

Practical Guide

The corporate anti- corruption compliance function



**Consultancy, Strategic Analysis and International Affairs
Division**

- Private Sector Support Department (D2AE) -

December 2019

INTRODUCTION

Article 1 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 mandates the French Anti-Corruption Agency (AFA) to assist all relevant persons with the prevention and detection of corruption.

The purpose of this handbook is to meet a need found by the AFA to help senior management structure an effective, integrated anti-corruption compliance function in their companies.

Anti-corruption compliance can be defined as the set of measures and procedures adopted by an organisation to prevent and detect breaches of probity (corruption and influence peddling in particular) by the company itself, its management, its employees or third parties with which the organisation has dealings. These measures and procedures are described in the anti-corruption policy framework.¹

There is no standard anti-corruption compliance function model. Each company is responsible for defining its governance of the anti-corruption compliance function and its compliance officer's profile and responsibilities on the basis of its own characteristics (size, line(s) of business, maturity of its corruption prevention and detection programme, etc.) and its risks.

Anti-corruption compliance function tasks are cross-cutting and need to be coordinated with other functions in the company to ensure that the anti-corruption programme applies to all the firm's employees and covers all its business activities. Senior management is responsible for specifying how these functions are coordinated.

This guide is not legally binding. It should not be interpreted as having the purpose or effect of stipulating a set organisation of the compliance function.

Nevertheless, the AFA would like to point out that the appointment of an anti-corruption compliance function officer,² the officer's hierarchical position, and the resources allocated to the officer serve as evidence of senior management's commitment to the prevention and detection of corruption.

¹ The French anti-corruption policy framework comprises the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016, its implementing regulations, the AFA recommendations to help private and public sector entities prevent and detect corruption, factsheets and practical guides, and FAQs published on the AFA website.

² Irrespective of his or her title (manager, director, etc.).

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I. The anti-corruption compliance function: a cross-cutting task that is the responsibility of senior management

The anti-corruption compliance function has important implications for a company.

1. A strategic issue

As regularly reported in the news, the implication of a company in a corruption scandal can have serious financial, commercial and human repercussions. It can damage the company's image with its customers and partners and make it harder to obtain financing.

An anti-corruption system, however, protects companies against the risk of their reputation being stained and a decline in the value of their business. An anti-corruption programme also helps secure their economic performance in a competitive environment where third parties are examining values of integrity and ethical conduct increasingly attentively.

In view of the gravity of the potential repercussions of a corruption case reaching far beyond the implication of the offenders, anti-corruption compliance is a strategic matter for which senior management is responsible.

Senior management's responsibility to the company's stakeholders (shareholders, employees, suppliers, customers, local and national authorities, etc.) requires them to equip themselves with the means to identify and control the risks to which the company is exposed, especially in an environment of increasing competition and complexity of standards in France and abroad.

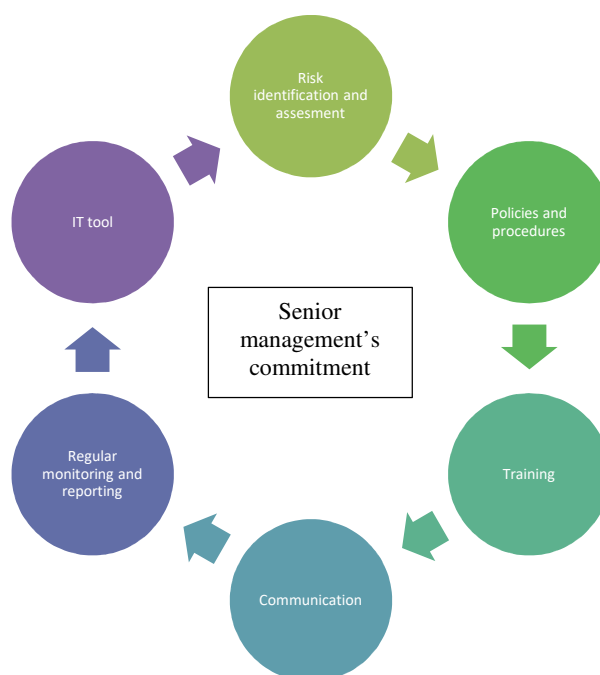
In this respect, senior management needs to:

- Define the organisation of the anti-corruption compliance function by appointing a compliance officer with sufficient autonomy and adequate resources;
- Where necessary, help the compliance officer to remove any obstacles encountered in the exercise of his or her duties;
- Deploy an appropriate anti-corruption programme for the company's risks working with the functions concerned and ensuring its effectiveness;
- Continuously improve this system by means of its regular assessment and updates where needed.

