



**Report of Investigation into Alleged
Bribery of Ghanaian Officials by Airbus SE**

8 August 2024



1.0 Introduction

- 1.1 The Office of the Special Prosecutor (OSP) presents this report on an investigation into alleged bribery of high-ranking Ghanaian officials by Airbus SE, through intermediaries, in respect of the sale of military transport aircraft by Airbus SE to the Republic of Ghana between 2009 and 2015. The investigation was conducted upon a referral by the President of the Republic.
- 1.2 This report has been heavily redacted in the interest of national security – especially in respect of the correspondence and deliberations involving the Presidency, Cabinet, Ministry of Finance, Ministry of Defence, the Ghana Armed Forces, Airbus SE, and a subsidiary of Airbus SE.
- 1.3 This report is founded on sections 2 and 3 of the Office of the Special Prosecutor Act, 2017 (Act 959) and regulation 31(1)(g) of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374).

2.0 Airbus SE

- 2.1 Airbus SE (Airbus) is a European multinational aerospace corporation. It designs and manufactures commercial aircraft, helicopters, defence, and space equipment and aircraft. It is one of the two largest manufacturers of commercial aircraft in the world (the other being The Boeing Company). It is registered in Leiden, Netherlands under the corporate law of the European Union, and its headquarters are located in the Occitanie region of France, near the Toulouse-Montaudou Airport.

3.0 The Referral

- 3.1 By correspondence dated 2 February 2020 addressed to the Special Prosecutor, the Secretary to the President, Nana Bediatuo Asante, communicated that he had been directed by the President of the Republic to refer to the OSP, allegations of bribery made against Ghanaian officials in an approved judgment of the Crown Court at Southwark in the United Kingdom, delivered on 31 January 2020 by the Rt. Hon. Dame Victoria Sharp, the President of the Queen's Bench Division, in the matter titled *Director of the Serious Fraud Office v. Airbus SE* (Case No: U20200108).
- 3.2 The 2 February 2020 referral recounted that according to the Statement of Facts in the case, between 2009 and 2015, a number of Airbus employees made or



promised success-based commission payments of approximately five million Euros to a person described as Intermediary 5, who was said to be a close relative of a high-ranking elected Ghanaian official (described as Government Official 1). The referral narrated that significantly, the Statement of Facts stated that Government Official 1 was a key decision maker in respect of Government of Ghana aircraft orders; and that payments to Intermediary 5 by officials of Airbus SE were intended to induce or reward improper favour by Government Official 1 in respect of the purchase of three C-295 military transport aircraft. The referral also related that indeed, out of the five million Euros promised to Intermediary 5, 3.8 million Euros was paid between March 2012 and February 2014.

3.3 Further, the referral indicated that similar conclusions had been reached by investigative and judicial authorities in the United States in the case of *United States of America v. Airbus SE* (Case No: 1:20-cr-00021 (TFH)).

3.4 The referral requested that given the implications of the judgment, the OSP may collaborate with its United Kingdom and other foreign counterparts to conduct a prompt inquiry to determine the complicity or otherwise of any Ghanaian government official, past or present, involved in the scandal and to take the necessary legal action against such official, as required by Ghanaian law.

4.0 Investigation and Judicial Pronouncements by Relevant Foreign Authorities

4.1 On 31 January 2020, three courts, one each in the United States of America, the United Kingdom, and France simultaneously delivered similar decisions containing agreed outcomes (variously described as Consent Agreement, Deferred Prosecution Agreement, or Judicial Public Interest Agreement, depending on the jurisdiction) between Airbus SE and the relevant authorities in the three jurisdictions. The apparently coordinated judicial decisions imposed global financial sanctions in excess of 3.9 billion Euros on Airbus SE.

4.2 The agreed judicial decisions were the outcome of joint investigations carried out by the Serious Fraud Office (SFO) of the United Kingdom and the French Parquet National Financier (PNF), and a parallel investigation conducted by the United States Department of Justice (DOJ) and the United States Department of State (DOS) – in respect of alleged bribery and corruption and violations of the United States International Traffic in Arms Regulations (ITAR) involving Airbus SE in Malaysia, Sri Lanka, Taiwan, Indonesia, China, Columbia, Nepal, South Korea, United Arab Emirates, Saudi Arabia, Taiwan, Russia, and Ghana.



- 4.3 The alleged bribery offences of Airbus in respect of Ghana was investigated by the SFO, while the DOJ investigated violations by Airbus of parts 126.1, 129, and 130 of ITAR in the context of the alleged bribery offences in relation to Ghana. Therefore, the judicial decisions by the courts in the United Kingdom (UK) and the United States (US) affected Ghana. Consequently, the investigations carried out by the SFO and DOJ and the decisions of the two courts bear on the investigation by the OSP and thus, require recourse and in some detail.

United Kingdom

- 4.4 It is well-known that on 31 January 2020, the President of the Queen’s Bench Division, the Rt. Hon. Dame Victoria Sharp, sitting in the Crown Court at Southwark, delivered a final declaration and order in respect of a Deferred Prosecution Agreement (DPA) between the SFO and Airbus in the case of *Director of the Serious Fraud Office v. Airbus SE*. This was based on investigation conducted by the SFO in respect of Malaysia, Sri Lanka, Taiwan, and Ghana – which was held to demonstrate that in order to increase sales, persons who performed services for and on behalf of Airbus offered, promised or gave financial advantages to others intending to obtain or retain business, or an advantage in the conduct of business, for Airbus. And that, those financial advantages were intended to reward such improper performance. And further that, Airbus did not prevent, or have in place at the material times adequate procedures designed to prevent those persons associated with Airbus from carrying out such conduct.
- 4.5 In respect of Ghana, Airbus was charged with the offence of failure of a commercial organisation to prevent bribery, contrary to section 7 of the Bribery Act 2010. The particulars of offence stated that between 1 July 2011 and 1 June 2015, Airbus failed to prevent persons associated with Airbus from bribing others concerned with the purchase of military transport aircraft by the Government of Ghana, where the said bribery was intended to obtain or retain business or advantage in the conduct of business for Airbus.
- 4.6 The accompanying statement of facts summarised the SFO’s position that between 2009 and 2015, an Airbus defence company engaged Intermediary 5 (who had no experience in the aviation sector), a national of the UK born in Ghana and close relative of a high-ranking elected Ghanaian Government official (Government Official 1), as its Business Partner in respect of the proposed sale of three aircraft to the Government of Ghana. A number of Airbus employees knew that Intermediary 5 was a close relative of Government



Official 1, a key decision maker in respect of the sales. A number of Airbus employees made or promised success-based commission payments of approximately five million Euros to Intermediary 5. False documentation was created by or with the agreement of Airbus employees in order to support and disguise these payments. The payments were intended to induce or reward improper favour by Government Official 1 toward Airbus.

