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Publishing Staff

Publisher: Leanne Battle

Production Editor: Sharon D. Ray

Cover Art Design: Morgan Morrisette Wright and Sharon D. Ray

This journal's cover includes a photo of Washington D.C.'s Metro Center underground station. The Metro's distinctive coffered and vaulted ceilings were designed by Harry Weese in 1969. They are one of the United States' most iconic examples of the brutalist design style often associated with federal administrative buildings. The photographer is by XH_S on Unsplash, used with permission.

Cite this publication as:

The Journal of Federal Agency Action (Fastcase)

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A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE JOURNAL OF FEDERAL AGENCY ACTION, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

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Leanne Battle, Publisher, Full Court Press at leanne.battle@vlex.com or at 866.773.2782

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Available 8 a.m.–8 p.m. Eastern Time

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ISSN 2834-8796 (print)

ISSN 2834-8818 (online)

The Trump Administration Takes Aim at the Foreign Corrupt Practices Act

Isabelle De Smedt and Albert Stieglitz*

In this article, the authors examine the impact of President Trump's executive order pausing enforcement of the Foreign Corrupt Practices Act and identify some key considerations and takeaways for companies and individuals.

The Executive Order (EO) titled “Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security”¹ signed by President Trump instructs the U.S. Department of Justice (DOJ) not to open any new Foreign Corrupt Practices Act (FCPA) investigations or engage in any “FCPA enforcement” for 180 days, while the U.S. Attorney General (AG) conducts a review of all existing investigations, enforcement actions, policies, and guidelines related to the FCPA.

Although this EO has attracted considerable attention, much remains to be seen about how it will be implemented, the nature and scope of the AG’s review, and what will emerge from that review.

Moreover, it is highly unlikely that anticorruption enforcement—or the need to make investments to prepare for and respond to such enforcement—will disappear as a result of this EO.

The Executive Order

After asserting that the FCPA “has been systematically, and to a steadily increasing degree, stretched beyond proper bounds and abused in a manner that harms the interests of the United States,” the EO instructs the AG to conduct a 180-day review of “guidelines and policies governing investigations and enforcement actions under the FCPA.” During that 180-day period—which the AG can extend an additional 180 days if “appropriate”—the AG is instructed not to initiate “any new FCPA investigations or enforcement actions,” unless the AG makes “an individual exception” for doing so, based on as-yet-unclear criteria.

The scope of the AG's review during the 180-day period is sweeping and will include "all existing FCPA investigations or enforcement actions." The AG is further instructed to "issue updated guidelines or policies" related to FCPA investigations and enforcement actions, and thereafter to "determine whether additional actions, including remedial measures with respect to inappropriate past FCPA investigations and enforcement actions, are warranted."

Finally, in a significant departure from historical practice, the EO directs that all FCPA investigations and enforcement actions "initiated or continued" after the AG issues new guidance must "be specifically authorized" by the AG.

Initial Considerations

The EO Does Not Bind Agencies Other Than the DOJ

The EO is expressly directed at the AG and therefore only affects criminal FCPA enforcement. Left unaddressed by the EO is civil FCPA enforcement, which is conducted primarily by the U.S. Securities and Exchange Commission (SEC), joined in more recent years by the Commodity Futures Trading Commission. The SEC has brought dozens of corporate enforcement actions over the past decade alleging FCPA violations, and though it frequently works in parallel to and benefits from the efforts of the DOJ, its ability to continue investigating violations of and otherwise enforcing the FCPA is not expressly implicated by the EO. That said, recent comments by a senior SEC enforcement official that the SEC would "follow the lead of the DOJ" regarding FCPA enforcement may portend a parallel deemphasis of such enforcement at the SEC as well.

More broadly, there are a multitude of foreign government agencies dedicated to the investigation and prosecution of bribery and corruption of public officials under the laws of their jurisdictions—think of the UK's Serious Fraud Office enforcing the UK Bribery Act—and, of course, none of them will be bound by the EO. Indeed, just a few weeks after the EO, the UK's Serious Fraud Office, France's Parquet National Financier, and the Attorney General of the Swiss Confederation announced the formation of a "International Anti-Corruption Prosecutorial Task Force" to address "the significant threat of bribery and corruption and the severe harm

that it causes,” emphasizing their joint and ongoing “commitment to tackle this threat.”

