

**Investigative report
following the allegations by Victor Castanet
(SUMMARY)**

7 June 2022

Table of contents

SUMMARY	7
INTRODUCTION: CONTEXT, SCOPE OF INVESTIGATION AND APPROACH	5
INVESTIGATIVE APPROACH	6
IMPLEMENTATION OF EVIDENCE PRESERVATION MEASURES	6
INTERVIEWS AT HEAD OFFICE	6
SITE VISITS	7
DOCUMENT ANALYSIS	8
EXAMINATION OF EMAILS AND ELECTRONIC COMMUNICATIONS.....	8
TRANSACTION ANALYSES AND ANALYSES OF STRUCTURED DATA	8
ECONOMIC INTELLIGENCE	9
IMPLEMENTATION OF AN INDEPENDENT WHISTLEBLOWING HOTLINE.....	9
OTHER APPROACHES.....	9
RESOURCES MOBILISED	10
LIMITATIONS	11
NATURE OF THE WORK	11
DATABASE	11
ANALYSES OF THE ELECTRONIC COMMUNICATIONS.....	12
INTERVIEWS	12
PROGRESS OF THE WORKS.....	12
TOPIC 2 SUMMARY: USE OF PUBLIC FUNDS ALLOCATED TO ORPÉA TO FULFIL ITS MISSIONS THROUGH THE FUNDING OF STAFF POSITIONS AND PAYMENT FOR MEDICAL DEVICES	14
2.1 ALLEGATION REGARDING THE DECLARATION OF WORKFORCE TO SUPERVISORY AUTHORITIES.....	14
<i>Reminder of the allegations</i>	14
2.1.1 Allegation regarding the over-assessment of the workforce.....	14
2.1.2 Allegation regarding a potential mechanism of concealment and falsification of documents in case of audit.....	19
2.2 ALLEGATION REGARDING THE USE OF PUBLIC FUNDS	21
2.2.1 Allegation regarding the existence of Year-End Discounts not disclosed to the authorities on goods financed by public funding	21
2.2.2 Allegation of overcharging by suppliers (before application of Year-End Discounts)	25
2.2.3 Allegation relating to Orpéa receiving chargebacks on the professional fees of self-employed physiotherapists working in Orpéa’s Nursing Homes	27
2.3 ALLEGATION REGARDING NON-REPAYMENT OF BUDGET SURPLUSES	29
2.3.1 Allegation regarding the falsification of reports to the Regional Health Authorities	29
2.3.2 Allegation regarding service provider invoices	31
2.3.3 Allegation regarding surpluses on funding	35
2.4 ALLEGATION OF MISREPRESENTATION OF MEDICAL SERVICES	43
2.4.1 Allegation regarding excessive declarations of medical services by the optimisation of procedures declared as T2A.....	43
2.4.2 Allegation regarding fraud on the part of some doctors	44
TOPIC 3 SUMMARY: ALLEGATION REGARDING THE EXISTENCE OF SITUATIONS OF CONFLICTS OF INTEREST, EVEN CORRUPTION, IN THE BUSINESS RELATIONS EXISTING BETWEEN ORPÉA AND SOME PUBLIC OFFICIALS	46
<i>Reminder of the allegations</i>	46
<i>Work performed</i>	46
3.1 ALLEGATION REGARDING RELATIONS WITH PUBLIC SERVANTS	48
3.2 ALLEGATION REGARDING THE USE OF INTERMEDIARIES.....	50
3.3 ALLEGATION OF ATTEMPTED BRIBERY OF VICTOR CASTANET.....	54

3.4 IDENTIFICATION OF ANY AT-RISK PRACTICES AND TRANSACTIONS IN 2019, 2020, 2021 55

 3.4.1 *Identification of Orpéa employees who hold or have held public service roles* 55

 3.4.2 *Identification of Orpéa consultants who have held public service roles* 56

 3.4.3 *Analysis of business introduction fees declared by the Orpéa Group over the period 2019, 2020 and 2021 for activities in France*..... 56

Summary

Introduction: Context, scope of investigation and approach

1. Following publication of Victor Castanet's book, *Les Fossoyeurs*, ("the Book") in January 2022, which made a number of damaging allegations against the Orpéa Group (the "Orpéa Group" or "Orpéa" or the "Group"), the Group's Board of Directors, through an ad hoc Committee formed for this purpose (the "Committee"), mandated the firms Alvarez and Marsal ("A&M") and Grant Thornton ("GT"), jointly ("GTAM" or "we"), to carry out an independent investigation.
2. The independence of this engagement is guaranteed through the Committee's direct and exclusive oversight of the investigation, with no interference by Orpéa's General Management. The Committee has supported all requests linked to the conduct of our investigations and has facilitated access to the people and data necessary to carry out our works.
3. Thus, on 1 February 2022, we were appointed to conduct an investigation focused on the period from 2019 to today. The mandate also notes however that for specific allegations relating to earlier periods, our investigations may go back further.
4. This independent investigation aims to help establish the facts regarding the allegations on the management of Nursing Homes made in the Book. The allegations covered by our investigation were identified in consultation with the Committee and combined into four investigative topics:
 - Topic 1: Conditions of care for residents of the Group's Residential Nursing Homes for the Elderly ("Nursing Homes");
 - Topic 2: Use of public funds allocated to Orpéa to fulfil its missions through the funding of staff positions and payment for medical devices;
 - Topic 3: The existence of situations of conflicts of interest, or even corruption, in the existing business relations between Orpéa and some public officials;
 - Topic 4: Various shortcomings on the social component.
5. We note that the scope of our investigation concerns exclusively the allegations of the Book as set out in our engagement letter.
6. In an e-mail dated 29 April 2022, and in view of the constraints of the Orpéa Group, the ad hoc committee asked the GTAM team to deliver its report in two phases: the conclusions on Topics 2 and 3 before the end of May 2022, and the conclusions on Topics 1 and 4 before the end of June 2022.
7. The purpose of this report is therefore to present the conclusions of our investigations on Topics 2 and 3. It does not deal with Topics 1 and 4, for which the investigations are still ongoing.
8. It is acknowledged that this report was drawn up exclusively for the members of the Committee and the Board of Directors. Any communication of this document in full or in part to a third party requires the formal prior agreement of GTAM.¹

¹ In this event, the Committee will be responsible for ensuring that the dissemination complies with the requirements of the General Data Protection Regulation regarding the right to information.

Investigative approach

9. Our work programme comprises various types of tasks and inspections:
 - Implementation of evidence preservation measures;
 - Interviews at Head Office;
 - Visits to the operating sites (Nursing Homes);
 - Analysis of the documents provided by the Orpéa Group and the Nursing Homes visited;
 - Examination of emails and other electronic communications;
 - Transaction analysis;
 - Analysis of structured data, including accounts and management information;
 - Economic intelligence;
 - Implementation of an independent whistleblowing hotline.
10. Generally, in order to guarantee the independence of our work and the objectivity of our findings, we started from the principle of analysing the raw data recovered directly by our teams from the Group's various information systems, rather than relying on the analyses already undertaken by Orpéa or presented in the audit reports or assessment tasks undertaken by third parties.

Implementation of evidence preservation measures

11. From the start of our work, we took care to organise the protection of the various data we were likely to need within the scope of our works.
12. Therefore, in the presence of a bailiff, we made a legal copy of 39 computers and 36 smartphones and tablets belonging to the Group's senior management, with a volume of around 6,540 GB (gigabytes). We also secured the email data from the Zoom platform, representing a volume of approximately 3 GB.
13. In addition to the data stored on physical devices, we retrieved the data stored on the Orpéa e-mail servers. In the absence of a log file system, our approach was to retrieve the e-mail inboxes of 52 selected employees and the backups of these inboxes, in order to gain access to potentially deleted content. The backups of 32 selected employees were restored.
14. Given the particularly large volumes of documents collected, we were not able to review and analyse every document. We made selections on the basis of keywords determined according to the Book's allegations and the progress of our investigations. We cannot exclude the fact that other documents may contain information relevant to the Book's allegations that could have an impact on our conclusions.

Interviews at Head Office

15. We have conducted interviews with some members of Management and employees of Head Office and management functions across France. We conducted 79 interviews with 51 different people. Each interview was the subject of a report and was followed up with requests for additional material and supporting documentation.

16. We were unable to meet a number of people who had left or were absent from the Orpéa Group at the time of our investigations.
17. Some discussions, which were very occasional and followed the communication of documents or an analysis on our part, were not considered to be interviews in their own right and did not result in the formalisation of a report.

Site visits

18. We have included in our work programme unannounced visits to a representative number of Nursing Homes covering all Orpéa regions in France (the “visits”). Our aim is to understand the activity of the Nursing Homes and how Orpéa Group procedures are implemented in the field, to obtain staff testimonies, and to conduct a number of reviews within the Nursing Homes, in particular looking at procurement, employment contracts and the management of adverse events. Each site was visited for a minimum of two consecutive days.
19. Given the total number of Nursing Homes (in excess of 220) and our objective to cover a representative sample, we determined a sampling methodology according to set criteria: occupancy rate, NOP², GMP³, staff turnover, surplus of care funding, frequency of adverse events, number of inspections by the Regional Health Authority, ratio of temporary/permanent staff⁴, sites mentioned in the book, sites with red flags.
20. The compilation of these different criteria enabled us to draw up a list of sites triggering one or more warning criteria. In order to obtain a representative sample of Orpéa sites, we also studied the geographical distribution of these sites in order to make a representative geographical selection.
21. The change in timetable made at the request of the ad hoc committee did not allow us to carry out all the planned visits and we had to limit ourselves to 32 Nursing Homes. This sample represents approximately 15% of the total number of sites, which, in our opinion, is sufficiently representative of the Group’s activities to be able to draw conclusions.
22. We have visited a total of 32 Nursing Homes in which we have conducted interviews with an average of ten individuals (Nursing Home Director, Deputy, Management Assistant, Coordinating Physician, Coordinating Nurse, Head Chef, Head Housekeeper, Assistant Nurses, Nursing Assistant, Health Professionals, etc.). Over these visits, we have met more than 320 people. These interviews were generally held individually.
23. During the visits we were also able to meet the Regional Directors (“RDs”).
24. In addition, we have met individually with four Regional Directors, using the same format of individual interviews and following a number of desk studies, business analyses and interviews with other parties.

² NOP: Net Operating Profit

³ Degree of loss of autonomy (average, weighted)

⁴ Fixed-term contract/permanent contract

Document analysis

25. During our work, we issued several document requests to Orpéa. Orpéa has complied with these requests by sending the items requested, in parallel to our ongoing interviews and our work.
26. To date, we have thus collected more than 50,000 documents.
27. These documents take various forms:
 - Accounting and financial documents;
 - Performance indicators and other reporting documents;
 - Internal instructions and procedures;
 - Legal documents (contracts, delegations of powers, articles of association, minutes, etc.);
 - Audit reports and internal and external inspection reports (Regional Health Authority, IGF/IGAS, Statutory Auditor, Internal Auditor, Quality Controls, etc.);
 - Regulatory reports to the supervisory authorities (statements of actual income and expenditure — ERRD, statements of projected income and expenditure — EPRD, etc.);
 - Employment contracts;
 - Meeting materials and associated minutes.
28. All documents sent by Orpéa within the framework of the joint review by the IGAS (*Inspection Générale des Affaires Sociales* — French inspectorate general for social affairs) and the IGF (*Inspection générale des finances* — French inspectorate general for finance) have also been sent to us.
29. These documents have been analysed as required according to the needs of the investigation.

Examination of emails and electronic communications

30. Initial enquiries led to the collection and preservation of a very large volume of data derived from computers, tablets and mobile phones of some thirty employees and directors of the Group and from the Orpéa Group's IT servers.
31. We have collected a total volume of 11.4 terabytes of data corresponding to the emails and their attachments of 59 employees, as well as instant messaging data.
32. This corresponds to a total of over 40 million documents.
33. All the extracted data was loaded onto the RelativityOne digital forensics tool. This data was analysed using a keyword approach that allowed us to target more than 2,923,495 documents, in order to identify relevant information related to the allegations.
34. We were also able to make more than 11,000 documents available that were password protected.

Transaction analyses and analyses of structured data

35. In relation to transaction analyses and analyses of structured data deriving from the Orpéa Group's management information systems, we collected the general ledger and accounting entry files for

the Group's companies covering the years targeted by our investigation (the period 2019 to 2021), and, for some allegations when required, those of earlier years (covering 2001 to 2018).

36. We have also collected management information from the human resources information systems (HRIS), payroll, management control, management dialogue with the supervisory authorities, procurement, management of accommodation in the Nursing Homes, and also care management (with strict respect for the confidentiality of the personal health data).
37. The data collected is hosted on a platform by a certified operator that complies with HDH (Health Data Hosting) requirements.

Economic intelligence

38. We have conducted 57 in-depth procedures according to the requirements of our work. These relate to both the directors of Orpéa and the suppliers, business partners, and intermediaries. The primary aim of these procedures was to establish the business network of the person involved and any reputational risks arising from these networks. For each individual, we therefore conducted a series of searches over their mandates and shareholdings using various information sources including: the database of Orpéa Group mandates (Dilitrust), the legal sources of shareholding information (trade registers, audited annual report), and a set of private and public databases (Data Inpi, Orbis, Pappers, Offshore leaks, etc.).
39. We also conducted searches in private databases (Dowjones, Nexis diligence, Offshore leaks) for the existence of any sanctions or other compliance-related red flags.
40. We also carried out a reputational risk analysis using open source resources on a series of keywords that we selected in connection with the allegations.
41. Lastly, we conducted a search for any litigation or dispute through a specialised database.

Implementation of an independent whistleblowing hotline.

