024, concluding that plaintiffs demonstrated it is more likely than not that the expert's analysis is reliable at each step.³⁹⁶ In May 2024, plaintiffs filed a motion for partial summary judgment,³⁹⁷ Odebrecht filed its opposition in June 2024,³⁹⁸ and plaintiffs filed their reply in August 2024.³⁹⁹ The court has not yet ruled on the motion.

³⁹¹ Compl., *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. June 16, 2017) ECF No. 1.

³⁹² See WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, *2022 Global Anti-Bribery Year-in-Review* (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>; WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

³⁹³ See WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>; see also Compl., *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. June 16, 2017) ECF No. 1.

³⁹⁴ Memo. in Support of Def.'s Motion to Exclude Pl.'s Expert Opinions, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 10-17 (S.D.N.Y. June 5, 2023) ECF No. 292.

³⁹⁵ Memo. in Support of Def.'s Motion to Exclude Pl.'s Expert Opinions, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 10-17 (S.D.N.Y. June 5, 2023) ECF No. 292.

³⁹⁶ Op. & Order re Def.'s Motion to Exclude Pl.'s Expert Opinions, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 31 (S.D.N.Y. Mar. 14, 2024) ECF No. 298.

³⁹⁷ Memo. of Law in Support of Pls.' Motion for Partial Summary Judgment, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. May 28, 2024) ECF Nos. 302-303.

³⁹⁸ Memo. of Law in Support of Odebrecht's Opposition to Pls.' Motion for Partial Summary Judgment, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. June 27, 2024) ECF No. 308.

³⁹⁹ Memo. of Law in Support of Pls.' Reply to Odebrecht's Opposition to Pls.' Motion for Partial Summary Judgment, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. Aug. 2, 2024) ECF No. 311.

3. Veon

In September 2024, a Southern District of New York judge granted Dutch-based multinational telecommunications provider Veon's motion to dismiss new portions of plaintiffs' third amended complaint.⁴⁰⁰ As discussed in our 2021 and 2023 Year-in-Reviews, shareholders of Veon brought suit after Veon pleaded guilty to charges relating to multiple FCPA violations, including improper payments to the eldest daughter of Uzbekistan's President to obtain a business advantage in Uzbekistan's telecommunications market, and entered into a DPA with the DOJ.⁴⁰¹ The shareholders brought securities fraud claims under Section 10(b) of the Exchange Act, alleging that, among other things, Veon made material omissions in its securities filings by failing to disclose this misconduct.⁴⁰²

The court dismissed the lead plaintiff for lack of standing and appointed a new lead plaintiff, and that new lead plaintiff filed a third amended complaint in March 2023.⁴⁰³ The third amended complaint included six newly-alleged corrective disclosures and three newly-alleged false statements concerning additional events in Uzbekistan during an earlier period of time (2012), including Veon's awareness that a competitor had its assets seized after the competitor stopped paying bribes to the daughter of Uzbekistan's President in exchange for not paying taxes.⁴⁰⁴ Veon moved to dismiss the third amended complaint, arguing that the new allegations were time-barred.⁴⁰⁵ Both parties submitted supplemental authority.⁴⁰⁶

⁴⁰⁰ Op. & Order re Defs.' Motion to Dismiss Pl.'s Third Amend. Compl., *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. Sept. 30, 2024) ECF No. 247.

⁴⁰¹ See WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

⁴⁰² WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

⁴⁰³ WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>; Third Amend. Complaint, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672 (S.D.N.Y. Mar. 1, 2023) ECF No. 221.

⁴⁰⁴ Memo. of Law in Support of Def.'s Motion to Dismiss Pl.'s Third Amend. Compl., *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 6-8 (S.D.N.Y. May 12, 2023) ECF No. 242.

⁴⁰⁵ Memo. of Law in Support of Def.'s Motion to Dismiss Pl.'s Third Amend. Compl., *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. May 12, 2023) ECF No. 242.

⁴⁰⁶ Notice of Supp. Auth., *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 2 (S.D.N.Y. July 18, 2023) ECF No. 245; Letter re Boris Lvov's July 18, 2023 letter, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. July 20, 2023) ECF No. 246.

On September 30, 2024, the court granted Veon's motion to dismiss the newly pleaded false statements because they were time-barred, denied Veon's motion to dismiss the newly pleaded corrective disclosures without prejudice, and directed the parties to file supplemental briefing.⁴⁰⁷ On October 2, 2024, the parties filed a joint letter confirming their understanding of the court's order.⁴⁰⁸ Plaintiffs filed additional briefing on October 7, 2024⁴⁰⁹ and Veon submitted additional briefing on October 14, 2024.⁴¹⁰ The court has not yet ruled.

4. In re Danimer Scientific Inc. Securities Litigation

Plaintiffs brought a putative class action lawsuit asserting claims under Rules 10(b) and 10b-5 of the Exchange Act against Danimer Scientific, Inc. and some of Danimer's executives and board of directors.⁴¹¹ Danimer, which produces bioplastics, announced that it was merging with a special purpose acquisition company formed solely for the purpose of merging with another company.⁴¹² After the merger, Danimer continued to publicly promote its business both in press releases, interviews, and in SEC filings.⁴¹³ Plaintiffs alleged, however, that Danimer's statements were misleading after articles suggested that Danimer's claims about its business, production capacity, and demand for its products were misleading.⁴¹⁴ Plaintiffs further alleged that another report criticized Danimer's CEO and the CEO's tenure as the head of another company that previously entered into settlements with the SEC and the DOJ for FCPA violations.⁴¹⁵ Plaintiffs alleged that Danimer's omission of the FCPA-related settlements rendered a description of its CEO's experience materially misleading.⁴¹⁶ Danimer moved to dismiss.⁴¹⁷

⁴⁰⁷ Op. & Order re Defs.' Motion to Dismiss Pl.'s Third Amend. Compl., *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. Sept. 30, 2024) ECF No. 247.

⁴⁰⁸ Parties' Joint Letter re Defs.' Motion to Dismiss Pl.'s Third Amend. Compl., *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. Oct. 2, 2024) ECF No. 248.

⁴⁰⁹ Pls.' Letter of Additional Auth. *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. Oct. 7, 2024) ECF No. 250.

⁴¹⁰ Pls.' Letter of Additional Auth., *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. Oct. 14, 2024) ECF No. 251.

⁴¹¹ Amend. Compl., *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708 (E.D.N.Y. Jan. 19, 2022) ECF No. 44.

⁴¹² Amend. Compl., *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708 (E.D.N.Y. Jan. 19, 2022) ECF No. 44.

⁴¹³ Amend. Compl., *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708 (E.D.N.Y. Jan. 19, 2022) ECF No. 44.