- 4.7 Intermediary 5 was assisted in his work for Airbus by two other nationals of the UK – Intermediary 6 (a friend of Intermediary 5 and a UK television actor and film director) and Intermediary 7 (a former UK television actor). Contact between Airbus and the Government of Ghana about aircraft sales began in June 2009 following an expression of interest by the Government of Ghana. By August 2009, Airbus employee 15 [senior] reported that he was in contact with Government Official 1 and his team.
- 4.8 On 7 December 2009, Intermediaries 5 and 6 incorporated a company (Company D) in Ghana. A company of the same name was incorporated in the UK in February 2010. Company D was the corporate vehicle through which Intermediary 5 and his associates provided services to Airbus.
- 4.9 In December 2010, Airbus employee 16 was made aware that Intermediaries 5 and 6 were or had recently been working for Government Official 1 and/or the Government of Ghana.
- 4.10 The Airbus campaigns in Ghana culminated in the sale of three C-295 military transport aircraft by Airbus to the Government of Ghana.
- 4.11 In respect of the first campaign for two C-295s, Airbus paid 3,909,756 Euros to a third-party company, Intermediary 8 between March 2012 and February 2014. Intermediary 8 in turn paid 3,850,115.85 Euros to Company D. In respect of the second campaign for the sale of one C-295, Intermediary 5 or Company D were promised approximately 1,675,000 Euros. The promised amount was not paid.
- 4.12 From 2009, Intermediary 5 and his associates worked on the sales to the Government of Ghana without any written consultant agreement. This included liaison with Government Official 1 regarding the potential Airbus C-295 sale. Intermediaries 5 and 6 submitted a report to Airbus which documented a January 2011 meeting in London attended by themselves, Government Official 1 and Airbus at which the C-295 aircraft was agreed upon as the most suitable aircraft for the needs of the Government of Ghana.



- 4.13 By April 2011, Airbus employee 16 reported to his colleagues that the deal was close to being finalised. He then asked Intermediaries 5 and 6 to transmit a letter to Government Official 1 and explain a possible delay. He also asked them to secure meetings with the Ghanaian Ministry of Defence and Ministry of Finance. On 18 May 2011, Intermediary 6 emailed Airbus employee 16 stating that Government Official I had taken the relevant financials to the Minister of Finance and that Intermediaries 5 and 6 were planning to go to Ghana within the next couple of weeks so they could oversee the project personally.
- 4.14 Company D submitted a formal Business Partner application in May 2011. On 8 July 2011, Intermediary 6 sent Airbus employee 15 [senior] a [Company D] update. He reported that he had just returned from Ghana “having had very productive meetings with all parties, including [Government Official 1], the [Ministry of Defence] and Minister of Finance.” The email stated that the C-295 sale was agreed at all levels, and was expected to clear Parliament by 14 July 2011, and that Government Official I had expressed an interest in buying two more C-295s.
- 4.15 On 3 August 2011, Airbus’ Spanish Defence Subsidiary and the Government of Ghana signed a purchase agreement for the sale of the two C-295 aircraft. The following day Airbus employee 17 [senior] (Airbus Compliance) declared to the Spanish export credit agency that no more than 3,001,718.15 Euros would be paid to Business Partners in connection with this contract. Although no payment had actually yet been made, this figure broadly reflected a 5% commission. The same document also declared compliance with the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- 4.16 Following the May 2011 Business Partner application, Airbus commissioned an external due diligence report on Company D. The resulting report dated 30 September 2011 identified Intermediary 5 as a shareholder of Company D and the possibility that he was a close relative of Government Official I. The source of the information was a UK newspaper article quoting Intermediary 6.
- 4.17 The Airbus external due diligence report raised concerns that there was a risk of non-conformity with the OECD Convention.
- 4.18 Faced with this raised concern and a stated fear that a failure of the Company D application portended the prevention of Airbus from doing business in Ghana for a number of years, relevant Airbus employees agreed to, and did substitute Company D with a Spanish company (Intermediary 8), which was a pre-existing Airbus Business Partner, by deliberately circumventing the proper compliance



process by falsely representing that the work in respect of the first campaign had been done by Intermediary 8 – who could in turn then make the money available to Intermediary 5 and others.

- 4.19 On 19 March 2012, Airbus employee 1 [senior] and Airbus employee 22 [senior] approved the Intermediary 8 Business Partner application for the first campaign. The consultant agreement between Intermediary 8 and Airbus was dated 20 March 2012 and with an effective date of 1 January 2010. The agreement provided for a percentage commission fee of the net total amount received by Airbus by virtue of any commercial contract with the Government of Ghana for C-295 aircraft.
- 4.20 As indicated above, between March 2012 and February 2014, Airbus paid 3,909,756.85 Euros to Intermediary 8, which in turn paid 3,850,115 Euros to Company D, and retained about 60,000 Euros.
- 4.21 By the time of the second campaign, the March 2012 Intermediary 8 consultant agreement had expired. A request on 24 February 2014 by Airbus employee 21 [senior] and Airbus employee 15 [senior] for the extension of the expired agreement was refused on 19 March 2014 by Airbus employee 20, who advised that a new agreement would have to be signed.
- 4.22 Extensive discussions via email were held by relevant Airbus employees and Intermediary 5 on the urgency to carry the deal forward since it had stalled. Government Official 1 was blind copied in some of the emails from the relevant Airbus employees to Intermediary 5. Intermediary 5 assured Airbus employee 16 on 14 October 2014 that he had spoken with Government Official 1 who had expressed that there would be movement on the transaction.
- 4.23 A draft Business Partner application in the name of Intermediary 8 was created in February 2015 and a request for payment presented to the Airbus Liquidation Committee in April 2015. However, the Liquidation Committee requested further due diligence before payment could be concluded. Intermediary 8 declined to participate in an interview and accordingly failed the due diligence.
- 4.24 Airbus did not enter into a written contract or make any commission payment in respect of the second campaign. Correspondence from Intermediary 5 to Airbus claimed that he was owed 1,675,000 Euros. Airbus disputed the claim by Intermediary 5. No proceedings have been instituted by Intermediary 5 or Company D.



