

The Deferred Prosecution Agreement for Legal Persons -A Study in Light of Law No 25/14 Amending the Code of Criminal Procedure-

اتفاقية ارجاء المتابعة الجزائية للشخص المعنوي -دراسة على ضوء القانون 14/25 المتضمن قانون الاجراءات الجزائية-

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Abstract :

The Algerian legislator has kept pace with modern criminal policy by introducing a provision for the postponement of criminal proceedings against legal persons under Law 25/14. This provision allows the Public Prosecutor to suspend criminal proceedings against a legal persons if it fulfills the obligations stipulated therein. This measure balances, on the one hand, the requirements of deterrence and crime prevention by recovering embezzled funds and paying all amounts owed to the public treasury, and on the other hand, it protects the economy by ensuring the continuity and financial stability of the legal persons without resorting to the application of traditional penalties. Despite the importance of this measure in strengthening criminal justice, its novelty means that evaluating its effectiveness depends on the availability of implementation mechanisms and the cooperation of legal persons involved in corruption, economic, and financial crimes.

Keywords: Postponement of criminal proceedings; Legal persons; Public Prosecutor; Penalties.

ملخص:

لقد واكب المشرع الجزائري السياسة الجنائية الحديثة باستحداثه لاتفاقية ارجاء المتابعة الجزائية للشخص المعنوي بموجب القانون 14/25، فالاتفاقية تسمح لوكيل الجمهورية بوقف المتابعة الجزائية للشخص المعنوي إذا نفذ الالتزامات الواردة فيها، فهذا الاجراء يوازن من جهة بين متطلبات الردع ومكافحة الجريمة باسترجاعه الاموال المهربة ودفع كامل المبالغ المستحقة للخزينة العمومية، ومن جهة أخرى يحيي الاقتصاد من خلال ضمان استمرارية الشخص المعنوي واستقراره المالي دون اللجوء الى تطبيق العقوبات التقليدية. ورغم اهمية هذا الاجراء في تعزيز العدالة الجنائية الا ان حدائته تجعل تقييم فعاليتها مرهون بتوفير آليات تطبيقه وتجاوب الأشخاص المعنوية المتورطة في جرائم الفساد والجرائم الاقتصادية والمالية.

الكلمات المفتاحية: ارجاء المتابعة الجزائية؛ الشخص المعنوي؛ وكيل الجمهورية؛ العقوبات.

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Introduction:

Modern criminal policy has witnessed significant developments in addressing economic and financial crimes, particularly those committed by legal persons. This has led to the need to explore alternative or complementary mechanisms to traditional criminal prosecution. Among these is the Convention on the Deferral of Criminal Proceedings for Legal Persons, a new mechanism aimed at suspending or postponing public prosecution for a specific period until its conditions are met, without issuing a verdict of conviction or acquittal.

The importance of this study stems from the significance of this procedure and its role in achieving criminal justice with flexibility, without always resorting to traditional punishment. This procedure is contingent upon the fulfillment of the obligations stipulated in the Convention; otherwise, public prosecution will proceed against the legal persons. The purpose of this procedure is to achieve the public interest by recovering public funds, compensating for damages incurred, and achieving advantages that surpass those offered by traditional punishment.

It is also a crucial mechanism for combating serious crimes that may threaten national security, such as corruption and financial crimes. This study aims to highlight this newly introduced procedure under Law 25/14¹, which includes the Code of Criminal Procedure, by defining its concept, conditions and procedures for its application, in addition to addressing the obligations that fall on the legal persons benefiting from the procedure of postponing criminal proceedings.

Based on the foregoing, we pose the following problem:

What is the agreement to postpone criminal proceedings against legal persons, and how effective is it in achieving the objectives of deterrent criminal policy?

The following sub-questions stem from this problem:

- **What is the legal basis for an agreement to postpone criminal prosecution for a legal persons?**
- **What are the limits of the Public Prosecutor's authority in concluding such an agreement?**
- **What are the effects of applying an agreement to postpone criminal prosecution for a legal persons?**

To answer these questions, we adopted a descriptive-analytical approach, which we deemed appropriate for analyzing the legal provisions contained in Law 25/14 concerning agreements to postpone criminal prosecution for legal persons. We addressed the topic in two sections:

Section I: The Concept of an Agreement to Postpone Criminal Prosecution for Legal Persons

Before addressing the regulations governing the conclusion of an agreement to postpone criminal prosecution for legal persons, we have chosen to first define the agreement, its characteristics, scope, and application.

