

The liability of individuals

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The corporate liability of Article 102 does not replace the liability of the individuals who commit the offences. The trader who pays a bribe, the manager who authorises it and the official who receives it are liable under the ordinary provisions of the Criminal Code. As the *Trafigura* judgment shows, the courts impose custodial sentences on them. The former executive of the *Trafigura* group was sentenced to thirty-two months, of which twelve unconditional, while the former *Sonangol* official received thirty-six months, of which fourteen unconditional.¹ The prosecution of individuals is in many cases more difficult than the prosecution of the company, because the evidence of the individual's knowledge and intent must be established, because the individuals may be abroad and because the limitation periods may have expired.

For the employees and managers of the traders in Zug, the personal risk is real. A trader who arranges a payment to an intermediary, knowing or accepting that it will be passed on to an official, may be convicted of bribery. A manager who approves the payment, or who fails to intervene when he learns of it, may be convicted as a participant. A compliance officer who ignores red flags may face questions about his own responsibility. The personal exposure of the individuals is one of the most effective incentives for compliance. The practitioner who advises an individual in such a case must consider the interests of the individual separately from those of the company, since the two may diverge.

1 Notes

1. Federal Criminal Court, press release on case SK.2023.49, 31 January 2025: sentences of 32 months partially suspended (12 months unconditional) for a group executive and 36 months partially suspended (14 months unconditional) for the former Sonangol official.
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