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The Paris Judicial Court approved two new French-style Deferred Prosecution Agreements on May 17, 2023

Two new *Conventions Judiciaires d'Intérêt Public* (French-style Deferred Prosecution Agreements, hereinafter "CJIPs") have been published on the website of the Ministry of Justice, following their approval by the Paris Judicial Court on May 17, 2023.

These two CJIPs concern legal entities accused of having committed acts that could be classified as influence peddling for the first CJIP, and of having participated in irregularities in public procurement for the second CJIP.

The first CJIP concerns the company Guy Dauphin Environnement, a subsidiary of the Derichebourg Group, which was accused of influence peddling in order to obtain a license to operate a landfill facility for automobile shredder residues in the Orne department.

The second CJIP concerns the companies Bouygues Bâtiment Sud Est and Linkcity Sud Est, alleged to have disregarded public procurement rules, in particular those rules concerning the equal treatment of bidders in public procurement, in relation to three construction projects with the Hospital of Annecy Genevois.

This article will first recall the definition of a CJIP under French law, and then provide an outline of the measures negotiated in the abovementioned CJIPs.

1. What is a CJIP under French law?

Inspired by Anglo-American practices, the *convention judiciaire d'intérêt public* (French-style Deferred

Prosecution Agreement) is a procedural mechanism introduced by Law No. 2016-1691 of December 9, 2016 on transparency, the fight against corruption and the modernization of economic life, known as the “Sapin II” law, codified in Article 41-1-2 of the French Code of Criminal Procedure^[1], that enables legal entities to negotiate alternative measures to prosecution directly with the public prosecutor’s office and thus escape a criminal conviction. Originally, it could only be implemented for acts of corruption and influence peddling.

Law No. 2018-898 of October 23, 2018 on the fight against fraud extended its scope of application to tax evasion.

Law No. 2020-1672 of December 24, 2020 on the European Public Prosecutor’s Office, environmental justice and specialized criminal justice further included in its scope money laundering offenses as well as offenses listed in the French Environmental Code and codified in Article 41-1-3 of the Code of Criminal Procedure^[2].

The CJIP between a legal entity and the public prosecutor may impose one or more of the following obligations on the prosecuted entity:

- The payment to the French Treasury of a so-called public interest fine (*amende d’intérêt public*) of up to 30% of the entity’s average annual turnover calculated on the last three annual turnovers known at the time of discovery of the relevant breach(es),
- The implementation of an anti-corruption compliance program for a maximum period of three years under the control of the French Anti-corruption agency or the relevant departments of the French Ministry of the Environment,
- the indemnification of the victim for the harm suffered.

In order to conclude a CJIP, the legal entity is required to demonstrate its willingness to cooperate in good faith, which means either self-reporting the offense(s) to the public prosecutor’s office, or revealing the truth through an internal investigation into the alleged facts.

Once the CJIP has been concluded, the public prosecutor files a motion for approval with the president of the judicial court. The president of the judicial court either approves or dismisses the CJIP during a public hearing. If the CJIP is approved by the president of the judicial court, the legal entity has a ten-day cooling-off period. If the legal entity does not withdraw at the end of this period, the obligations set out in the CJIP come into force.

If the CJIP is not approved by the president of the judicial court or if the legal entity withdraws from the CJIP or fails to fulfill its obligations thereunder, the public prosecutor will initiate criminal proceedings and the legal entity will be held criminally liable.

Pursuant to Article 41-1-2 of the French Code of Criminal Procedure^[3], the public prosecutor retains the right to initiate criminal proceedings against natural persons, including the directors/officers of the legal entity, who are perpetrators of or accomplices to the offense(s) identified in the CJIP.

In accordance with the circular of June 2, 2020, the National Financial Prosecutor’s Office is designated as the

lead judicial authority in matters of international corruption, and is responsible for dealing with the most complex cases of tax evasion and laundering of tax evasion proceeds.

On January 16, 2023, the National Financial Prosecutor's Office published guidelines on the implementation of the CJIP^[4].

These guidelines recall the benefits for legal entities of entering into a CJIP, in particular with the discontinuation of criminal proceedings without generating the effects that a court sentence could have on their business activity. As such, companies working with the public sector can continue to bid for public procurement contracts.

They also clarify how the amount of the public interest fine is to be set.

2. The CJIP concluded between the National Financial Prosecutor's Office and Guy Dauphin Environnement

In this matter, Guy Dauphin Environnement (hereinafter "GDE") was accused of having sought the assistance and support of the President of the Orne General Council and his Chief of Staff between 2007 and 2013, in order to influence public authorities' decisions concerning the construction of a landfill for automobile shredder residues on the Nonant le Pin site.