A) Definition of an Agreement to Postpone Criminal Prosecution for Legal Persons

This is an agreement included in the judicial investigation phase between the Public Prosecutor and the legal persons concerning offenses related to economic and financial crimes.

This agreement allows the legal persons to be bound by three types of obligations: paying a financial penalty for the benefit of the public interest, adhering to a program for compliance with the laws, and compensating for the damages resulting from the violation. Full implementation of these obligations leads to the dismissal of the public prosecution².

It is noteworthy that this definition clarifies the parties to the agreement and the obligations incumbent upon the legal persons concerned.

The agreement is also defined as an innovative procedural mechanism. This agreement constitutes a settlement mechanism that allows for the efficient and rapid handling of proceedings initiated against legal persons. This alternative to prosecution applies to legal persons accused of committing acts of corruption, tax evasion, money laundering, and any related crime³.

The French legislature has designated the agreement to postpone criminal proceedings against a legal persons as the Judicial Agreement in the Public Interest (CJIP), under the law of December 9, 2016⁴, concerning transparency, the fight against corruption, and the modernization of economic life, known as "Sapin II." This law stipulates its inclusion in Article 41-1-2 of the Code of Criminal Procedure. It is thus a contractual procedure concluded between the public prosecutor's office and legal persons involved in specific crimes related to integrity and money laundering. The agreement typically imposes three types of obligations on the legal persons: payment of a "**public interest**" fine, implementation of a compliance program under the supervision of the French Anti-Corruption Agency (AFA), and compensation for damages suffered by any victims.

The French criminal justice system has adopted this procedure as a highly strategic tool in the field of justice. This procedure is not intended merely to fill the state coffers quickly and efficiently. In fact, ensuring a certain and rapid benefit to the state, rather than procedures with uncertain results, is a limited and immediate objective, and therefore closer to a tactic, a tactic already present in other consensual procedures known in the French criminal justice system⁵.

B) Characteristics of an agreement to postpone criminal proceedings against a legal persons

1- The deferral of criminal proceedings for legal persons is an effective tool for achieving criminal justice flexibly, without always resorting to traditional punishment, by avoiding over-criminalization when the offense can be addressed through less severe means. This mechanism addresses shortcomings in the criminal justice system that have led to near-total impunity for legal persons.

2- A dual benefit for the state and the legal persons:

The agreement allows the legal persons to protect the continuity of its economic activity from the negative repercussions of criminal prosecution. Such prosecution could damage its image and deter its clients and investors from dealing with it, even if the case ends in acquittal or the charges are dropped. Therefore, the agreement allows the legal persons to maintain its reputation and market confidence without tolerating violations⁶.

While the agreement offers an advantage to the state by allowing it to restore its international credibility and take effective punitive measures. Indeed, once the judicial agreement is implemented, the company is considered to have been penalized, compensated for the damage inflicted on the public interest (and the victim, if any), and potentially ensured the prevention of recurrence of the crime, along with the recovery of any illicit funds⁷.

The amount of the fine in the public interest is determined based on the profit gained from the violation and the economic size of the legal persons. Consequently, the Convention stipulates fines that can reach billions of euros, while criminal law prescribes lower fines for the same acts. In fact, when the fine targets multinational corporations, it can reach astronomical levels, incomparable to the corresponding criminal fine⁸.

3- The Convention's speed as an alternative to prosecution is undeniable, especially compared to the slow pace of criminal justice. The speed of the proceedings, enhanced by the legal persons

cooperation in the investigation, mitigates the damage to the company's reputation⁹. Obtaining evidence in economic and financial matters is extremely difficult, making prosecution even more challenging. Even with sufficient evidence, proving acts of corruption is not easy, as these acts are not only clandestine but also often occur abroad, requiring a degree of international cooperation between prosecution authorities. However, in practice, this cooperation is not always easy¹⁰.

4- The Consensual Nature of the Agreement:

The agreement enshrined the shift away from the repressive model adopted by the legislative authority. The agreement relies on the consent of the legal persons concerned, thus confirming its consensual nature, which differs from the traditional concept of criminal justice as a form of imposed justice. The legal persons involved in acts falling within the scope of the agreement has the right to choose between settlement and legal proceedings. Both parties benefit from this mechanism based on mutual concessions¹¹.

C- Scope of Application of the Agreement on Deferring Criminal Proceedings for Legal Persons

The agreement on deferring criminal prosecution for legal persons is considered an alternative procedure, created to achieve specific objectives. Therefore, it is important to define its scope of application in terms of identifying the parties to the agreement, the crimes covered by the agreement, and finally, its geographical scope.

