



**FRENCH GUIDELINES FOR THE REINFORCEMENT OF PREVENTION OF CORRUPTION
IN COMMERCIAL TRANSACTIONS**

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In France there is currently no legal requirement for businesses, regardless of their size, to adopt internal measures to prevent corruption, unlike what exists in many countries and in other fields, such as workplace health and safety, where companies have a best endeavours obligation in France.

Yet the adoption in an increasing number of country of regulations on combating corruption with extraterritorial reach means that those countries are now capable of prosecuting foreign companies, including French companies, for acts of corruption committed anywhere in the world, sometimes even penalizing the mere lack of prevention.

At the same time, certain French businesses are gradually establishing ethical and compliance programmes to improve prevention of the corruption risk in their commercial transactions, often on the basis of principles and guidelines produced by international bodies or foreign legislations.

That is why, in the framework of its general corruption risk prevention role, the Central Service for the Prevention of Corruption (SCPC, *Service Central de Prévention de la Corruption*) has decided to provide businesses of all sizes with a tool to help them implement and develop effective policies to prevent corruption.

These guidelines to prevent corruption have been drawn up by the SCPC in collaboration with the main ministries concerned (Justice, Foreign Affairs and International Development, Finances and Public Accounts) and following wide consultation with the main stakeholders of the sector (private sector and public authorities). They meet the highest international anti-corruption standards and are aimed at French companies and other organizations (economic interest groupings, other groups, etc.) carrying out commercial transactions, with the aim of establishing compliance systems to prevent corruption in their commercial transactions and ensure their effectiveness. The guidelines are also aimed at professional organizations which assist businesses in their efforts.

These guidelines are flexible and can be adapted by organizations, especially small, medium- and intermediate-sized enterprises on the basis of their specific characteristics (size, legal form, sector of activity, geographical area, etc.).

The aim of the guidelines is to provide recommendations, that are not legally binding, for organizations drawing up their own compliance programmes to prevent and detect corruption at both national and transnational levels. They come with five annexes including a glossary of terminology, corruption offences, practical advice, major normative references and a list of the organizations consulted.

These guidelines for the prevention of corruption are freely available on the website: <http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/service-central-de-prevention-de-la-corruption-12312/>

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I- THE PURPOSE OF THESE GUIDELINES

Whereas:

- 1- corruption in national and international commercial transactions¹ affects good governance and sustainable economic development and distorts competition, above and beyond the serious moral and political concerns it raises;
- 2- there is an increased legal and financial risk resulting from enhancement of French legislation;
- 3- France has ratified anti-corruption conventions, and foreign anti-corruption laws with extraterritorial reach are increasingly being adopted;
- 4- multilateral development banks require more and more prior demonstration of anti-corruption compliance from their candidates for financing, through the existence of specific procedures that are effectively implemented;
- 5- the responsibility for combating corruption in the framework of commercial transactions is incumbent upon governments that must, each within their own competence, implement the international anti-corruption conventions they have signed and transpose them into internal law;
- 6- efforts are being made by businesses, employers federations and trade unions, as well as by non-governmental organizations specialized in combating corruption;
- 7- all progress in this area requires combined and simultaneous efforts from public authorities and economic stakeholders, including in the private sector;

The Central Service for the Prevention of Corruption (SCPC) recommends to organizations² of all sizes that they put in place an effective policy to prevent corruption that is suited to their specific risks. To that end, they may usefully draw upon the guidelines developed below.

¹ See Annex 1 – Glossary

² *Ibid.*

II- THE GUIDELINES

The French Guidelines are based around the six following principles:

1- Management commitment at the highest level

Management commitment³ is the prerequisite for the implementation of other measures to prevent corruption. It is therefore essential for management at the highest level to tolerate no such acts (“zero tolerance”). That commitment needs to be explicitly supported by the organization and made known to all staff.⁴

It also needs to be implemented at every level of the organization and with third parties.⁵

2- Risk assessment

An initial assessment and chart⁶ of the corruption risks the organization may be exposed to in relation to its activities or, potentially, the activities of its component parts (subsidiary, representation office, etc.) should be carried out in order to ensure that the compliance procedures that are put in place are suitable and proportionate to the identified risks.