42. In addition to the tasks described above, it was decided, in agreement with the Committee, to set up a digital platform to enable any employee to report any fact relating to the allegations made in the Book. This secure platform is provided by a company specialised in internal whistleblowing management and is administered independently by our teams. The reports made via this platform that fall within the scope of our works have systematically been taken into account in our investigations.
43. We received a total of 40 reports from 36 different people. These reports pertained to a variety of subjects, the majority of which were outside the scope of our investigation. These reports were systematically answered.

Other approaches

44. Within the framework of our works, we have incorporated reports received from third parties wishing to share information, which were sent directly to one of our two firms after we were mandated in this investigation.
45. We have also contacted Mr Victor Castanet three times to ask him to share with us information he may deem useful to our works, while guaranteeing the confidentiality of his sources. We have not yet received a response.

Resources mobilised

46. To undertake these works, GTAM mobilised a multidisciplinary team comprising 38 people in total.
47. This team is composed of:
 - Specialists in digital forensics;
 - Specialists in investigations;
 - Experts in economic intelligence;
 - Data analysts;
 - Operational auditors;
 - Accounting and financial auditors;
 - Experts in reviews of economic and operational models;
 - Experts in review and analysis of operational and management processes.

Limitations

Nature of the work

48. Given the large number of subjects, transactions and data to be processed for this assignment within the given timeframe, we had to make choices and prioritise our analyses, while respecting the commitments we had made in our engagement letter. These choices were all the more important as the Orpéa Group Board of Directors asked us to bring forward submission of this report to the end of May 2022 rather than at the end of June 2022 as initially planned. One impact of this reduction in time was to reduce the number of sites visited as well as the depth of some investigations.
49. As mentioned above, we have focused our analysis on the allegations made in the book “Les Fossoyeurs”, which are relatively old in nature. On this basis we sought to identify the current practices of Orpéa S.A. for the 2019, 2020 and 2021 financial years.
50. With respect to the work carried out for 2019, 2020 and 2021, it is important to note that our work only concerned Orpéa S.A. and its activities in France, with a few exceptions as detailed in this report.
51. This work does not constitute an audit conducted in compliance with audit standards or a review according to the applicable standards of professional practice, and its objective is not to audit the financial statements or express any audit opinion on the financial statements on any date whatsoever.
52. Although we are experienced forensic experts, we are not lawyers. We are not qualified to provide legal services and we will not be held liable for any legal qualification that may be inferred from information highlighted by our investigation works. In this way, this document must not be interpreted as constituting a legal opinion.

Database

53. Back-ups made between November 2019 and February 2022 of Oracle databases of seven applications (expenses, accounts, care management, schedule management, pay, re-invoicing, HRIS) covering processes falling within the scope of our engagement, have not been kept by the Orpéa Group.
54. Indeed, the backup policy of the centralised Commvault tool, backing up data on an electronic file, which has been in production since 7 June 2019, was not correctly applied for the Oracle databases. These were saved, but not kept by the Orpéa Group in compliance with the defined rotation strategy: two years for monthly backups, and ten years for annual backups.
55. There is an Exadata online backup of the Oracle databases, but the duration of storage is limited to a maximum of sixty days. The last backup is dated 24 January 2022.
56. Consequently, we are not able to check completeness of data between November 2019 and December 2021 within applications using the Oracle databases. We cannot guarantee that data has not been deleted, whether deliberately or accidentally, from these databases. At the time of our works, it is therefore possible that operations or transactions deleted from the information system had not been brought to our attention.

57. For periods prior to November 2019, the magnetic tape backup recovery system has not yet been re-established, preventing us from accessing older versions. Safeguard measures have been taken to preserve these tapes.
58. We note that the completeness and accuracy of our findings and conclusions are directly dependent on the accuracy and completeness of the information shared with us. For some parts of our work, we had no feasible means of ascertaining this with reasonable effort. In these cases we had to rely on the integrity of the data and systems.

Analyses of the electronic communications

59. Furthermore, we draw your attention to the fact that we have not reviewed all the documents that were identified in Relativity following our keyword searches. Even though the volume of documents reviewed is significant, we cannot rule out that there may be unprocessed documents that could have led to a modification of our findings.
60. Given the volume of documents considered relevant, it was furthermore not physically possible to transcribe all of these in this report. We have mentioned some of these and provided summaries on some subjects, but we cannot rule out that there are relevant documents that we did not have the time to include within this report.
61. In general, we have described in detail, in each section/sub-section, the analyses that we have carried out and those that we were unable to carry out, so that the reader can understand our findings in relation to the work undertaken or not undertaken.
62. In summary, the findings can/should only be understood in light of the procedures carried out and the documents processed at the date on which this report and the documents were issued.
63. Our investigation draws on a review and analysis of electronic communications of the main stakeholders in the allegations as identified in the Book or later during our various analyses. The current backup system of the Exchange email server covers the period 2019 to 2022, which made it possible to recover email inboxes, sometimes at the cost of a complex process.
64. However, for earlier periods, the magnetic tape backup recovery system was not operational at the time we started our work and has not yet been re-established, preventing us from accessing older versions. Given the abnormally low volumes of some email inboxes, we therefore could not be sure that some data has not been destroyed, either deliberately or accidentally.

Interviews

65. Our works draw on interviews held at Head Office, France management, regional managements, and in the Nursing Homes. We have not interviewed all employees and members of the management.
66. We note that although we have corroborated where possible, we had to assume that the information provided in the interviews was true and complete where we could not verify it.

Progress of the works

67. We conducted our investigations from 1 February to 27 May 2022 in accordance with the terms of our engagement letter. Our report is limited to setting out the work and findings in relation to the allegations of the Book and as defined in our respective engagement letters.

68. We also cannot rule out the possibility that, had we received other information or performed other work, the findings and conclusions presented in this report might have been different.
69. We note that on several occasions our work was complicated and delayed by the absence of certain employees (due to sick leave or lay-off) or by their failure to respond to our requests for explanations or documentation.
70. For some of our analyses, we had to make extrapolations based on the findings from the sample of sites visited and the results of the resulting controls. Even though we consider the randomly selected facilities to be representative, we cannot rule out that a wider survey, carried out on all sites, may have led us to a different conclusion. The results of these extrapolations include a margin of error and are provided as an indication and for illustrative purposes only.
71. In the summary we have chosen to quote only those people already mentioned in the Book by Victor Castanet. All other individuals have been anonymised.
72. This report has been prepared solely for you in the context of the objective defined in our respective engagement letters. The Report may not be used for any other purpose, nor reproduced in whole or in part, nor transmitted to third parties, including by filing with a court, without our prior written consent. GTAM accepts no liability to third parties for the contents of this report.

Topic 2 summary: Use of public funds allocated to Orpéa to fulfil its missions through the funding of staff positions and payment for medical devices

2.1 Allegation regarding the declaration of workforce to supervisory authorities

Reminder of the allegations

73. Reminder of the contents of the allegation as set out in the engagement letter:

- Over-assessment of the workforce through untruthful declarations to the supervisory authorities (the Departmental Councils and the Regional Health Authorities);
- Establishment of mechanism(s) of concealment and falsification of documents in case of audit.

2.1.1 Allegation regarding the over-assessment of the workforce

Work performed

74. With regard to the allegations made, the objective of our investigations was to verify the sincerity, validity and compliance of the declarations made to the supervisory authorities, both in terms of the workforce number and the total salaries declared.

75. To this end, our investigations covered both the implemented declaration processes, at the level of Orpéa's head office and within the Nursing Homes, and the declared data.

76. In particular, in order to verify whether the declarations made by the group aim to over declare amounts, our investigations focused on the following issues:

- Analysis of the regulatory framework applicable to the operating bodies of Nursing Homes and relating to the coverage of salary costs by public funds;
- Analysis of the process implemented within Orpéa to declare salary costs to the supervisory authorities;
- Carrying out bulk consistency verifications between the amounts of staff costs reported to the authorities and the internal data from the Orpéa Group's payroll tools and systems;
- Carrying out bulk consistency verifications aimed at verifying the validity and legitimacy of the allocation of staff costs to financed functions;
- The performance of targeted tests based on unannounced visits to a sample of Nursing Homes, aimed at ensuring the existence of reported staff, the adequacy of their qualifications as well as the appropriate category of assignment with regard to the operational reality of the activities undertaken by these staff, as reported to the supervisory authorities;
- And lastly, a review of data, and in particular e-mails, in the Relativity database.

Detailed findings:

77. The scope of the investigation for the bulk analysis task covers all Nursing Homes (facilities housing dependent elderly people) in the Orpéa Group in France within the meaning of Article L. 313-12 of

the French social action and family code (*“Code de l’action sociale et des familles”* or *“CASF”*). The investigation period runs from 1 January 2019 to 31 December 2021, as specified in the engagement letter.

78. The income and expenditure declared for the 2021 financial year could not be investigated because the associated declaration statements had not yet been issued at the date of our engagement.

The procedure for declarations to the authorities implemented at Orpéa

79. The various discussions we had with the Group contacts and our review of the tools, data integration methods, and methods for producing the declaration statements on the workforce and staff costs for the supervisory authorities enabled us to identify several weaknesses in the process implemented within the Orpéa Group: data integration is manual (no secure automatic interface), expenses are added manually, the tool used to prepare declarations is an internal tool that requires regular configuration, the calculations integrated into the tool change every year, manual adjustments are made after data integration, the traceability and evidence for these restatements are not guaranteed, and, lastly, there is no structured internal control system throughout the process that would guarantee a level of reliability and security of the data produced.

Bulk consistency verifications between source data and data aggregated in the declaration statements

80. In order to ensure the consistency of the declarations made to the supervisory authorities, we first carried out bulk scaling and followed by detailed tests.
81. Following the initial comparative analyses of the amounts presented in the various documents sent to the supervisory authorities (Annexes 9H9J and attached staff lists), we observed a number of discrepancies. We had to seek assistance from a researcher and from the director of the DRESMS (*Direction des Relations Etablissements et Services Médico-Sociaux* — department for relations between nursing homes and health services) on several occasions to understand these discrepancies.
82. After taking into account the explanations provided by the DRESMS, we observed residual discrepancies of €1,345K for 2019 and €35K for 2020 respectively, corresponding to amounts declared in Annexes 9H9J, which are not found in the staff lists or in the supporting documents provided by our contacts.
83. These unexplained discrepancies highlight the following issues:
- The data detailed in the staff lists that are communicated to the supervisory authorities do not correspond to the staff costs finally declared in annexes 9H9J for a large number of residences.
 - It is confirmed that the implemented process, manual restatements, configurations of the 4D tool and the absence of internal controls (comparison, reconciliation, etc.) do not provide a satisfactory level of assurance on the accuracy of the information declared in annex 9H9J, which is therefore only partially explained by the staff lists.
84. We have collected and consolidated the payroll extractions over the period provided for all the Nursing Homes within the scope of the investigation to reconcile them with the staff lists communicated to the supervisory authorities.

85. Our discussions with the payroll department enabled us to explain some of the detected discrepancies. However, we noted residual unexplained discrepancies in the amounts declared in the staff lists and which do not appear in the payroll statements.
86. The amount of these unexplained discrepancies in payroll declared in the staff lists over 2019 and 2020 is €4,114K. By applying these amounts to the proportions of each package in relation to the payroll declared in Annexes 9H9J over the two years, the amount of these discrepancies allocated to the care and dependency funding packages is estimated at €3,393K over the investigation period (€1,531K for 2019 and €1,862K for 2020).
87. Regarding the nature of the staff costs declared to the supervisory authorities, in light of Articles R. 314-166 and R. 314-172 of the CASF, which are covered by the Care and Dependency funding packages, the components of the gross salary plus employer contributions declared in the ERRDs appear to be consistent with the usual understanding of the concept of staff costs.
88. However, we note that, based on the results of the IGAS and IGF inspection carried out in March 2022, certain components of the “payroll taxes” included by the Orpéa Group in the declarations to the supervisory authorities have been identified as non-compliant, in particular the “CET” (*contribution économique territoriale* — regional economic contribution), the “C3S” (*contribution sociale de solidarité des sociétés* — social solidarity contribution of companies) and the civil liability insurance.
89. With regard to the staff categories declared to the supervisory authorities, the “Nursing assistants filling in” category, which is not provided for in the regulations, represents an expense of €19,355 over 2019 and 2020, which has been transferred from the “accommodation” funding package (borne by the Orpéa Group) to the “care” funding package (borne by the Regional Health Authorities).
90. With regard to the transfer of staff costs associated with nursing assistants under the validation of the professional experience scheme from the “accommodation” funding package to the “care” funding package, which is required by law, we cannot guarantee in our bulk analysis that the transfer amount⁵ of €18,745 Kis accurate, due to the unreliability of the reported identification data of nursing assistants under the validation of the professional experience scheme.
91. Lastly, specifically with respect to the dishwashers category, their assimilation by the Orpéa Group to nursing assistants may seem excessive given the reality of their duties, and led to the allocation of €798K in 2019 and €1,239K in 2020 to the dependency funding package.