⁴¹⁴ Amend. Compl., *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708 (E.D.N.Y. Jan. 19, 2022) ECF No. 44.

⁴¹⁵ Amend. Compl., *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708 (E.D.N.Y. Jan. 19, 2022) ECF No. 44.

⁴¹⁶ Amend. Compl., *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708 (E.D.N.Y. Jan. 19, 2022) ECF No. 44.

⁴¹⁷ Defs.' Motion to Dismiss Amend. Compl., *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708 (E.D.N.Y. May 31, 2022) ECF No. 61.

The Eastern District of New York granted the motion to dismiss in its entirety.⁴¹⁸ As for the omission of the FCPA-related settlements, the district court concluded that this omission did not render Danimer's description of its CEO's managerial experience as materially misleading.⁴¹⁹ In addition, the CEO's lack of personal involvement as a party to the prior FCPA settlements did not suggest that there was an engagement in improper activities.⁴²⁰ Plaintiffs appealed, and on September 27, 2024, the Second Circuit affirmed.⁴²¹

B. RICO Suits

1. Petrobras

On September 16, 2024, the Fifth Circuit affirmed the Southern District of Texas's dismissal, with prejudice, of RICO claims brought in 2019 by a Brazilian state oil company subsidiary, Petrobras Americas, Inc., against Samsung in connection with allegations that Samsung paid bribes to Petrobras officials.⁴²² As discussed in our 2020, 2021, and 2023 Year-in-Reviews, Samsung allegedly wanted to facilitate the agreement between Petrobras and another company, Pride Global, because Pride Global demanded it have a contract in place with Petrobras prior to agreeing to purchase a drillship from Samsung.⁴²³ Petrobras instead decided to assign the contract to a Petrobras subsidiary (plaintiff in this case), and the subsidiary alleged it suffered injuries as a result.⁴²⁴ The district court dismissed plaintiff's claims, finding that Samsung's conduct was too far

⁴¹⁸ Memo. & Order, *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708 (E.D.N.Y. Sept. 30, 2023) ECF No. 66.

⁴¹⁹ Memo. & Order, *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708, at 20-21 (E.D.N.Y. Sept. 30, 2023) ECF No. 66.

⁴²⁰ Memo. & Order, *In re Danimer Scientific Inc. Sec. Litig.*, No. 21-CV-2708, at 20-21 (E.D.N.Y. Sept. 30, 2023) ECF No. 66.

⁴²¹ Summ. Order, *Swanson v. Danimer of Scientific Inc.*, No. 23-7674-CV, at *1 (2d Cir. Sept. 27, 2024).

⁴²² Order of USCA Judgment, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co.*, No. 19-CV-01410 (S.D. Tex. Sept. 16, 2024) ECF No. 252.

⁴²³ WilmerHale, *2020 Global Anti-Bribery Year-in-Review* (Jan. 28, 2021), <https://www.wilmerhale.com/insights/client-alerts/20210126-2020-global-antibribery-yearinreview>; WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

⁴²⁴ WilmerHale, *2020 Global Anti-Bribery Year-in-Review* (Jan. 28, 2021), <https://www.wilmerhale.com/insights/client-alerts/20210126-2020-global-antibribery-yearinreview>; WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

removed from the assignment agreement to be the cause of the purported injuries.⁴²⁵ Plaintiff appealed (for the second time).⁴²⁶ The Fifth Circuit affirmed the dismissal.

C. Other Actions

1. EIG Energy Fund XIV LP

In 2018, investors of energy investment funds managed by EIG Management Company, LLC (EIG) alleged that they were defrauded by two nonparties—the Brazilian state oil company (Petrobras) and its investment entity—and that a manufacturer of offshore drilling equipment, Keppel Offshore & Marine Ltd. (Keppel), aided and abetted that fraud.⁴²⁷ EIG alleged that Petrobras established its investment entity to raise money to drill for oil in Brazil, that Keppel was awarded contracts by the nonparty investment entity to build drill ships for the project, and EIG invested \$220 million into that investment entity. EIG sued Keppel after Brazilian law enforcement exposed a years-long bribery scheme between Keppel, Petrobras, and Petrobras's investment entity following an investigation.⁴²⁸ EIG claimed that it made an investment without knowing of the bribery scheme, that Keppel defrauded EIG by failing to disclose the bribery scheme, and that it lost all of its investment as a result.⁴²⁹ Originally, EIG brought claims for fraud, aiding and abetting fraud, and conspiracy to defraud against Keppel, Petrobras, and other defendants in the U.S. District Court for the District of Columbia, but that case was dismissed for lack of jurisdiction.⁴³⁰

⁴²⁵ WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

⁴²⁶ WilmerHale, *2020 Global Anti-Bribery Year-in-Review* (Jan. 28, 2021), <https://www.wilmerhale.com/insights/client-alerts/20210126-2020-global-antibribery-yearinreview>; WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, *2023 Global Anti-Bribery Year-in-Review* (Jan. 30, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240129-global-anti-bribery-year-in-review-2023-developments-and-predictions-for-2024>.

⁴²⁷ Amend. Compl., *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Apr. 30, 2018) ECF No. 17; Def.'s R. 56.1 Stmt., *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Aug. 9, 2023) ECF No. 144-1; Def.'s R. 56.1 Cntrstmt., *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Aug. 9, 2023) ECF No. 144-2.

⁴²⁸ Amend. Compl., *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Apr. 30, 2018) ECF No. 17.

⁴²⁹ Amend. Compl., *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Apr. 30, 2018) ECF No. 17.

⁴³⁰ *EIG Energy Fund XIV, L.P. v. Petróleo Brasileiro S.A.*, 246 F. Supp. 3d 52, 61 (D.D.C. 2017); *aff'd*, 894 F.3d 339 (D.C. Cir. 2018).

EIG filed a new complaint in 2018 in the Southern District of New York, and then amended it by asserting claims for RICO conspiracy and aiding and abetting fraud.⁴³¹ Keppel moved to dismiss.⁴³² The court dismissed the RICO conspiracy claim because the alleged conduct fell within the scope of the Private Securities Litigation Reform Act of 1995 (PSLRA)'s bar on predicate acts involving securities fraud, but upheld EIG's aiding and abetting fraud claim.⁴³³ In 2020, Keppel moved for reconsideration, but that motion was denied.⁴³⁴ The parties filed cross-motions for summary judgment on EIG's aiding and abetting fraud claim.⁴³⁵ Keppel did not dispute that it engaged in a bribery scheme, but argued that there was no evidence that it was aware Petrobras and its investment entity were defrauding EIG or that Keppel substantially assisted any fraud perpetrated on EIG.⁴³⁶ The court agreed. The court granted Keppel's motion for summary judgment and denied EIG's motion for summary judgment after concluding that Keppel demonstrated that there was no material issue of fact with respect to its actual knowledge of or substantial assistance in the investment fraud that Petrobras and its investment entity orchestrated upon EIG.⁴³⁷ EIG filed a notice of appeal on April 12, 2024 and the parties have since filed briefs in the Second Circuit.⁴³⁸ The Second Circuit has not yet ruled on EIG's appeal.

