

DOJ Highlights Commitment to Enforcing Deferred Prosecution Agreements: Ericsson to Plead Guilty and Pay Over \$200 Million for Breaching 2019 Agreement

By **Robert A. Johnston Jr.**, **Rachel Maimin**, and **Nicholas D. Velez**

In October 2021, the U.S. Department of Justice (DOJ) accused Ericsson Inc., a Swedish telecommunications manufacturer, of breaching a deferred prosecution agreement (DPA)¹ that stemmed from charges that Ericsson violated the Foreign Corrupt Practices Act (FCPA) by paying bribes to several foreign government officials.² Under the terms of the DPA, Ericsson agreed to retain an independent compliance monitor and to cooperate in ongoing investigations for three years in exchange for having the charges dropped at the conclusion of the DPA's term.³ As Lowenstein Sandler covered in a November 2021 article,⁴ the DOJ notified Ericsson that it had breached the DPA for "failing to provide certain documents and factual information" and gave Ericsson a chance to explain and remediate the breach.⁵

In our last article on the issue, we observed that it remained to be seen whether the DOJ would rip up Ericsson's DPA over the breach. On March 2, 2023, the DOJ announced that it had, in fact, done exactly that.⁶ Under the

terms of Ericsson's DPA, as with all DPAs, the DOJ retained the sole discretion to determine whether a breach occurred and thus whether the deferred charges would be reinstated—with any admissions made by the company in the DPA being admissible in a subsequent trial. The DOJ asserts that after agreeing to the DPA in 2019, Ericsson failed to disclose evidence related to several of its overseas bribery schemes, thereby preventing the DOJ from bringing charges against other potential defendants related to the underlying corruption schemes. Ericsson will now plead guilty to the original charges and pay an additional criminal penalty of over \$206 million (on top of the \$520 million it paid upon entering into the DPA).⁷

This recent development highlights the DOJ's commitment to monitoring compliance with DPAs and should serve as a cautionary tale to companies that they must take seriously any and all obligations contained in a DPA. In announcing the guilty plea, Assistant Attorney General Kenneth A. Polite Jr. warned companies that the DOJ "will closely scrutinize

¹ "Update on Deferred Prosecution Agreement," Ericsson Press Release (Oct. 22, 2021), <https://mb.cision.com/Main/15448/3438066/1484624.pdf>.

² *United States v. Telefonaktiebolaget LC Ericsson*, 1:19-cr-00884-AJN (S.D.N.Y. Nov. 26, 2019) (Deferred Prosecution Agreement), <https://www.justice.gov/opa/press-release/file/1272151/download>.

³ *Id.* ¶¶ 4(h), 5, 6.

⁴ Johnston, Maimin, & Van Driesen, "Best Practices to Ensure DPA Compliance After Ericsson," *Law360* (Nov. 8, 2021), <https://www.lowenstein.com/news-insights/publications/articles/best-practices-to-ensure-dpa-compliance-after-ericsson-johnston-maimin-van-driesen>.

⁵ "Update on Deferred Prosecution Agreement," Ericsson Press Release (Oct. 22, 2021), <https://mb.cision.com/Main/15448/3438066/1484624.pdf>.

⁶ "Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement," Dep't of Justice Office of Public Affairs Press Release (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

⁷ *Id.*

their compliance with all terms of corporate resolution agreements and that there will be serious consequences for those that fail to honor their commitments.”⁸ Damian Williams, the U.S. Attorney for the Southern District of New York, also stated that his office “will hold to account companies that fail to live up to obligations to root out and voluntarily report their misconduct to the Department of Justice.”⁹

If your company is subject to a DPA or has been offered one by the government, please consult Lowenstein Sandler’s list of the “Five Best Practices for Ensuring Compliance with DPA Obligations.”¹⁰ And, as always, you can reach out to the authors of this article—Robert A. Johnston Jr. and Rachel Maimin, partners in the firm’s White Collar Criminal Defense group—or to your regular Lowenstein Sandler contact for more information.

⁸ *Id.*

⁹ *Id.*

¹⁰ Johnston, Maimin, & Van Driesen, “Best Practices to Ensure DPA Compliance After Ericsson,” *Law360* (Nov. 8, 2021), <https://www.lowenstein.com/news-insights/publications/articles/best-practices-to-ensure-dpa-compliance-after-ericsson-johnston-maimin-van-driesen>.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

ROBERT A. JOHNSTON JR.

Partner

T: 212.419.5898

rjohnston@lowenstein.com

RACHEL MAIMIN

Partner

T: 212.419.5876

rmaimin@lowenstein.com

NICHOLAS D. VELEZ

Associate

T: 862.926.6582

nvelez@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

This Alert has been prepared by Lowenstein Sandler LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. Lowenstein Sandler assumes no responsibility to update the Alert based upon events subsequent to the date of its publication, such as new legislation, regulations and judicial decisions. You should consult with counsel to determine applicable legal requirements in a specific fact situation. Attorney Advertising.