Detailed tests at the Nursing Homes

92. In view of the observations regarding both the workforce declaration process implemented at head office and the bulk analyses, we have performed on-site tests at the Nursing Homes to verify, in greater detail, the accuracy and operational reality of the data relating to the staff declared to the supervisory authorities.
93. The on-site work covered three areas:
- Work to validate the compliance of declared staff’s qualifications;

⁵ Transfer amount = transfer of expenses from one category to another carried out by the DRESMS teams in the 4D software

- Work to validate the compliance of declared staff's duties;
 - Work to detect over-declarations or under-declarations other than qualification errors.
94. This work covered a sample of 32 sites representing 22% of the Group's Nursing Homes and 16% of the total salaries plus employer contributions for 2019 and 2020.
95. As a first step, for our staff qualification compliance review, we compared the qualifications declared in the staff lists with those in the payroll records and those in the Octime schedules and compared this reconciliation with the care list from the Netsoins application.
96. Our conclusions:
- Errors in the assignment of staff wrongly declared as qualified assistant nurses or other medical staff, representing an impact of approximately 1% in over-declaration, i.e. €385 K in 2019 and €322 K in 2020.
 - Errors in the assignment of Accommodation nursing assistant staff wrongly declared as "Nursing assistants filling in" (6% in 2019, 5% in 2020), and conversely errors in the assignment of "Nursing assistants filling in" staff wrongly declared as Accommodation nursing assistants (7% in 2019 and 6% in 2020), representing a net impact of around 1% in under-declaration, mirroring the over-declaration identified above for assistant nurse roles.
97. We also verified the contracts and diplomas of care staff. The percentage of certificates or diplomas not found in the care staff files ranged from 25% to 51%, depending on the category, with an average of 39%. This volume of errors compromises the reliability and enforceability of the declarations made to the supervisory authorities.
98. In a second step, we reconciled the staff lists communicated to the supervisory authorities with the operational schedules managed in Octime and the activities declared in the Netsoins application.
99. We conclude, subject to the reliability of the data in Netsoins:
- Some staff are declared to be care staff but are not attributed any activity in the Netsoins application: 6% of the personnel numbers in our sample do not exist in the Octime data, i.e. €2,618 K in 2019 and €2,894 K in 2020. Extrapolating this result with all the limitations of this type of exercise, this would represent a potential over-declaration of €11,575 K in 2019 and €11,890 K in 2020.
 - Some staff are declared to be accommodation staff but are not assigned any scheduled activity in the Netsoins application: In Netsoins, 29% of these staff, i.e. €4,927 K in 2019 and €5,181 K in 2020, show care activities provided to residents, even though their qualification does not allow for this. Extrapolating this result with all the limitations of this type of exercise, this would represent a potential under-declaration of €20,551 K in 2019 and €21,270 K in 2020.
100. Lastly, we reconciled the staff lists of our sample of sites with the payroll records and found an additional discrepancy. We found a 1% error margin, with staff present in the payroll registers but not in the staff lists, i.e. €450 K for 2019 and €563 K for 2020. Extrapolating this result with all the limitations of this type of exercise, the projected error on the total of salaries plus employer contributions for the staff lists for all the Nursing Homes of the Orpéa Group is €839 K for 2019 and €1,055 K for 2020, which would be an under-declaration.

Searching for documents by keywords in Relativity

101. This work resulted in a review of almost 5,000 documents in total.
102. The review of these documents, through targeted key words, did not make it possible to establish the existence of a system aimed at voluntarily over-declaring to the authorities the workforce or the amounts related to staff costs.

Results

103. In summary, our work to assess the basis for the allegation on the production of incorrect and overvalued workforce declarations to the supervisory authorities by Orpéa has not found any evidence to confirm the existence of a systematic desire to over-declare workforce. However, it is clear that:
- The process in place within the Nursing Homes and head office is not reliable, is subject to numerous manual interventions, and there exists no satisfactory internal control system. In addition, this process is based on an internally developed tool, the various configurations of which are not fully controlled or monitored. Our work led us to identify discrepancies at all levels of reconciliation we investigated:
 - Discrepancies between the amounts declared to the authorities (in particular the 9H9J statement), the associated staff lists and the files extracted from payroll
 - Discrepancies related to the qualifications and categories of staff declared, between the staff lists, the payroll files and the operational activity monitoring tools used within the Nursing Homes
 - The allocation of staff to categories that are eligible for Regional Health Authority and Departmental Council funding, as declared to the authorities, is not systematically reliable (there may be over- or under-declarations) and supporting evidence is lacking:
 - The category of “Nursing assistants filling in”, officially declared to the authorities, has no regulatory basis pursuant to the conclusions of the IGAS and IGF investigation in March 2022
 - Some staff are associated with eligible categories, although there is no objective evidence for this (e.g. dishwashers)
 - The reconciliation of information related to personnel categories, at the most detailed level of operational activity monitoring, shows that personnel who are not eligible for funding are providing care and vice versa
 - Certain expenses considered to be salary-related expenses by Orpéa are declared, even though their nature does not justify this, as noted by the IGAS and IGF investigation carried out in March 2022.
104. Lastly, all identified discrepancies and the projections we made as part of our work lead us to believe that there are:
105. amounts, not eligible for public funding as noted by the IGAS and IGF, that have been declared to the authorities for “Nursing assistants filling in” (€7,419 K for 2019 and €11,936 K for 2020, according to our calculations based on the staff lists) and certain taxes classified by Orpéa as “payroll taxes”, in particular the CET, C3S and civil liability insurance (details of the amounts for 2019 and 2020 could not be provided by the Orpéa Group, but the overall estimate for the period 2017 to 2020 identified by the IGAS and the IGF amounts to €20,068 K, i.e. an estimate of approximately €5,000 K per year).
106. Potentially over-declared amounts to the authorities:

- For 2019:
 - €2,876 K related to amounts declared to the authorities in excess of staff lists and payroll
 - €798 K related to “dishwasher” staff, covered by the dependency funding package
 - For 2020
 - €1,897 K related to amounts reported to the authorities in excess of staff lists and payroll
 - €1,319 K related to “dishwasher” staff, covered by the dependency funding package
107. Uncertainty about the correct allocation of staff costs to operational activities in the care monitoring tools:
- Estimated workforce eligible for public funding who do not carry out activities related to eligible care:
 - €11,575 K in 2019 (extrapolated estimate based on our sampling)
 - €11,890 K in 2020 (extrapolated estimate based on our sampling)
 - Estimated workforce not eligible for public funding who do carry out activities related to eligible care:
 - €21,101 K in 2019 (extrapolated estimate based on our sampling)
 - €23,144 K in 2020 (extrapolated estimate based on our sampling)

2.1.2 Allegation regarding a potential mechanism of concealment and falsification of documents in case of audit

Work performed

108. With regard to allegation 2.1.2, our work consisted of:
- A review of the procedure put in place by the Orpéa Group for the management of audits and inspections
 - A verification of the authenticity of the employment contracts carried out during our unannounced site visits
 - A verification of schedule content
 - A document review by key words in Relativity

Results

109. All investigations carried out on the allegations regarding potential mechanisms of concealment and falsification of documents in case of an audit made it possible to identify that there is indeed a framework aimed at providing instructions and guidelines to the directors of Nursing Homes in the context of inspections carried out by the Regional Health Authorities and Departmental Councils. The implementation of these instructions was confirmed by the e-mails we were able to find. These instructions essentially consist of keeping head office informed of the audit and the documents requested by audit teams. Furthermore, it is established that some audit visits can be announced by the authority itself, as specified in the procedure.
110. We found that most of the employment contracts (96%) were present in the personnel files and showed no signs of falsification. However, 5% of the contracts were not signed and 4% could not be sent to us because they had been archived.

111. We were unable to find any evidence that a system existed to organise the modification or falsification of documents requested during inspections. However, it was confirmed to us that the care plan is a document that can be modified retroactively, without control.

2.2 Allegation regarding the use of public funds

112. Reminder of the contents of the allegation as set out in the engagement letter:
- Alleged “Year-End Discounts” on goods financed by public funds, generating income for Orpéa. This aspect is covered in the Allegation 2.2.1 section.
 - Alleged overcharging by Bastide before application of any Year-End Discounts, in order to finance part of the Year-End Discounts, as well as annual seminars for Orpéa employees abroad. This aspect is covered in the Allegation 2.2.2 section.
 - Alleged charging by Orpéa of fixed and variable fees to physiotherapists working in the Nursing Homes, who are funded by public money. This aspect is covered in the Allegation 2.2.3 section.

2.2.1 Allegation regarding the existence of Year-End Discounts not disclosed to the authorities on goods financed by public funding

Details of the allegations

113. According to the allegations in the Book, Orpéa negotiated Year-End Discounts with certain suppliers of products eligible for financing by public funds (care, dependency). It is also alleged that the percentage discount is higher than the percentage of the discount applied to products purchased by Orpéa in the framework of the accommodation budget (the cost of which is entirely borne by Orpéa).⁶ These allegations are aimed specifically at two suppliers:
- Laboratoires Hartmann (“Hartmann”): A Year-End Discount of 28% is allegedly applied; and
 - Bastide Le Confort Médical (“Bastide” or “BLCM”): A Year-End Discount of 10% or 15% is allegedly applied.
114. According to the Book, Orpéa does not reuse the income from these Year-End Discounts for expenses related to the needs and health of its residents.
115. According to the Book, the Year-End Discounts system allowed Orpéa to organise “extravagant”⁷ seminars every year.

Work performed

116. We focused our analyses on suppliers Bastide and Hartmann, who are explicitly mentioned in the Book, and we proceeded as follows:
- Review of the Year-End Discount agreements and Orpéa’s service contracts with Bastide and Hartmann;
 - Review of Bastide and Hartmann invoices since 2019;

⁶ *Les Fossoyeurs (2022)*, p. 106-109.

⁷ *Les Fossoyeurs (2022)*, p. 365.

- Interviews with the Purchasing, Logistics, Sales Administration, DRESMS, Finance and Accounting departments;
- Review of certain emails exchanged between the Purchasing and Sales Administration departments in which the revenue (“**Revenue**”) used to calculate the Year-End Discounts was communicated to the Sales Administration;
- Examination of the supporting documents for the services rendered by Orpéa to Bastide and to Hartmann, and reconciliation with the remuneration received by Orpéa;
- Analysis of the data available in the Navision accounting software, in order to understand how the Year-End Discounts are recorded; and
- Analysis of the Year-End Discount databases maintained in Excel.

Findings

117. Some of the contracts in place with Bastide and Hartmann mention such services delivered by Orpéa and billed to suppliers; the price for these services is set on the basis of a percentage of the volume of business conducted with the supplier during previous periods.
118. These services and discounts are billed by Orpéa to its suppliers under the following headings: “Year-End Discounts”, “commissions”, “commission – sales”, and/or “commissions – maintenance service”. The billed amounts are mostly calculated on the basis of a percentage applied to a volume of business achieved in a previous period.
119. In accounting, these services and discounts are recorded in the 609 accounts for “rebates, discounts and refunds on purchases” (designated as “Year-End Discounts” in Orpéa’s internal accounting) and therefore charged as a reduction of expenses in the income statement.
120. We sought to confirm the existence of services rendered by Orpéa to Bastide and Hartmann in the context of these service contracts. The supporting documents and explanations provided do not allow us to confirm the existence of certain services, even though they were contracted for, or to establish whether the amounts billed by Orpéa are justified.
121. A number of indicators allow us to establish that these services are in fact part of Year-End Discount agreements:
 - the absence of documentary evidence attesting to the services rendered;
 - the invoices issued under these service provision contracts are labelled “commissions” and do not mention any services;
 - with the exception of one contract that we have identified, the amounts billed correspond to a percentage of the business volume carried out by the supplier with Orpéa during a previous period;
 - these invoices are accounted for by Orpéa in the same manner as the invoices for year-end discounts not contingent to services provided by Orpéa, i.e. as Year-End Discounts charged as a reduction of expenses in the income statement;
 - the interviews carried out confirmed that there was a mismatch between the value of the services rendered and the amounts billed; and

- for Hartmann, the service contracts were issued in 2021 with retroactive effect to 2019 (without invoice correction).
122. Between 2019 and 2021, and based on accounting data, Orpéa received €1.7 million (excluding tax) in Year-End Discounts from Bastide and €8.3 million (excluding tax) from Hartmann. For Hartmann, these Year-End Discounts can represent up to 28% of the business volume.
123. Furthermore, Orpéa billed Hartmann approximately €95 K excluding tax per year in 2020 and 2021, equivalent to 1% of the annual business volume, for a training programme for some Orpéa employees referred to as Cadrelan (“**Cadrelan**”). Nonetheless, this training ceased to be organised at the end of 2019 and it has been confirmed by Orpéa that no Orpéa employee has participated in this training since.

The “Envelope”

124. We identified electronic communications between Orpéa and Bastide indicating that not all the Year-End Discounts would be recorded in Orpéa’s accounts.
125. Orpéa’s Purchasing Department in fact maintains an Excel file for monitoring certain transactions that do not appear in Orpéa’s accounts. For ease of reading, we will refer to these transactions as the Envelope (“**Envelope**”), using Orpéa’s internal terminology.
126. The Envelope is fed by Year-End Discounts due from Bastide in order to reach an amount of 15% of the revenue generated with Orpéa and Clinéa France (including the rental and purchase of medical devices).
127. According to the April 2022 version of the Envelope monitoring, it appears that a total of €23.67 million in Year-End Discounts was paid into the Envelope between Q3 2004 and Q3 2021. This amount is €7.7 million for the period January 2019 to September 2021 (the amount for Q4 2021 was not yet available at the time of our work).
128. The funds that feed the Envelope are used as a drawing right of Orpéa on Bastide, in order to cover certain expenses incurred by Orpéa.
129. Since 2004, Orpéa has drawn €21.94 million through this drawing right on the Envelope. This amount has been used as follows:
- €14.55 million corresponds to payments that Bastide are said to have made to service providers who organised internal seminars for Orpéa. As we do not have access to Bastide’s accounts, we have not been able to verify whether these amounts were actually paid by Bastide to these service providers. However, we were able to confirm that these seminars did take place and the financial participation by Bastide was confirmed to us during interviews.
 - €1.22 million has been used to finance boxes (in stadiums or theatres) for Orpéa.
 - A total of €900 K was paid by Bastide directly to BRH and TMM to pay for IT projects contracted by Orpéa.
 - The Envelope was also used to finance two promotion and partnership contracts for Bastide with Orpéa or Kauforg for an amount of €3.72 million.
 - The funds in the Envelope were also used to pay Bastide for arranging the personal protective equipment (“**PPE**”) logistics on behalf of Orpéa, for an amount of €1.55 million.