1- Personal Scope

Defining the personal scope is crucial as it helps us identify the parties involved in the agreement, namely the Public Prosecutor's Office and legal persons, Pursuant to the provisions of Article 105 of Law No. 25/14, the beneficiaries of the agreement to defer criminal proceedings against legal persons are limited to legal persons; this entails a very broad interpretation of the persons covered by this agreement, ranging from companies to local authorities and including associations.

A legal persons is defined in Article 49 of the Civil Code as follows: **"Legal persons include the State, the province, the municipality, public institutions of an administrative nature, associations, companies, waqfs, and any group of persons or assets to which the law grants legal personality."**¹²

However, the question arises: which legal persons are involved in concluding the agreement? Do we mean public and private legal persons, or are there exceptions?

Article 51 of the Algerian Penal Code¹³ states: **"With the exception of the State, local authorities and persons subject to public law, a legal person shall be criminally liable for crimes committed on its behalf by its organs or legal representatives when the law so provides..."**.

Article 51 bis stipulates that one of the conditions for establishing the criminal liability of a legal persons is that it be subject to private law¹⁴, regardless of its legal form (commercial or civil) and its purpose, whether for profit or non-profit.

This also applies to all social, cultural, or sporting bodies with economic objectives. It should be noted that the determining factor is legal personality; a joint venture or a de facto company is not criminally liable because it lacks legal personality. Furthermore, the liability must be stipulated by law, and the crime must be committed on behalf of the legal persons and by its legal representative. Consequently, the State and local authorities are excluded from the scope of public legal persons¹⁵.

However, local authorities and their groups are permitted to bear criminal liability when the crime is committed within the framework of activities that may be subject to a public service delegation agreement.

Public economic enterprises, mixed-capital enterprises, and private enterprises providing public services are also subject to criminal liability; however, public enterprises of a service and commercial nature (EPICs) remain a matter of debate, given that these persons are governed by private law in their dealings with private parties.¹⁶

-Comprehensiveness of the agreement:

The comprehensiveness of the agreement is highlighted by its targeting of a wide range of companies, such as well-known global banks, smaller companies, multinational corporations, and small and medium-sized enterprises, which expands the scope of the agreement¹⁷.

2- Scope of Application:

This agreement is proposed when a legal persons commits crimes related to integrity. This alternative to prosecution applies to companies, associations, local authorities, and other persons accused of corruption, influence peddling, tax evasion, or money laundering stemming from any other related crime¹⁸.

According to Article 105 of Law 25/14, the agreement to Postpone Criminal Prosecution for Legal Entities cannot be proposed if it is proven that the establishment of the legal persons was for fraudulent or criminal purposes, or if the legal persons has a prior record of any of the crimes stipulated in Article 106 of Law 25/14. Perhaps what distinguishes these crimes is that they are financial and economic crimes, as well as corruption offenses, as I mentioned by way of example, not an exhaustive list , These crimes include:

-Articles 119 bis, 418, and 419 of the Penal Code, which were introduced by Law No. 24/06 amending and supplementing the Penal Code¹⁹.

With regard to Article 119 bis, imprisonment is imposed on any public official, as defined by the Law on the Prevention and Combating of Corruption, who intentionally, as a result of failing to observe applicable laws, regulations, or security rules, causes the theft, dissipation, embezzlement, or damage of public or private funds, or items serving as such, or documents, deeds, contracts, or movable property entrusted to them, whether by virtue of or in connection with their official duties²⁰.

Here, we question the rationale for introducing this provision, which is nearly identical to the offense criminalized under Article 29 of Law 06-01 concerning the prevention and combating of corruption²¹ , particularly since the penalty prescribed in this provision is more severe than that prescribed in Article 119 bis.

In the context of investment protection, Chapter II bis, titled “**Infringement of Investment,**” was introduced, wherein Article 418 punishes anyone who, in bad faith and by any means, engages in acts or practices aimed at obstructing investment with imprisonment of one to three years and a fine of 100,000 to 300, 000 DA, while Article 419 imposes harsher penalties on perpetrators of the offenses set forth in Article 418 if they result in harm to the national economy, with penalties ranging from 8 to 10 years’ imprisonment and a fine of 800,000 DA to 1,000,000 DA

The maximum prison term is increased to 12 years if the perpetrator’s position facilitated the commission of the crime²².