That means managers need to have sufficient information on the various risks in order to relevantly draw up and validate the organization’s corruption prevention policy.⁷

The risk assessment needs to be documented and updated on a regular basis. It should result in sufficient allocation of the organization’s financial and human resources to be dedicated to combating corruption on the basis of the identified risks.

3- Setting up an anti-corruption compliance programme

In concrete terms, management commitment should lead to the establishment within the organization of an anti-corruption compliance programme, involving a reference document, the identification of a compliance officer⁸ and procedures applied to all functions within the organization that are exposed or concerned (as identified by the risk assessment), as well as the implementation of an internal whistle-blowing system.

The programme should be supported by adequate sanctions and training policies for staff.

³ See Annex 1 – Glossary

⁴ See Annex 3 – Practical advice

⁵ See Annex 1 – Glossary

⁶ *Ibid.*

⁷ See Annex 3 – Practical advice

⁸ See Annex 1 – Glossary

a) Drafting of a reference document

This reference document (code of conduct, integrity guide, ethical charter, or any other appropriate internal document) is the common foundation of the values to which the organization adheres and needs to emphasize the importance attached to preventing corruption.⁹ It allows the dissemination of a culture of integrity. In operational terms, its implementation comes within the framework of an applicable and enforceable¹⁰ anti-corruption compliance programme at every internal level and, externally, with all entities over which the organization has effective control.¹¹

b) Designation of a compliance officer

The compliance officer, a physical person or, depending on the size of the organization, a compliance department, is responsible for ensuring that the organization's compliance programme is implemented and for dealing with staff queries concerning potential or actual corruption issues, both at prevention and response level.

The compliance officer should have a high rank in the organization's hierarchy and have the real independence, resources and internal relays¹² required to fulfil his/her mission impartially. He/She should report at the highest level.¹³

The compliance officer's roles include:

- determining and defining the arrangements for implementation of the policy to prevent and combat corruption;
- ensuring the deployment of prevention measures and compliance with them;
- if necessary, organizing investigative procedures in the event of suspicions.

He/She is responsible for reporting on the implementation of the policy and provide operational advice to directors, executives and employees concerning how the organization's compliance programme is implemented. He/She also be the point of contact for commercial partners as regards these issues.

c) Designing procedures

α/. Inclusion of an anti-corruption clause into commercial contracts

Whatever the size of the organization, the general goal of including an anti-corruption clause into commercial contracts is to provide the parties with a contractual provision implementing obligation of means for the prevention of any act of corruption in all phases of the contract's completion.¹⁴

⁹ See Annex 3 – Practical advice

¹⁰ *Ibid.*

¹¹ See Annex 1 – Glossary

¹² In large organizations, a local or sectoral champion should be designated in each operational entity. The group champion should draw on that network.

¹³ Depending on the size of the organization, the champion should report to the person criminally liable for the organization or their delegate, or to a dedicated collegial body whose role and hierarchical link to the champion is defined in advance.

¹⁴ See Annex 3 – Practical advice

Failure to comply with this clause could be evoked as a means of defence by the organization in the event of allegations by an authority or even, where no corrective action is possible, as a grounds to suspend or terminate the contract.

β/. Designing procedures suited to the risks identified.

Operational measures, determined both in organizational and operational terms, help prevent or correct risks that are identified in advance.¹⁵

γ/. Due diligence as regards third parties

In order to avoid entering into business relation with third parties¹⁶ that could resort to corruption,¹⁷ the organization should take appropriate preventive steps.

The aim is to know about the third party in detail. The organization should adapt the various degrees and forms of vigilance that are possible based on assessment of the risk posed by each third party.

d) Setting up an internal whistle-blowing mechanism

This mechanism¹⁸ should be adapted to the size of the organization. It aims to collect any reports and ensure adequate protection of employees who report illegal or risky behaviour or situations.

It is designed in accordance with labour law and, where necessary, with obligations to declare to the French National Commission on Data Processing and Liberties (CNIL)¹⁹ and with local regulations abroad.

The mechanism, whose scope must be clearly defined, should enable:

- confidential reports;
- protection of directors, executives, employees and, where necessary, commercial partners:
 - who do not wish to infringe deontological and professional standards upon instructions or under the pressure of their superiors;
 - who, in good faith and on the basis of reasonable suspicion, wish to report breaches of the law or deontological or professional standards taking place within the organization;
- taking of appropriate measures based on such reports.