130. On the basis of the above, we wanted to establish the overall amount of Year-End Discounts received from Bastide, i.e. on the one hand the Year-End Discount payments received and recorded in the accounts, and on the other hand the Year-End Discounts that are only recorded in the Envelope. We observed a total of €24.67 million in Year-End Discounts received between 2004 and 2021, reaching an average Year-End Discount percentage of 15% on all French business volumes, as is alleged in the Book. Over the period 2019 to 2021, Bastide's total Year-End Discounts amount to €7.7 million, of which €1.7 million is recorded in Orpéa's accounts.
131. To make a reliable assessment of the discounts received in relation to publicly funded products, a detailed analysis of all products purchased by Orpéa, by vendor, and a reconciliation of their eligibility for funding would be required. A detailed evaluation should also be carried out of the types of income received by Kauforg, apparently linked to Orpéa France's expenses, among others.

Information from the supervisory authority in the context of the statements of actual income and expenditure

132. We confirmed, through our work and our interviews with the DRESMS, that the statements of actual income and expenditure include a specific section in which Rebates, Discounts and Refunds on purchases obtained from suppliers of products related to Care and Dependency management must be reported.

Results

133. Our work focused on the suppliers Bastide and Hartmann, mentioned in the Book, in order to respond to the allegation relating to the existence of "Year-End Discounts" not disclosed to the supervisory authorities on goods financed by public funding.
134. Orpéa benefits from discounts from these two suppliers whose products and services are partly financed by public funding. These discounts stem from invoices issued by Orpéa and appear in Orpéa's accounts as a deduction from an expense account for Rebates, Discounts and Refunds. This mechanism also applies when services are mentioned in the contracts between Orpéa and its suppliers.
135. With the exception of one contract that we have identified, the amounts billed correspond to a percentage of the business volume carried out by the supplier with Orpéa during a previous period.
136. The supporting documents and explanations provided do not allow us to confirm the existence of certain services, even though they were contracted for, or to establish whether the amounts billed by Orpéa are justified.
137. The amounts entered in the accounts as Rebates, Discounts and Refunds were not declared in the section provided for this purpose in the ERRDs (statements of actual income and expenditure) of the respective Nursing Homes in the sample under review.
138. From 2019 to Q3 2021, Orpéa billed Year-End Discounts to Hartmann for €8.3 million (excluding tax), i.e. up to 28% discount on certain products, which is in line with the allegations of the Book. In addition, from 2019 to 2021, Kauforg, Orpéa's subsidiary in Switzerland, billed €507 K (excluding tax) to Hartmann under a Year-End Discount Agreement between Hartmann and Kauforg.

139. From 2019 to Q3 2021⁸, and based on accounting data, Orpéa billed Year-End Discounts to Bastide for €1.7 million (excluding tax).
140. Orpéa maintains a non-accounting system (the Envelope) with Bastide. This Envelope is fed by approximately 15% of the revenue made by Bastide with the Orpéa Group, including products and services eligible for public funding granted to Orpéa.
141. Between 2004 and 2021, a total amount of €23.7 million (excluding tax) was paid into the Envelope, i.e. €7.1 million (excluding tax) over the period from 2019 to Q3 2021.
142. Through this Envelope, Bastide pays third parties directly for services benefiting Orpéa, such as internal Orpéa seminars, marketing services (theatre boxes and sports events) and IT projects. The funds from the Envelope have also been used to finance the partnership contracts with Kauforg and Orpéa, as well as the costs of managing personal protective equipment (“PPE”) during the pandemic. Since 2004, a total of €21.94 million in expenses has been funded through this Envelope system.⁹

2.2.2 Allegation of overcharging by suppliers (before application of Year-End Discounts)

Details of the allegations

143. According to the Book, a supplier testified that he was asked to overcharge for certain products to finance seminars abroad.¹⁰
144. The author of the Book also mentions having received testimony from a Bastide sales representative who reported that *“the quotes I produced for Orpéa were 5 or 6% more expensive than the quotes I produced for small independent facilities”*¹¹ and *“Bastide paid 15% of my invoice at the end of the year to Orpéa’s head office, in the form of Year-End Discounts”*¹². This allegation only pertains to Bastide.

Work performed

145. In order to evaluate the allegations relating to overcharging on the part of Bastide, we carried out an analysis on the following points.
146. Understanding that Orpéa has decided to entrust Bastide with all of its medical devices, and in particular medical beds, we carried out a review of the process of invoicing for the rental of beds with a view to establishing possible overcharging.
- We analysed the contract with Bastide as well as the bed rental invoices issued by Bastide for the month of October 2019 for 28 of the Nursing Homes we visited.
 - We compared the number of beds invoiced by Bastide for the month of October 2019 with the data visible for the same month on the line “number of residents (Nursing Homes)” shown in the respective NOPs of each of the 28 Nursing Homes.

⁸ The Year-End Discounts for Q4 2021 were not yet recorded in the accounts at the time of writing.

⁹ Over the period 2019 to Q3 2021, the amount was €7.1 million excluding tax.

¹⁰ *Les Fossoyeurs (2002)*, p. 178.

¹¹ *Les Fossoyeurs (2022)*, p. 162.

¹² *Les Fossoyeurs (2022)*, p. 178.

- We also reviewed the document “Benchmark Bastide réalisé fin 2021.docx” (Bastide benchmark achieved by the end of 2021), which is a pricing analysis of the products supplied by Bastide for Q4 2021 (“**Benchmark**”), and we compared the prices agreed for Orpéa with the average prices displayed by Bastide according to the Benchmark. We also verified that the prices agreed for Orpéa in the Benchmark corresponded to the prices indicated in Orpéa’s purchasing software, eProc, but not whether they corresponded to the market price. This document was produced by Bastide at the request of the Purchasing Department after the publication of the Book.

147. We conducted interviews with the Nursing Home Directors of the visited sites, the Purchasing Department and the Logistics Department. We also reviewed e-mails.

Findings

Rental of medical beds

148. We reviewed Bastide’s invoicing for the rental of medical beds. The daily rental price invoiced is lower than the rates indicated in the LPP (*Liste des Produits et Prestations remboursables* — List of Reimbursable Goods and Services). We observe that vacant beds are generally invoiced but that (i) the contract with Bastide does not specify the invoicing method for vacant beds, and (ii) the absence of a Group directive distributed to the Nursing Homes results in disparities in the management of the invoicing for these beds by the Nursing Homes.

149. We have not identified any indications of price inflation or voluntary overcharging by Bastide on these products.

Over-valuation of the unit price paid by Orpéa

150. We cannot reach a conclusion on the existence of an over-valuation of the unit price paid by Orpéa to Bastide, as we do not have access to reliable data on the market prices charged by Bastide to Orpéa’s competitors.

151. We note, however, that in 2017, in the context of a potential takeover of a portfolio of Orpéa’s Nursing Homes, the potential buyer considered that Bastide’s rental rates were too high in relation to the quality of the products offered and therefore wanted to withdraw the beds supplied by Bastide. Orpéa then negotiated a better rate with Bastide for this potential buyer. Following this discussion, Bastide sent¹³ Orpéa a new price proposal for this buyer. This pricing proposal showed prices that were 5 to 10% lower than those proposed to Orpéa, without this resulting in a renegotiation of the price paid by the Group. We reiterate that according to the Book, Orpéa would pay 5 to 6% more than other Bastide customers do.

Results

152. Our analysis with regard to allegation 2.2.1 on Year-End Discounts confirmed that Bastide financed Orpéa’s internal seminars. However, in the course of our tests we did not identify evidence that Bastide’s billing for Orpéa was systematically 5 or 6% more expensive than for other Bastide customers.

153. We were able to observe that, in the context of a planned disposal of a portfolio of Orpéa’s Nursing Homes, a potential buyer wished to terminate the contract with Bastide. Orpéa then negotiated a 5% to 10% reduction in bed rental rates with Bastide for this potential buyer.

¹³ AMP06533692

2.2.3 Allegation relating to Orpéa receiving chargebacks on the professional fees of self-employed physiotherapists working in Orpéa's Nursing Homes

Details of the allegations

154. According to the allegations in the Book, Orpéa would deduct fixed and variable fees from physiotherapists working in Nursing Homes, who are funded by public money: *“in the course of the 2010s, the group began to demand that they too pay a minimum fee of 10%, believing that it gave them the advantage of a customer base and that this came at a price. But this time, the implementation of this ‘tithe’ was more problematic, as physiotherapist appointments are reimbursed by Social Security. Once more, Orpéa is indirectly profiting from part of the public funds for its own benefit”¹⁴.*

Work performed

Review of contracts with physiotherapists

155. We have reviewed the standard agreement currently available to Nursing Homes. We note that Article 9 of this document stipulates that *“in consideration for all the services directly or indirectly provided by Orpéa [...] the masseur-physiotherapist will pay Orpéa: - a fixed fee [...] and – a variable fee [...] for his or her activity at the Residence”*.
156. According to Article L. 4113-5 of the French Public Health Code (*Code de la santé publique*), *“any person who does not fulfil the conditions required for the practice of the profession shall be prohibited from receiving, by virtue of an agreement, all or part of the professional fees or proceeds from the professional activity of a member of one of the professions governed by this code”¹⁵.*
157. The FAQ of the French Order of masseur-physiotherapists specifies that *“a chargeback between a physiotherapist and the Nursing Homes is unlawful. Indeed, Article L. 4113-5 of the French Public Health Code prohibits a physiotherapist from paying all or part of the professional fees they receive to a person who does not themselves practice the same profession. Only a fee, which is defined as rent paid in return for the provision of premises, equipment and services, can be considered”¹⁶.*
158. On this basis we understand that it may be permissible to charge rent. For our analysis we limited ourselves to a review of the contractual relations between Orpéa and physiotherapists that mention variable fees and/or variable and fixed fees.

Review of accounting data and invoices

159. Over the period 2019 to 2021, we have identified variable (and fixed) fees in Navision paid by physiotherapists practising in some Nursing Homes, with the corresponding invoices in the Monéa billing system.

Findings

160. For the period 2019 to 2021, we observed contracts in effect pertaining to the terms for physiotherapist services at the Nursing Homes, requiring payment to Orpéa for their activity at the Nursing Home and “variable fees” on average of 9% excluding tax of the total of *“professional fees”* invoiced where the agreement provided for a variable fee in addition to the fixed fee. For

¹⁴ *Les Fossoyeurs (2022), p. 193.*

¹⁵ *Article L. 4113-5 - Code de la santé publique - Légifrance (legifrance.gouv.fr).*

¹⁶ *EHPAD – FAQ – Ordre des masseurs-kinésithérapeutes (ordremk.fr).*

agreements providing for a variable fee only, the percentage to be paid by the physiotherapist on the total of their “professional fees” was 10% excluding tax. This fee is charged in consideration for the services provided by Orpéa, such as the provision of premises, heating, laundry and cleaning of the premises.

Results

161. For the sampled contracts reviewed over the period 2019 to 2021, Orpéa received a variable compensation from 39 physiotherapists for their activity within the Nursing Home. These variable fees correspond to approximately 10% of the professional fees excluding tax and are reported as compensation for the provision of the premises, cleaning services and the provision of supplies.

2.3 Allegation regarding non-repayment of budget surpluses

162. Reminder of the contents of the allegation as set out in the engagement letter:
- Non-repayment of budget surpluses by means of irregularities in accounting or in declarations, set-up of a system of fake invoices, assignment of surpluses to other Nursing Homes.
163. It is claimed that the public funding allocated to Orpéa's Nursing Homes to pay for the health-related expenses ("**Care funding**") and the dependency of residents ("**Dependency funding**") have not been fully utilised. It is claimed that part of these surpluses was intentionally not returned to the supervisory authorities. It is claimed that there are allocations of excess funding to other Nursing Homes, and the use of fake invoices.

2.3.1 Allegation regarding the falsification of reports to the Regional Health Authorities

Details of the allegations

164. The actual Dependency and Care operating accounts submitted annually to the Regional Health Authorities through the ERRD for each Nursing Home might be intentionally falsified upwards in order to artificially increase the utilisation of public funding (the "**Funding**") intended to pay for the care and dependency of the Nursing Home residents.
165. On this subject, the Book's author comments:
- *"On the other hand, I can reveal that the declarations submitted to the supervisory authorities are not consistent with the figures stated in the group's internal documents and that the risks of fraud are significant."*¹⁷
 - *"But, in fact, this changed everything, because public money was being used to pay for accommodation expenses that the group should have paid for itself."*¹⁸

Work performed

166. We documented the process for producing the management information sent to the Regional Health Authorities by the DRESMS and tested its validity, notably for the ERRD, as described in the section on Allegation 2.1 above.
167. We mapped the information systems used, their data inflows and outflows, and the key processes performed manually and/or automatically by the systems.
168. We examined the steps for producing the ERRDs end-to-end on one Nursing Home visited, wherein we gathered source information (invoices, accounting documents, interviews with Nursing Home directors) and compared it to the work and documents produced by the DRESMS. DRESMS provided us with a demonstration of the production process used for the ERRD's "income and expenses" for that Nursing Home for 2019 and 2020. We tested its consistency with the accounts.

¹⁷ *Les Fossoyeurs, p.204*

¹⁸ *Les Fossoyeurs, p.209*

169. We have asked to review the comparison, by individual Nursing Home and as a whole, between the ERRDs submitted to the supervisory authorities and the accounts for the years 2019 and 2020.
170. We looked for any invoices from suppliers of goods and services chargeable to accommodation which were recorded in the Navision system accounts that populate the ERRDs through the 4D application for financial years 2019 and 2020. We carried out this analysis on two Nursing Homes due to the difficulty of obtaining the extracted data for the entire French Nursing Home scope. The means of accessing this comprehensive extraction was communicated to us after several reminders, too late to carry out the work on a national scope within the agreed timeframe.

