



Compliance The European Way

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<http://www.atlas-monde.net/europe/>

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Compliance – The External Influences

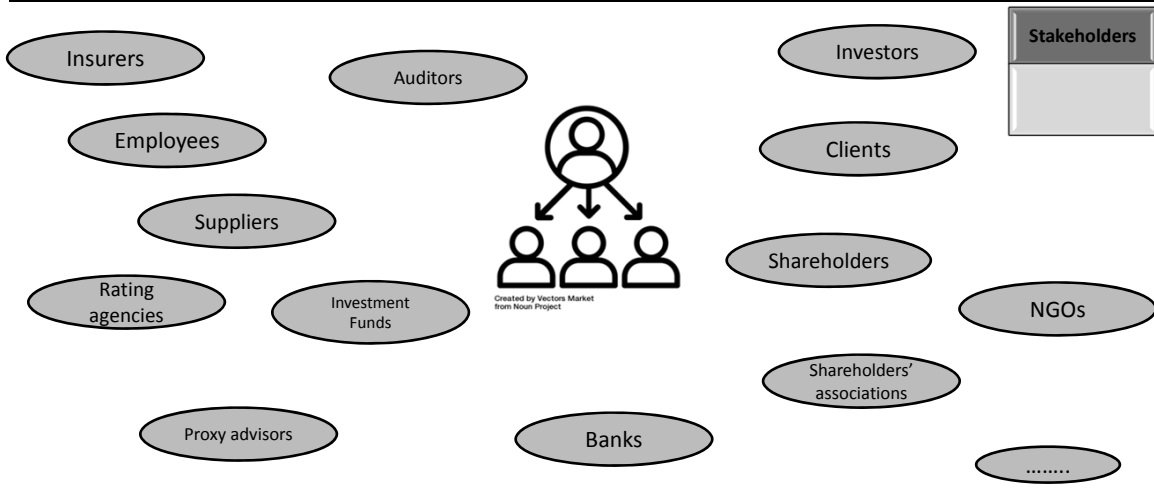
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Compliance – The External « Influences »



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Compliance – The External « Influences »



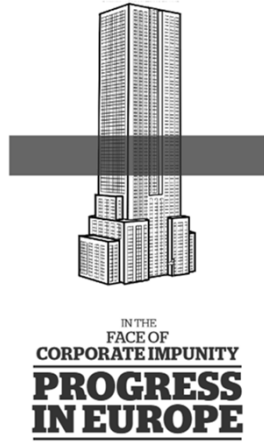
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Compliance – The External « Influences »



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Compliance – The External « Influences »



IT IS URGENT
TO LEGISLATE
ON MULTINATIONALS'
DUTY OF CARE!



* Sherpa

Stakeholders

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Compliance – The External « Influences »



**Industry giants fail to tackle child labour
allegations in cobalt battery supply chains**

| RATING | COMPANIES |
|----------------------------|---|
| All possible actions taken | None |
| Adequate action taken | Apple - Samsung SDI |
| Moderate action taken | Dell - HP - BMW - Tesla - LG Chem |
| Minimal action taken | Sony - Samsung Electronics - General Motors - Volkswagen - Fiat-Chrysler - Daimler - Hunan Shanshan - Amperex Technology - Tianjin Lishen |
| No action taken | Microsoft - Lenovo - Renault - Vodafone - Huawei - L&F - Tianjin B&M - BYD - Coslight - Shenzhen BAK - ZTE |

<https://www.amnesty.org/en/latest/news/2017/11/industry-giants-fail-to-tackle-child-labour-allegations-in-cobalt-battery-supply-chains/>

PÉTITION

**DITES À MICROSOFT DE
LUTTER CONTRE LES
VIOLATIONS DES DROITS
HUMAINS**

Jusqu'au 31.12.2018

13458 soutiens. Aidez-nous à atteindre 30000

Dans le monde actuel, nous avons de plus en plus recours aux batteries rechargeables. Elles alimentent nos téléphones portables, tablettes, ordinateurs portables, appareils photos et autres appareils électroniques portables. La révolution en matière de véhicules électriques qui se profile va encore accentuer notre dépendance aux batteries rechargeables. Mais connaissez-vous la provenance des matières premières qui les composent et les conditions dans lesquelles elles ont été extraites ?

Le cobalt est un composant essentiel des batteries lithium-ion rechargeables qui alimentent ces appareils électroniques portables.

Plus de la moitié de la production totale de cobalt dans le monde provient de la République démocratique du Congo (RDC). L'année dernière, le travail d'enquête d'Amnesty International a révélé comment le cobalt extrait par des adultes et des enfants parfois âgés de sept ans seulement dans des conditions dangereuses dans les mines de cobalt artisanales de la RDC se retrouvait dans les chaînes d'approvisionnement de nombreuses marques emblématiques des secteurs de l'électronique et de l'automobile.

<https://www.amnesty.fr/responsabilite-des-entreprises/petitions/microsoft>

Stakeholders

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Compliance – The External « Influences »

ÉNERGIE

CLIMAT : TOTAL, PREMIER PÉTROLIER À ÊTRE INTERPELLÉ SUR SON DEVOIR DE VIGILANCE

Les maires de plusieurs villes françaises et des ONG ont demandé mardi 23 octobre au groupe pétrolier Total d'agir pour limiter le réchauffement climatique à 1,5°. Faute de quoi ils pourraient l'attaquer en justice.