VIII. International Developments

A. United Kingdom

1. Legislative and Policy Developments

Throughout 2024, UK law enforcement agencies highlighted efforts to work collaboratively to bring assertive investigations. In addition, the UK government released guidance on the new offense of

⁴³¹ Compl., *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Feb. 6, 2018) ECF No. 1; Amend. Compl., *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-ICV-1047 (S.D.N.Y. Apr. 30, 2018) ECF No. 17.

⁴³² Def.'s Motion to Dismiss Amend. Compl., *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Apr. 12, 2019) ECF No. 35.

⁴³³ Mem. & Order on Def.'s Motion to Dismiss, *EIG Energy Fund XIV LP v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047, at 12-23 (S.D.N.Y. May 11, 2020) ECF No. 45.

⁴³⁴ Def.'s Motion for Reconsideration, *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CV-1047 (S.D.N.Y. May 26, 2020) ECF No. 48; Mem. & Order on Def.'s Motion for Reconsideration, *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. June 26, 2020) ECF No. 54.

⁴³⁵ Pl.'s Motion for Summary Judgment, *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Nov. 9, 2021) ECF No. 97; Def.'s Motion for Summary Judgment, *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Nov. 9, 2021) ECF No. 104.

⁴³⁶ Memo. of Law in Support of Def.'s Motion for Summary Judgment, *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047, at 13-37 (S.D.N.Y. Nov. 9, 2021) ECF No. 107.

⁴³⁷ Mem. & Order, Pl.'s Motion for Summary Judgment, *EIG Energy Fund, XIV L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047, at 40 (S.D.N.Y. Mar. 20, 2024) ECF No. 158.

⁴³⁸ Pl.'s Notice of Appeal, *EIG Energy Fund XIV, L.P. v. Keppel Offshore and Marine Ltd.*, No. 18-CIV-1047 (S.D.N.Y. Apr. 12, 2024) ECF No. 160.

failure to prevent fraud, which will likely be useful to enforcement agencies that bring anti-corruption cases in the UK.

a. Guidance on new offense of failure to prevent fraud

In November 2024, the UK government released its long-awaited guidance on the new corporate criminal offense of failure to prevent fraud, under the Economic Crime and Corporate Transparency Act 2023 (ECCTA).⁴³⁹ The new offense will come into force on September 1, 2025. The failure to prevent fraud offense broadly follows the same model as the failure to prevent bribery⁴⁴⁰ and failure to prevent the facilitation of tax evasion offenses. It will hold large organizations criminally liable for fraud committed by associated persons who provide services for or on behalf of an organization with the intention of benefiting the organization. This is a major development in the UK corporate crime landscape and increases the likelihood of companies being successfully prosecuted for fraud in the UK. Organizations that have reasonable procedures in place to prevent fraud, outlined below, may establish an affirmative defense to the new offense. The guidance clarifies the proper interpretation and application of the new offense and provides helpful guidance to companies as to what constitutes reasonable fraud prevention procedures.

The guidance confirms the jurisdictional scope of the offense: it will apply to large organizations where one of the acts that forms part of the underlying fraud takes place in the UK, or where the gain or loss occurs in the UK. The guidance also fleshes out the definition of an “associated person” and makes clear that a company could be guilty of failure to prevent fraud even if the company ultimately reimburses the proceeds of that fraud.⁴⁴¹

The guidance offers insight into the “reasonable procedures” that a company may enact to prevent fraud and potentially establish an affirmative defense to criminal liability for fraud due to the conduct of an “associated person.” Specifically, the guidance highlights six principles that organizations should incorporate into their fraud prevention frameworks: (1) top-level commitment; (2) risk assessment; (3) proportionate risk-based prevention procedures; (4) due diligence of staff, agents, and third parties; (5) communication, including training; and (6) monitoring and review.⁴⁴² These six principles are the same principles enumerated in the guidance for the failure to prevent bribery and facilitation of tax evasion offenses. The guidance notes that each case will be assessed on its own

⁴³⁹ WilmerHale, *UK Government Publishes Guidance on New Failure to Prevent Fraud Offence* (Nov. 19, 2024), <https://www.wilmerhale.com/en/insights/client-alerts/20241119-uk-government-publishes-guidance-on-new-failure-to-prevent-fraud-offence>.

⁴⁴⁰ *S. 7 Bribery Act 2010*, in force from July 1, 2011; *Part 3 Criminal Finances Act 2017*, in force from September 30, 2017.

⁴⁴¹ According to the guidance, an “associated person” is an employee, agent or subsidiary of the organization, while acting in that capacity, or a person providing services for or on behalf of the organization, while providing those services.

⁴⁴² WilmerHale, *UK Government Publishes Guidance on New Failure to Prevent Fraud Offence* (Nov. 19, 2024), <https://www.wilmerhale.com/en/insights/client-alerts/20241119-uk-government-publishes-guidance-on-new-failure-to-prevent-fraud-offence>.

facts, and that even strict compliance with the principles will not necessarily amount to having reasonable procedures in place. Equally, the guidance is non-prescriptive, and a fraud prevention framework might still be considered reasonable if it departs from the principles.

b. Increased inter-agency collaboration

While the UK's Serious Fraud Office (SFO) continues to be the principal agency investigating and prosecuting serious bribery offenses, collaboration among the SFO and its fellow UK law enforcement agencies continues to develop. This may in part be influenced by the policing background of the SFO's new Director, Nick Ephgrave QPM, who joined the SFO from the Metropolitan Police in September 2024. Perhaps as testament to Mr. Ephgrave's former career, all 15 searches of premises conducted under his leadership have been secured with the help of the National Crime Agency (NCA) or the police. The SFO's five-year strategy, launched in April 2024, identifies collaboration as a core value and stresses the need for the SFO to be "the partner of choice, both domestically and internationally" to other law enforcement agencies.⁴⁴³ In line with this ambition, the six investigations opened by Mr. Ephgrave in his first year have all involved collaboration with other UK regulators, prosecutors, or administrators.

Teamwork between enforcement agencies is also being encouraged by legislation. In May 2024, the National Crime Agency (Directed Tasking) Order 2023 came into force, granting the NCA the power to require the SFO to investigate suspected incidents of serious or complex fraud (although this power cannot be used in relation to the SFO's prosecutorial powers). Some commentators view the development as foreshadowing a potential merger of the SFO and the NCA, although the UK's new Labour government has not taken steps to do so since it came into power in July 2024.