Findings

Production and controls of the ERRD

171. In addition to the results presented in 2.1.1, we understand from our interviews with the DRESMS and the IT provider that the financial management statements submitted to the supervisory authorities are produced using the 4D application. This application, which was set up internally more than 20 years ago, had to be reverse-engineered by the service provider after the loss of a key person who mastered the code. This software allows the output data to be changed manually. According to our interviews with the DRESMS, the only way to adapt 4D to the changing requirements of the Regional Health Authorities and to internal needs for summary statements and control reports is for the service provider to develop new features.
172. For the Nursing Home selected for our end-to-end examination of the production of ERRDs:
- We were able to verify that the occupancy rates stated in the ERRD for 2020 are consistent with the source billing data.
 - We identified a variance of 0.2% in 2019 and 1.9% in 2020 between the expenses reported in the ERRD (excluding staff costs dealt with in Allegation 2.1) and the items in the accounting system (Navision). This variance is related to depreciation entries.
173. We asked the DRESMS whether a reconciliation, such as the one we carried out, was routinely done in-house. We were told that the ERRDs are not reconciled to the accounts, whether by each Nursing Home or as a whole, before being submitted to the authorities. Similarly, they are not subject to review by the Nursing Home Directors.
174. Since we did not receive the information requested for all the Nursing Homes in sufficient time, we are not able to extend the observation of consistency of the figures for the test Nursing Home to all of the Group's Nursing Homes.

Test of Accommodation invoices recorded as Care

175. In a sample of two Nursing Homes, our analyses did not reveal any systematic overstatement of expenses against Funding by means of accommodation invoices intentionally reported as eligible. The lack of access to full-scope information until early May, despite several requests, did not allow us to extend our analysis to all the Nursing Homes in France within the agreed timeframe.

Results

176. On the test Nursing Home that we analysed end-to-end, we have not identified any falsification mechanism on occupancy rates or non-staff expenses in the production process for management reports for the supervisory authorities.
177. However, we do note weaknesses in the production process and controls of these statements. These weaknesses, coupled with the fact that there is no procedure for routine reconciliation of the ERRDs to the accounts, preclude us from extending our observation on the test Nursing Home to all Nursing Homes.
178. Furthermore:
- The production of financial management statements (ERRD) for the supervisory authorities leaves room for manual intervention at every step and on every piece of data rather than relying on the fixed automatic transfer of data between systems.
 - No requests for verification of the ERRD or the activity report are made to the Nursing Home Directors for their respective Nursing Homes. The EPRDs, ERRDs and activity reports are not sent to the Nursing Home Directors or to some Regional Directors unless they expressly ask for them.

2.3.2 Allegation regarding service provider invoices

Details of the allegations

179. It is claimed that invoices for purchases charged against the Care funding, particularly at the end of the year, are fake, drafted by complicit suppliers without actual delivery.
180. According to the Book, *“one of the main suppliers of medical supplies in France offers to provide its customers with a system of fake invoicing. With the aim, again, of drawing as much as possible on public funding”*.¹⁹

Work performed

181. The work we carried out was intended to identify any invoices for fictitious products or services paid for by public funding.
182. We examined the invoices that were recorded without a documented delivery and/or receipt of the product or service, or even without a documented purchase order.
183. In particular, we collected statistical data for 2021 from the eProc ordering system, which was rolled out between June and December 2020, covering orders placed, orders reconciled to their respective invoices and/or their delivery slips.
184. We requested any summary statements of all exceptions concerning invoices that were not matched to purchase orders for the period 2019 to 2021. On the basis of written explanations received from the Group, we understand that such documents are not available.

¹⁹ *Les Fossoyeurs, p.209*

Findings

185. As of the date of the work, we note that Orpéa's Procure-to-Pay system, which covers purchasing transactions from the time the order is placed to the time the invoice is paid, does not make invoice payment conditional on automatic reconciliation to a purchase order and a delivery slip.
186. Our discussions with the Head Office Purchasing and Finance teams revealed the following:
- In 2020, an ordering software system, eProc, was set up, and it was fully rolled out to the Nursing Homes in 2021. This system replaced the Bible Achats software, which was a catalogue of listed products eligible for ordering.
 - Before the introduction of eProc, invoices were recorded on the basis of a payment order from the Nursing Home Director or the department head in the DEMAT electronic storage and invoice approval software. Invoices were not matched with purchase orders or delivery slips.
 - Reconciliation between purchase orders and receipt/delivery slips was not made mandatory until the eProc system was rolled out.
187. The Nursing Home Directors we met told us that they generally approve payable invoices that are attributed to their respective Nursing Homes in batches using the DEMAT software, without any real reconciliation being done, for at least three reasons: (i) lack of time, (ii) lack of pre-matching of the invoice with a purchase order and/or a delivery slip, (iii) the fact that they are not always the order givers or order receivers even though they are the only ones who approve the payments.
188. According to the eProc statistics for 2021:
- There were a total of 67,078 orders in eProc;
 - 35,051 orders (52% of the total) were reconciled with invoices (15% automatically and 75% manually by directors or department heads); and
 - Only 13,300 orders were fully reconciled with deliveries and invoices in the system.

Results

189. We note that despite the introduction of the eProc system, only 20% of the orders entered in eProc were reconciled to both an invoice and a delivery. 48% of the orders processed in eProc in 2021 were not reconciled to the invoice in the system. We also note that no exception reports for unmatched invoices are prepared and available.
190. In the absence of summary statements of all exceptions relating to invoices not matched to purchase orders for the period 2019 to 2021, it was not possible to identify invoices for fictitious purchases in a comprehensive and conclusive manner.

The "2.32 mechanism" referring to using up the remaining medical funding at the end of the year.

Work performed

191. Based on interviews, document review (work files and email exchanges) and examination of accounting records, we documented and described the existence of a mechanism, set up by Orpéa with the supplier Bastide, aimed at absorbing the unused amounts of the medical funding allocated by the supervisory authorities to Orpéa's Nursing Homes between 2008 and 2016.

Findings

192. Between 2008 and 2016, the medical funding per Nursing Home resident allocated by the supervisory authorities amounted to €2.32 per day and per resident, based on the maximum capacity of the Nursing Home. This was when funding was allocated by type of expense per Nursing Home (and not as a lump sum, as has been the case since the 2017 reform).
193. On 31 July 2008, one month before the promulgation of the interministerial circular establishing the coverage of medical devices, Bastide concluded a “partnership agreement” with Orpéa, setting out that Orpéa would entrust all its needs for medical devices to Bastide. Bastide’s services include maintenance, activity monitoring and follow-up on rented equipment.
194. On 1 July 2008, Orpéa entered into an agreement with Bastide (“Bastide 2008 Year-End Discount Agreement”), setting out the services provided by Orpéa to Bastide invoiced on the basis of an annual flat fee equivalent to a percentage (60% to 70%) of the annual revenues excluding tax for the specific services provided by Bastide (e.g. continuity of service, on-call duty, equipment installation and handling) (“the maintenance packages”).
195. The Bastide 2008 Year-End Discount Agreement was set up as a mechanism to use up the medical funding of each Nursing Home at the end of the year (“2.32 Mechanism”).
196. The maintenance services provided by Bastide to Orpéa are detailed in an appendix to the Bastide 2008 Year-End Discount Agreement. Various maintenance packages are defined therein, for increasing amounts depending on the services included. Although not specified in the agreement, we were able to determine that the cost of these services was calculated on the basis of the packages and the number of residents.
197. On the basis of our document review we were able to establish the following facts for the period 2008 to 2017:
- At the beginning of current year (Y)+1, Orpéa provided Bastide with a statement of the actual amounts of the medical funding used per Nursing Home, as available in the Group’s management software, compared to the medical funding allocated to the Nursing Home by the supervisory authority.
 - Based on the amounts of unused medical funding, Bastide then proposed an amount to be invoiced to each Nursing Home for maintenance packages in order to use up the maximum medical funding for each Nursing Home. This amount is explicitly referred to in the communications between Orpéa and Bastide as the “remainder to be used” (“Remainder to be Used”).
 - The proposed invoices were drawn up on the basis of the maintenance packages set out in the Appendix to the Bastide 2008 Year-End Discount Agreement.
 - Once the proposal was approved by Orpéa, Bastide issued the invoices (“Maintenance Package Invoices”).
 - In return, Orpéa issued invoices under the Bastide 2008 Year-End Discount Agreement amounting to 60% to 70% of the total amount of the Maintenance Package Invoices issued by Bastide.

- The Maintenance Package Invoices were assigned by Head Office to each Nursing Home without going through the DEMAT invoice processing software, instead passing directly through the Accounting department.
198. In this way, through this mechanism, Orpéa kept 60% to 70% of the remaining unused medical funding while Bastide benefited from additional revenues of 30% to 40% of the remaining unused medical funding.
199. Over the period 2008 to 2017:
- The total Remainder to be Used of the medical funding to Orpéa's Nursing Homes was €15.4 million.
 - Bastide invoiced Orpéa €14.0 million in order to increase Orpéa's utilisation of the Care funding as reported to the supervisory authority in the ERRDs.
 - Orpéa invoiced Bastide €9.6 million under the Bastide 2008 Year-End Discount Agreement.
 - Orpéa paid Bastide a net amount of €4.4 million corresponding to the difference between €14.0 million and €9.6 million.
200. Concurrently with the 2017 reform (and the end of allocating the Care and Dependency funding by type of expense), we no longer note any invoices issued under the 2.32 Mechanism.

Results

201. Between 2008 and 2017, and until the reform of the Care and Dependency funding, Orpéa, with the help of Bastide, set up an invoicing mechanism for maintenance packages supposed to be supplied by Bastide to Orpéa (the 2.32 Mechanism) that was intended to maximise the utilisation of the Medical funding allocated to the Nursing Homes by the supervisory authorities.
202. These invoices made it possible to significantly reduce the actual Remainder to be Used (share of the medical funding allocated by the supervisory authorities not used by the Nursing Homes), which for the period amounts to €15.4 million before the maintenance invoices issued by Bastide at the end of the financial years.
203. Bastide thus invoiced to Orpéa a total of €14.0 million in maintenance services, the materiality of which has not been established, at the end of the financial year, taking as a basis for the amounts to be invoiced the Remainder to be Used of the medical funding allocated by the authorities to the Group's Nursing Homes. This €14.0 million was reduced by the surpluses of the years in question.
204. Through a contractual cross-servicing mechanism between Bastide and Orpéa in the context of these maintenance services, Orpéa was able to keep €9.6 million of the €14.0 million invoiced by Bastide.
205. Bastide benefited from €4.4 million in additional revenue without any consideration for services actually rendered.
206. The absence of actual maintenance services that were supposed to be provided is evidenced by:
- The Nursing Home Directors' requests to Bastide for evidence of the maintenance service amounts charged to them by the Orpéa Group, to which Bastide was unable to respond;
 - The lack of consistency in determining the amounts invoiced;

- Exchanges between Bastide and Orpéa concerning the Remainder to be Used of the medical funding before drawing up the maintenance services invoices issued at the end of the financial year; and
- The discontinuation of the invoicing of maintenance services by Bastide concurrently with the regulatory change in 2017 which ended the allocation of funding by type of expense.

2.3.3 Allegation regarding surpluses on funding

Details of the allegations

207. According to the allegations, any surpluses on Dependency funding and Care funding (*dotations*) are neither returned to the State funding bodies nor spent according to their required purpose.
- *“Many suspected that part of the public money that they had received had not been spent, without being able to prove it since they were forbidden to communicate with the supervisory authorities, the Regional Health Authorities and the departmental councils, and they lacked access to all of their residence’s accounts.”²⁰*
 - *“Orpéa keeps the supervisory authorities in the dark and reportedly keeps some of the public money that it received to pay for care staff.”²¹*

Work performed

208. Our work focused mainly on the recurrent public funding intended to pay for operational expenses (payroll and consumables) related to care and Dependency in the Nursing Homes (the **“Funding”**). To a lesser extent, we also looked at the non-recurring financing (*crédits non-reconductibles*, or **“CNR”**) allocated for specific initiatives and investments proposed by the Nursing Homes (in Orpéa’s case, suggested by the DRESMS). Our investigations were based on a variety of complementary approaches.

Regulatory framework and internal procedures

209. We reviewed the regulations for managing surpluses on Funding (*“Surpluses”*) by the Nursing Homes, distinguishing between two periods: before and after the 2017 reform of the French Social Action and Family Code (*Code de l’action sociale et des familles*).
210. We documented and tested the operational validity of Orpéa’s calculation, classification and accounting treatment of any surpluses on the Funding.
211. We documented the distribution of responsibilities for the monitoring, use and accounting treatment of Funding and Surpluses in order to identify the factors that could lead to their under-use. In particular, we described any returns of surpluses or how they were allocated.

Interviews

212. We conducted interviews with several people from all of the Group’s corporate departments involved in the identification, calculation, accounting and operational treatment and monitoring of

²⁰ *Les Fossoyeurs*, p.199.

²¹ *Les Fossoyeurs*, p.207.

any surpluses, namely: the DRESMS, the Accounting and Finance departments and Management Control.

213. We also had targeted discussions on this topic with the Nursing Home Directors we met during the site visits, as well as with the Regional Directors.

Current situation

214. Working with the DRESMS and Accounting departments, we have verified how the Funding and Surpluses for Orpéa's entire Nursing Home portfolio were handled over the period 2019 to 2021.
215. We obtained a summary from the DRESMS, as calculated by Orpéa and reported to the supervisory authorities, of the surpluses and deficits (per Nursing Home) on the Funding for all Orpéa Nursing Homes for the period 2017 to 2020. We also collected the estimated overall amount of these surpluses for 2021.

Analysis

216. We examined the accounting practices for provisions and carryforwards for surpluses on funding over the period 2016 to 2021. We based our analysis on the available data, namely the DRESMS and Management Control monitoring statements and the resulting accounting entries.
217. We were faced with a lack of formalised procedures and an absence of documentation for the recorded accounting entries relating to Funding and Surpluses, which did not allow us to reach a conclusion as to the completeness of the figures.