4.25 The UK authorities and Airbus agreed on the foregoing as established facts. In brief, Airbus failed to prevent persons associated with it from bribing others concerned with the purchase of military transport aircraft by the Government of Ghana, where the said bribery was intended to obtain or retain business or advantage in the conduct of business for Airbus. And that, a number of Airbus employees agreed to deliberately circumvent the proper compliance process by falsely representing that the work in the first campaign had been done by Intermediary 8, which could, in turn, make the money available to Intermediary 5 and others. Further, the sum paid to Intermediary 8 by Airbus, and then by Intermediary 8 to Intermediary 5 exceed (in the latter case by about 850,000 Euros) the agreed commission amount set out in the declaration of compliance by Airbus to the Spanish export credit agency.

United States

4.26 It is also well-known that on 31 January 2020, the United States District Court for the District of Columbia, reached similar conclusions by way of a Deferred Prosecution Agreement (DPA)/Consent Agreement (CA) in the case of *United States of America v. Airbus*.

4.27 In relation to Ghana, the DPA posited that Airbus willfully concealed its political contributions, fees and commissions paid to business partners in conjunction with the sale or transfer of defence articles and defence services in violation of ITAR. This was because certain ITAR-controlled defence articles from US suppliers were component parts of the C-295. These components were exported from the US to Spain for the manufacture of the C-295. And that Airbus repeatedly filed re-export license applications with the US authorities relating to C-295s that included false or incomplete certifications related to ITAR Part 130, as well as re-export license applications that failed to include any certifications about ITAR 130.

4.28 The DPA stated that between 2009 and 2016, Individual 1, a citizen of Ghana, was a high-ranking elected government official in Ghana during the relevant ITAR time period. Beginning in or around 2009, a few months after Individual 1 took office, Individual 1 was in direct and repeated contact with senior Airbus executives from both the Defence & Space Division and SMO International (one of Airbus entities responsible for reviewing the use of Business Partners and payments to third parties) about Airbus sales campaigns. Individual 1 was influential in having the Government of Ghana approve aircraft purchases, and Individual 1 contacted Airbus senior executives during the government approval process. In 2011, during Individual 1's time in office, the Ghanaian Parliament approved the purchase of two C-295 aircraft.



- 4.29 In Connection with the sales to Ghana, beginning on or about 1 January 2009, the Defence & Space Division’s Spanish subsidiary contracted with Individual 1’s brother, Consultant 4, a citizen of Ghana and the UK, to act as a third-party consultant for Airbus during the C-295 sales campaigns. Airbus purposefully sought to engage Consultant 4 due to his closeness to Individual 1, and Airbus management included Consultant 4 in their communications with Individual 1. Airbus used Consultant 4 as a conduit for messages intended for Individual 1, and Consultant 4 traded on his access to Individual 1.
- 4.30 Consultant 5, a citizen of the UK, worked in conjunction with Consultant 4 to assist in the sale. Consultant 4 and Consultant 5 initially were engaged by Airbus without any written business partner agreement and without Airbus completing due diligence.
- 4.31 Airbus initially agreed to pay Consultant 4 through a company owned by Consultant 4 and Consultant 5, in excess of 3.5 million Euros. Airbus worked with Consultant 4 and Consultant 5 for two years before submitting a business partner application to Airbus compliance staff.
- 4.32 In October 2011, Airbus compliance staff rejected the proposed contract between Airbus and Consultant 4 and Consultant 5’s company because Consultant 4 had a familial relationship to Individual 1. Specifically, Airbus compliance staff found that “the shareholders of this company are so close to the decision makers”.
- 4.33 Thereafter, due to the scrutiny of using Consultant 4 as a business partner, senior leadership in SMO International and the Defence & Space Division concocted a plan to deliberately circumvent Airbus compliance rules. Specifically, the Airbus executives proposed to pay Consultant 4 via Organisation 1, a Spanish-based third-party business partner of Airbus previously used on other Defence & Space Division campaigns. Organisation 1 was in good standing with SMO International. However, it had no prior affiliation with Consultant 4 or Consultant 5. Airbus used Organisation 1 solely as a pass-through entity to obscure the involvement of Consultant 4 in sales transactions. Organisation 1 did not undertake any third-party business partner activity in Ghana in connection with the 2011 campaign to sell two C-295s to the Government of Ghana.
- 4.34 Under this scheme, on 20 March 2012, Airbus entered into a contract with Organisation 1 to provide business partner services to the C-295 Ghana campaign. Although the agreement was signed on 20 March 2021, it stated that the effective date for the contract was 1 January 2010. The agreement was signed



by Airbus Defence & Space management and it noted that Organisation 1's "operational address" was in Ghana, despite the fact that Organisation 1 was operating in Spain. Under the agreement, Organisation 1 would be provided a success fee for the C-295 aircraft sale. The success fee was calculated to be approximately 3,001,718 Euros, a similar amount to that previously promised to Consultant 4 (3,500,000 Euros).