Senior management may, however, delegate the implementation of the anti-corruption programme to the anti-corruption compliance function officer.

2. The core of the anti-corruption compliance function

The core of the anti-corruption compliance function can be illustrated as follows:



The main purpose of this function is to:

- Design the anti-corruption programme and steer its implementation and updates in association with the relevant functions;
- Disseminate the anti-corruption culture within the company by means of communication, awareness and training actions in association with human resources in particular;
- Where applicable, ensure that the company's IT tools can be used to perform the procedures defined by the anti-corruption system;
- Monitor deployment of the anti-corruption programme and check compliance of the processes with the system;
- Provide operational support to directors, managers and staff for corruption risk situations and act as the contact point for sales representatives and other functions exposed to the risk of corruption;
- Monitor best practices and the development of anti-corruption norms and standards;
- Report to senior management on the implementation and effectiveness of the anti-corruption programme and propose continuous improvement developments.

3. A cross-cutting function

The anti-corruption compliance function needs to be coordinated with the other corporate functions and other compliance areas for its action to be effective.

3.1. Coordination with other corporate functions

It is essential for ease of steering to coordinate the compliance function with other corporate functions such as the human resources, legal affairs, financial affairs, internal control, internal audit and technical departments. It could be useful to specify the interaction procedures with other corporate functions in the anti-corruption compliance function officer's brief.

3.2. Coordination with other compliance areas or ethics

Compliance covers other areas than the prevention and detection of corruption, such as:

- Anti-money laundering and combating the financing of terrorism;
- Control of exports of goods subject to regulations;
- Personal data protection;
- Competition law;
- Prevention of insider dealing;
- International economic sanctions on states (e.g. by the UN).

If senior management tasks a person or dedicated department with the anti-corruption compliance function, they must ensure that this function is coordinated with these other compliance areas.

Senior management may also involve the anti-corruption compliance function with work on other subjects, such as:

- Ethics, social and environmental responsibility (SER) and professional conduct;
- Prevention of conflicts of interest;
- Countering harassment and discrimination;
- The company's voluntary or contractual commitments with respect to other policies.

To this end, it could be useful to represent the roles of all the company's players in a table of responsibilities.

Example of a possible table:³

Compliance functions/areas	Chief compliance officer	Legal Affairs Director	Internal Audit Director	Human Resources Director	Financial Department
Competition law	Oversight	Management	Informed	Consulted	Consulted
Corruption prevention	Management Oversight	Consulted	Informed	Consulted	Consulted
Insider dealing	Oversight	Consulted	Informed	Consulted	Management
Ethics	Management Oversight	Consulted	Informed	Management	Informed
Fraud	Oversight	Consulted	Consulted	Informed	Management
Anti-money laundering and combating the financing of terrorism	Management Oversight	Consulted	Informed	-	Consulted

Anti-corruption compliance function officer and data protection officer: what are the similarities and differences?

It is important to note that only the company head is answerable to the AFA Sanctions Commission in the event of a breach of Article 17 (in addition to the legal entity that the company head represents). Similarly, only the controller (or processor) is answerable to the National Commission for Data Protection and Privacy (CNIL) in the event of a breach of personal data protection legislation. Neither the anti-corruption compliance officer nor the data protection officer (DPO) is answerable to these administrative authorities.

The data protection officer's tasks are defined in Article 39 of the EU General Data Protection Regulation (GDPR). The data protection officer is tasked with informing and advising the controller and relevant employees of their legal obligations and monitoring compliance with the standards incumbent on the company, "including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits."

In addition, the data protection officer is the contact point for the supervisory authority on processing issues. In practice, the anti-corruption compliance officer is very often the regular contact point in the event of an AFA audit.

In the same way as the anti-corruption compliance officer, the data protection officer must be operationally independent, pursuant to Article 38 of the GDPR, and must be able to directly report to the relevant management level, in this case the controller.

Nevertheless, there are a few differences between the two positions

- In certain cases determined by the GDPR, the designation of a data protection officer is compulsory, whereas a company head is not legally bound to appoint an anti-corruption compliance officer;

³ Oversight: responsible for indicator monitoring and feedback; Management: in charge of operational execution; Consulted: for an opinion; Informed: purely for information.

- A data protection officer may be a member of staff reporting to the controller or a service provider, whereas the anti-corruption compliance officer is always an employee, even though the company can use a service provider to set up and update its anti-corruption compliance system;
- Pursuant to Article 37 of the GDPR, the data protection officer must be designated “on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks”; there is no standard defining the skillset required to be an anti-corruption compliance officer.⁴

The case of financial sector companies

Some financial sector companies assign a compliance officer (investment company compliance officer – RCSI – or compliance and internal control officer – RCCI) to oversee the enforcement of the standards controlled by the French Financial Market Authority (AMF) and, where necessary, the sound performance of the financial security tasks.