2. Enforcement Developments and Recent Cases

a. Enforcement of Ephgrave's Agenda

September 2024 marked the end of Mr. Ephgrave's first year as Director of the SFO. When delivering his first public address in the role, Mr. Ephgrave set out his intention to lead a "bolder, more pragmatic, more proactive" SFO.⁴⁴⁴ It seems that Mr. Ephgrave's promise of stronger, swifter action is being borne out, with more dawn raids in the first three months of Mr. Ephgrave's leadership than in the previous three years, and six investigations opened in his first year.

b. Individual prosecutions

In February 2024, two former senior executives at Petrofac who were based in the United Arab Emirates (Marwan Chedid and George Salibi) were charged by the SFO with offering or paying

⁴⁴³ Serious Fraud Office, SFO Strategy 2024-29 (Oct. 27, 2024), <https://www.sfo.gov.uk/2024/04/18/serious-fraud-office-strategy-2024-2029/>.

⁴⁴⁴ Kyle Brasseur, *New SFO director vows quicker cases, stumps for whistleblower payouts*, COMPLIANCE WEEK, Feb. 14, 2024, <https://www.complianceweek.com/regulatory-enforcement/new-sfo-director-vows-quicker-cases-stumps-for-whistleblower-payouts/34346.article>.

bribes in connection with contracts in the Middle East.⁴⁴⁵ The SFO alleges that Chedid and Salibi were involved in offering and paying agents over \$30 million USD to influence the awarding in Petrofac's favor of contracts worth approximately \$3.3 billion USD. The contracts related to oil facilities in the United Arab Emirates, including one for the infrastructure and design of the second largest oil field in the Gulf. The trial is expected to start in October 2026.

In May 2024, a London court sentenced two individuals, Romy Andrianarisoa and Philippe Tabuteau, to a combined total of over five and a half years of imprisonment following their convictions for requesting bribes from a UK gemstones mining company.⁴⁴⁶ The bribes were requested in exchange for mining contracts in Madagascar. Andrianarisoa, former Chief of Staff to the President of Madagascar, was convicted following trial in February 2024. The case, which was brought by the Crown Prosecution Service (CPS) following an NCA investigation, marks the first occasion of a foreign official being convicted of bribery in the UK and involved the use of covert surveillance and recording by an undercover NCA agent.

In May 2024, the NCA charged Peter Virdee (also known as Hardip Singh), the director of UK-based renewable energy firm PV Energy, under the UK Bribery Act.⁴⁴⁷ Virdee faces one count of bribing a foreign official, Asot Michael, between 2015 and 2017, to win or retain business for PV Energy. Michael was formerly a Member of Parliament in Antigua and Barbuda. The trial is expected to start in January 2027. The fact that charges were brought by the NCA, rather than the SFO, highlights the increasing range of UK agencies taking assertive action in bribery investigations.

In August 2024, the SFO charged five former Glencore employees with conspiring to make corrupt payments to benefit Glencore's operations in West Africa between 2007 and 2014.⁴⁴⁸ Charges were brought against a sixth individual in September 2024.⁴⁴⁹ The trial is expected to start in June 2027.

⁴⁴⁵ United Kingdom Press Release: SFO charges two former Petrofac senior executives with bribery (Feb. 16, 2024), <https://www.gov.uk/government/news/sfo-charges-two-former-petrofac-senior-executives-with-bribery>.

⁴⁴⁶ Ana de Liz, *Madagascar president's ex-chief of staff sentenced to prison in UK*, GLOBAL INVESTIGATIONS REV. May 10, 2024, <https://globalinvestigationsreview.com/article/madagascar-presidents-ex-chief-of-staff-sentenced-prison-in-uk>.

⁴⁴⁷ Malavika Devaya, *British businessman charged with bribing Antiguan politician*, GLOBAL INVESTIGATIONS REV. May 23, 2024, <https://globalinvestigationsreview.com/article/british-businessman-charged-bribing-antiguan-politician> <https://globalinvestigationsreview.com/article/british-businessman-charged-bribing-antiguan-politician>.

⁴⁴⁸ United Kingdom Press Release: SFO charges five former Glencore employees (Aug. 1, 2024), <https://www.gov.uk/government/news/sfo-charges-five-former-glencore-employees>.

⁴⁴⁹ United Kingdom Press Release: Former Glencore employees in court charged with bribery offences (Sept. 10, 2024), <https://www.gov.uk/government/news/former-glencore-employees-in-court-charged-with-bribery-offences>.

c. Company prosecutions

In May 2024, UK-based renewable energy firm PV Energy was charged under the UK Bribery Act with failing to prevent bribery in connection with Peter Virdee's alleged conduct (described above).⁴⁵⁰ Specifically, PV Energy is charged with one count of failing to prevent bribery by an associate with intent to obtain or retain business or a commercial advantage.

d. Settlements

In October 2024, a settlement agreement was reached between the SFO and Eurasian Natural Resources Corporation (ENRC), bringing an end to part of the dispute regarding the SFO's conduct during its investigation into ENRC.⁴⁵¹ The SFO's investigation into allegations of bribery to secure mining contracts spanned over a decade and was ultimately dropped in August 2023 without charges being brought. ENRC pursued the SFO for redress, alleging misconduct and mishandling of the investigation. The settlement figure is confidential.

e. Extradition

In June 2024, Justice Charles Bourne, sitting at the High Court of Justice, ruled that Asante Berko, a former executive director in the Investment Banking Division of Goldman Sachs, could be extradited to the United States. In 2020, Berko was indicted by U.S. federal prosecutors in a six-count indictment for his alleged role in a conspiracy to offer and pay more than \$700,000 in bribes to government officials in Ghana in exchange for their assistance in ensuring that a Turkish energy company was successful in winning the bid to build and operate a power plant. Following his arrest in November 2022 in London, Berko contested his extradition to the United States. In June 2023, the Westminster Magistrate's Court authorized Berko's extradition on all six counts. On appeal, Justice Bourne ruled that Berko should be extradited to the United States on the counts of the indictment related to the FCPA and money laundering charges. However, Justice Bourne held that Berko could not be extradited on the remaining three counts for his alleged failure to disclose overseas bank accounts because "under the law of England and Wales," there is "no duty to disclose the information" about his bank accounts.⁴⁵²

⁴⁵⁰ Malavika Devaya, *British businessman charged with bribing Antiguan politician*, GLOBAL INVESTIGATIONS REV., May 23, 2024, <https://globalinvestigationsreview.com/article/british-businessman-charged-bribing-antiguan-politician>.