- 4.35 Pursuant to the agreement, between March 2012 and February 2014, Airbus paid in excess of 3,500,000 Euros to Organisation 1 in Spain. The payments were authorised by SMO International.
- 4.36 Thereafter, Organisation 1 transferred money to the account of the company owned by Consultant 4 and Consultant 5. Organisation 1 took a percentage of the money prior to the transfer. In total, the company owned by Consultant 4 and Consultant 5 was paid in excess of 1,800,000 Euros in May 2012, related to the 2011 sale of two C-295s. Consultant 4 later claimed 71,393 Euros was still owed to him related to this sale.
- 4.37 In February 2014, Airbus management at SMO International and the Defence & Space Division sought to extend Airbus' contract with Organisation 1, related to a subsequent campaign to sell C-295 aircraft to Ghana. Airbus compliance staff rejected the extension request and required that a new contract be signed. In March 2015, a request was submitted for Organisation 1 to be paid 1,665,000 Euros for the 2015 sale of one C-295 aircraft to Ghana. Consultant 4 subsequently demanded from both Airbus and Organisation 1 payment of 1,675,000 Euros in connection with the 2015 C-295 sale.
- 4.38 Additionally, on or about 28 March 2012, Airbus made political contributions in the amount of 62,200 Euros to a Spanish foundation related to agricultural development in Ghana. This contribution was not initially disclosed to the US authorities. Airbus subsequently disclosed it out of abundance of caution. No direct link between the political contributions and the relevant C-295 sales has been identified to date.
- 4.39 Airbus admitted, accepted and acknowledged that it was responsible under US law for the acts of its officers, directors, employees and agents as charged in the DPA, and that the allegations described in the DPA are true and accurate.
- 4.40 Airbus also accepted that the facts were established beyond reasonable doubt, and that the facts took place during the relevant time frame.



5.0 OSP Investigation

- 5.1 Notwithstanding the definitive pronouncements by the UK and the US courts on the accepted culpability of Airbus, beyond reasonable doubt, for bribery in relation to the sale to Ghana of C-295 aircraft, it was imperative that criminal investigations be carried out by relevant Ghanaian authorities for several reasons.
- 5.2 First, the relevant investigative authorities in Ghana did not participate in the investigation in relation to the acts that refer to Ghana. The President's 2 February 2020 referral to the OSP is testament that Ghana officially became aware of the global investigation into the conduct of Airbus by the SFO, the DOJ, the DOS, and the PNF after the fact and after the coordinated 31 January 2020 judicial pronouncements.
- 5.3 Also, the UK and US judicial decisions only establish criminal culpability in the context of the laws of the two jurisdictions. It does not automatically follow that the acts accepted as proved beyond reasonable doubt in those jurisdictions amount to criminal offences in the reckoning of Ghanaian law. To rely solely on the UK and US decisions, without more, as proof of criminal culpability, would be akin to seeking to enforce the criminal laws of the UK and US in Ghana – which is impermissible. Therefore, the UK and US court decisions cannot of themselves be the only index of proof of criminality in Ghana. That is to say, the Republic cannot hope to successfully mount criminal prosecutions solely on the back of the two foreign court decisions. It has to be shown, beyond reasonable doubt, that the acts amount to criminal offences in Ghana.
- 5.4 Then again, the above detailed account of the outcome of the investigations and court decisions in the UK and US shows that the DPAs did not include and cover the referenced individuals. The agreed settlements were reached by the UK and US authorities with Airbus only. Indeed, the UK court stated in paragraph 6 of its decision that “DPAs provided a mechanism by which an organisation (being a body corporate, a partnership or an unincorporated association, but not an individual) can avoid prosecution for certain economic offences through an agreement with the prosecuting authority.” Similarly, the US DPA regime provides no protection against prosecution of any individual, regardless of their affiliation with Airbus.
- 5.5 On this score, it seems that Airbus accepted criminal culpability for bribery for itself and also vicariously on behalf of the referenced individuals, including its employees, agents, business partners, and Ghanaian officials. And that the referenced individuals appeared not to have been direct subjects of the investigations by the UK and US authorities and were not afforded the



opportunity, if they were so minded to take it, to explain their actions and to present exculpatory evidence, if any.

- 5.6 Further, it is obvious that the identity of the referenced individuals was not disclosed in both the UK and US outcomes and court decisions. The UK court explained in paragraph 13 of its decision that there were ongoing investigations in respect of a number of individual suspects in the UK and outside the UK. Thus, it was appropriate to protect the rights of the suspects to a fair trial. In addition, some of the individuals involved in the relevant conduct were based in jurisdictions where there were human rights concerns, and the death penalty existed for corruption. Further, the intermediary companies used by Airbus were often made up of a few individuals. Naming the companies would therefore be tantamount to naming those individuals. Consequently, it was prudent not to prejudice potential criminal proceedings and revelation that could potentially lead to action or the imposition of a penalty which would be regarded as contravening Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment.
- 5.7 Therefore, it is compelling that investigations be carried out by relevant Ghanaian authorities to ascertain the identity of the referenced individuals as direct subjects of the investigation for closer scrutiny of their actions, and to determine whether the acts committed in Ghana amount to criminal offences in Ghana; and whether the acts committed outside Ghana would amount to criminal offences in Ghana, if committed in Ghana.
- 5.8 Ergo, the Special Prosecutor, upon determining that allegations of bribery are within the mandate of the OSP, and that the referral and the judgments of the UK and US courts raised reasonable suspicion of the commission of corruption and corruption-related offences of bribery of public officers and the use of public office by public officers for private profit, authorised the commencement of preliminary investigation into the matter in accordance with regulation 5(1)(b) and subsequently, a full investigation under regulations 5(1)(c) and 6 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374).
- 5.9 The investigation was commenced in February 2020 and concluded in June 2024. The investigation focused on the individual described as Government Official 1 by the UK court and Individual 1 by the US court; the individual described as Intermediary 5 by the UK court and Consultant 4 by the US court; the individual described as Intermediary 6 by the UK court and Consultant 5 by the US court; the individual described as Intermediary 7 by the UK court; the company described as Company D by the UK court and by the US court as the Company owned by Consultant 4 and Consultant 5; another individual associated with the



individual described as Intermediary 5 by the UK court and Consultant 4 by the US court; other individuals who are Ghanaian public officials and politically exposed persons.