These tasks may cover the control of enforcement of the international trade rules (export control), financial security, fraud prevention, anti-money laundering and combating the financing of terrorism, and anti-corruption.

However, it has been observed that this financial security task is being increasingly assigned to one or more dedicated persons.

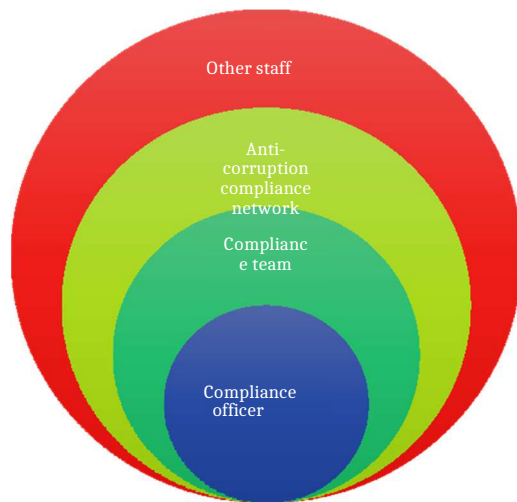
⁴ The compliance position is nevertheless governed in financial establishments by the ECB, the Prudential Supervisory and Resolution Authority (ACPR) and the French Financial Market Authority (AMF).

II. Governance of the anti-corruption compliance function

Governance of the anti-corruption compliance function depends on the company's characteristics: business model, size, nature of business activities, maturity of the anti-corruption compliance system, senior management's level of commitment, etc.

In some cases, senior management will consider it appropriate to assign the anti-corruption compliance function to the manager of another function (legal affairs, financial, etc.). In other cases, senior management will decide to place the compliance function officer at the head of a dedicated team.

In all cases, it is important to ensure that the anti-corruption compliance function is not spread across other functions and is provided with the resources it needs to carry out its work.



The anti-corruption compliance officer needs to be clearly identified within the company as the coordinator of the development and implementation of the anti-corruption system.

The anti-corruption compliance officer must have the means to be able to coordinate the functions concerned and report to senior management.

1. Appointment and hierarchical position of the anti-corruption compliance function officer

It is the responsibility of senior management to appoint, where appropriate, an anti-corruption compliance officer and to define the officer's hierarchical position. This is likely to vary from one company to the next, but it is important for the position to guarantee:

- The objectiveness of the officer's assessments;
- The officer's independence of other company functions and the capacity to have a real influence on these other functions;
- Easy, if not direct access to senior management.

The anti-corruption compliance function officer's position as a member of general management with a seat on the management committee can be seen as evidence of:

- Senior management's commitment to the prevention of corruption;
- The effectiveness and maturity of the company's anti-corruption system.

A lower hierarchical position will not necessarily form an obstacle to the anti-corruption compliance officer's independence as long as regular contact is established with senior management and the compliance officer is able to refer to senior management for mediation.

Nevertheless, the compliance function officer's independence does not mean that there is no oversight of the officer's work:

- The compliance officer must account for his or her work in internal reports sent regularly to the officer's hierarchy and senior management;
- The officer's analyses and opinions must be well-documented;
- The anti-corruption compliance function is part of the tasks within the remit of the internal audit.

In addition, a special memorandum could inform staff of the officer's appointment and the appointment itself could be formalised by a brief or an internal memorandum signed by senior management and stating:

- The compliance officer's tasks (including the officer's coordination with the other company functions and compliance areas);
- The compliance officer's hierarchical position (including procedures for accessing and reporting to senior management), resources and any in-house correspondents.

Lastly, the compliance function officer's title may vary depending on the organisation's choices and the officer's assigned remit.

Examples of possible titles:

Most common title in French	Most common title in English	Other possible titles
Directeur/directrice de la conformité	<i>Group/Chief Compliance Officer</i>	Professional conduct adviser
Responsable de la conformité	<i>Compliance Officer/Compliance Manager</i>	Compliance and internal control manager
Chargé(e) de conformité	<i>Compliance Analyst</i>	Legal expert in compliance

2. Relations between senior management and the anti-corruption compliance function officer

A key condition for the effectiveness of the anti-corruption programme is fluid, high-quality communications between senior management and the anti-corruption compliance officer.

2.1. Operational delegation

In practice, senior management delegates to the compliance function officer the operational tasks of developing, deploying, implementing, assessing and updating the anti-corruption system.

This operational delegation should not undermine senior management's role in monitoring the anti-corruption system.