⁴⁵¹ Julia Kollewe and Tom Burgis, *SFO and mining firm ENRC agree settlement over legal claims*, THE GUARDIAN Oct. 8, 2024, <https://www.theguardian.com/business/2024/oct/08/sfo-and-mining-firm-enrc-agree-settlement>.

⁴⁵² Ana de Liz, *Ex-Goldman Sachs banker loses extradition appeal in Ghana bribery case*, GLOBAL INVESTIGATIONS REV., June 11, 2024, <https://globalinvestigationsreview.com/just-anti-corruption/article/ex-goldman-sachs-banker-loses-extradition-appeal-in-ghana-bribery-case>; *Berko v. U.S.* [2024] EWCH 1392 (Admin) (English High Ct).

B. Germany

1. Overview of German Bribery Enforcement Activity

In 2024, several reports identified Germany as an effective country in fighting corruption, while also identifying certain areas for improvement.

According to the Corruption Perceptions Index (CPI) published by Transparency International (TI) in January 2024, Germany ranks ninth among 180 countries and has one of the most robust frameworks for combating bribery.⁴⁵³ TI, however, criticized the lack of consequences in fighting corruption within German politics and urged Germany (i) to intensify the laws against bribery of members of parliament,⁴⁵⁴ (ii) to include the so-called “footprint”⁴⁵⁵ in the German lobbyist register, and (iii) to introduce a law on corporate criminal liability.⁴⁵⁶

In July 2024, the European Commission published its 2024 Rule of Law Report on Germany, which concluded that Germany “overall provides an effective response” in fighting corruption.⁴⁵⁷ The European Commission, however, raised certain issues, some of which were also cited by TI, including that (i) the legislative “footprint”⁴⁵⁸ is delayed, (ii) monitoring secondary activities of

⁴⁵³ Transparency International Press Release: CPI 2023: Das Erstarken autoritärer und antidemokratischer Kräfte weltweit führt zu mehr Korruption (Jan. 30, 2024), <https://www.transparency.de/aktuelles/detail/article/cpi-2023>.

⁴⁵⁴ In June 2024, the new Section 108f German Criminal Code came into force which criminalizes undue interest representations by members of parliament, German Federal Law Gazette, BGBl. I 2024 Nr. 190 from June 17, 2024, <https://www.recht.bund.de/bgbl/1/2024/190/VO.html>.

⁴⁵⁵ The “footprint” is meant to indicate the impact of lobbyists on laws and regulations by showing how and when lobbyists have been involved in the legislative process and how their demands have been taken into account, Transparency International, *CPI 2023: Fortschritte und verpasste Chancen bei der Korruptionsbekämpfung* (Jan. 30, 2024), https://www.transparency.de/fileadmin/Redaktion/Aktuelles/2024/CPI2023_Hintergrundpapier_Verpasste-Chancen.pdf; the so-called executive “footprint” was addressed by an amendment to the Joint Rules of Procedure of the Federal Ministries.

⁴⁵⁶ Transparency International Press Release: CPI 2023: Das Erstarken autoritärer und antidemokratischer Kräfte weltweit führt zu mehr Korruption (Jan. 30, 2024), <https://www.transparency.de/aktuelles/detail/article/cpi-2023>; the issues mentioned by TI were already addressed in the coalition agreement between the current German Government Parties (*Bundesregierungsparteien*) in 2021, see coalition agreement between SPD, Bündnis 90/Die Grünen and FDP for the 20th parliamentary term from Oct. 2021 to 2025, https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf, at 9, 88.

⁴⁵⁷ European Commission, *Commission Staff Working Document 2024 Rule of Law Report Country Chapter on the rule of law situation in Germany* (July 24, 2024), https://commission.europa.eu/document/download/3d1a2f80-5989-4364-a9e6-d925d4a1c900_en?filename=16_1_58059_coun_chap_germany_en.pdf.

⁴⁵⁸ The European Commission defines the term “footprint” similarly to TI and had previously recommended such a policy in 2022, cf. European Commission, *Commission Staff Working Document 2022 Rule of Law Report Country Chapter on the rule of law situation in Germany* (July 13, 2022), https://commission.europa.eu/document/download/66e2f3c8-905f-484b-b789-b7492018c254_en?filename=16_1_193990_coun_chap_germany_en.pdf, at 2, 13; the so-called executive “footprint” was addressed by an amendment to the Joint Rules of Procedure of the Federal Ministries, for details.

members of parliament is a challenge, and (iii) the disclosure rules on conflict of interests for “top executives”⁴⁵⁹ remain a weakness.⁴⁶⁰

In September 2024, the German Federal Criminal Police Office (*Bundeskriminalamt – BKA*) published a report that showed a slight increase in bribery cases in Germany in 2023 compared to 2022.⁴⁶¹ Notably, in the public sector, the criminal offenses of accepting⁴⁶² and granting benefits⁴⁶³ increased,⁴⁶⁴ with particular increases in the criminal offenses of taking⁴⁶⁵ and giving bribes⁴⁶⁶ in the healthcare sector⁴⁶⁷.

2. Enforcement Developments and Recent Cases

In August 2024, the Stuttgart Regional Court sentenced a former Head of the International Unit (*Auslandsabteilung*) of Klinikum Stuttgart—a hospital—to four years and nine months’ imprisonment on various charges, including taking bribes.⁴⁶⁸ The International Unit of Klinikum Stuttgart was involved in the treatment of war-wounded patients from Libya, as well as a

⁴⁵⁹ Those “top executives” include “federal ministers, parliamentary state secretaries, state secretaries and directors general,” cf. European Commission, *Commission Staff Working Document 2024 Rule of Law Report Country Chapter on the rule of law situation in Germany* (July 24, 2024), https://commission.europa.eu/document/download/3d1a2f80-5989-4364-a9e6-d925d4a1c900_en?filename=16_1_58059_coun_chap_germany_en.pdf, at 19.

⁴⁶⁰ European Commission, *Commission Staff Working Document 2024 Rule of Law Report Country Chapter on the rule of law situation in Germany* (July 24, 2024), https://commission.europa.eu/document/download/3d1a2f80-5989-4364-a9e6-d925d4a1c900_en?filename=16_1_58059_coun_chap_germany_en.pdf, at 14, 17-19.

⁴⁶¹ German Federal Criminal Police Office, *Bundeslagebild Korruption 2023* (Sept. 10, 2024), <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Korruption/korruptionBundeslagebild2023.html?nn=28078>.

⁴⁶² Accepting benefits is a criminal offense under Section 331 German Criminal Code. The German Criminal Code can be accessed at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

⁴⁶³ Granting benefits is a criminal offense under Section 333 German Criminal Code.