- 5.10 On 7 February 2020, the Special Prosecutor triggered the mutual legal assistance process under the Mutual Legal Assistance Act, 2010 (Act 807), which governs mutual legal assistance in respect of criminal matters under an agreement or other arrangement between Ghana and a foreign state or foreign entity. The Special Prosecutor's request, channeled through the Central Authority under Act 807 for onward transmission to relevant authorities in the UK and US (in particular the SFO and the DOJ), was designed to obtain admissible evidence relating to the allegations of bribery of Ghanaian officials in the C-295 aircraft purchase from Airbus, and the establishment of whether any proceeds of the corruption and corruption-related offences were transferred to Ghanaian officials. The mutual legal assistance process continued well into 2023. The UK authorities paused the process between 10 February 2021 and 20 December 2021 pending the outcome of an ongoing UK investigation.
- 5.11 The OSP established, through independent enquiry, the identity of the subjects of the investigation. We deem it necessary to reveal the identity of some of the individuals owing to the very heightened public interest in the fact that the conduct of Airbus was held by the UK and US courts to be aimed at courting undue favour and advantage from Ghanaian public officials and an elected high Government official in the sale of C-295 aircraft to Ghana and the persons held to be closely associated with or the conduit of the courting of such undue favour and advantage; and also in light of the occurrences in the context of the investigative and prosecutorial actions of Ghanaian and UK authorities in the past four and a half years.
- 5.12 The OSP confirms the identity of the following individuals:

Government Official 1/Individual 1

The individual described as Government Official 1 by the UK court and Individual 1 by the US court is **John Dramani Mahama**. He is a citizen of Ghana. He was the Vice President of Ghana from 7 January 2009 to 24 July 2012. He was the President of Ghana from 24 July 2012 to 7 January 2017. His tenure of office as the Vice President of Ghana coincided with the time frame of UK and US investigation of the first Airbus campaign for the sale of two C-295 aircraft to Ghana. His term as the President of Ghana occurred during the UK and US investigation time frame of the second Airbus campaign for the sale of one C-295 aircraft to Ghana.



Intermediary 5/Consultant 4

The individual described as Intermediary 5 by the UK court and Consultant 4 by the US court is known both as **Samuel Adam Mahama** and **Samuel Adam Foster**. He is a UK citizen and a citizen of Ghana. He is a younger brother of the full blood of John Dramani Mahama, a former President of Ghana (referred to above). His birth name is Samuel Adam Mahama. He was adopted from Ghana and taken to the UK in 1972 by a British missionary couple. He assumed the last name of his adopted parents – Foster, at age 9. He lost touch with his Ghanaian family until 1997.

Intermediary 6/Consultant 5

The individual described as Intermediary 6 by the UK court and Consultant 5 by the US court is **Philip Sean Middlemiss**. He is a UK citizen. He is an English television and radio actor and businessman. He is a close friend of Samuel Adam Foster (referred to above).

Intermediary 7

The individual described as Intermediary 7 by the UK court is **Leanne Sarah Davis**. She is a UK citizen. She is a partner to Philip Sean Middlemiss (referred to above).

- 5.13 On 30 April 2020, the OSP requested the assistance of INTERPOL for the issuance of a Red Notice for the apprehension of Samuel Adam Foster, Philip Sean Middlemiss, Leanne Sarah Davis, and Sarah Furneaux (the spouse of Samuel Adam Foster). The Red Notice was published by INTERPOL on 10 July 2020.
- 5.14 On 13 May 2020, the OSP sought and obtained warrants from the Circuit Accra, Accra for the arrest of Samuel Adam Foster, Philip Sean Middlemiss, Leanne Sarah Davis, and Sarah Furneaux.
- 5.15 In the general scheme of affairs, the INTERPOL Red Notice, by itself, is not an arrest warrant, and it is insufficient to secure the presence in Ghana of the non-resident subjects of the investigation, without an accompanying request for extradition. The OSP is not the body mandated by law to request the extradition of suspects from foreign jurisdictions to the Republic. Thus, it could only rely on the agencies mandated by law so to do.



- 5.16 In July 2020, the OSP sought, through the Ministry of Foreign Affairs and Regional Integration and the Ghana High Commission in the UK, the voluntary return to Ghana of Samuel Adam Foster for interviewing by the OSP, since he is a citizen of Ghana, apart from being a citizen of the UK. The efforts were unsuccessful.
- 5.17 There was a pause in the investigation between November 2020 and July 2021. The investigation resumed in August 2021. By July 2022, it had become obvious that the mutual legal assistance process was yielding precious little.
- 5.18 The OSP interviewed former President John Dramani Mahama on 5 January 2024 in Accra. On its own, the OSP located and interviewed Samuel Adam Foster, Philip Sean Middlemiss, Leanne Sarah Davis, and Sarah Furneaux outside Ghana in March 2024, in the presence of their counsel.
- 5.19 Former President Mahama intimated that he had had the opportunity to publicly respond to the allegations against him of bribery by Airbus through intermediaries in respect of the purchase by Ghana of C-295 aircraft from Airbus. However, he welcomed the OSP's interview.
- 5.20 He recounted that to the best of his recollection, the procurement of new aircraft for the Ghana Air Force began in August 2008 under the tenure of former President John Agyekum Kufuor, when the Air Force decided to replace its Fokker F-27 medium lift aircraft with C-27J Spartan aircraft. At the time, the project was to be executed under the Foreign Military Sales of the United States with the expectation that the United States would assist Ghana with a grant or loan to purchase the aircraft and provide pilot training and logistics support. The final decision was to purchase four aircraft. Thereafter, a framework contract was developed, followed by inspection visits by the Ghana side and negotiations among the Air Force Headquarters, Ministry of Defence, Ministry of Finance, Attorney-General's Department, and representatives of the US Government, toward the purchase of the aircraft.
- 5.21 Former President Mahama stated that on or about 14 April 2009, during the presidency of former President John Evans Atta Mills, the Air Force submitted a proposal to the Government of Ghana designed to replace all the ageing Air Force transport fleet comprising the Fokker F-27, BN-2 (Defender), and the Skyvan. Following a comparative analysis of various aircraft, a recommendation was made to the effect that the United States Government should be engaged to facilitate the acquisition of the C-27J Spartan aircraft. However, as it turned out, the year 2012 initially agreed for the delivery of the aircraft was impractical, and the purchase price had increased substantially.