Findings

Determining the funding

218. Until 2017, the Funding was allocated to each Nursing Home by type of use (staff, consumables).
219. Since the 2017 reform, the Funding is no longer designated by type of use and the operator now decides how to distribute the Funding allocated to a Nursing Home between the various cost items relating to Care and Dependency.
220. For both periods, changes in the Funding per Nursing Home may be projected using clearly defined calculation rules, based on the initial contractual commitment, including the pricing convergence plan, and the actual figures for previous years.
221. "Pricing convergence" refers to the supervisory authorities' plan, included in the 2017 reform, to gradually increase the Funding to nursing homes to bring it up to a target funding level by 2023 and thus close the gap between the public and private sectors. This target funding was reached in 2021.

Factors contributing to the emergence and growth of Surpluses

222. The Funding for a given year is by nature intended to cover the operational costs of Dependency for that year.
223. However, the Funding for each Nursing Home for a given year is only confirmed by the supervisory authority at the end of June of that same year, requiring a budget reconciliation exercise carried out by Orpéa in August.
224. The surpluses ("**Surpluses**") of a given year correspond to the share of the year's Funding not utilised by a Nursing Home for Care and Dependency expenses. These may result in part from the

time lag between the production of the budget and the commitment of expenditure in the first half of the year and from the confirmation of the current year's Funding only at the end of that first half-year, if the Funding is higher than the previous year.

225. The Funding for the given year should be the basis for the budgeting process in the following year in respect of a Nursing Home's Care and Dependency expenditure. However, our work shows that the budgeting process, led by the Group for each Nursing Home, does not take the previous year's Funding as the basis for the following year's process. The budgeting process is based on the previous year's expenses which do not include the Funding communicated in June of the previous year or the pricing convergence factors already known. A Surplus amount occurring in a given year may also become recurrent due to budget inertia.
226. In addition, budget production at Orpéa's Nursing Homes is not set up to fully utilise the Funding insofar as the Funding is not a variable of the budgeting process that must be utilised. Thus, payroll, which is a major factor in budget development, is treated in a holistic manner for the Nursing Home, without distinction between payroll for accommodation activities and payroll for Care and Dependency activities which are eligible for the Funding.
227. In addition to this time lag and the budget production process, our interviews at Head Office and during our visits revealed several factors explaining the under-use of Funding, such as:
- An increase in the Funding due to pricing convergence, with the convergence period having been shortened by two years. As a result, the Funding for comparable Nursing Homes rose by an average of 6.6% per year between 2018 and 2021.
 - The public health crisis led to a drop in occupancy rates, reducing the pressure on care staff requirements and related expenses. As a result, the funding allocated remained constant despite the fall in the number of residents.
 - The public health crisis has magnified the difficulties in recruiting Care staff, particularly assistant nurses and nursing assistants with care experience. Some posts thus remained vacant for several months, contributing to the under-use of the Funding.

Impact of the Group's budgetary management of the activity

228. The Group's financial management is centred on monitoring the Net Operating Profit (NOP) corresponding to the aggregate operating margin of the Nursing Homes. The NOP includes the income and expenses related to accommodation activities and income and expenses related to Care and Dependency activities, without distinguishing between the two.
229. Efforts to improve the NOP are a key criterion in setting performance targets for the Nursing Home Directors and Regional Directors.
230. The Nursing Home's overall payroll (combining accommodation staff and Care and Dependency staff) is the main component of the operating expenses included in the NOP.
231. In their efforts to improve the NOP, Nursing Home Directors and Regional Directors may under-utilise their Funding (the part of the Funding designated for the care and dependency payroll) and generate Surpluses.
232. Furthermore, the full utilisation of the Nursing Home's Funding for the benefit of the residents is not included in their objectives and key performance indicators. Likewise, any Surpluses carried forward from previous years are not tracked for use in their management software.

Regulations on the treatment and use of Surpluses

233. Until 2017, the regulatory framework included a mechanism for returning surpluses to the supervisory authorities.
234. A Nursing Home's Surpluses could be allocated to:
- actions to improve care within the Nursing Home, subject to the agreement of the supervisory authority;
 - reducing the Nursing Home's past deficits; and
 - a carryforward to reduce future deficits.
235. Since the 2017 reform, any surpluses of a Nursing Home may be:
- allocated to reduce the deficits, past or current, of one or more other Nursing Homes in the same *département*;
 - retained as a carryforward to reduce any future deficits of Nursing Homes in the *département*;
 - allocated as a carryforward for actions to improve care (training, equipment, improvements, screening campaigns) at Nursing Homes in the *département*.
236. The use of Surpluses carried forward to subsequent financial years is decided by the operator, and these are deemed to be "acquired" by the beneficiary of the Funding.

Factors contributing to non-absorption of the Surpluses

237. We have not identified a plan coordinated by the France General Management to reduce the scale of the Surpluses. In addition to the recurrent under-use of Funding, there is also the question of the Surpluses accumulated, particularly since 2019.
238. From our interviews with the Nursing Home Directors and Regional Directors, it appears that these management levels are only partially aware or even unaware of the unused Surpluses and the actions that are supposed to be taken to spend them. Based on our interviews with these Directors and within the corporate functions at Head Office, it appears that they are not involved in or responsible for reducing or absorbing the Surpluses. The EPRDs, ERRDs and lists of expenditure against Surpluses reported to the supervisory authorities would only be communicated to them at their express request. Past Surpluses not yet used are not incorporated into the "Nursing Home" budgets for the next year.
239. We understand from the DRESMS that it acts only in an administrative capacity for the Funding and Surpluses, without decision-making power on these subjects.
240. The DRESMS informs us that the Surpluses are held without being used "to cover any future deficits". No projection has been created to establish whether the occurrence of such deficits is plausible, in particular at sufficient scale to absorb the accumulated surplus. This is particularly surprising since, in many *départements*, the Surpluses are recurrent and seem predictable. A summary of the "all Nursing Homes" surpluses/deficits was recently drawn up by the DRESMS, by manually compiling the figures for all ERRDs for each year from 2017 to 2020. This information, available since Q1 2022, has been sent to the financial department and France operations team.

Calculation and accounting treatment of Surpluses until 2017

241. Based on the interviews we conducted and our examination of the accounting records for the period 2015 to 2021, the process for calculating and accounting for surpluses prior to 2017 was as follows:
- In February of year Y+1, the DRESMS would calculate the surpluses and deficits of the Care and Dependency funding per Nursing Home for year Y (current year).
 - This calculation of surpluses and deficits would be sent to Management Control, which would share it with the General Management.
 - An entry for deferred revenue (*produit constaté d'avance*) would then be recorded in Orpéa's balance sheet for year Y in order to deduct the portion of the Care and Dependency funding not utilised during the financial year from the year Y revenue.
242. We observed a systematic variance between the Surpluses calculated by the DRESMS and Funding in deferred revenue, which is reflected by an insufficient provision to deferred revenue on the balance sheet. The revenue for year Y is thus adjusted downwards, but by an amount that is less than the under-used Funding amount calculated by the DRESMS.
243. To explain this variance, Management Control told us that the amount of the Surplus to be provisioned to deferred revenue was determined by the Group's General Management. Thus, a lump sum increase in Care and Dependency expenses was applied to each Nursing Home with a Care and Dependency budget surplus for the fixed amount of €50,000, €30,000 or €20,000 (depending on the year).
244. Concerning this explanation, we note the following:
- During the allocation period, we were unable to identify any actual expenses for the Nursing Homes of which Management Control might not have been aware, which would justify a lump-sum assignment of additional expenses requested by the General Management.
 - It is surprising that the same amount of additional expenses is assigned to all Nursing Homes showing a Surplus, implying an identical amount of expenses missing for all the Nursing Homes in Surplus.
 - It is surprising that unidentified expenses exist only for Nursing Homes showing a Surplus, which are assigned additional lump sum expenses, whereas Nursing Homes in deficit do not require a similar upward lump sum adjustment of their expenses.
 - We have not identified any procedure to review the actual final expenses of the Nursing Homes in Surplus that have been impacted by this, following the assignment of these additional lump sum expenses. Thus, these additional expenses which have absorbed an additional portion of the Funding are not adjusted upwards. The Surplus is not increased accordingly and the deferred revenue provision is not adjusted upwards.
245. There are reversals to the deferred revenue account in years following the provision (years Y+2, Y+3, Y+4). Evidence that these reversals were justified for the uses authorised under regulations (care and dependency initiatives, subsequent annual deficits) could not be systematically provided to us and were not documented or archived.

246. We were unable to establish a precise figure for the amounts potentially reversed on deferred revenue without corresponding evidence of care and dependency expenditure.

Calculation and accounting and financial treatment of surpluses since 2017

247. From 2017 to 2020, the DRESMS no longer provided a summary of Surpluses by Nursing Home, and the Funding in deferred revenue was valued by Management Control, based on operational management statements, and approved by Orpéa General Management.
248. In February 2022, the DRESMS produced a summary of the actual deficits and surpluses for the Care and Dependency Funding, as reported in the ERRDs by Nursing Home for every year from 2017 to 2020.
249. This summary was drawn up manually by compiling all the figures communicated in each ERRD and in the annual activity reports. It allows us to compare the consolidated net surpluses by *département* with the amounts recognised as deferred revenue at the balance sheet date (excluding non-recurring awards and “*Séгур*” funds) for each financial year.

Comparison between the provision first recorded in 487xxx for unused Funding (excluding non-recurring awards and “Séгур” funds) and the estimate based on the consolidated ERRDs and offset by département (in Ks of euros)

	2017	2018	2019	2020	TOTAL 2017-2020
Amount initially recognised for the financial year as deferred revenue (PCA)	4,328	2,678	3,972	6,090	17,068
Our calculation based on the consolidated net surplus by <i>département</i>	6,400	5,307	12,192	14,223	38,122
DIFFERENCE	-2,072	-2,629	-8,221	-8,132	-21,054

250. This comparison shows a recurring under-estimate of the amount recognised in deferred revenue for year Y.
251. At the 2021 balance sheet date, the Group recognised deferred revenue for the 2021 financial year and an additional provision for liabilities and charges (*Provision pour risques et charges*).
252. Such provisions are calculated based on the net surplus at national level (aggregating the *départements* for which there is a Funding surplus and those for which there is a Funding deficit). This total is thus less than the sum of the surpluses of just the *départements* in surplus.
253. At the 2021 year-end date, according to the latest figures communicated to us, the total deferred revenue on the balance sheet for Care Funding amounts to €19.3 million (broken down by Nursing Home), plus €83.2 million in provision for liabilities and charges for the same purpose (recognised on the Orpéa Head Office entity).

Governance, documentation and formalisation

254. Throughout our work, we noted the lack of reference documentation, governance and formalisation in accounting for the Surpluses and their recognition in deferred income, whether by provision or reversal. The provisioned amounts, which did not match the total Surpluses, are difficult to reconcile to the work files to which we had access. For the amounts reversed, we obtained summary tables of Surplus repayments but no documentary evidence of the reversals by year. Lastly, we have not been able to obtain any evidence to justify that surpluses not reclaimed

by the authorities can be considered as “acquired” and therefore included in income and earnings after a certain time limit (“*prescription*” in French).

Results

255. Our work reveals a recurring under-use of public funding intended for the care and dependency of residents of the Group’s Nursing Homes. The main factors of the recurrence and accumulation of this under-use are:
- The budget production mechanism, which makes no distinction between the care and dependency activity and the accommodation activity.
 - Management of the performance and objectives of the Nursing Home Directors and the Regional Directors, which is focused on optimising both the operating margin and the payroll without distinguishing between the two activities.
 - The pricing convergence and the Covid situation, which had a jaws effect of increasing the Funding and decreasing expenses.
 - The structural difficulty in recruiting care staff.
256. This under-use generates Surpluses which, on the basis of our work and interviews with the DRESMS, can be used to:
- cover previous or future deficits generated by Care and Dependency expenditure;
 - fund initiatives to improve Care and Dependency.
257. There are two ways in which the accounting treatment of Surpluses from unused Funding within deferred revenue has led to the recognition in the Group’s income and earnings of the Funding amounts intended for the care and dependency of residents:
- The recurrent under-provisioning of the deferred revenue account in the year the Surplus is recognised, thus generating additional income and earnings for the Group to the detriment of care and dependency during the year.
 - Reversals to deferred revenue during the financial years following the year in which the Surplus was recognised, without documentation or the systematic implementation of actions to improve care and dependency and without offsets of care and dependency deficits during the year in which the reversal was made.
258. In the year in which they take place, the said reversals lead to the recognition of additional revenue and operating profit for the Group generated by the public funding for Care and Dependency.
259. During the period from 2017 to 2020 for which we were able to obtain figures, we estimate that the total amount of revenue and earnings generated in this way, to the detriment of utilising the financing for Care and Dependency as intended, could be as high as €21 million due to the undervaluation of the deferred revenue provisioned each year, in addition to €5.5 million in reversals on prior periods. The lack of documentation does not allow us to reach a conclusion on the other €10.8 million of reversals between 2015 and 2020.
260. Our work reveals that no mechanism has been established by the Group to ensure:
- the full use of the public funding intended to pay for Care and Dependency expenses;

- the absorption of Surpluses corresponding to the unused portion of this Funding in accordance with authorised practices;
- traceability of the calculation and accounting treatment of the Surpluses.

261. In particular, we note that the Nursing Home Directors and Regional Directors were not sufficiently empowered in this respect by the Head Office as part of their duties.
262. Throughout our work, we noted the lack of reference documentation, governance and formalisation in accounting for the Surpluses and their recognition in deferred income, whether by provision or reversal.

2.4 Allegation of misrepresentation of medical services

263. It is claimed that excessive and/or fraudulent declarations of medical services have been made:
- by a practice of “optimising” procedures declared as T2A (covered below in Allegation 2.4.1);
 - as well as by allowing fictitious or excessive patient visits by private doctors at the Nursing Homes (covered below in Allegation 2.4.2).