- **Corruption crimes**, excluding bribery, which are included in Law 06-01, concerning the prevention and combating of corruption, as amended and supplemented. The legislator's purpose in excluding bribery from the agreement is likely due to the fact that it is considered one of the most serious corruption crimes because it is not merely a financial crime but is based on the principle of trading in public office. While economic crimes are deterred by financial compensation, bribery has a serious ethical dimension, namely the exploitation of public office for personal gain.

- **Offenses stipulated in the laws governing foreign exchange and the movement of capital to and from abroad**, as outlined in Order No. 10-03 dated August 26, 2010 (corresponding to Ramadan 16, 1431 AH), amending and supplementing Order No. 96-22 dated Safar 23, 1417 AH (corresponding to July 9, 1996), concerning **the suppression of violations of legislation and regulations related to foreign exchange and the movement of capital to and from abroad**.

- **Crimes stipulated in the law against smuggling**, as outlined in Order No. 05/06 dated Rajab 18, 1426 AH (corresponding to August 23, 2005), concerning the fight against smuggling, as amended and supplemented.

- **The Monetary and Banking Law**, as outlined in Law No. 23-09 dated June 12, 2023, which contains the Monetary and Banking Law

- **The legislation in force relating to invoicing**, contained in Law No. 04-02 of 5 Jumada I 1425 AH (23 June 2004), defines the rules applicable to commercial practices, as amended and supplemented.

- **The legislation relating to the stock exchange**, contained in Law No. 03-04 of 17 February 2003, amends and supplements Legislative Decree No. 93-10 of 2 Dhu al-Hijjah 1413 AH (23 May 1993), relating to the stock exchange.

- **The Customs Code**, contained in Law No. 17-04 of 19 Jumada I 1438 AH (16 February 2017), amends and supplements Law No. 79-07 of 26 Sha'ban 1399 AH (21 July 1979), which contains the Customs Code.

- **Offenses of tax evasion or fraud** as defined in tax and financial legislation. Algerian legislation includes a large number of taxes that can be classified according to the legal provisions governing them, including:

Indirect taxes: Decree No. 76-104 dated December 9, 1976, as amended and supplemented, containing the Indirect Tax Law.

Stamp duty: Decree No. 76-103 dated December 9, 1976, as amended and supplemented, containing the Stamp Act.

Registration fee: Decree No. 76/105 dated December 9, 1976, as amended and supplemented, including the Registration Law.

Tax violations take several forms, namely tax fraud, which includes two forms tax fraud as a criminal offense and tax fraud as a tax violation ²³.

3- Spatial scope (international coordination):

If the criminal acts attributed to the legal persons are of a transnational nature and a foreign judicial authority has been notified of them, the Public Prosecution may, through the Ministry of Justice, apply the procedures stipulated in this chapter in consultation with the foreign judicial authority within the framework of relevant international agreements²⁴

The International Criminal Justice Program allows prosecution authorities in different countries dealing with the same crimes to coordinate their required penal responses. This measure is

in accordance with the rules on mutual international assistance in criminal matters. In this context, the determination of the amount of the fine for the public interest can be discussed with foreign prosecution authorities to allow for the assessment of all fines and penalties paid by the legal persons.

If compliance with the compliance programme is considered, it is preferable to designate only one monitoring body. This measure is then implemented under the supervision of the Public Prosecutor's Office, which informs the foreign prosecution authorities as appropriate²⁵.

Section II: Regulations for concluding and implementing the agreement to postpone criminal prosecution of a legal persons

In this axis, we will attempt to address the regulations for concluding agreements to postpone criminal prosecution of a legal persons, by presenting the conditions for concluding them, the most important obligations incumbent upon the legal persons benefiting from the agreement, and finally we will discuss the effects of applying or not applying the agreement.

A) Conditions for Applying the Agreement to Postpone Criminal Proceedings of Legal Persons:

Article 105 of Law 25/14 outlines the conditions for applying the agreement to postpone criminal proceedings of legal persons, which we will summarize as follows²⁶:

1-High probability of the legal persons 's conviction:

If the preliminary investigation gathers evidence that strongly suggests the legal persons guilt should it be prosecuted.

2- Achieving the desired outcome of the trial through postponement:

If the option of postponing the proceedings achieves the expected outcome of the trial and saves the time that the judicial investigation might otherwise require.

3- Assessment of all damages resulting from the crime to the public treasury and public institutions.

4- Achieving deferral of prosecution for reasons more significant than imposing penalties on the legal persons:

if the public interest and the recovery of the treasury's rights and the rights of affected public parties are more beneficial than other penalties that may be imposed on the legal persons.