- 5.22 Consequently, the Air Force was constrained to consider other options. After a selection review, it opted for the CASA C-295 aircraft from Airbus because it met its operational requirements at a much cheaper cost. Equally important, delivery of the aircraft was guaranteed for the end of 2011. The Air Force accordingly wrote to the Minister for Defence on its choice.
- 5.23 In the reckoning of former President Mahama, the decision to acquire the C-295s was taken professionally by the Ghana Air Force and the Military Command, in general, in the best interest of Ghana, and in broad consultation with relevant state institutions including the Ministry of Finance, Ministry of Defence, and ultimately, Parliamentary approval. Therefore, any suggestion that he had corruptly or improperly influenced in any way the process of acquisition is simply fanciful and untrue.
- 5.24 Former President Mahama opined that he believed the allegations of corruption levelled against him stemmed from the fact that Samuel Adam Foster, his brother, was involved in Airbus activities in Ghana and elsewhere in Africa at the time, and the suspicion was always that because of that familial relationship, Foster might have been a corrupting source for influencing Government's decision to award the supply contract to Airbus. Former President Mahama stated that he had no hand whatsoever in the establishment of any relationship (formal or otherwise), which Foster had with Airbus.
- 5.25 Former President Mahama admitted that during his term as Vice President of the Republic, he met with officials of Airbus sometime in February or March 2011 on an official trip to London – where the Airbus team made a representation to Government on their products, including helicopters. He stated that it was a formal meeting attended also by the Minister of Finance, representatives of the Ministry of Defence and the Commander of the Ghana Air Force.
- 5.26 Former President Mahama also admitted that he subsequently met one or other Airbus official in his office a couple of times in connection with the sale of the aircraft. He described the meetings as being invariably official engagements with one or other responsible state official present – the purpose of which was to discuss progress of the proposed sale of aircraft.
- 5.27 Former President Mahama further stated he never received any bribe or inducement or gained any personal benefit or advantage from the procurement of the aircraft for Ghana. And that Airbus did not make any such allegation against him.



- 5.28 On his part, Samuel Adam Foster stated that he unequivocally denied the accusations against him that he was involved in any bribery activities with Ghanaian public officials or any individuals on behalf of Airbus. He recounted that from late 2009 to approximately 2015/16, he served legitimately as a consultant and business partner for Airbus, contributing across all its sectors, encompassing projects in Ghana, Uganda, Kenya, Nigeria, and Suriname as required by Airbus.
- 5.29 Foster illustrated that in the aftermath of the tragic Kenyan police Eurocopter AS350 helicopter crash on 10 June 2012, Airbus (the manufacturer) was becoming estranged from the Kenyan authorities. A directive by a Senior Vice President of Airbus, [REDACTED], assigned Foster and his team the mission of repairing high-level relations with the Kenyan Government. The campaign led to a restoration of Airbus' relationship with the Kenyan authorities. Foster opined that after performing all these services for Airbus, it was unfair to portray him falsely as a facilitator of bribes. And that the misrepresentation of his contributions and the failure to recognise the lawful nature of his activities have resulted in unwarranted allegations of corruption.
- 5.30 Foster contended that contrary to the assertion that he lacked relevant aviation experience, he obtained a Private Pilot's License in South Africa in 2000. And that, in any case, Airbus' criteria for business partners did not require aeronautical experience. Further, he stated that his engagement with Airbus was not predicated on family connections but on a genuine interest and understanding of the aviation sector.
- 5.31 Foster stated that his engagement by Airbus was based on a success-based commission model, which is standard within the industry and entirely contingent on the successful finalisation of deals. And that this distinguished his work a world away from a regime of inducive payments to secure business.
- 5.32 Philip Sean Middlemiss stated that he unequivocally denied the accusations that he was involved in bribery activities with Ghanaian public officials or any individuals on behalf of Airbus. He contended that from late 2009 to approximately 2012, he served legitimately and in good faith as a consultant and business partner for Airbus. And that his primary role was to assist and facilitate in the completion of the sale and purchase of the aircraft which had already been selected and approved by the relevant government authorities and agencies before the involvement of him and his colleagues.
- 5.33 Middlemiss stated that the narrative suggested by Airbus and subsequently recorded in the DPAs inaccurately portrayed him as a conduit for bribery and



grossly distorted the reality of his involvement. He argued that he worked on an industry standard success-based commission. And that remuneration due to him was invoiced by and paid into Company D or the Company owned by Consultant 4 and Consultant 5, of which he was a shareholder.

- 5.34 Leanne Sarah Davis stated that she was never involved, either professionally or personally, with Airbus or any individual connected to Airbus, whether in Ghana, the UK, or Europe. She declared that she categorically denied any accusations of misconduct.
- 5.35 Davis recounted that she was appointed the Company Secretary of Company D or the Company owned by Consultant 4 and Consultant 5 on 10 February 2010 until its dissolution on 20 September 2011. She stated that she was never employed by Airbus. Her name did not appear in Airbus-related email communications, statements or facts, or within the DPA. Further, she stated that she was never questioned about the Airbus case nor received any correspondence from the UK, US, French or Ghanaian authorities regarding alleged bribery linked to Airbus.
- 5.36 On Sarah Furneaux's part she stated that she wondered why she became a subject of the OSP investigation since she merely served as a silent director for a company which was not the focus of the Airbus investigation in the UK, US, or France. She denied any allegations of wrongdoing and she stated that she had never been involved with Airbus.

6.0 Observations

- 6.1 The OSP's mutual legal assistance requested from the UK and US authorities placed the OSP in a position no better than any person who read the DPAs and the decisions of the UK and US courts on the Airbus matter. It was not a lack of industry or want of trying on the part of the OSP. In the end, the OSP conducted the investigation on its own. However, the DPAs and the decisions of the UK and US courts served as a vital foundation for the OSP investigation. After all, the President's referral to the OSP was on the back of the DPAs and the judicial pronouncements. Therefore, the OSP investigative outcomes are substantially similar to that of the SFO and the DOJ.
- 6.2 The OSP investigation shows, as captured in the UK and US DPAs, that Airbus completed two sale campaigns in Ghana in respect of C-295 twin-turboprop military transport aircraft manufactured in Spain by a subsidiary of Airbus. The campaigns resulted in the sale of three C-295s. The first contract between Ghana



and Airbus was signed on 3 August 2011 for the sale of two of the aircraft and the second contract was signed on 5 March 2015 for one C-295. The three aircraft were delivered to Ghana on 17 November 2011, 19 March 2012, and 4 December 2015, respectively.