2.4.1 Allegation regarding excessive declarations of medical services by the optimisation of procedures declared as T2A

Details of the allegations

264. According to the Book, the doctors working for Clinéa aim to maximise the amounts paid by the social security system when treating patients:

“The third technique used by the group is much more sophisticated than the previous ones, and almost impossible to detect. It consists in maximising the social security cost of each patient treated. Here again, the idea is to skirt the red line, to pad the costs here and there without the risk of getting caught.”²²

“In the private sector, the Medicine, Surgery, Obstetrics clinics (“MCO”) for which Patrick Métais was responsible, in addition to the post-acute care and rehabilitation clinics (“SSR”), are 100% remunerated based on the activity and the procedures performed. This is called “T2A”, which means that each patient is billed for what was actually done. This concerned at least 5 clinics that have to complete what is called a “simplified discharge summary”, with a certain number of factors that allow a price to be set. To begin with, there is the type of illness to be treated with a predetermined number of days of care. For example, in the case of pneumonia, the social security system will estimate that eight days of treatment are required. Then a second aspect comes into play, the severity of the disease, with four different degrees. Some pneumonias may be mild, others a little worse because of a local secondary infection, and others even more severe because of generalised secondary infection. Related factors, such as having diabetes, will also affect the degree of severity. That is the principle. Then there is how it is applied.”²³

“The idea is, of course, to look for all the factors that will allow you to raise the degree of severity. You take someone who has just had a stroke and is paralysed on one side. You increase the severity by looking for related factors.”²⁴

“The idea is to tell the patient, ‘I’m going to discharge you, but I’m concerned about your condition. Come back and see me in a week!’ The patient, being conscientious, comes back. And you have your two stays and you earn twice as much. It happens all the time. Imagine the monitoring by the social security system that would be necessary to catch this.”²⁵

²² Les Fossoyeurs (2022), p.150.

²³ Les Fossoyeurs (2022), p. 150.

²⁴ Les Fossoyeurs (2022), p. 151.

²⁵ Les Fossoyeurs (2022), p. 152.

“This question of monitoring, its relevance and the competence of the teams in charge is absolutely central. Several senior managers in the healthcare sector told me how aware they were that the balance of power was totally lopsided between their teams and those sent by the State.”²⁶

Work performed

265. This allegation concerns the Clinéa clinics, an entity that is not in the scope of our work for this report.
266. As a result, we did not investigate this topic.

Findings

267. We are not able to provide any finding on this allegation.

Results

268. We did not investigate Allegation 2.4.1 regarding the misrepresentation of medical services by “optimising” procedures declared as T2A.

2.4.2 Allegation regarding fraud on the part of some doctors

Details of the allegations

269. The Book details excessive medical treatment that allegedly took place at the Bords de Seine residence, such as:

“One of the residence’s long-time physicians often took the initiative to come every month or every two weeks to see his fifteen or so patients. So long as the family did not ask him to stop, he kept doing it, without anyone really seeing the medical necessity of these visits. He renewed prescriptions and billed each one between 80 and 100 euros. ‘Often, he did not even go see the residents personally. He took his prescriptions, signed them. And then he left!’ Garcia exclaims to me. It is an extremely lucrative and often painless transaction for these well-off families with good top-up health insurance. But it comes at a cost to the Social Security.”²⁷

“There was also a dentist who charged 1,200 euros for fillings,” he continued. “Sometimes even in cash. And no one said anything.”²⁸

270. These practices allegedly took place with no reaction from the Nursing Home.

Work performed

271. We do not have access to the accounts of the general practitioners, nor to the medical and prescription data recorded by Social Security.
272. A study of the patient visits would have at least required access to Netsoins (the French electronic medical records system), which would have involved examining and analysing the personal medical data of each resident. Given the sensitive and confidential nature of such information, GTAM opted not to do so.
273. As a result, we did not investigate this topic.

²⁶ *Les Fossoyeurs (2022), p. 152.*

²⁷ *Les Fossoyeurs (2022), p. 26.*

²⁸ *Les Fossoyeurs (2022), p. 27.*

Findings

274. We are not able to provide any finding on this allegation.

Results

275. No work was done on Allegation 2.4.2 regarding fraud by some doctors.

Topic 3 summary: Allegation regarding the existence of situations of conflicts of interest, even corruption, in the business relations existing between Orpéa and some public officials

Reminder of the allegations

276. In Topic 3, we cover the allegations regarding the existence of situations of conflicts of interest, even corruption, in the business relations between the Orpéa Group and some public officials, particularly as it relates to obtaining administrative authorisations to open Nursing Homes as well as in relation to acquiring existing Nursing Homes or groups of Nursing Homes.
277. We also covered the allegation that Victor Castanet was asked by a financial analyst if he would agree to not publish his book if the Orpéa Group paid him €15 million.
278. Initially, we sought to verify the existence and accuracy of the facts alleged by Victor Castanet in Part 4 of his book.
279. Then, insofar as these allegations were relatively old, we sought to identify the existence of any at-risk practices or transactions over a more recent period, namely the financial years 2019, 2020 and 2021.
280. To do this, we selected transactions and analysed them by means of a documentation review. The purpose of this analysis was to identify whether the type of practices alleged in Victor Castanet's book could have been carried out by the Orpéa Group over the last three years.
281. However, it is not within our remit to assess the facts reported. We have merely presented the findings of our analyses as objectively and with as much detail as possible.

Work performed

Confirming or refuting of old allegations

282. Our work consisted of investigating the specific allegations, summarised above, that are found in Part 4 of the book *Les Fossoyeurs*.
283. By "specific" we mean allegations that can be traced back to a particular individual and/or legal entity.
284. In order to confirm/refute these allegations, we implemented the following procedures:
- Where applicable, determining the identity of the persons mentioned in Part 4 of the book *Les Fossoyeurs*, based on:
 - Open-source information available to the general public and cross-checks between such information and that contained in Victor Castanet's book;
 - Information obtained from the Relativity source information tracking application;
 - Information that was shared with us by the Orpéa Group (documents and interviews).
 - Corporate intelligence work to trace the career paths of these individuals, identifying the companies to which they are linked as shareholders or senior managers, identifying their business ties and other information relevant to our investigations.
 - Review of data in the Relativity database.

- Where these individuals were linked to companies, we looked for the existence of transactions between these companies and Orpéa over the period 2000 to 2021.
- Where applicable, analysis of documents recovered from the Orpéa Group to corroborate or expand on certain claims.
- Interviews with Orpéa Group employees during which we discussed the above allegations.

Identifying the existence of any at-risk practices or transactions over the period 2019, 2020 and 2021.

285. For the period 2019, 2020 and 2021, we implemented the following procedures:

- Identification, based on the Orpéa Group's declarations, of staff employed by the Group between 2019 and 2021 who hold or may have held public service roles, particularly with the supervisory authorities (Regional Health Authorities, DDASS).
- Analysis of the documents relating to all business introduction fees disclosed by the Orpéa Group as part of our investigation.
- Identification and analysis of changes in the value of securities and goodwill in Orpéa's financial statements over the period 2019, 2020 and 2021.
- Identification of more than 500 at-risk transactions in Orpéa's accounting records in 2019, 2020 and 2021. Our selection of transactions included fee accounts, entertainment expenses, gifts, etc.
- Review of unstructured data in Relativity

3.1 Allegation regarding relations with public servants

Reminder of the allegations

286. Reminder of the contents of the allegation as set out in the engagement letter:

- Privileged relations with public servants leading to the provision of confidential information benefiting the Orpéa Group in its bids for projects through appropriate adjustments to the needs of the authorities; recruitment of public servants previously involved in the oversight of Orpéa Group operations.

Work performed

287. We looked into the allegations of close ties between certain public officials and the Orpéa Group, which may have benefited the latter in its business development activities:

- Confidential information obtained in the context of tendering process for projects relating to the opening of Nursing Homes;
- Recruitment of Regional Health Authority employees by CLINEA, who used their public sector contacts after joining the Group for the Group's development activities;
- A prefect (*Préfet*, a French official) is also said to have helped the Orpéa Group in the 2000s to resolve administrative and political impasses;
- Elisabeth Hubert, former Health Minister, allegedly provided paid consultancy services to the Orpéa Group in the context of applications for authorisation that the Orpéa Group had submitted in the home hospitalization sector (*hospitalisation à domicile* or "HAD").
- Xavier Bertrand, when he was Health Minister, was allegedly referred to as the Orpéa Group's "fully comprehensive insurance". He is said to have helped the Group as a last resort, when there were no other alternatives.

288. Our objective was to identify the individuals mentioned in the Book, to confirm or refute the allegations in the Book and to identify whether these individuals may have been paid.

Results

Project Manager from the Ile de France Regional Health Authority

289. Our work enabled us to identify the project manager (*chargée de mission*) from the Ile de France Regional Health Authority who was indeed recruited by the Orpéa Group.

290. However, our work does not allow us to confirm the allegations made in the Book regarding the presumed role of this official.

291. The information we found shows that the recruitment process followed all the usual steps, both within the Orpéa Group and within the originating administration.

292. We are not aware of any request made to this person to disclose confidential information or to unduly influence a decision.

Executive from the Nord Pas de Calais Regional Health Authority

293. Our work enabled us to identify the Nord Pas de Calais Regional Health Authority executive who was in fact recruited by the Orpéa Group.

294. Our investigations revealed that:

- In 2014, a year spent with the Orpéa Group, this executive was asked to mobilise his political network in the north and east of France.
- In 2015, this person sent a “service and business introducer agreement, signed in duplicate”. Orpéa does not have a signed version.
- In March 2015, Orpéa S.A. recorded a supplier invoice of €4,089 including tax.

Prefect (“Préfet”) who allegedly helped Orpéa to resolve impasses

295. Our work enabled us to identify a prefect who provided services on behalf of the Orpéa Group.

296. Our investigations revealed that:

- In the period 2008 to 2011, this prefect was invited to business development meetings.
- Over the period from April 2008 to February 2015, this prefect was involved in at least 27 projects, including 4 “clinic” dossiers.
- He was asked, often at the direct request of Jean-Claude Marian, to intervene with politicians on behalf of Orpéa. He thus allegedly enabled meetings with senior public officials.
- Over the period 2006 to 2014, this prefect received remuneration of €464,699 including tax.
- In 2006, his status was that of “*Préfet en disponibilité*” (a prefect not assigned to a particular region or territory). Then, he retired as of November 2009.

Elisabeth Hubert

297. Our investigations revealed that:

- Elisabeth Hubert sent a draft agreement between ALIAGIS SARL, represented by Elisabeth Hubert, and SAS CLINEA, dated 2 December 2005. However, the document is not signed by either party.
- We identified transactions for an amount of €26,312 including tax.
- The related services were for a consultancy engagement for a feasibility study to develop a home hospitalisation structure (*hospitalisation à domicile* or “HAD”) in the Eure département.
 - In 2019, Elisabeth Hubert and Orpéa decided to have Orpéa’s post-acute care and rehabilitation (SSR) teams collaborate in Elisabeth Hubert’s HADs.

Xavier Bertrand

298. On the basis of the documents reviewed, we note that the Orpéa Group was in contact with Xavier Bertrand, who for many years had been the supervisory minister for the Group. However, the items reviewed during our investigations do not lead us to confirm a relationship of the type described in the Book.

3.2 Allegation regarding the use of intermediaries

Reminder of the allegations

299. Reminder of the contents of the allegation as set out in the engagement letter:
- Use of intermediaries and business introducers tasked with using their network and contacts for undue advantages in kind or in cash.
300. These allegations are contained in Chapter 31 of the book “*Les Fossoyeurs*” and mainly concern two individuals:
- A business introducer by the name of Jean-François Rémy, who allegedly told Victor Castanet that he had received several fees by various channels.
 - A major figure in the development of the Orpéa Group, who allegedly received kickbacks from nursing home acquisitions.

Work performed

301. In this section 3.2, we sought to confirm or refute these allegations through corporate intelligence, keyword searches in Relativity, a review of documents provided by the Orpéa Group, and a search of the Orpéa S.A. general ledgers for the period 2001 to 2021.
302. Our work was further extended to other individuals and companies on the basis of our findings in investigating the allegations in Chapter 31 of *Les Fossoyeurs*.

Results

Jean-François Rémy

303. Our work has confirmed the following elements:
- Jean-François Rémy is or was related to the following seven companies as a shareholder: YSWG Yellowstone Worldwide Group LTD (Cyprus); Yellowstone S.A. (Luxembourg), Yellowstone S.A. (Switzerland), Yellowstone S.A.S. (France), Health Luxembourg Invest (Luxembourg); ELVC Investissements II S.A. (Luxembourg) and ELVC Investissements (Luxembourg).
 - Orpéa S.A. allegedly paid €850,000 to Yellowstone S.A. (Switzerland): €800 K in 2010 for the assistance provided by Jean-François Rémy in obtaining the authorisation to build the Nursing Home in Vouziers (Ardennes *département*) and €50 K in 2009 for his involvement in the Orpéa Group’s business development transactions in Switzerland and Luxembourg.
 - Orpéa S.A. allegedly paid €2,000,000 to Yellowstone S.A. (Luxembourg) between 2012 and 2015: Payment of €950 K in several instalments for the assistance provided by Jean-François Rémy as part of the public-private partnership with Générale de Santé and the acquisition of the Polyclinique du Parc premises in Charleville Mézières (Ardennes *département*); €600 K paid in several instalments for the assistance provided as part of the acquisition of the Léon Braconnier Nursing Home in Charleville-Mézières and the Les Perdrix Nursing Home in Revin, as well as €450 K for several projects including the Patrice Groff Nursing Home in Charleville-Mézières.
 - In 2011, the Orpéa Group paid an additional fee of €700 K to Jean-François Rémy for the assistance provided in obtaining the authorisation to build the Vouziers Nursing Home, by acquiring 49% of the shares of the company Health Luxembourg Invest (HLI) created

specifically by Jean-François Rémy/Yellowstone S.A. (Luxembourg) for the payment of this fee. More specifically, the Health Luxembourg Invest shares were purchased by Brige S.A., a Luxembourg company held by Orpéa, but Orpéa provided the funds. This brings the total fees paid to Jean-François Rémy for the authorisation obtained for the Vouziers Nursing Home to €1.5 million.