How Broadly Will “FCPA Enforcement” Be Read?

By its terms, the EO prohibits only “new FCPA investigations or enforcement actions” during the 180-day review period. Accordingly, while the opening of new FCPA investigations and the “initiation” of any FCPA enforcement actions—such as charges, pleas, and deferred or non-prosecution agreements—would seem clearly to be off the table during the 180-day review period, further investigative activity in existing matters, especially those closely aligned with apparent Trump administration priorities such as combatting cartel and transnational criminal organization activities, would not seem to contradict the EO.

The impact of the EO on pending (charged) cases, including but not limited to cases set for trial, is also far from clear. Early signals from the DOJ, including requests to delay at least two FCPA cases set for trial in the first four months of this year suggest that the EO-directed “pause” will extend to such cases, but as of the time of writing, no additional clarification from the DOJ has been offered.

How Readily Will the Attorney General Grant “Individual Exceptions” for New Investigations and Enforcement Actions?

The EO confers upon the AG discretion to “determine[] that an individual exception should be made” to the EO’s prohibition on “new FCPA investigations or enforcement actions.” However, the EO articulates no criteria that are to guide these determinations, leaving it entirely unclear how readily exceptions will be granted. For example, to what extent will they be based on procedural considerations, such as the imminence of a pending enforcement action (e.g., indictment, trial, plea, sentencing)? To what extent will they be based on substantive factors, such as the nature of the target of the investigation, the nature of the target’s conduct, and the jurisdiction where the target’s conduct occurred?

The manner in which the AG exercises discretion in granting or denying these exceptions will reveal much about the extent of FCPA investigations and enforcement during the 180-day review

period and will be an early indicator of how the AG might exercise the separate but analogous discretion the EO confers upon the AG to authorize FCPA investigations and enforcement actions after the review period.

How Will the Attorney General Conduct Her Review?

While one might not fairly expect the EO to direct the precise details of how the AG will conduct her 180-day review, the absence of any further explanation by the DOJ of how she will do so leaves prosecutors, defendants, courts, and others without critical clarity on key questions, including but not limited to (1) when and in what order investigations and prosecutions/cases will be reviewed, (2) what happens to them while they await review, (3) what the review process will look like (e.g., what inputs will be evaluated, and by whom), (4) what specific criteria will be applied by the AG, and (5) what remedies the DOJ will apply to cases that fail to satisfy such criteria.

The EO also neither identifies nor defines the criteria by which the AG will determine that past FCPA investigations or enforcement actions were “inappropriate,” and here again the DOJ has not as of the time of this writing provided any further guidance or clarification on this question.

Is the EO Data-Driven?

The EO purports to address “overexpansive and unpredictable FCPA enforcement,” and the Fact Sheet² accompanying the EO cites enforcement statistics from 2024 as evidence of “broadened” FCPA enforcement. However, 2024—when the DOJ entered into a total of eight corporate criminal FCPA resolutions—was a slower year for resolutions than all but one of the years of the first Trump administration. Indeed, the total number of corporate criminal FCPA enforcement actions under the Biden administration was nearly 30 percent *lower* than under the first Trump administration. Moreover, aside from the final year of the Obama administration, the top three years for corporate criminal FCPA enforcement in the past decade all occurred during the first Trump administration.

In a similar vein, the EO asserts that FCPA enforcement “against American citizens and businesses” has been “overexpansive” in a

way that has created “excessive barriers to American commerce abroad.” However, over the past five years, less than one-third of corporate criminal FCPA enforcement actions have been directed against U.S. companies.

What About Those February 5 DOJ Memoranda?

Just five days before President Trump issued the EO, newly installed AG Pam Bondi issued 14 memoranda³ to DOJ prosecutors, addressing a variety of changes to policies, procedures, and priorities at the DOJ, including criminal FCPA enforcement. In the memorandum titled “Total Elimination of Cartels and Transnational Criminal Organizations,”⁴ the AG directs that the DOJ Criminal Division’s FCPA unit “shall prioritize investigations related to foreign bribery that facilitates the criminal operations of Cartels and T[ransnational] C[riminal] O[rganization]s, and shift focus away from investigations and cases that do not involve such a connection.” For any FCPA investigations and prosecutions involving cartels or TCOs, the AG also suspended DOJ policies requiring authorization by and participation of the DOJ’s Criminal Division.