5- The legal persons expresses its willingness to cooperate in putting an end to the crime and taking disciplinary measures against the natural person who committed the crime in its name and for its benefit, and reports this to the judicial authorities.

B) Obligations of the legal persons benefiting from deferral of prosecution

The legislator, under Law 25/14, established a set of obligations for the legal persons that has benefited from deferral of prosecution, these obligations consist of paying a financial penalty to the public treasury, participating in a compliance program, compensating the affected public party if it is a party to the agreement, and fulfilling any other obligations deemed appropriate by the public prosecutor. We will explain these obligations in detail below:

1- Obligation to Pay a Financial Penalty²⁷:

Payment of a penalty to the public treasury, the amount of which will be determined in proportion to the benefits derived from the proven violations. This penalty can reach up to 30% of the annual turnover of the signatory legal persons over the last three years²⁸.

The amount of the fine considers the damage incurred by the public treasury and the undue benefits obtained from the crime or the revenue generated by the contract. Article 107 of Law 25/14 permits the payment of the fine according to a schedule determined by the Public Prosecutor, which may not exceed four years in any case²⁹.

1-1- Determining the financial benefit:

The financial benefit to the legal persons from the execution of the contract affected by corruption offenses is determined, and the profit is calculated based on the revenue generated by the contested contract, after deducting expenses directly related to the project. Deductions may only be made from the revenue of those expenses directly related to the contract under consideration³⁰.

Therefore, the legal persons is required to submit cost accounting data and any forecasting documents related to the signed contracts. These documents allow for an assessment of the profits that were expected from the project in question.

These documents should also allow for an assessment of any non-financial benefits that may have accrued to the company through recorded misconduct, or in light of the market share gained, even if the contract in question was accountingly unprofitable or generated low profits³¹.

According to Article 41-1-2 of the French Code of Criminal Procedure, the fine must be proportionate to the seriousness of the offense. The public benefit fine includes both a restitution of illicit gains and a punitive aspect, calculated according to the application of several criteria outlined below:

- **Restitution of illicit gains:**

The public benefit fine must be at least equal to the amount of the illicit gain identified.

- **Punitive aspect:**

Public prosecutors assess the seriousness of the offense, taking into account aggravating and mitigating factors, and specifically considering the following criteria:

- The legal persons that has previously been convicted of corruption offenses,
- The company's conduct after becoming aware of the wrongdoing,
- The implementation of an effective compliance program,
- The implementation of corrective measures and organizational changes,
- The use of the legal persons resources to conceal corruption-related offenses,
- Voluntary disclosure and cooperation with investigating authorities—this last point is crucial for the judge in approving the convention, as it reflects the idea that even after an illegal act has been committed and harm has occurred, a positive impact can still be achieved through voluntary disclosure and full cooperation³²

This concept leads us to assign a relatively innovative role to the judge, who is required to assess the appropriateness of the punishment by considering the interests at risk and evaluating the consequences of applying the criminal penalty.

Therefore, the judge must verify the validity of resorting to the procedure, as well as the integrity of the proceedings, the conformity of the fine amount to the limits stipulated by law, and the proportionality of the prescribed measures to the benefits derived from the violations. This means that the public prosecutor assesses, according to their conscience and based on the

seriousness of the crime, the character of the perpetrator, and the disruption it caused to public order, whether to initiate legal proceedings or implement an alternative to prosecution³³.

2- Payment of compensation to the affected public party if it is concerned by the agreement³⁴:

The affected party is not considered a party to the agreement. Article 107 limits it to public legal persons and excludes private legal persons, as the aim is to protect public funds from financial crimes and corruption offenses.

On the other hand, the legal persons fulfillment of the obligations stipulated in the agreement precludes public prosecution, but it leaves open the door for civil action for compensation for individuals not compensated under the agreement who suffered harm due to proven violations.

3- Submission to a Compliance Program³⁵:

Submission to an internal reform program to support integrity and prevent the crimes stipulated in Article 106. This program is prepared and its implementation monitored by the expert or experts or the qualified body appointed by the Public Prosecutor, and the legal persons concerned is responsible for paying the expenses allocated to this process³⁶.

The obligation to undergo a compliance program allows legal persons found guilty of corruption or influence peddling to establish internal mechanisms aimed at preventing the recurrence of such acts. Thus, within the framework of a judicial agreement serving the public interest, a legal persons can be required to undergo a compliance program for a specific period determined by law.

