



# Eiffage Code of Conduct

*II - Definitions and illustrations of prohibited situations, practices  
and conduct*

## I - Competition law

The Group's employees must evolve in an environment that allows free and fair competition, without any unlawful practices, for the satisfaction of their customers and the company as a whole. They must be the protagonists and the guarantors of this.

The EIFFAGE group therefore prohibits conduct and actions contrary to competition law.

Anti-competitive behaviour affects the effective functioning of civil society.

For these reasons, it is subject to very serious penalties: fines of up to 10% of the Group's worldwide turnover, considerable damages, imprisonment and individual fines for directors and employees.

It can take several forms, the most common of which are anti-competitive agreements such as the cartel.

**An anti-competitive agreement** *is defined as any concerted action with third parties which may restrict access to the market by competitors, distort free competition or prices, or allocate the award of contracts among competitors in advance. The oldest form of competition restrictions, an anti-competitive agreement, which impedes the independence of operators in competition on a market, is strictly prohibited.*

## II – The offence of favouritism (in French law) or cronyism

In France, **favouritism** is an offence applicable to public contracts and other public procurement agreements (*concessions, outsourcing of public services, etc.*).

It is a prohibited practice whereby a person within or connected to a public client (such as a public official or an assistant to a contracting authority), "*obtains (or attempts to obtain) an unjustified benefit from the company through an act contrary to laws guaranteeing free access and the quality of bidders in public procurement contracts*".

In practice, in our business, this offence will consist of a person within or connected to a public client, mostly with the assistance of the company, favouring that company for the award of a public contract, to the detriment of its competitors, without there being any remuneration for the person showing such favouritism or cronyism (which would then be bribery).

The offence of favouritism or cronyism allows that particular type of "anti-competitive agreement" between a public procurement agent and a bidding company to be seized. It is not an "anti-competitive agreement" in the sense of competition law nor is it bribery because the individual connected to the public authority does not receive any consideration, for example financial, for having favoured the company.

Although it is not possible to establish an exhaustive typology of actions that could be classified as an offence of favouritism or cronyism, the following situations in particular have been sanctioned by the courts for constituting offences of favouritism or cronyism:

- The participation of a company in defining the requirement, drawing up the specifications or consultation documents or preparing the tender procedure,
- The granting of privileged information such as:
  - ⇒ The communication of the preliminary project outline, plans or price studies prior to any legal publication,
  - ⇒ Confidential information that has permitted a bid in accordance with conditions set by the client,
  - ⇒ A bidder who received information that the others did not have, allowing it to prepare a proposal within an unusually short period,
  - ⇒ The preferential submission to certain bidders of documents useful for the preparation of their bid,

The amendment of bids at the time of opening the bids,

- A decision not to proceed for reasons of general interest, coupled with the organisation of a second consultation to award the contract to the prospective company;
- The misuse of amendments (...)

By committing an offence of favouritism, public players could face imprisonment and fines.

However, the companies and their directors and employees that would have benefited (*namely from the award of the contract or from privileged information*) are **still more severely punished than the client**, in particular (*at the date of publication of the Code of Conduct*), by 5 to 10 years' imprisonment and a fine from €375,000 to €750,000 for individuals plus deprivation of their rights including civil rights and family rights, and a fine from €1,875,000 to €3,750,000 for companies, plus additional severe penalties such as exclusion from public contracts or the closure of the establishment concerned.

In addition, any attempt is punishable, regardless of whether the act has resulted in the award of the contract or the benefit, as established intent is sufficient to perpetrate the offence.

Such practices are, of course, prohibited within the Eiffage Group.

On the contrary, the Group encourages the marketing of its offers, namely the showcasing of its offers, which consists of getting to know a customer's needs, understanding them and ensuring that the offer meets them in full, with the constant objective of striving for differentiation as opposed to competition.

### III – Bribery and trading in influence

**Bribery** is an agreement (the “corrupt pact”) whereby an individual (the bribee) requests or accepts a gift, offer or promise of any presents or benefits (“the consideration”) from another person (“the briber”), in order to perform, delay or fail to perform an action which directly or indirectly falls within the scope of his duties.

The very existence of that agreement constitutes an offence, irrespective of whether it was accomplished.

Active bribery is the act of the briber and passive bribery is the act of the bribee. Bribery can occur in public and private contracts.

Public bribery applies to the following persons:

- The representatives of a public client,
- Persons vested with public authority,
- Holders of elected public office,
- Persons responsible for a public service mission.