The internal whistle-blowing mechanism may, as necessary, be open to third parties; indeed, as such parties, unlike employees, do not enjoy the legal protection of whistle-blowers, the organization may provide for the protection of the third party in a contractual framework.

¹⁵ See Annex 3 – Practical advice

¹⁶ See Annex 1 – Glossary

¹⁷ See Annex 3 – Practical advice

¹⁸ See Annex 1 – Glossary

¹⁹ See Annex 3 – Practical advice

4- Control mechanism

Once the corruption prevention mechanism has been put in place, its effective implementation must be insured, depending on the size of the organization. Internal²⁰ and/or external control provides regular verification of its effectiveness.

An appropriate financial and accounting procedures system, including internal accounting controls, should guarantee that books, registers and accounts are sincerely kept, so that they cannot be used for the purposes of corruption or concealing corruption.

The report on such verifications must be presented to management bodies.

A compliance audit²¹ can be a useful supplement to internal controls by providing an objective analysis of potential weaknesses of the implemented procedure and by offering advice on how to improve it.

5- Communication, training and follow-up of the anti-corruption compliance programme

Management commitment²² and the organization's anti-corruption compliance programme need to be known and applied at all levels and functions exposed and/or concerned, including management, sales, procurement, accounting and finances and human resources teams.

Initial and continuous training of employees and regular review of the anti-corruption programme are needed to ensure the message is well understood and acted upon, and to ensure that it remains dynamic and constantly updated.²³

An appropriate training programme is decisive to ensure the mechanism developed is fully efficient and, thus, credible.

The aim is to effectively implement management commitment, including through the creation of an appropriate training programme whose effectiveness is based both on its terms²⁴ and on the regular supervision and assessment of the way it is conducted.

Various types of training can be distinguished, in line with the risks identified in the chart:

- training of management, as well as of risk-exposed executives and employees;
- general employee outreach as regards the organization's values of integrity;
- where appropriate, outreach to certain third parties.

The organization should take the necessary steps to ensure that the corruption prevention mechanism evolves to match changes in the environment (such as new identified or experienced risks, new standards, corrective measures in the framework of reviews) and is subject to regularly updated external communication.

²⁰ See Annex 1 – Glossary

²¹ See Annex 1 – Glossary

²² See § 1 above.

²³ See Annex 3 – Practical advice

²⁴ *Ibid.*

6- Setting up a sanctions policy

Without prejudice to the ability to report incidents that could constitute offences to police services or the territorially or nationally competent public prosecutor, the organization should set up an internal sanctions policy through appropriate disciplinary proceedings against all personnel, from employees through to executives, where it has been shown that they committed acts that infringed internal anti-corruption policies and procedures.

Communication about these possible sanctions should come alongside that around the anti-corruption compliance programme itself. The organization may decide, depending on circumstances, whether communication should take place regarding implemented sanctions decisions.

Analysis of the causes that made possible the incident that gave rise to sanctions could be a useful complement to the sanctions policy, providing a reflection into the ways of avoiding any repeat.

III. THE ACTIONS OF PROFESSIONAL FEDERATIONS

Professional federations could usefully contribute to the implementation of the anti-corruption compliance programme by, for example:

- legislative and parliamentary monitoring;
- dissemination and updating of information on national and transnational corruption issues;
- outreach and incentive actions with organizations.

CONCLUSION

This document aims to support organizations in their efforts to set up an effective compliance programme aimed at combating corruption in commercial transactions and providing them with suitable guidelines.

With this in mind, organizations should as a minimum design their programme based on the following six principles:

1. Management commitment at the highest level

2. Risk assessment

3. Setting up an anti-corruption compliance programme

Drafting of a reference document

Appointing an anti-corruption officer

Designing procedures

Inclusion of an anti-corruption clause into commercial contracts

Designing procedures suited to the risks identified

Due diligence as regards third parties

Setting up an internal whistle-blowing mechanism

4. Control mechanism

5. Communication, training and follow-up of the anti-corruption compliance programme

6. Setting up a sanctions policy

The effectiveness of the corruption prevention mechanism depends not on the quantity of measures taken, but rather on their effective implementation.

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