In this regard, the compliance function officer maintains direct, regular contact with senior management.

2.2. Regular reporting

The compliance function officer reports to senior management on the deployment and operation of the company's anti-corruption system.

This report reviews the system's actual implementation, including the corruption risk management strategy, prevention actions (procedures, training, etc.), findings of the anti-corruption programme checks, major incidents and whistleblowing reports handled.

3. Resources allocated to the anti-corruption compliance function officer

The compliance function officer needs to be able to rally human and financial resources commensurate with the corruption risks in order to accomplish his or her task.

The anti-corruption compliance function budget needs to cover expenses associated with such items as:

- The dedicated compliance team;
- Setting up IT tools such as third-party integrity due diligence tools, internal whistleblowing tools and risk management tools;
- Developing and deploying the training system;
- Any use of external consultant or service provider services.

4. Setting up a “compliance officers” network⁵

Depending on the size of the company, the risks identified and the options chosen for the organisation of the compliance function, a “compliance officers” network could be set up associating business line players to facilitate the deployment of the anti-corruption system.

⁵ Irrespective of title.

The creation of a network could assist with the implementation of the procedures in the company's different units, where each compliance officer has sound knowledge of his or her unit's business activity. The network could also facilitate information feedback (e.g. line staff feedback and questions, and whistleblowing reports).

The network members could be operationally attached to the compliance department or remain attached to their own department.

The effectiveness of this network calls for:

- A precise definition of the tasks of the "compliance officers" consistent with the tasks of the anti-corruption compliance function officer;
- "Compliance officers" to be trained in their role and informed of non-disclosure rules;
- "Compliance officers" to include the anti-corruption compliance tasks in their targets and workload.

It could be useful to disseminate an organisation chart presenting the "compliance officers" network for staff information.

Example:



III. Compliance function officer profile and missions

In view of the importance of the anti-corruption compliance function, particular care should be taken when recruiting the compliance function officer.

1. Compliance function officer profile

It is necessary to ensure that the compliance function officer:

- Has the aptitude to conduct a cross-cutting function. The person should have interpersonal skills and managerial capabilities: the ability to dialogue with senior management and all the company units, objectiveness and impartiality, the ability to work as part of a team, a sense of discretion, etc.;
- Has sound knowledge of the regulations to be enforced and experience of risk mapping and management methods, and internal control and analysis tools.

Training in anti-corruption compliance is obviously an asset.

It is advisable to ask for the references of applicants for the position of compliance function officer;⁶ the information requested must be directly related to and necessary for the proposed job and enable an assessment of the applicants' professional capacities.⁷

In certain activity sectors, the compliance function officer will also need to have specific technical skills and credentials.

For example, a compliance function officer working in an investment company will need to have a professional licence issued by the French Financial Market Authority (AMF). In financial establishments, the European Central Bank (ECB), the Prudential Supervisory and Resolution Authority (ACPR) and the AMF may examine the compliance officer's profile and ask for this job to be done by a qualified person. The ACPR or the ECB may, where necessary, ask for the investment company compliance officer (RCSI) or compliance and internal control officer (RCCI) to be replaced.

2. Anti-corruption programme missions

The anti-corruption compliance officer steers the implementation of the anti-corruption system, even when the company is assisted by a service provider. The involvement of the compliance function officer guarantees that the company's vulnerabilities are addressed.

⁶ With the applicant's consent, in accordance with articles L. 1221-8- and L.1221-9 of the French Labour Code.

⁷ Article L. 1221-6 of the French Labour Code.

2.1. Risk mapping

The compliance function officer coordinates the development of corruption risk mapping by assisting the company with:

- The inventory of its business lines, functions and processes;
- The identification and assessment of its corruption risks;
- The definition and implementation of appropriate preventive measures.

2.2. Code of conduct

The anti-corruption compliance officer steers the development of the anti-corruption code of conduct by:

- Helping senior management to define and disseminate the company's commitments and values;
- Identifying from the corruption risk map the practical cases considered most relevant to illustrate behaviour to be prohibited and the responses to adopt.

As with risk mapping, this task calls for cooperation with other “support” functions (legal affairs, human resources, communication, etc.) and with the operational departments.

2.3. Training system

The compliance function officer works with the human resources department and any other departments concerned to conduct staff training and information actions based on the vulnerabilities identified by corruption risk mapping.

The compliance function officer contributes in particular to the identification of those managers and employees most exposed to corruption risks, who are the priority training targets. The officer ensures that training is actually delivered, whether internal or external, in person or as e-learning modules.