3.1. Compliance Program Obligations:

The legal persons must commit to implementing measures and procedures to prevent and detect corruption within its organization. These measures include:

- **A code of conduct:** that defines and clarifies the various types of prohibited behaviors that are likely to constitute corruption or influence peddling.
- **An internal alert system:** designed to collect signals from employees regarding behavior or situations that violate the code of conduct and ethics.
- Procedures for assessing the risk profile of clients, major suppliers, and intermediaries.
- Internal or external accounting control procedures designed to ensure that books, records, and accounts are not used to conceal acts of corruption or abuse of power. These controls can be implemented by the accounting and financial control departments of the legal persons itself.
- A training program for managers and employees most vulnerable to corruption and abuse of power.
- A disciplinary system that allows for the sanctioning of employees of the legal persons for violating its code of conduct³⁷.

-To be subject to any other obligation that the Public Prosecutor deems appropriate, as indicated in Article 107, which states that, in addition to the previous obligations, the Public Prosecutor may subject the legal person to any other obligation that he deems necessary and appropriate to the circumstances and facts of the agreement.³⁸

C) Procedures for concluding an agreement:

Before initiating public prosecution, the Public Prosecutor may conclude an agreement with a private legal persons involved in or complicit in one or more of the crimes stipulated in Article 106

of Law 25/14. This agreement stipulates the postponement of criminal proceedings against the persons in exchange for the return of funds, assets, and proceeds disposed of or transferred outside the national territory, or their equivalent value, and the full payment of amounts due to the Public Treasury and to the public parties harmed by the crimes attributed to it³⁹. The process of concluding an agreement involves several procedures to achieve its effects, which we summarize below⁴⁰:

1-Parties to the Agreement:

The agreement is concluded with the legal representative of the legal persons, who must not be personally involved in committing the crimes attributed to the legal persons as a perpetrator, accomplice, or instigator, and the competent Public Prosecutor.

2- Notifying the Public Prosecutor of the Parties Concerned with the Agreement:

Here, the Public Prosecutor notifies both the judicial agent of the Public Treasury and the affected public party to submit a memorandum specifying the damages incurred and providing necessary observations. Simultaneously, the Public Prosecutor summons the legal representative of the legal persons to present the proposed agreement and inform them of the possibility of retaining legal counsel, requiring a written response within one month of being notified.

The question that arises is whether the legal persons can negotiate the content of the agreement, the amount of the penalty, or whether the process is limited to simply accepting or rejecting the draft agreement.

3-Draft Agreement:

Upon completion of the negotiation process, the Public Prosecutor shall deliver the draft agreement for deferring prosecution to the legal representative of the legal persons, which shall mainly include the identity of the legal representative of the legal persons signing the agreement, a detailed presentation of the facts, the time and place of their commission and the legal description that they may have, the procedures taken under the supervision of the judiciary, the efforts made by the legal persons to put an end to the crime or to uncover its perpetrators and the measures taken against it, the determination of the amount of the fine due to the public treasury and the methods and deadlines for its payment, as well as the compensation to be paid to the affected public party.⁴¹.

4-Ratification of the Agreement:

Article 109 of Law 25/14 stipulates that if the representative of the legal persons approves the agreement, the Public Prosecutor summons the representative of the Public Treasury and the affected public party, informing them of the agreement's contents. They may submit their final observations within a maximum period of 5 days, and a record of this is drawn up.

At this point, the agreement is stamped with the executory formula and becomes an enforceable instrument. The agreement does not constitute a postponement of proceedings or a conviction of the legal persons.

Consequently, the agreement is not considered a criminal judgment and does not result in any mention of the legal persons criminal record⁴².

5-Effects of Implementing the Agreement:

One of the effects of implementing the agreement is the suspension of the statute of limitations for public prosecution during the agreement's implementation period. Accordingly, the public prosecution is extinguished once the legal persons fulfill all its obligations under the agreement⁴³.

In case the agreement is not ratified by the President, or is withdrawn from, or is not implemented in part or in whole (failure to pay the fine, failure to comply with the compliance program), the Public Prosecutor informs his legal representative of the suspension of the implementation of the agreement⁴⁴, and the commencement of criminal proceedings.

In this case, the content of the statements made by his legal representative may not be used against him before the investigating or judicial authority unless the Public Prosecution was aware of them in advance.

The judicial authority must also consider in its judgment the obligations that were partially implemented by the legal persons before the suspension of the implementation of the agreement, as indicated in Article 113 of Law 25/14⁴⁵.