While the sequencing of the AG’s directive and the EO may create some confusion and questions, they are not incompatible, and it would not be surprising if the new guidelines or policies related to FCPA enforcement that the AG is to issue after the 180-day review incorporate aspects of the memo’s directive.

What About Existing DOJ Corporate Enforcement Policies?

The EO’s “pause” on FCPA investigations and enforcement can be expected to further complicate the already fraught decisions companies face when evaluating whether and when to engage with the DOJ on potential FCPA violations. For example, how, if at all, will the EO’s prohibition on new FCPA investigations during the 180-day review period affect the DOJ’s determination of the “timeliness” of a company’s voluntary self-disclosure? And what amount of cooperation can the DOJ fairly expect and demand of companies while pausing and reassessing its entire FCPA enforcement program? These and other questions will impact companies differently depending on where in the investigation and enforcement timeline

they are, but regardless of where they are, the EO can be expected to introduce a plethora of new complexities for all parties—companies, their counsel, and prosecutors.

Will Resource Cuts Be a Force Multiplier for the EO?

In parallel to the EO-directed “pause” on the DOJ’s FCPA enforcement efforts, public reports have indicated that the Trump administration is planning to cut resources from those efforts, including through a significant downsizing of the DOJ Criminal Fraud Section’s FCPA Unit, which in recent years has grown to include dozens of federal prosecutors. Some of these cuts likely will be counterbalanced by the decentralization of FCPA criminal enforcement to U.S. Attorneys’ Offices discussed above, but they nevertheless surely will amplify the EO’s impact on criminal FCPA enforcement.

Looking Ahead

Amid the considerable uncertainty the EO has caused about the future of FCPA enforcement, some historical context must be borne in mind. After all, the first corporate criminal FCPA enforcement action of the first Trump administration did not occur until September 2017, and the first action of the Biden administration did not occur until June 2021. An absence of corporate criminal FCPA enforcement actions in the opening months of a new administration would hardly be unusual.

Moreover, the “pause” required by the EO does not appear to affect existing criminal FCPA investigations, and it plainly does not affect civil FCPA investigations, much less the anticorruption investigations and enforcement actions of foreign authorities. Accordingly, many companies and individuals currently anticipating or facing investigative scrutiny into potential corruption issues are unlikely to be able to go “pencils down” on investigations, and perversely, they may actually experience additional costs as a result of this EO due to the delay of DOJ investigations.

Some key takeaways to keep in mind:

- *Anticorruption Enforcement Is Not Going Away.* While unquestionably designed for maximum publicity impact,

the EO is limited in its scope: it only pauses certain DOJ FCPA enforcement activities, leaving unaffected—and thus still front of mind for companies—the investigative and enforcement activities of the SEC, Commodity Futures Trading Commission, and foreign enforcement authorities.

- *The Details Will Matter.* The ultimate and longer-term impact of the EO will depend heavily on the outcome of the AG's 180-day review, including whatever actions are taken with respect to current and past investigations and cases, whatever new guidelines or policies the DOJ may issue regarding FCPA enforcement, and the extent to which the DOJ's Criminal Division continues to have preeminence in such enforcement.
- *Four Years < Five Years.* FCPA violations are generally subject to a five-year statute of limitations, meaning that any violations committed during the current administration could be prosecuted under President Trump's successor, who might take a different approach to FCPA enforcement.
- *Compliance and Controls: Not a Light Switch.* As compliance professionals know well, investments in anticorruption compliance and controls frequently only mature and bear fruit well after they are made. Discontinuing that commitment and those investments in reliance on the EO would be a mistake, not only because of the limited scope of the EO but also because of the likelihood that the landscape will again change in the (relatively) near future.

Notes

* The authors, attorneys with Alston & Bird LLP, may be contacted at isabelle.desmedt@alston.com and albert.stieglitz@alston.com, respectively.

1. <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/>.

2. <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-american-competitiveness-and-security-in-fcpa-enforcement/>.

3. <https://www.justice.gov/ag/select-publications>.

4. <https://www.justice.gov/ag/media/1388546/dl?inline>.