⁴⁶⁴ Compared to 2022, the criminal offenses of accepting and granting benefits increased significantly, by over 200 percent, in 2023. However, compared to the average number of the past four years, the number of criminal offenses of accepting benefits approximately stayed the same, while the number of criminal offenses of granting benefits only slightly increased. German Federal Criminal Police Office, *Bundeslagebild Korruption 2023* (Sept. 10, 2024), <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Korruption/korruptionBundeslagebild2023.html?nn=28078>, at 2, 5-6.

⁴⁶⁵ Taking bribes in the healthcare sector is a criminal offense under Section 299a German Criminal Code.

⁴⁶⁶ Giving bribes in the healthcare sector is a criminal offense under Section 299b German Criminal Code.

⁴⁶⁷ The number of criminal offenses of taking and giving bribes in the healthcare sector increased by over 200 percent and over 600 percent, respectively. As such, the average number of criminal offenses of taking bribes in the healthcare sector as well as giving bribes in the healthcare sector increased significantly over the past four years. German Federal Criminal Police Office, *Bundeslagebild Korruption 2023* (Sept. 10, 2024), <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Korruption/korruptionBundeslagebild2023.html?nn=28078>, at 2, 5, 8-9.

⁴⁶⁸ Taking benefits is a criminal offense under Section 332 German Criminal Code; Rüdiger Soldt, *Geschönte Lebensläufe und eine „dilettantische“ Führung*, FRANKFURT ALLGEMEINE ZEITUNG (Aug. 15, 2024), <https://www.faz.net/aktuell/politik/inland/klinikum-stuttgart-hohe-haftstrafe-fuer-ex-manager-19921918.html>.

collaboration with a Kuwaiti hospital. The alleged illicit acts concerned the remunerations of these service providers and the billing of treatment costs. The former Head allegedly initiated these projects with service providers and received kickbacks amounting to approximately €65,000 (approximately \$71,000). The former Head intends to appeal the court's decision.⁴⁶⁹ Further proceedings are likely, as charges against the former clinic Managing Director, the former medical directors, and the former Hospital Mayor (*Krankenhausbürgermeister*) of Stuttgart have already been set for trial.⁴⁷⁰

C. France

1. Regulatory Developments

On October 16, 2024, the French Anti-Corruption Agency (Agence Française AntiCorruption or “AFA”) published guidance for companies now required to make disclosures on their anti-corruption and compliance program as part of the EU's new Corporate Reporting Sustainability Directive (“CSRD”).⁴⁷¹ Until now, under the French anti-corruption statute, companies with more than 500 employees, incorporated in France and with a revenue of more than €100 million were required to establish and maintain an anti-corruption and compliance program.⁴⁷² The CSRD imposes new reporting requirements related to environment, social and governance (ESG) topics to a broader set of companies, including both EU and non-EU headquartered companies that meet the following criteria on a consolidated basis:

1. All companies with securities listed on an EU-regulated market, which includes companies incorporated outside the EU;
2. Non-listed EU companies, including EU subsidiaries of U.S. or other non-EU companies, that exceed at least two of the following criteria on two consecutive annual balance sheet dates: (1) total assets of more than €25 million; (2) net turnover (revenue) of more than €50 million; and/or (3) the average number of employees during the fiscal year is over 250; or
3. EU companies, including EU subsidiaries of U.S. or other non-EU companies, that are a parent of a group that is not listed but meets at least two of the criteria set forth in the

⁴⁶⁹ Rüdiger Soldt, *Geschönte Lebensläufe und eine „dilettantische“ Führung*, FRANKFURT ALLGEMEINE ZEITUNG (Aug. 15, 2024), <https://www.faz.net/aktuell/politik/inland/klinikum-stuttgart-hohe-haftstrafe-fuer-ex-manager-19921918.html>.

⁴⁷⁰ Landtag von Baden-Württemberg, *Korruption am Klinikum Stuttgart: Haftstrafe für Ex-Manager* (Aug. 15, 2024), <https://www.landtag-bw.de/home/aktuelles/dpa-nachrichten/2024/August/KW33/Donnerstag/8cc866e6-be13-401e-831d-0448166e.html>.

⁴⁷¹ AFA, *Mettre en œuvre les indicateurs anticorruption de la Directive CSDR* (Oct. 16, 2024), https://www.agence-francaise-anticorruption.gouv.fr/files/files/102024_%20pr%C3%A9sentation%20obligations%20anticorruption%20CSRD.pdf

⁴⁷² Loi No. 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique, Article 17, https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000033558666.

second criterion for non-listed EU companies above on two consecutive annual balance sheet dates.⁴⁷³

Companies subject to the CSRD must file annual sustainability reports alongside their financial statements and must be prepared in accordance with the European Sustainability Reporting Standards (ESRS) which lay out ESG topics where disclosure is required.⁴⁷⁴ Under the ESRS, companies must make disclosures with respect to their anti-corruption and anti-bribery practices, protection of whistleblowers, political lobbying, and the management of relationships with suppliers (including payment practices).⁴⁷⁵

To facilitate the implementation of the CSRD reporting requirements, the AFA encourages in-scope companies to establish an anticorruption program based on eight key pillars that are required by the French anti-corruption statute:

1. Risk mapping;
2. Code of conduct;
3. Training on anti-corruption risks;
4. Third-party due diligence;
5. Internal whistleblowing system and effective protection of whistleblowers;
6. Internal control and evaluation system;
7. Internal and external accounting control procedures; and
8. Disciplinary regime.⁴⁷⁶

2. Enforcement Developments and Recent Cases

On July 8, 2024, SOTEC, a Gabonese construction and services company, settled with the Paris prosecutor's office concerning allegations that, from 2005 to 2008, the company had served as an intermediary of the French company Marck and paid bribes to officials of the Gabonese Ministry of Defense to help secure a €7.5 million (around \$8 million) contract for the manufacturing of military

⁴⁷³ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Dec. 14, 2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>.

⁴⁷⁴ Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (July 31, 2023), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32023R2772>.

⁴⁷⁵ Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (July 31, 2023), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32023R2772>.