Conclusion:

The agreement to postpone criminal prosecution of legal persons represents a modern trend in contemporary criminal policy, balancing the requirements of deterrence with the protection of the economy. This prompted the Algerian legislator to keep pace with positive legislation by amending the provisions of the Code of Criminal Procedure under Law 25/14.

Undoubtedly, this step is important and necessary, aiming to achieve objectives that traditional punishment sometimes fails to attain. However, evaluating its effectiveness depends on providing mechanisms for its practical implementation and on the cooperation of legal persons involved in economic and financial crimes with this measure. At the end of this study, we arrived at the following conclusions:

- The agreement is considered an important mechanism for combating corruption and financial crimes, based on the principle of negotiation between the Public Prosecutor's Office and the legal persons concerned.
- The agreement seeks to enshrine the principles of criminal justice by achieving general and specific deterrence through the imposition of financial and legal obligations that prevent the recurrence of the crime. The aim of this procedure is to achieve the objectives of criminal justice, even if unconventional procedures are used in judicial proceedings.
- The agreement is characterized by its speed and flexibility in settling cases compared to traditional criminal prosecution procedures.
- The agreement suspends criminal proceedings, rather than terminating or dismissing them. The matter is contingent upon the legal persons fulfilling its conditions and obligations; otherwise, criminal proceedings will be initiated against it. This characteristic is considered one of the guarantees for achieving criminal justice.

This procedure serves a dual interest of the parties to the agreement: recovering stolen state funds and compensating the public treasury, and allowing the legal persons in question to settle its situation without conviction, thus minimizing potential economic and financial losses.

Despite its importance, some of its procedures are complex, particularly in transnational crimes.

Recommendations:

- We suggest expediting the issuance of regulatory texts to clarify the mechanisms for implementing the Convention, particularly regarding procedures that are currently ambiguous, such as how to prepare compliance programs, the criteria for ratifying the Convention, and the circumstances under which the proposed Convention may be negotiated.
- Establishing judicial oversight mechanisms that align with the specific nature of this procedure.

- To enhance the transparency of this procedure and evaluate its effectiveness, we recommend the continuous publication of agreements deferred prosecution and their outcomes at the level of the High Authority for Transparency, Prevention and Combating of Corruption.
- Establishing clear legal safeguards for the implementation of the Convention to prevent it from becoming a mechanism for impunity for implicated persons.
- Drawing upon the experiences of countries that have already implemented this procedure, particularly the British and French legislation.

Citations:

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⁴ the Sapin II Act corresponds to Law No. 2016-1691 of December 9, 2016, **on transparency, the fight against corruption, and the modernization of economic life**, Official Journal of the French Republic (JORF) No. 0287 of December 10, 2016.

⁵ Martina Galli: **A Criminal Justice System Tailored to Legal Entities: Reflections on Public Interest Judicial Agreements** Journal of Criminal Science and Comparative Criminal Law, Paris, , No. 2, 2018, pp 359–385, p 365, 361.

⁶ Anaëlle Mazé, op. cit, p 57.

⁷ Ibid, p 64.

⁸ Mathilde Lacaze- Masmonteil, **From 2016 to the Present: Between Promises, Challenges, and Prospects, What Is the Assessment of the CJIPS?**, LEXISNEXIS SA - practical proceeding & corporate engineering –, Paris, N°6 - November December -2023, pp 1–18, p. 9.

⁹ Transparency International France, **The public interest judicial settlement (CJIP)**, January 2023
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¹⁰ Stéphane Bonifassi, Gabrielle Massoulier, **The New Judicial Agreement Procedure in the Public Interest**, Journal of companies ,Paris, N° 149, February 2017, pp. 38–42, p. 40.

¹¹ Anaëlle Mazé, op-cit, p 50.

¹² Decree No. 75/58 dated 20 Ramadan 1395 (corresponding to September 26, 1975), containing the amended and supplemented **Civil Code**; Official Gazette of the People's Democratic Republic of Algeria, No. 78, published in 1975.

¹³ Decree No. 66/156 dated 18 Safar 1386 (corresponding to June 8, 1966), containing the amended and supplemented **Penal Code**, Official Gazette of the People's Democratic Republic of Algeria No. 49, published on June 11, 1966.