2.4. Internal whistleblowing system

The compliance function officer steers the setting up of the company's internal whistleblowing system in liaison with the other functions concerned (human resources department, legal affairs department, etc.).

The compliance function officer oversees the processing of whistleblowing reports, launches an internal investigation if acts of corruption are found and assists with these investigations where required.

2.5. Disciplinary rules

The anti-corruption compliance officer takes part in disciplinary action. In the event of a breach of the anti-corruption code of conduct, the officer may propose disciplinary sanctions to senior management and the human resources department.

2.6. Third-party due diligence

The compliance function officer provides useful expertise to line managers in charge of conducting due diligence and provides an opinion in high-risk cases. The officer

receives a whistleblowing report in the event of an incident in relations with the third party, for example, when abnormal payment procedures are requested.

The officer checks that due diligence is satisfactory, conducting what is called a second-line audit. The officer produces indicators on the third-party due diligence system and reports them to senior management.

The officer may be in an appropriate hierarchical position in the company to be able to give an opinion regarding the renewal of a contract.

2.7. Accounting control procedures

Accounting control procedures are set up to detect irregularities (expenses, gifts, philanthropy, sponsorship, etc.) that might conceal acts of corruption. These procedures are conducted in liaison with the compliance function officer.

Controls are conducted on the accounts themselves and on the accounting systems used.

In this area, the anti-corruption compliance officer assists with the definition of the control checklist and the management of the information systems.

2.8. Internal monitoring and assessment system

Compliance with the procedures defined for the anti-corruption programme is internally monitored and assessed.

- First line of defence

Any issues encountered by the first line of defence are reported, systematically or in keeping with rules laid down in advance, to the compliance function officer who analyses the issues and determines the corrective action to be taken.

- Second line of defence

The compliance function officer draws up and implements a second line of defence plan covering the system in its entirety (or oversees its implementation). This plan can combine manual and automated checks.

- Third line of defence

A third line of defence is conducted in the form of an internal audit. A report is produced and sent to the compliance function officer on completion of this audit. The report may make recommendations and determine corrective action to be taken.

3. Advisory mission

In addition to the anti-corruption programme missions, the compliance function officer is also consulted on the company's major projects. The officer may hence give an opinion on external growth projects (mergers and acquisitions in particular) and investment projects, developing new markets, setting up a partnership, marketing new products, etc.

The compliance officer may also advise any employee exposed to a corruption risk or with a question about a given situation.

IV. Liability of the anti-corruption compliance function officer

1. Liability associated with the corruption prevention and detection obligation

The anti-corruption compliance officer cannot be held liable on the basis of Article 17⁸ of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016. These provisions make the company head liable for the implementation of the anti-corruption compliance system. The company head may be held personally liable, in addition to the legal entity's liability, before the AFA Sanctions Commission in the event of a breach.

2. Criminal liability

In principle, in the event of suspicion of corruption, any natural person involved in committing the offence may be held criminally liable if that person has actively participated in committing the acts of corruption.

Failure by compliance function officers to fulfil their professional obligations cannot constitute a criminal act of participation, as perpetrator or accomplice, in committing the offence of corruption.

An incomplete risk map, inadequate third-party due diligence or the absence of an advance whistleblowing report to senior management regarding a transaction, even one presenting a high risk of corruption, do not constitute acts of corruption or aiding and abetting such offences. In practice, therefore, it is improbable for compliance function officers to be held criminally liable for corruption if such officers have restricted themselves to acting (or have refrained from acting) within their remit.

However, compliance function officers could be held to blame by their company for failure to fulfil their professional obligations in the event of acts of corruption committed in which they have not taken part if they were in a position to prevent them, for example by informing senior management in good time. Such a situation would expose the compliance function officer concerned to a disciplinary sanction.

In this regard, note that the compliance function officer can act as a whistleblower in accordance with the conditions laid down in articles 6 and following of the Transparency, Anti-Corruption and Economic Modernisation Act of 9 December 2016.

Note also that the legal entity can also be held criminally liable under the common law conditions provided for in Article 121-2 of the French Criminal Code, as interpreted by case law. The legal entity is, in this case, criminally liable for the offences committed, on its behalf, by its bodies or its representatives.

⁸ "I. The chairs, chief executive officers and general managers of a company with at least 500 employees, or belonging to a group of companies whose parent company has its registered office in France and which hires at least 500 employees, and whose turnover or consolidated turnover exceeds €100 million shall take measures to prevent and detect, in France and abroad, acts of corruption or influence peddling (...)."



Agence Française Anticorruption

23 avenue d'Italie, 75013 Paris, France

afa@afa.gouv.fr

For more information:

www.agence-francaise-anticorruption.gouv.fr