

The United States and United Kingdom proceedings: a comparison

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The Swiss convictions of Geneva traders form part of an international movement of which the United States and the United Kingdom have been the driving forces. The US Department of Justice has concluded deferred prosecution agreements with several major traders, accompanied by fines running to hundreds of millions of dollars, including more than USD 661 million for Gunvor in 2024, described above. It has also concluded agreements worth more than one billion dollars with the world's largest commodity trader in 2022, for corruption in Africa and Latin America and for market manipulation.¹ The United Kingdom's Serious Fraud Office has conducted parallel investigations, while Brazil, Switzerland and other states have coordinated their proceedings, with agreements on the sharing of fines.²

These proceedings differ from the Swiss ones in their instrument: the deferred prosecution agreement, which allows the company to avoid a conviction by admitting the facts, paying and accepting monitoring, does not exist in Swiss law. In Switzerland the company is convicted by summary penalty order or by judgment, with an entry in the criminal record and the consequences that this part describes. Swiss fines, capped at five million francs, are derisory when set against US fines, though the compensatory claims, which absorb the profits, bring the two closer together. Geneva practitioners debate the introduction in Switzerland of a deferred prosecution mechanism, which would allow companies to cooperate without suffering a conviction, and which the Federal Council has examined without proposing it.³

1 Notes

1. Guilty pleas of Glencore International AG and Glencore Ltd of 24 May 2022 for bribery of public officials in Nigeria, Cameroon, Côte

d'Ivoire, Equatorial Guinea, Brazil, Venezuela and the Democratic Republic of the Congo, and for manipulation of fuel oil prices at US ports; total penalties exceeding USD 1.1 billion, resolutions coordinated with the United Kingdom and Brazil, independent monitors for three years; U.S. Department of Justice, "Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes", press release of 24 May 2022, justice.gov. ↩

2. Serious Fraud Office, press release of 21 June 2022: Glencore Energy (UK) Ltd convicted on seven counts of bribery (five offences under section 1 and two under section 7 of the Bribery Act 2010) for more than USD 28 million in bribes in Nigeria, Cameroon, Côte d'Ivoire, Equatorial Guinea and South Sudan; "The SFO has worked in parallel with the US and collaboratively with the Dutch and Swiss prosecutors"; Sentencing Remarks, Southwark Crown Court, 3 November 2022: fine of GBP 182,935,392, confiscation of GBP 93,479,338.95 and costs of GBP 4,550,362 (approximately GBP 280.9 million in total), bribes of USD 26,901,820 paid "through intermediaries, agents and employees"; DOJ, 24 May 2022 (settlement coordinated with the United Kingdom and Brazil). ↩
3. *economiesuisse*, "Poursuite différée : non aux accords en droit pénal" (Deferred prosecution: no to agreements in criminal law), dossier politique of 10 March 2020: proposal by the Office of the Attorney General of Switzerland to introduce an instrument modelled on the US deferred prosecution agreement during the revision of the Criminal Procedure Code, rejected by the Federal Council in August 2019 on the ground that "this instrument would have the effect of strengthening the already extensive role of the public prosecutor"; Schellenberg Wittmer, "Postulate to examine the instrument of deferred prosecution": postulate 25.3028 of the Legal Affairs Committee of the Council of States of 25 February 2025 instructing the Federal Council to examine the advantages, disadvantages and conditions for introducing such an instrument "in view of the increasing number of extensive court proceedings in the area of white-collar crime"; OECD, Recommendation of 26 November 2021 (non-trial resolutions). ↩

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