This construction project had given rise to numerous concerns by local residents and stock farmers, due to the high risk of pollution resulting from leachates from shredder residues, which were likely to pollute a nearby groundwater table and thus affect stud farms using water from such table.

While the *préfecture* (local administrative authority) had refused to issue an authorization to operate the facility because of the existence of ecological risks, GDE challenged this decision and obtained an operating license from the Caen administrative court which asked the *préfet* (local representative of the government) to set the necessary technical requirements by way of a prefectoral decree.

Following this decision, the French Minister of Ecology, **at the request of the President of the Orne General Council**, ordered the *préfet* to issue the necessary requirements for the installation of the facility.

The facility opened in 2013, but was immediately blocked by a group of local residents.

Several administrative appeals were lodged, resulting in a ruling by the Nantes administrative court which overturned the decision of the Caen administrative court.

The public prosecutor's office received a complaint from environmental protection associations alleging breach of probity by the President of the Orne General Council and his Chief of Staff.

The criminal investigation revealed that GDE had sought the assistance and support of the President of the Orne General Council and his Chief of Staff in order to influence the decisions of the public authorities.

It is interesting to note how influence peddling is characterized in this decision.

It was found that GDE had:

- regularly invited the President of the Orne General Council and his Chief of Staff to lunch and dinner, and invited them to enjoy a helicopter flight over Mont-Blanc,
- considered appointing the President of the Orne General Council to the Supervisory Board of GDE,
- planned to finance the publication of a book by the President of the Orne General Council up to 10,000 euros.

Pursuant to the CJIP, GDE accepted the following obligations:

- Payment of a public interest fine of 1,230,000 euros,
- Implementation of a three-year compliance program under the supervision of the French Anti-Corruption Agency, the cost of which, 1,337,000 euros, to be borne by GDE.

In accordance with the guidelines issued by the National Financial Prosecutor's Office, the public interest fine was set taking into account both "*the benefits derived from the breaches*", estimated at zero since the landfill was never operated, and the punitive fine set at 1,230,000 euros.

3. The CJIP concluded between the National Financial Prosecutor's Office and the companies Bouygues Bâtiment Sud Est and Linkcity Sud Est

This second matter involved Bouygues Bâtiment Sud Est and one of its subsidiaries, Linkcity Sud Est.

Both were accused of having benefited from irregularities committed by the Hospital of Annecy Genevois in three public procurement contracts that they had been awarded.

In a first design-build contract for the construction of a building for which Bouygues Bâtiment Sud Est had submitted a bid as leader of a consortium, it has been established that:

- The consortium led by Bouygues Bâtiment Sud Est had been ranked first by the jury members who did not take into account all the selection criteria, as they focused mainly on architectural considerations whereas such considerations were supposed to only account for 15% of the final score,
- The consortium's architect had received privileged information.

In a second contract for the construction of a retention pond, it was established that the contract had been awarded without any advertising or competitive bidding, even though there was no urgency justifying the non-application of the public procurement procedure.

In the third contract, it has been established that the Hospital had not complied with the selection criteria, and

that the name of the owner's representative had been suggested by the sales director of Bouygues Bâtiment Sud Est.

Above all, it has been established that between 2015 and 2018 members of the Hospital had received from Bouygues Bâtiment Sud Est and Linkcity Sud Est:

- Several invitations to restaurants, sometimes during the calls for tenders,
- Concert tickets for the "piano in Lyon" festival during the 2016-2017 season.

The companies agreed to the following obligations under CJIP:

- A public interest fine of 7,964,000 euros,
- A three-year compliance program under the supervision of the French anti-corruption agency, for a cost of 1,337,000 euros.

These two CJIPs serve as a reminder of the vital importance of setting up compliance programs within companies and local authorities to prevent breaches of business ethics and public probity.

[1] https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042779529/2023-05-23 (in French only)

[2] https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043979263/2023-05-23 (in French only)

[3] https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042779529/2023-05-23 (in French only)

[4]

<https://www.tribunal-de-paris.justice.fr/sites/default/files/2023-01/Lignes%20directrices%20sur%20la%20mise%20en%20oeuvre%20de%20la%20convention%20judiciaire%20d%27int%C3%A9r%C3%AAt%20public%20PNF%20version%20sign%C3%A9e.pdf> (in French only)

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