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FRENCH ANTI-CORRUPTION LAW

The Risks of Individual Guilty Pleas in France

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French Criminal Law allows defendants to enter a guilty plea (CRPC) with prosecutors for certain criminal offenses in exchange for smaller fines and avoiding jail time. Although this procedure is not new in the French legal system, it has seen an increase in use for white collar crime cases for individuals alongside the signing of French DPAs for legal entities.

Any guilty plea must be approved, or homologated, by a court once the parties have agreed to its terms and a recent guilty plea entered into by one of the richest businessmen in France to settle allegations of corruption in Togo with the French Financial Prosecutor suggests that no outcome is assured. In a surprising and unexpected turn of events, the court refused to homologate the CRPC due to the seriousness of the allegations even though the defendant had already acknowledged his guilt during the homologation hearing.

In this article, we discuss the implications of this decision and highlight the key advice for professionals when contemplating a guilty plea procedure in France.

See “[How the New French Guidance on Deferred Prosecution Eligibility Affects Settlement Negotiations](#)” (Oct. 30, 2019).

DPAs and Guilty Pleas Under French Law

French criminal law does not have a longstanding tradition of negotiated justice. A French guilty plea (*Comparution sur Reconnaissance Préalable de Culpabilité* or CRPC) was introduced in 2004 for minor offenses and broadened in 2011 to a wider scope of criminal offences, including white-collar crimes.

The CRPC system, applicable to both natural and legal persons, allows a defendant to strike a deal with prosecutors and to be offered a reduced sentence (which cannot exceed half of what the prison sentence would be if convicted at trial, nor can it be more than three years) in exchange of an acknowledgement of guilt. Once the prosecutor and the defendant agree on a sentence, the CRPC agreement must be approved, or homologated, by a Judge.

The Interaction of CJIPs and CRPCs

Separately from CRPCs, a new form of negotiated deferred prosecution agreement (DPA) for legal entities, the Judicial Public Interest Agreement (*Convention Judiciaire*

d'Intérêt Public or CJIP), was implemented in 2016 by the Sapin II Law, a comprehensive set of legislation aimed at preventing corruption.

Although a CJIP can bring an end to legal proceedings initiated against legal entities for corruption offences, private individuals (such as current or former executives or employees involved in misconduct) can still find themselves criminally liable before French courts for related offenses.

In such a situation, the CRPC procedure is an attractive alternative to a traditional court hearing for individuals implicated in corporate misconduct, particularly if the company involved conducted an internal investigation as part of its CJIP. According to the guidelines of the French National Financial Prosecutor Office (PNF) on CJIPs, internal investigations can, indeed, lead to individual liability.

See “[Lessons Learned From the First-Ever French Convention Judiciaire d'Intérêt Public Concluded With HSBC](#)” (Jan. 24, 2018).

The CRPC Homologation Process

Generally, the process begins when a prosecutor offers a proposed guilty-plea sentence. The defendant may accept or refuse this proposal.

If the defendant refuses the proffered settlement, the case is sent to trial but, if the defendant accepts settlement offer, then the CRPC must be approved by a court pursuant to Article 495-9 of the French Code of criminal procedure. This approval process is called the homologation of the CRPC.

The homologation hearing is a public hearing where the defendant appears before a judge tasked with ensuring that the legal conditions

for a valid CRPC have been met. A decision homologating a CRPC carries the same legal effects as a traditional judgement and constitutes a criminal conviction registered on the criminal record of the defendant.

According to Article 495-11 of the French Code of criminal procedure, the homologation judge may homologate a CRPC if three legal conditions are met:

1. the facts are well established and match the legal charges in the case;
2. the defendant admits guilt regarding the facts he is charged with and accepts the sentence offered by the Prosecutor; and
3. the sentence offered is justified and proportionate to the offence committed and takes into consideration the defendant's position in society.

Since 2019, Article 497-11-1 of the French code of criminal procedure adds that the homologation judge can refuse to homologate a CRPC if he finds that the nature of the facts, the personality of the offender, the situation of the victims or the general interests of society justify that a public trial should be held.

Although a decision homologating a CRPC may be appealed, French law does not provide the defendant with the possibility to appeal a judge's refusal to approve a guilty plea.