⁴⁷⁶ AFA, Mettre en œuvre les indicateurs anticorruption de la Directive CSDR (Oct. 16, 2024), https://www.agence-francaise-anticorruption.gouv.fr/files/files/102024_%20pr%C3%A9sentation%20obligations%20anticorruption%20CSRD.pdf.

uniforms by Marck.⁴⁷⁷ Under the settlement agreement, SOTEC agreed to pay €520,000. SOTEC received cooperation credit. The settlement was approved on July 10, 2024 by the Paris Tribunal.⁴⁷⁸

D. Other European Union

1. Legislative and Policy Developments

As noted in the 2023 edition of the Global Anti-Bribery Year-In-Review, the European Commission and the High Representative for Foreign Affairs submitted a draft anti-corruption directive to the European Parliament in May 2023. The proposed anti-corruption legislation establishes rules concerning corruption in the public and private sectors for the first time at the EU level. The new law will oblige all EU countries to criminalize the same acts of corruption and define them in the same way.⁴⁷⁹ The criminal offenses that will become illegal under EU law will be punishable by a term of imprisonment of up to two to four years, depending on the offense. Additional penalties for corruption offenses include fines, removal from public office, disqualification from holding public office or exercising a public service function, the withdrawal of permits, and exclusion from access to tender procedures and public funds. Legal persons will face fines from 3-5% of their total worldwide turnover or at least €24 or €40 million.⁴⁸⁰ In the European Parliament, the proposal was referred to the Committee on Civil Liberties, Justice and Home Affairs (LIBE) with the Committee on Budgetary Control (CONT) acting as the associated committee. The CONT delivered its opinion in

⁴⁷⁷ Convention judiciaire d'intérêt public entre la Procureur de la République près le tribunal judiciaire de Paris et la Société SOTEC (July 8, 2024), https://www.justice.gouv.fr/sites/default/files/2024-07/CJIP_SOTEC_20240708_.pdf.

⁴⁷⁸ Cour d'Appel de Paris, Tribunal Judiciaire de Paris, Ordonnance de validation d'une convention judiciaire d'intérêt public, RG No. 82-2024 (July 10, 2024), https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2024/09/cjip_sotec_ov_20240710.pdf.

⁴⁷⁹ Bribery in the public and private sectors, misappropriation, trading in influence, obstruction of justice and enrichment from corruption offences will now – throughout the EU – qualify as a criminal offence.

⁴⁸⁰ Council of the European Union Press Release: Combatting corruption: Council adopts position on EU law (June 14, 2024), <https://www.consilium.europa.eu/en/press/press-releases/2024/06/14/combating-corruption-council-adopts-position-on-eu-law/>; Piotr Bąkowski, *Commission proposal for a directive on combating corruption*, LEGISLATIVE TRAIN SCHEDULE, Oct. 20, 2024, <https://www.europarl.europa.eu/legislative-train/package-anti-corruption-package/file-directive-on-combating-corruption>.

November 2023 and the LIBE subsequently adopted its report on January 31, 2024.⁴⁸¹ The LIBE agreed to commence interinstitutional negotiations in February 2024.⁴⁸²

On June 14, 2024, the Council approved a general approach in respect of the European Commission's proposal for the directive that sets minimum standards for the definition and sanctioning of corruption offenses, preventive measures, and rules for more effective investigation and prosecution.⁴⁸³ Trilogue negotiations among the European Parliament, Council of the EU, and European Commission will take place once the new Parliament confirms its position.⁴⁸⁴ Once adopted, Member States will have to incorporate the directive within 36 months (instead of the 18 months originally proposed by the European Commission).⁴⁸⁵

At the end of 2023, during the 10th Conference of the States Parties of the UN Convention Against Corruption, the Anti-Corruption Partnership Forum was launched which aims to further improve international cooperation in the fight against corruption. The Forum's first meeting took place in July 2024, and the Forum aims to reduce the administrative burden for countries participating in review mechanisms of their anti-corruption frameworks, notably by boosting cooperation and the exchange of information among the international organizations carrying out the reviews.⁴⁸⁶

⁴⁸¹ The Committee report put forward various amendments to the Commission's proposal. For instance, there is a proposed extension of the definition of 'national official' to include 'any other person assigned or exercising a public service function' and 'any person entrusted with tasks of public interest or in charge of a public service' European Parliament Briefing: Directive on combating corruption (Sept. 23, 2024), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762406/EPRS_BRI\(2024\)762406_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762406/EPRS_BRI(2024)762406_EN.pdf) at 9. The report is more specific than the Commission proposal regarding sanctions for natural persons. It differentiates between offenses, setting the minimum level of maximum penalties at three, six and seven years depending on the type of the offense, instead of the five years the Commission set for all offenses under the directive. In addition, new categories of offenses, such as intentional concealment and continued retention of corruptly acquired assets, misconduct in public office, and illicit political financing were introduced. The report requires that Member States adopt and periodically review national strategies on preventing and combating corruption and also lays out the EU-level strategy on combating corruption.

⁴⁸² European Parliament Briefing: Directive on combating corruption (Sept. 23, 2024), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2024\)762406](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762406).

⁴⁸³ Discussions within the Council focused on several issues, notably the definitions of corruption offenses and the prevention of corruption.

⁴⁸⁴ European Parliament Briefing: Directive on combating corruption (Sept. 23, 2024), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2024\)762406](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762406).

⁴⁸⁵ Council of the European Union (June 17, 2024), Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council – General approach, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_11272_2024_INIT.

⁴⁸⁶ Directorate-General for Migration and Home Affairs, Strong EU representation at the UN Convention against Corruption Conference of States Parties 2023, EUROPEAN COMMISSION, Jan. 15, 2024, https://home-affairs.ec.europa.eu/news/strong-eu-representation-un-convention-against-corruption-conference-states-parties-2023-2024-01-15_en; Directorate-General for Migration and Home Affairs, *A new Forum against Corruption promises better coordination at global level*, EUROPEAN COMMISSION, Sept. 5, 2024, https://home-affairs.ec.europa.eu/news/new-forum-against-corruption-promises-better-coordination-global-level-2024-09-05_en.

2. Enforcement Developments and Recent Cases

a. European Union

In February 2024, the European Commission began an investigation to determine whether EU funds were misused in Spain's Koldo corruption scandal. The Koldo case involves a web of commissions allegedly paid to the ex-Minister of Transport of the Pedro Sánchez Administration, Koldo Garcia. Allegedly, it included €130 million in offshore accounts, €54 million in opaque contracts, and tens of millions in various political favors such as masks and sanitary equipment contracts that were given to a company managed by Mr. Koldo's top assistant. The scandal purportedly involved paying (with EU funds) up to seven times more for masks and sanitary equipment than offers from professional competitors to generate enormous commissions that were transferred to offshore accounts.⁴⁸⁷

b. Switzerland

On August 5, 2024, the Office of the Attorney General of Switzerland imposed a fine of CHF two million and a compensation claim of 150 million dollars on Glencore International for its failure to take all necessary and reasonable organizational measures to prevent the bribery of a Congolese public official by its business partner in 2011.⁴⁸⁸

c. Spain

In August 2024, the Spanish National Police arrested an unnamed Spanish lawyer and charged him with corruption, money laundering, falsification of accounts and forgery of documents. The lawyer purportedly corrupted high-level individuals close to the Equatorial Guinea government to obtain an agreement for his project development company to build a fishery products processing plant.⁴⁸⁹

⁴⁸⁷ Fernando Heller, *Brussels looks into potential misuse of EU funds in Spanish Koldo corruption case*, EURACTIV (Feb. 29, 2024), <https://www.euractiv.com/section/politics/news/brussels-looks-into-potential-misuse-of-eu-funds-in-spanish-koldo-corruption-case/>; Daniel Lacalle, *Corruption Scandals Rock the Spanish Government*, TOMORROW'S AFFAIRS (Mar. 10, 2024), <https://tomorrowaffairs.com/corruption-scandals-rock-the-spanish-government>.