¹⁴ Abdelaziz Farhawi, **Criminal Liability of Legal Persons in Algerian Law**, Journal of Literature and Social Sciences, Setif, Vol. 16, No. 2, 2019, p. 91

¹⁵ Aswad Yassin, **The New Penal System for Imposing Criminal Liability on Legal Persons**, Journal of International Law and Development, Mostaganim, Vol. 8, No. 1, 2020, pp. 124–148, p125

¹⁶ Ahsan Bosqia, **A Concise Guide to Special Criminal Law**, Part 2, edition 9, Dar Houma, Algiers, 2008, p.42

¹⁷ Anaëlle Mazé, op-cit, p16.

¹⁸ French Anti-Corruption Agency, **Judicial Agreement in the Public Interest**, 2023.
<https://www.agence-francaise-anticorruption.gouv.fr/fr/convention-judiciaire-dinteret-public>
 (consulted on 22/02/2026)

¹⁹ Law No. 24/06, dated 19 Shawwal 1445 (corresponding to April 18, 2024), amends and supplements Decree No. 66/156, dated 18 Safar 1386 (corresponding to June 8, 1966), **containing the amended and supplemented Penal Code**, Official Gazette of the People's Democratic Republic of Algeria No. 30, issued on April 30, 2024.

²⁰ See Article 119 bis of Law No. 24/06

²¹ Law 06-01 dated 21 Muharram 1427 AH, corresponding to February 20, 2006, concerning **the prevention and combating of corruption**, as amended and supplemented Official Gazette of the People's Democratic Republic of Algeria No. 14, issued on March 08, 2006.

²² See Article 418, 419 of Law No. 24/06.

²³ Ahsan Bosqia, **A Concise Guide to Special Criminal Law**, Part I, edition 10, Dar Houma, Algiers, 2009, p. 423.

²⁴ See Article 111 of Law No. 25/14, previously cited.

²⁵ Anaëlle Mazé, op-cit, p.15

²⁶ See Article 105 of Law No. 25/14, previously cited.

²⁷ See Article 107, paragraph 1, of Law 25/14, previously cited.

²⁸ Olivier Leurent, **Judicial Agreements in the Public Interest in Environmental Matters**, *Revue justice actualités*, Paris, No. 28, 2022/2, pp. 116–119, p. 117.

²⁹ See Article 107, paragraph 7, of Law 25/14, previously cited.

³⁰ French national Financial prosecutor's office, **guidelines on the implementation of the convention judiciaire d'interet public**, 2019, p11.

https://www.agence-francaise-anticorruption.gouv.fr/files/2019-09/EN_Lignes_directrices_CJIP_revAFA%20Final%20%28002%29.pdf
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³¹ Ibid, p11.

³² Ibid, p12.

Stéphane Bonifassi, Gabrielle Massoulie, op-cit, p 40.

³³ Martina Galli, op-cit, p365.

³⁴ See Article 107, paragraph 2, of Law 25/14, previously cited.

³⁵ See Article 107, paragraph 3, of Law 25/14, previously cited.

³⁶ See Article 107, paragraph 6, 8 of Law 25/14, previously cited.

³⁷ Anaëlle Mazé, op-cit, p 27-28.

³⁸ See Article 107, paragraph 4, of Law 25/14, previously cited.

³⁹ I would like to point out that the application of the Convention's procedures does not preclude the application of the precautionary measures provided for in Article 50 of Law 25/14, namely the freezing or seizure of property, funds, and illicit proceeds resulting from the commission of crimes, including those specified in Article 106 of Law 25/14, provided that the precautionary order remains in effect for a period of six months.

renewable Precautionary measures may include the freezing or partial or total seizure of the suspect's property and funds, as well as the property and funds of persons associated with him, where there is strong evidence that such assets constitute proceeds of crime related to the acts under investigation. However, the application of these measures is reserved for the president of the competent court, either upon an ex officio request by the public prosecutor or upon a reasoned request by judicial police officers during the preliminary investigation (For further details, see Articles 51 et seq. of Law 25/14).

⁴⁰ See Article 108 of Law 25/14, previously cited.

⁴¹ See Article 108 of Law 25/14, previously cited.

⁴²As for French law, in addition to the aforementioned procedures, it mandates publication a press release must also be published on the French Anti-Corruption Agency website, together with the order approving the CJIP.

French Anti-Corruption Agency , **CJIP : The French DPA**

<https://www.agence-francaise-anticorruption.gouv.fr/en/convention-judiciaire-dinteret-public>

(consulted on 01/04/2026).

⁴³ See Article 108 of Law 25/14, previously cited.

⁴⁴ See Article 112 of Law 25/14, previously cited.

⁴⁵ See Article 108 of Law 25/14, previously cited.

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