See “[An Insider's Take on France's New Approach to Foreign Corruption](#)” (May 16, 2018).

Recent Examples of Refusal to Homologate a CRPC

Two recent cases underscore that a court's approval of a proposed guilty plea is not a sure thing.

The Bollore Case

Even as many legal practitioners were relying on the CRPC procedure to settle their clients' criminal exposure, a recent case highlights that this strategy is not without risk.

On January 26, 2021, Vincent Bollore, one of the richest businessmen in France, appeared before a judge to homologate a CRPC and settle allegations of corruption and embezzlement. The French press reported that the CRPC stemmed from allegations regarding public procurement contracts related to the prolongation and extension of the concession of Port of Lomé, in Togo.

The companies involved signed a CJIP in which they did not admit to any wrongdoing but agreed to pay a €12-million fine and set up a compliance program.

Bollore's lawyers had negotiated with the PNF to settle these allegations by having Bollore acknowledge the charges publicly in court and recognize his guilt and payment of a €375,000 fine (the maximum fine for such offenses). In exchange he would be spared a public trial and jail time. It was also agreed as part of the CRPC that this conviction would not appear on his criminal record.

The prosecutor and the parties anticipated that the CRPC would be homologated. During the homologation hearing, the PNF argued that the guilty plea was warranted because the alleged offences were old and that the companies involved were paying substantial fines. However, the judge refused to homologate the CRPC. This was unexpected and surprised even the PNF.

Journalists who attended the public hearing reported that the homologation was not granted because the judge found Bollore's conduct had "seriously undermined public economic order" and "undermined Togo's sovereignty." The judge argued that Bollore, who runs a major international company, represents France on a global scale and should be held to account in a public trial.

The case is expected to go to trial in the next few months. Until then, Bollore and the two other executives of his company who appeared before the homologation judge are presumed innocent.

A Previous Example

This is not the first instance where a CRPC was rejected in a high-profile case in France. In 2017, a prominent French member of Parliament had negotiated with the Paris prosecutor for a CRPC to settle allegations of money laundering and violation of financial reporting requirements. The offered sentence was a €200,000 fine and an eight-month suspended jail sentence.

There, the judge refused the homologation indicating that the sentence was "unsuitable in view of the circumstances of the offence and the personality of the perpetrator" who was a "representative of the Nation."

The French Supreme Court recently held, in September 2020, that the homologation judge had no duty to justify the decision to refuse homologation and rejected the challenge. The case is still pending before the trial court and the defendant is still presumed innocent.

See the Anti-Corruption Report's three-part series on the Airbus case: "[A Milestone in International Anti-Corruption Cooperation](#)" (Feb. 19, 2020); "[Compliance Lessons](#)" (Mar. 4, 2020); and "[The Value of Cooperation](#)" (Mar. 18, 2020).

Takeaways

Homologation Is Not Guaranteed

These two cases show from a procedural standpoint that the homologation judge has the discretionary power to block a CRPC and, in fact, does not need to so much as justify the decision to refuse to homologate.

Based on the two examples, the risk that a guilty plea will not be accepted is increased for high-profile individuals or where public interests may be involved in serious offences such as corruption or influence peddling.

If the terms of the agreement are very favorable to the defendant, there is also a risk that the procedure will not be homologated by the judge because a light sentence for a public figure could be seen by the public as an escape from both a public trial and legal accountability.

Impact on a Subsequent Trial

The refusal of a judge to homologate a CRPC further raises the question as to whether a defendant can be afforded a subsequent fair trial when the homologation hearing is widely reported in the press, as it was for Bolloré.

Article 495-14 of the French Code of criminal procedure prohibits parties from using the acknowledgement of guilt during a homologation hearing in any subsequent trial.

However, in a high-profile case such as Bolloré's, the fact of his admission of guilt was widely reported in media outlets calling into doubt the judge's ability to be impartial in a subsequent trial.

Legal practitioners should thus take this risk into account when negotiating a plea agreement in France and explore all possible options with their client.

See "[How to Assess Risk Under Sapin II](#)" (Dec. 11, 2019).

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