- 6.3 The OSP investigation shows that, in the general scheme of affairs, the acquisition of operational assets by the Air Force is driven by national and operational requirements. When a need is identified, the Air Force Command develops a technical paper upon which providers are requested to make presentations on technical details, logistics support and cost. If a provider meets the requirements, a formal contract in the form of a sales and purchase agreement are drafted by the provider for the consideration of the Air Force. Thereafter, stakeholder meetings are held among representatives of the Air Force, Attorney-General's Department, Department of Legal Services of the Ministry of Defence, the Judge Advocate General's office, and the provider – aimed at arriving at a consensus on outstanding issues and conflicting positions and resulting amendments to the draft agreement. Thereafter, the agreement is submitted to the Ministry of Defence for Cabinet and Parliamentary approvals. The Air Force then constitutes a compliance team to work closely with the provider to ensure that the delivered item meets the agreed specifications.
- 6.4 The processes leading to the purchase by the Government of Ghana of three C-295 twin-turboprop military transport aircraft from Airbus followed substantially the same pattern. Parliament approved the proposed transactions in 2011. In accordance with the laws of Ghana, there was nothing remarkable about the deal and it certainly would not have found its way in the UK and US DPAs and made headlines around the world but for the involvement of former President John Dramani Mahama and his younger brother of the full blood, Samuel Adam Foster (also known as Samuel Adam Mahama) and his associates, as recounted in the UK and US DPAs.
- 6.5 The OSP investigation found no evidence that former President Mahama was involved or played any role in the procurement and maintenance of the agency relationship between Airbus and Foster and his associates in respect of the purchase by the Government of Ghana of military transport aircraft from Airbus. And it appears to the OSP that the direct communications and meetings between former President Mahama and officials of Airbus to close the deal were actuated by good intentions on the part of the former.
- 6.6 It also appears that Foster and his associates became involved as intermediaries in the Airbus-Ghana deal after the decision by the Government of Ghana in preference of the C-295 aircraft. Therefore, it seems that Foster's Airbus



intermediary role at the time his brother served as the Vice President of Ghana was a case of luckless coincidence that attracted the disapproval of the UK and US authorities.

- 6.7 The OSP found no evidence that suggests that the involvement of Foster as an intermediary of Airbus and the direct communications and meetings between former President Mahama and officials of Airbus to close the deal between Airbus and the Government of Ghana amounted to any corruption and corruption-related offence in respect of which the OSP has a mandate.
- 6.8 However, it ought reasonably to have occurred to former President Mahama and the Government of Ghana that the familial relationship between former President Mahama and Foster and the direct participation by former President Mahama in the communications and meetings with Airbus officials were bound to raise reasonable suspicions of improper conduct and dealings notwithstanding any claims to good faith conduct and above board dealings, especially in light of the fact that during the first Airbus campaign former President Mahama was the Chairman of the Armed Forces Council by reason of his position as the Vice President – and therefore a key decision-maker.
- 6.9 Such close proximity dealings by such elected high officials of the Republic and their kin and close associates on behalf of the Republic should neither be viewed favourably nor encouraged – as they give rise to reasonable suspicion of influence peddling and conflict of interest. Never mind any intended good faith.
- 6.10 Then again, the direct participation of the President and the Vice President (on behalf of the Republic) in commercial communications and meetings with commercial entities should not be encouraged either – as they expose these elected high officials to the spectre of the slightest hint of perceived corruption that may attend international business transactions. The President and Vice President should be insulated from such direct commercial dealings.
- 6.11 Indeed, it seems to the OSP that the only reasons why the Airbus-Ghana deal found its way into the UK and US DPAs were the fact that former President Mahama and Samuel Adam Foster were brothers of the full blood; and that former President Mahama directly participated in commercial communications and meetings with Airbus officials.
- 6.12 This is because – without seeking to critique the UK and US DPAs – the OSP found no evidence, circumstantial or direct, which suggests that Foster and his associates were actually paid bribes and which bribes were to be transmitted to



former President Mahama and that the bribes were actually paid to former President Mahama.

- 6.13 Indeed, to all intents and purposes and objectively viewed, an agency relationship existed between Airbus and Foster and his associates by which Foster and his associates acted as business partners of Airbus in respect of the Airbus-Ghana deal, and under which Foster and his associates were to be remunerated success-based commission payments. This was a typical arrangement instituted by Airbus, by which it contracted third parties as business partners to increase its international footprint and to assist it in winning sales contracts in numerous jurisdictions. On this basis, when Airbus made a successful sale of aircraft, it would ordinarily pay a business partner a commission-based percentage value of the sale, or a fixed amount of the aircraft.
- 6.14 In this context, Airbus took the benefit of the agency arrangement with Foster and his associates and the services they provided to Airbus for a considerable length of time. This was so because the contract for the sale of the first two C-295s between Airbus and Ghana (which was clearly secured by Foster and his associates) was signed almost two months before Airbus issued its due diligence report on 30 September 2011, which led to the abrogation of the arrangement between Airbus and Foster and his associates.
- 6.15 It was only when the Airbus due diligence mechanism discovered the familial relationship between former President Mahama and Foster that it abrogated the relationship. The abrogation by Airbus of the agency arrangement certainly portended to work, and it did work, grave unfairness against Foster and his associates. Thus, the concoction of a plan by senior leadership in SMO International and the Defence & Space Division to deliberately circumvent Airbus compliance rules by substituting Company D or the company owned by Consultant 4 and Consultant 5 with the Spanish Intermediary 8 or Organisation 1 to ensure payments to Foster and his associates was probably a well-intentioned adventure, though apparently misguided – as it rendered the payments seemingly of doubtful provenance.
- 6.16 It also appears to the OSP that the relationship between Airbus and Foster and his associates was neither one-off nor peculiar to the Airbus-Ghana deal. Airbus had in place similar business partnership models with Foster and his associates in respect of business promotion in other African countries before the Airbus-Ghana transaction.
- 6.17 As we stated above, the UK and US DPAs did not include and cover the referenced individuals. The agreed settlements were reached by the UK and US



authorities with Airbus only. And it appears that Airbus accepted criminal culpability for bribery for itself and also vicariously on behalf of the referenced individuals, including its employees, agents, business partners, and Ghanaian public officials. And that the referenced individuals appeared not to have been direct subjects of the investigations by the UK and US authorities and were not afforded the opportunity, if they were so minded to take it, to explain their actions and to present exculpatory evidence, if any.