⁴⁸⁸ Office of the Attorney General of Switzerland, Office of the Attorney General closes its criminal investigation against Glencore International AG with a summary penalty order and an abandonment order (Aug. 5, 2024), https://www.bundesanwalt.ch/mpc/en/home/medien/archiv-medienmitteilungen/nsb_medienmitteilungen.msg-id-101995.html.

⁴⁸⁹ *Corrupt Spanish lawyer arrested for EUR 4.5 million fishery project bribe in Equatorial Guinea*, Europol (Aug. 9, 2024), <https://www.europol.europa.eu/media-press/newsroom/news/corrupt-spanish-lawyer-arrested-for-eur-45-million-fishery-project-bribe-in-equatorial-guinea#:~:text=The%20Spanish%20National%20Police%20%28Polic%C3%ADa%20Nacional%29%20have%20arrested,EUR%204.5%20million%20via%20his%20project%20development%20company>.

d. Italy

In July 2022, the Milan Court of Appeal confirmed the acquittal of all defendants in the Eni-Shell Nigeria case. The companies, Eni and Shell, had been prosecuted for allegedly bribing Nigerian public officials to grant an oil prospecting license to their subsidiaries in 2011.⁴⁹⁰

In May 2024 the Court of Cassation rejected the Nigerian government's appeal against the decision of the Milan Court of Appeal which denied its civil action for damages in November 2022.⁴⁹¹

In October 2024, Fabio de Pasquale and Sergio Spadaro, the two prosecutors who led the prosecutions of Shell and Eni in Italy, were handed eight-month suspended jail sentences, for failing to file documents that would have supported Eni's position in the international corruption case. The lawyer representing the prosecutors said that his clients planned to appeal the Brescia court's decision. Counsel for the prosecutors contend such punishment sets a dangerous precedent, calling into question a fundamental principle: public prosecutors' autonomy to make certain procedural decisions.⁴⁹²

e. European Public Prosecutor's Office (EPPO)

On February 19, 2024, in an investigation led by the EPPO in Prague (Czechia), 36 searches were conducted, and 10 suspects were arrested and formally accused on suspicion of corruption involving public contracts to provide medical supplies to hospitals. Among the suspects are the general manager of a hospital and managers of the contracting authority, as well as directors of suppliers of medical equipment. The suspected criminal organization was formed with the intention to manipulate the public procurement of hospital medical supplies, aiming to favor selected suppliers and secure medical equipment without commencing a formal procurement process. According to the evidence, when a selected supplier received a public contract, they would pay a bribe—amounting to 10% of the contract value—to suspects within the contracting authority. The group reportedly used fake invoices for nonexistent services issued by affiliated companies to

⁴⁹⁰ The Milan court case: story of an acquittal, Eni, <https://www.eni.com/en-IT/media/opl245-case-process-nigeria/judicial-documents-milan.html>; Italy Court confirms acquittal of Eni, Shell in Nigeria case, REUTERS, July 19, 2022, <https://www.reuters.com/business/energy/italy-court-confirms-acquittal-eni-shell-nigeria-case-2022-07-19/>; Nigeria charges Shell, Eni with corruption, OCCRP (Mar. 3, 2017), <https://www.occrp.org/en/news/nigeria-charges-shell-eni-with-corruption>.

⁴⁹¹ *The Milan court case: story of an acquittal*, Eni, <https://www.eni.com/en-IT/media/opl245-case-process-nigeria/judicial-documents-milan.html>; *An interview with Studio Legale Pisano discussing Anti-Corruption in Italy*, LEXOLOGY (Sept. 5, 2024), <https://www.lexology.com/library/detail.aspx?g=7676878d-4246-446b-b26b-feb07ce19a9d>.

⁴⁹² *Two Italian prosecutors convicted for hiding documents in Eni-Shell Nigeria trial*, REUTERS (Oct. 8, 2024), <https://www.reuters.com/world/europe/two-italian-prosecutors-convicted-hiding-documents-eni-shell-nigeria-trial-2024-10-08/>; M. Coyle and P. Seers, *Convictions of Shell and Eni's Italian prosecutors are disturbing, campaigners say*, MLEX (Oct. 10, 2024), https://content.mlex.com/#/content/1601637/convictions-of-shell-and-eni-s-italian-prosecutors-are-disturbing-campaigners-say?referrer=search_linkclick.

obscure the origin of the illicit money. The bribes were then allegedly converted into cash and distributed among the criminal group members by their head.⁴⁹³

Additionally, EPPO opened an investigation in November 2024 into Henrik Hololei, a senior official at the European Commission (former Director-General for Transport) stemming from the Qatargate scandal, which was discussed in the 2022 edition of the Global Anti-Bribery Year-In-Review. Hololei is accused of giving Qatar Airways confidential information concerning the EU's position during the negotiations of the "open skies" agreement,⁴⁹⁴ in exchange for luxury holidays and gifts.⁴⁹⁵

IX. Conclusion

In 2025, we expect that the Trump Administration will articulate new priorities for white-collar enforcement. There will also be significant personnel changes at the DOJ and SEC and likely changes to various policy memos and guidance issued by the prior administration. We expect that anti-corruption enforcement efforts will continue, however, given the long lifespan of investigations and the global nature of the fight against corruption.

The DOJ and SEC are likely to continue their focus on new technologies, like AI, as well as strategic partnerships with foreign law enforcement agencies. The enforcement prerogatives of the new administration will take time to evolve.

⁴⁹³ European Public Prosecutor's Office Press Release: Czechia: Ten arrested in probe into corruption ring involving medical supplies to hospitals (Feb. 19, 2024), <https://www.eppo.europa.eu/en/media/news/czechia-ten-arrested-probe-corruption-ring-involving-medical-supplies-to-hospitals>

⁴⁹⁴ Open Skies agreements are bilateral agreements (e.g., between U.S. and EU) that the U.S. government negotiates with other countries to provide rights for airlines to offer international passenger and cargo services.

⁴⁹⁵ *Corruption investigation opened into high-ranking EU official*, THE BRUSSELS TIMES (Nov. 1, 2024), <https://www.brusselstimes.com/1294643/corruption-investigation-opened-into-a-senior-eu-official>.

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