This definition therefore covers the broadest positions: parliamentarians, mayors, prefects, elected local officials, civil servants, notaries, stakeholders of the contracting authority, etc.

Private bribery, on the other hand, concerns all persons who do not fall within the categories above and who perform a management role or work on behalf of a natural or legal person or any organisation as part of a professional or social activity.

In practice, the consideration can take different forms (directly or via intermediaries) and benefit the bribee and his/her friends or family: performance of work at home, miscellaneous gifts, free accommodation, travel, payment of university fees, fictitious employment contracts, interest-free loan, reduced purchase price, etc.

Bribery is severely punished.

In France, at the date of publication of the Code of Conduct, the penalties incurred for individual bribers and bribees (*i.e. public representatives, managers, employees*) are: up to 10 years' imprisonment and a fine of 1 million euros, fines, or double the proceeds of the offence, as well as deprivation of their rights including civil and family rights, ban on professional practice, etc. For companies, the penalties are 5 times the fine for individuals, plus additional severe penalties such as exclusion from public contracts or the closure of the establishment concerned.

Bribery committed internationally may be penalised by the law and the courts of the country in which it takes place, and is also punishable by foreign (extra-territorial) laws such as American or British regulations, which also stipulate severe penalties.

**Trading in influence** is an offence closely related to bribery. A person abuses his influence (real or perceived) to “*obtain distinctions, jobs, contracts or any other favourable decision for a beneficiary from an authority or public administrative authority.*” The perpetrator is therefore presented as an *intermediary* between the potential beneficiary and the recipient of the abuse.

Trading in influence is *active* when the initiative is taken by an individual who asks an influential person to abuse his influence. It is *passive* when the initiative is taken by the influential person.

The methods used (commissions, bribes, overcharging, use of intermediaries, gifts, travel, payment of university fees, fictitious employment contracts, etc.) and the persons concerned (public representatives and private individuals) are the same as for bribery.

At the date of publication of the Code of Conduct, the penalties incurred by individuals are 5 years' imprisonment and a fine of €500,000 or double the proceeds of the offence, plus deprivation of their rights including civil and family rights.

For companies, the penalties are 5 times the fine for individuals, plus additional severe penalties such as exclusion from public contracts or the closure of the establishment concerned.

The following situations in particular have been punished by the courts for bribery or trading in influence:

- An agreement between companies for the construction and renovation of public establishments which had been permitted by members of the regional executive and design office through the dissemination of privileged information on the bids of competitors, the consideration of which consisted of the payment of commissions to the elected officials hidden by the billing of non-existent services, or the remuneration of fictitious employment, etc.
- An official in an architectural department of a municipality requested and received gifts from a contractor, who, as consideration, was notified of the tender projects of the municipality and benefited from less strict control of work sites,
- An elected official who, through votes and in exchange for remuneration, made it easier for a company to obtain public works, the schedule of which had been submitted to a deliberative assembly,
- The mayor of a municipality receiving a cruise as a thank you from a company which was awarded a public water treatment contract,
- A chairman of the Chamber of Trades who had several contracts awarded to a company after having received cash payments and a laptop from the manager in return,

- Companies that remunerated the officials of a construction department in the river sector for having benefited from the placing of orders,
- The payment of "bribes" to enable a company to obtain a contract, or information on research carried out by a competitor.

## **IV- Facilitation payments**

In some countries as mentioned by the OECD, facilitation payments are modest payments made to civil servants, public officials or their employees for their personal benefit, to speed up or guarantee the performance of ongoing administrative actions (obtaining visas, permits, release from customs, etc.), which are legally entitled to be obtained without such payment.

## **V – Conflict of interest**

There is no legal definition of a conflict of interest as it is not, in French law in any case, a tortious or criminal offence. The bribery and/or the trading in influence that may arise from a conflict of interest are the crimes.

A conflict of interest may be defined as where a person carrying out a professional activity or having an elected mandate is in a position likely to influence the way in which he or she performs his or her duties.

A conflict of interest can potentially call into question the neutrality and impartiality with which the person must perform his or her mission as a result of his or her personal interests.

In particular, working directly or indirectly under the orders of a family member or someone with whom a personal relationship is maintained may constitute a conflict of interest situation.

The Group's growth is partly the result of the acquisition of family-owned businesses, which may also be the source of real, potential or apparent conflict of interest situations.

## **VI - Money laundering**

The term "money-laundering" refers to a method used to inject, through legal and financial channels, money obtained or generated by illegal activities (e.g. bribery, tax fraud, drug trafficking or other trafficking, etc.). In particular, the method may consist of real estate and/or industrial investments.