



COMMENTARY
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French Anticorruption Agency Sets the Pace: New Anticorruption Compliance Guide Just Published

IN SHORT

The Situation: On February 4, 2019, the French Anticorruption Agency published its much-awaited practical guide for anticorruption compliance.

The Result: Through this publication, the Agency gives key guidance to company executives on how to structure an integrated and efficient anticorruption compliance function and becomes the latest regulator to add to the growing international consensus on the requirements for an effective anticorruption compliance program.

Looking Ahead: The Guide is the first in a series of six such guides, and we are expecting the Agency to publish the remaining five guides soon.

Background

On February 4, 2019, the French Anticorruption Agency published its new practical guide relating to the implementation of a robust anticorruption compliance program, as required by Law No. 2016-1691, dated December 9, 2016 ("Sapin II Law"). The Anticorruption Compliance Guide is the first in a series of six such Guides; the Agency will soon publish the remaining five Guides. The Guide provides crucial guidance to French executives when structuring an integrated and effective compliance program for their companies.

As a reminder, Article 17 of the Sapin II Law applies to all companies that: (i) have more than 500 employees, *or* are part of a group with more than 500 employees and whose parent company is headquartered in France; and (ii) have an annual revenue or consolidated annual revenue exceeding €100 million.

The Guide's Main Points

The Guide emphasizes the importance and strategic nature of an anticorruption compliance program for companies. The governing body of each company covered by the Sapin II law should ensure that it has the means to identify and control the risks faced by the company, especially in a context of increased competition and more complex standards. As the Guide recognizes, there is no single model for anticorruption compliance, and each company must have its own tailored internal policies.

The Guide also reflects the Agency's position that the appointment of an internal anticorruption Compliance Officer demonstrates the commitment of a company's governing body to preventing and detecting corruption. The Compliance Officer should be afforded easy access to the governing body to enable it to develop a true and fair view of the company's activity. Moreover, the need for the Compliance Officer to be independent from other corporate officers is reiterated on several occasions throughout the Guide, although primary responsibility for overseeing the anticorruption compliance program remains vested in the company's governing body.

In addition, the role of the Compliance Officer is not limited to designing and managing the compliance program, but also includes monitoring good practices and the evolution of anticorruption standards, coordinating internal investigations, and reporting on implementation and effectiveness of the anticorruption program to the company's governing body.

The Guide calls for the involvement of a Compliance Officer in the implementation of strategic projects and in making structuring decisions, including with respect to mergers and acquisitions, restructuring projects, investment projects in new countries, accessing new markets, and marketing new products.



Although measures contained in the Guide are mere suggestions, in case of an inspection by the Agency, the existence of an integrated and independent compliance function would likely be an indicator of the effectiveness of the anticorruption program.



The adequacy of compliance resources is also addressed by the Guide. In this regard, the Guide provides that the Compliance Officer should have the necessary resources to carry out his or her mission. More specifically, the budget for the compliance program should cover the compliance team's financial support, the use of external advisors, training, the implementation of an IT system to assess the integrity of third parties, and the production of periodic reports and evaluations.

The anticorruption compliance program applies to all parts of the company and all staff. In addition, it should be well coordinated with the other areas of compliance such as anti-money laundering, ethics, and insider trading. As a result, the Compliance Officer may also intervene in several compliance areas beyond anticorruption. The Guide suggests the use of matrixes showing roles and responsibilities of all stakeholders within each process of the group.

The Guide recommends the appointment of a Compliance Officer who has good knowledge of the company and is able to adopt a multifaceted approach. Being trained in anticorruption compliance is a clear asset for this position. Moreover, although measures contained in the Guide are mere suggestions, in the case of an inspection by the Agency, the existence of an integrated and independent compliance function would likely be an indicator of the effectiveness of the anticorruption program.

Finally, the Guide reiterates the liability regime applicable in the case of alleged corrupt activities. The company's chief executive is responsible for the implementation of the anticorruption compliance program. The chief executive and the company itself remain administratively liable in the event of a failure to establish and implement the anticorruption program. However, in the case of corruption, any persons involved in the commission of the offense, including the Compliance Officer, may be subject to prosecution. The Compliance Officer may also be exposed to disciplinary sanctions with respect to the commission of corrupt acts that he or she was in a position to prevent.

Part of a Growing International Trend

The Guide is the latest addition to what is now a growing international trend. Governments around the world are promulgating official guidance regarding anticorruption compliance programs and the role of Compliance Officers. In addition to this Guide in France, countries such as the United States, the United Kingdom, and Brazil, among others, have provided detailed guidance on the creation and management of effective anticorruption compliance programs.

For example, in 2011, the United Kingdom's Ministry of Justice published "The Bribery Act 2010 Guidance," offering companies guidance on implementing adequate anticorruption compliance procedures. The United States government has summarized its views on the key components of an effective compliance program in publications such as the Department of Justice's ("DOJ") and Securities and Exchange Commission's 2012 "A Resource Guide to the U.S. Foreign Corrupt Practices Act" and also in the DOJ Criminal Division Fraud Section's 2017 "Evaluation of Corporate Compliance Programs."

There is no doubt that governments and regulators are learning from each other, as well as seeking to normalize good practice for effective compliance programs in their own jurisdictions. As a result, much of the guidance contained in France's Anticorruption Compliance Guide will also be relevant to global companies that are looking to develop their own compliance systems further and/or "future-proof" those systems against heightened global expectations about what constitutes "effective" anticorruption compliance.

THREE KEY TAKEAWAYS

1. The Agency has published the first in a series of six anticorruption Guides. This Guide sets forth key guidance on corporate compliance programs and in particular the role of the Compliance Officer. The Agency will soon publish the remaining five Guides.
2. In particular, this Guide highlights the need for governing bodies to structure an integrated and effective compliance function within their company, with knowledge and responsibilities in several compliance areas, and strongly suggests that a Compliance Officer is to be a key part of any effective compliance program.
3. Companies and regulators will be looking across borders as heightened global expectations for anticorruption compliance programs converge.



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