- In 2014, Brige S.A. sold 49% of the HLI shares to Lipany for the amount at which it had purchased these shares itself in 2011, namely €715,190. However, Lipany has never paid for these shares. We understand from our interviews regarding our requests for documents on Jean-François Rémy, that Lipany may have helped the Orpéa Group to hide its connections with HLI and Jean-François Rémy by buying Brige's stake in HLI.
- This discovery highlighted the close ties between the Orpéa Group and Lipany, whose beneficial owner is the former CEO of Orpéa Italy and Orpéa's business partner in numerous projects.
- We have in fact found through our investigations that:
 - Lipany's subsidiaries held assets leased to Orpéa's Italian Nursing Homes.
 - Lipany has minority shareholdings in entities controlled by Orpéa Real Estate Luxembourg.
 - The Orpéa Group is a shareholder of at least two companies that are majority-owned by Lipany and its subsidiaries.
 - Laurita Belgium SPRL, a subsidiary of Lipany, reportedly enabled the Orpéa Group to acquire a stake in RSS Senior+++.
 - The person who manages the Luxembourg companies of the Orpéa Group in Luxembourg was a director of Lipany from 2007 to 2017.
 - Lastly, we have identified a number of e-mails suggesting that Lipany may acquire property on behalf of the Orpéa Group, which could explain the fact that the Orpéa Group supports Lipany financially.
- The Orpéa Group has a current account receivable against HLI for €762 K. This debt was not discharged at the time of the purchase of the HLI shares held by Lipany. Ultimately, the Group invested €1,477 K in HLI.
- In 2019, Jean-François Rémy's lawyers contacted the Orpéa Group regarding the payment of two outstanding invoices issued by Yellowstone S.A. to Orpéa in 2015 and 2016 for a total amount of €900 K. Orpéa is contesting these invoices.
- In conclusion, Jean-François Rémy was indeed a business introducer for the Orpéa Group. He appears to have received €3,550 K in fees between 2009 and 2015. If we include the sums paid into the HLI current account, this brings the total amount paid by Orpéa to Jean-François Rémy to €4,312 K.
- On the basis of the documents obtained as part of our investigation, it appears that Jean-François Rémy has mainly used his network to benefit the Orpéa Group in its business development projects. In the emails that we reviewed or in the activity reports that he prepared, we note that he mentioned on several occasions that he had made contact with departmental authorities, town halls and politicians.
- The business relationship with Jean-François Rémy appears to have been managed by Yves Le Masne. We also note that the Orpéa Group's Chief Financial Officer at the time managed the financial aspects (implementation of the financial package to pay the additional fee of

€700 K on Vouziers, payment of invoices following approval by Yves Le Masne). Lastly, in the field, Jean-François Rémy was in contact with the Group's business development teams.

Major figure in the development of Orpéa who allegedly received kickbacks

304. Our work enabled us to identify the person concerned by the allegations in the Book.
305. Our investigations revealed that:
- The Seller of the Paul Cezanne Nursing Home reportedly paid a fee of €2.5 million to the Spanish company International Medical Research Corporation in 2008/2009.
 - This company apparently kept €500 K and transferred €2 million to the bank account of the Panamanian company domiciled in Switzerland, Roseland Trading Corporation, which is owned by the person concerned, who was then development director of Orpéa.
 - The said €2 million were reportedly split between the Seller's son, in the amount of €1,450 K, and Jean-François Rémy and the person concerned in the amount of €550 K.
 - In relation to the acquisition of the Valmante Nursing Home, a fee of €1 million was allegedly paid on 11 December 2007 to the Panamanian company Lake Wales Financial Corporation via an account domiciled in Switzerland at the bank Banque de la Suisse Italienne. Lake Wales Financial Corporation is said to be registered at the same address as Roseland Trading Corporation, "C/O Fabrega Molina & Mulino, Omega Building – Mezzanine, Avenida Samuel Lewis, 53 Street, Panama City".
 - Regarding the €1 million fee paid in connection with the acquisition of the Valmante clinic, it would appear that Yves Le Masne was aware of this before it was paid. It would also appear that Yves Le Masne knew that a Panamanian company domiciled in Switzerland had been used for the Valmante acquisition.
 - According to an email from the person concerned, Mr Le Masne had asked Jean-François Rémy to buy the St Joseph (Clamart) Nursing Home through his Swiss company before Orpéa bought it from him.
 - Finally, we note that the expense forms submitted by the person concerned amount to an average of €2 381 per month over the period 2003 to 2021, and that he received significant advances on bonus payments for a minimum of €391 K over the period 2005 to 2019, including €271 K over financial years 2009, 2010 and 2011.

Another external consultant involved in the Group's development activities

306. Our work enabled us to identify, over the same period, another external consultant involved in the Group's development activities.
307. We understand from our document review that this person worked with Orpéa as an external consultant, in particular to facilitate discussions with members of the Regional Health Authorities.
- His position would have allowed him to obtain administrative information on business development opportunities in France.

308. We note that this consultant was reportedly paid a minimum of €3 788 690 (including tax) by Orpéa between 2005 and 2019, including fees and travel expenses, as well as success fees in connection with some transactions, particularly the acquisition of a Nursing Home in Nantes.

Another business introducer

309. Our work enabled us to identify another business introducer over the period in review.

310. Our investigations revealed that:

- This person was named as a business introducer during various interviews we conducted.
- He was said to be in charge of the Group's business development, particularly abroad. We have noted his involvement in projects in the Netherlands, Germany, Switzerland and Bahrain where he was part of an Orpéa delegation to explore investment opportunities in the healthcare sector. He is described as a representative of the company.
- Between 2007 and 2021, we have estimated the total remuneration of this person at €2,118,671 including tax.

3.3 Allegation of attempted bribery of Victor Castanet

Reminder of the allegations

311. Reminder of the contents of the allegation as set out in the engagement letter:

- Use of an intermediary to try to prevent the author from publishing the book *Les Fossoyeurs* in exchange for the sum of €15 million.

Work performed

312. We are covering this point through a detailed review of the electronic correspondence, ongoing to-date, between various stakeholders likely to have been involved in this matter, especially leveraging keyword searches in the electronic correspondence we have gathered.

Results

313. None of the company's internal messages and documents that we analysed could confirm the allegation made by Victor Castanet concerning an attempt to pay €15 million to prevent the Book's publication.
314. It should be recalled that the allegation related more specifically to a solicitation from Jean-Claude Marian through a financial analyst in early 2020. However, at that time, Dr Marian was no longer part of the company and therefore no longer had access to the company's communication tools on which we based our work.

3.4 Identification of any at-risk practices and transactions in 2019, 2020, 2021

315. The Book's allegations concerning the use of business introducers and a complex system of kickbacks to obtain authorisations in France relate mainly to the period 2005 to 2015.
316. The goal of our work was therefore to determine whether such practices still existed for the period 2019 to 2021 in France.

3.4.1 Identification of Orpéa employees who hold or have held public service roles

Work performed

317. The Orpéa Group provided us with a list of former public servants who now work for the Orpéa Group as staff (11 people) or as external consultants (2 people).
318. Of the 11 employees who are former public servants, two have already been discussed in section 3.1.
319. Of the 11 former public servants employed by Orpéa, we identified six who occupied relevant roles with the supervisory authorities prior to their recruitment to the Orpéa Group.
- Former public servant #1, Project Manager for Nursing Homes, now a Regional Director within the Group;
 - Former public servant #2, Departmental Council – Nursing Home and Services Management Consultant, now Director of a residence;
 - Former public servant #3, Regional Health Authority Project Manager, now a Medical and Economic Director and Doctor at a clinic;
 - Former public servant #4, Regional Executive (*Délégué territorial*) of Regional Health Authority Nord, moved to CLINEA in 2014/2015;
 - Former public servant #5, Regional Health Authority Project Manager before joining the Orpéa Group;
 - Former public servant #6, DDASS — Project Manager for Elderly Care Services, now a Nursing Home Director.

Results

320. Based on the communications that we identified and reviewed concerning these individuals, we did not determine that they had provided confidential information to the Orpéa Group prior to joining the Group.

3.4.2 Identification of Orpéa consultants who have held public service roles

Work performed

321. The Orpéa Group stated that it had hired two former Regional Health Authority executives as consultants.
322. We examined the relationship between the Group and these consultants and analysed the services provided.

Results

323. The first one, a former Regional Health Authority director, was hired to visit Regional Health Authority branches and identify needs and opportunities for the CLINEA Group, and then to assist in preparing the files to be submitted to the Regional Health Authorities. This consultant's network is undoubtedly an asset in carrying out his various assignments.
324. Over the period 2016 to 2021, CLINEA paid €567,883.31 (including tax) in fees to this consultant, including a success fee of €240 K (including tax) for the assistance his consultancy provided in obtaining authorisation for the development of a post-acute care and rehabilitation clinic in Strasbourg.
325. The second consultant was hired by CLINEA in late 2019/early 2020, following his departure from the Ile de France Regional Health Authority. He worked on two clinic restructuring/combination projects in the Val d'Oise and the Var *departements*.
326. The fees he received in 2020 and 2021 amounted to €17,518.68 including tax.
327. In addition, we note several potential conflicts of interest for this consultant that should have been closely monitored by the Group.

3.4.3 Analysis of business introduction fees declared by the Orpéa Group over the period 2019, 2020 and 2021 for activities in France

Work performed

328. We asked the Orpéa Group to provide us with a list of business introducers with whom Orpéa has worked over the years 2019 to 2021, by geographical region. For France, Orpéa stated that it used ten business introducers,
329. For these ten business introducers, we requested contracts, invoices, accounting records and proof of payment. We also reviewed communications between the Group and these business introducers and analysed the services provided.

Results

330. From our work, we observe that the use of business introducers is frequent in the context of the Orpéa Group's development for the acquisition of land, companies, activities or businesses. It should be noted that the use of business introducers is not illegal per se, but the amounts paid to business introducers should be analysed in relation to the services provided.
331. We note that relationships with business introducers were managed on a daily basis directly by the Group's historical business developers (see Allegation 3.2). Nevertheless, Yves Le Masne appears to be the final decision-maker regarding the approval of agreements and business introducer fees.

The former Finance director was rather in charge of the financial area and the payments made to business introducers.

332. From our work, we found that business introducers could be classified into two categories:
- Those who comply with the remuneration criteria for business introducers as set out in the Group procedures in effect since 2018, namely 1% of the project value and, since November 2020, 1% of the project value and a maximum of €100,000, and for which no validation by the Investment Committee (Codev) is required, and who are mentioned in the Preliminary Investment Committee (Precodev) / Investment Committee (Codev) slides.
 - This is the case for the business introducers listed in the disclosure statement of business introducers provided to us by Orpéa, as well as others that we have identified through our searches in the general ledgers or on Relativity.
 - Those who do not comply with the Group's remuneration criteria and are not mentioned in the Precodev/Codev slides.
 - Their remuneration seems ultimately to have been negotiated directly with Yves Le Masne or the head of the Clinics Business Unit, contrary to the internal procedures which indicate that the business introducers' names should at least be mentioned and that their remuneration should be approved by Precodev/Codev or, at the very least, that the Group General Management's agreement should be obtained through the Development Projects Coordinator if the remuneration exceeds the limit of 1% of the transaction and/or €100,000.
 - Such is the case, for example, with business introducer #1 (€150,000 including tax in fees paid), business introducer #2 (€100,000 excluding tax in fees paid) and business introducer #3 (€499,000 excluding tax in fees paid).
333. Finally, we have identified some points of concern which raise questions regarding the governance, independence and day-to-day management of the Orpéa Group by its main executives, Yves Le Masne and the former Finance director:
- The fact that, since at least 2006, one of Orpéa Belgium's directors, in addition to his directors' fees, receives business introduction and/or management fees through his own companies (€1,560,016 of identified services, at a minimum).
 - Yves Le Masne's direct management of certain development transactions which lack evident economic sense, as well as the involvement of the Group's historical partners in the business development process.

We refer in particular to the following transactions:

- The Oasis and Rose des Sables real estate development transactions, for which a developer's margin had been negotiated well in advance with one of these intermediaries, and which turned out to be grossly overestimated. Concerning the Oasis project in particular, this project is expected to generate a significant loss for the Orpéa Group, estimated at a minimum of €400,000, even though the Group paid a very significant business introduction fee of at least €1,136,105 including tax;
- The signing of a business introducer agreement with the company Résidence France Silver. The remuneration of this agreement amounts to €500,000 excluding tax per half-year for three years, in return for the presentation of one project to the Codev per half-year, with no obligation of success for the transaction presented. This remuneration appears to be much higher than that observed for other business introducers, especially since they are generally not remunerated if the transaction does not succeed;

- The fact that Orpéa's former Finance Director invoices fees to the Orpéa Group through his own company. We identified a total of €100,000 excluding tax in fees invoiced by Foncière des Sept Vents in the Orpéa accounts between 2001 and 2021;
- The fact that Orpéa agreed to pay a business introducer via his wife's company for tax purposes. In fact, that person did not want the fees to be considered as doctor's fees and thus subject to social security contributions and corporate or income tax;
- The rationale behind the recruitment of a former business introducer from CCI France Pay-Bas who was involved in several development transactions in the Netherlands and who is now a managing partner of Orpéa Netherlands through his company Jaspe B.V.;
- The rationale behind Orpéa's acquisition of 49% of the shares of Seniors Services Platform Ltd and the payment of a €2,000,000 current account advance to this company, which markets nursing homes in Europe although it is based in Israel;
- The role of business introducer #2 for the Launaguet Nursing Home and his relationship with the former Purchasing Director as well as the various benefits he enjoys (travel and expense account, entertainment, etc.).