- 6.18 The OSP is unaware of any such analogous proceedings or framework in Ghana by which an entity could vicariously accept wholesale criminal responsibility on behalf of another, especially where that other was not a direct subject of the investigation and was available to answer for himself but was not afforded the opportunity to do so and to present any exculpatory evidence he may have.
- 6.19 Though the UK DPA and the US DPA were emphatic that Airbus failed to prevent persons associated with it from bribing others concerned with the purchase of military transport aircraft by the Government of Ghana; and that the bribes were intended to obtain or retain business or advantage in the conduct of business for Airbus; and further that the payments were intended to induce or reward improper favour by former President John Dramani Mahama toward Airbus – the conclusions by the UK and US authorities appear to be solely from the perspective of Airbus and what Airbus perceived as the real intentions of its employees in their dealings with their intermediaries and the Government of Ghana.
- 6.20 The OSP does not question the conclusions of the UK and US authorities. This is so, especially as the OSP is not privy to the raw body of evidence available to the UK and US authorities, apart from the content of the DPAs. However, it seems to us that the nature and structure of Ghana’s statutory prohibitions and our jurisprudence on corruption and corruption-related offences do not lend themselves to founding criminal culpability in respect of the referenced individuals in the context of the UK and US outcomes.
- 6.21 It seems to us that since the referenced individuals were not represented during the UK and US investigations, it became a case of whatever characterisation Airbus placed on their conduct in relation to the actions of the employees of Airbus. It is also obvious that Airbus did not represent and had no intention of representing the interest of the referenced individuals. It appears to us that the sole aim of Airbus was to save its image and reputation, never mind what it did to the image and reputation of the referenced individuals – and to pay fines to avoid prosecution.



- 6.22 Therefore, by reconstructing the entirety of Airbus' dealings in Ghana and through its intermediaries and with Ghanaian public officials from both the perspective of the officials of Airbus and that of the Airbus intermediaries and Ghanaian public officials, it seems to the OSP that what Airbus perceived and accepted in the DPAs as the real intentions of its employees in their dealings with the intermediaries and Ghanaian public officials is at cross purposes with what appeared to be the real intentions and expectations of the intermediaries and Ghanaian public officials in their dealings with the employees of Airbus.
- 6.23 That is to say, while the accepted facts in the two foreign jurisdictions are that the employees of Airbus designed the payments to the intermediaries as bribes intended to court favour with Ghanaian public officials, the intermediaries, on the other hand, appeared to expect and received the payments as their legitimate expectation under an arrangement of success-based commissions for the sale of the military transport aircraft to the Government of Ghana. And their actions (in whichever way viewed) were calculated as businessmen expecting their lawful paychecks and not as conduits of a bribery scheme.
- 6.24 The concoction of a plan by senior leadership in SMO International and the Defence & Space Division to deliberately circumvent Airbus compliance rules by substituting Company D or the company owned by Consultant 4 and Consultant 5 with Spanish Intermediary 8 or Organisation 1 to ensure payments to Foster and his associates, though wrongful and deceptive, was entirely an internal matter for Airbus in respect of its disciplinary regulations and code of ethics. It does not amount to the payment of bribes to court favour with Ghanaian public officials in the reckoning of Ghanaian law. Neither does the short declaration by Airbus to the Spanish export credit agency and Airbus' non-declaration in the context of US ITAR.
- 6.25 Consequently, the OSP has **no** evidentiary basis upon which to conclude that Samuel Adam Foster (also known as Samuel Adam Mahama), Philip Sean Middlemiss, and Leanne Sarah Davis acted as conduits of bribery between the employees of Airbus and former President John Dramani Mahama or any other public official.
- 6.26 Also, the OSP found no evidentiary basis that suggests that Samuel Adam Foster (also known as Samuel Adam Mahama), Philip Sean Middlemiss, and Leanne Sarah Davis received payments from Airbus with the intention of bribing former President John Dramani Mahama or any other public official.
- 6.27 Further, the OSP found no evidentiary basis that suggests that former President John Dramani Mahama or any other public official was paid bribes by Samuel



Adam Foster (also known as Samuel Adam Mahama), Philip Sean Middlemiss, and Leanne Sarah Davis in respect of the purchase by the Government of Ghana of military transport aircraft from Airbus.

- 6.28 Then again, the OSP found no evidentiary basis that suggests that former President John Dramani Mahama or any other public official was induced to improperly favour or did improperly favour Airbus in respect of the purchase by the Government of Ghana of military transport aircraft from Airbus.
- 6.29 Sarah Furneaux should not have been a subject of the OSP investigation.
- 6.30 The OSP has cited and notes that by two separate communications, both dated 22 April 2021, the SFO notified Samuel Adam Foster and Philip Sean Middlemiss as follows:

CRIMINAL INVESTIGATION INTO AIRBUS S.E. AND OTHERS

I write to notify you that, following a review of the evidence in your case and consideration of the Code for Crown Prosecutors, a decision has been made that you are not to be prosecuted for any offence in respect of the above Serious Fraud Office investigation.

This decision might be reconsidered if:

- a further review of this decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought; or
- new evidence comes to light.

- 6.31 It has not come to the notice of the OSP that the SFO has reconsidered its decision.

7.0 Further Action

- 7.1 The Special Prosecutor has directed the closure of the OSP investigation into alleged bribery of high-ranking Ghanaian officials by Airbus SE, through intermediaries, in respect of the sale of military transport aircraft by Airbus SE to the Republic of Ghana between 2009 and 2015.
- 7.2 The OSP would not institute criminal proceedings against any person in respect of this investigation.
- 7.3 The Special Prosecutor has also directed authorised officers of the OSP to rescind the 13 May 2020 warrants of arrest obtained from the Circuit Court,



Accra for the arrest of Samuel Adam Foster (also known as Samuel Adam Mahama), Philip Sean Middlemiss, Leanne Sarah Davis, and Sarah Furneaux.

- 7.4 On 8 August 2024, the Special Prosecutor notified INTERPOL of the withdrawal of the Red Notice in respect of Samuel Adam Foster (also known as Samuel Adam Mahama), Philip Sean Middlemiss, Leanne Sarah Davis, and Sarah Furneaux.

A handwritten signature in green ink that reads "Kissi Agyebeng".

Kissi Agyebeng
The Special Prosecutor
The Republic of Ghana
8 August 2024