<https://www.novethic.fr/actualite/energie/energies-fossiles/lsrc/climat-total-petrole-devoir-vigilance-146477.html>

<https://www.asso-sherpa.org/wp-content/uploads/2018/10/221018-Courrier-Patrick-Pouyanne%CC%81.pdf>

Monsieur Patrick Pouyanné
Président Directeur Général
Total SA
Tour Coupole - 2 place Jean Millier
92078 Paris la Défense cedex

Stakeholders

Conformément aux dispositions de l'article L225-102-4 I du code de commerce, votre Groupe a publié son premier « plan de vigilance », intégré dans votre document de référence 2017

Celui-ci n'apparaît pas conforme aux exigences légales.

Il ne reflète pas la réalité des impacts de vos activités et les risques d'atteintes graves au système climatique qu'elles induisent.

En premier lieu, la cartographie des risques publiée ne mentionne pas le risque lié au changement climatique résultant de la hausse globale des émissions de gaz à effet de serre découlant de vos activités.

En second lieu, le plan de vigilance ne comporte aucune action adaptée d'atténuation des risques et de prévention des atteintes graves qui résultent du changement climatique. Les actions et

Voici les raisons pour lesquelles nous vous interpellons publiquement sur la nécessité de mettre en conformité votre plan de vigilance.

Celui-ci devra intégrer les actions que vous ne manquez pas d'adopter en matière d'atténuation du risque climatique et de prévention des atteintes graves à l'environnement et aux droits humains qui en découlent.

Vous devrez ainsi en tirer toutes les conséquences qui s'imposent à vos activités.

Si ces omissions majeures devaient être confirmées dans le plan de vigilance portant sur l'exercice 2018, nous serions alors contraints de saisir la juridiction compétente sur le fondement des dispositions de l'article L. 225-102-4-II du code de commerce.

Compliance – The External « Influences »

Stakeholders



In your country, What is the influence of NGOs?

<https://pixabay.com/fr/question-la-d%C3%A9cision-de-la-2003955/>

Compliance – The External « Influences »

Soft Law

Soft law refers to rules that are neither strictly binding in nature nor completely lacking legal significance but do have in common that they are directed at and have as effect that they influence the conduct of undertakings and individuals, however without containing rights and obligations

•US Legal (2018). *Soft Law and Legal Definition* <https://definitions.uslegal.com/s/soft-law>

It is often said that the importance of CSR soft law developments lies in how they influence, rather than control, the behaviour of corporations. It is in this way that soft law is distinguished from more traditional domestic legislative instruments or hard law, such as Acts and statutes, which are legally binding on corporations. Within this 'soft touch' approach is the promise of a more tailored and efficient route to ensuring corporate respect for human rights

•Croquet N., Hammed A. and Yalgin T.R. (2009). *Corporate Social Responsibility Soft Law Developments In The European Union*. Oxford Pro Bono Publico, <https://www.business-humanrights.org/sites/default/files/reports-and-materials/CSR-soft-law-in-EU-Oxford-Pro-Bono-Publico-for-Ruggie-30-Jul-2009.pdf>

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Compliance – The External « Influences »

Soft Law

WE SUPPORT



About the UN Global Compact

We are a voluntary initiative based on CEO commitments to implement universal sustainability principles and to take steps to support UN goals.

United Nations Global Compact (2018b). *The Ten Principles of the UN Global Compact*. <https://www.unglobalcompact.org/what-is-gc/mission/principle>

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Compliance – The External « Influences »



In your country, Is Soft Law convincing enough?

Soft Law

<https://pixabay.com/fr/question-la-d%C3%A9cision-de-la-2003955/>

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Compliance – The External « Influences »

▪ Soft Law Leads to Hard Law

European Parliament Resolution on Commission Green Paper on promoting a European Framework for Corporate Social Responsibility (2002)



European Parliament resolution of 6 February 2013 on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth



Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

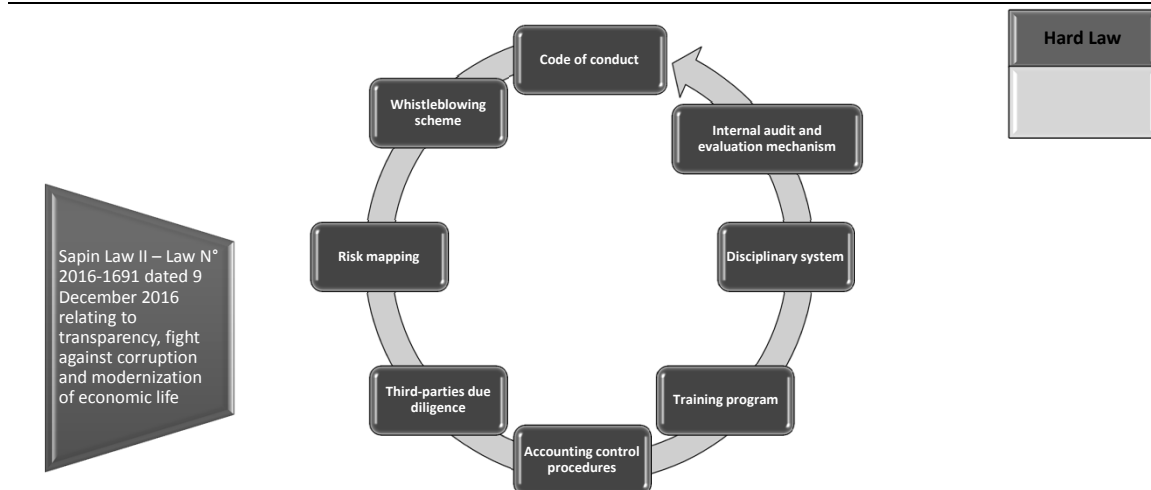


Article L. 225-102-1 of the *French Code de commerce*

Hard Law

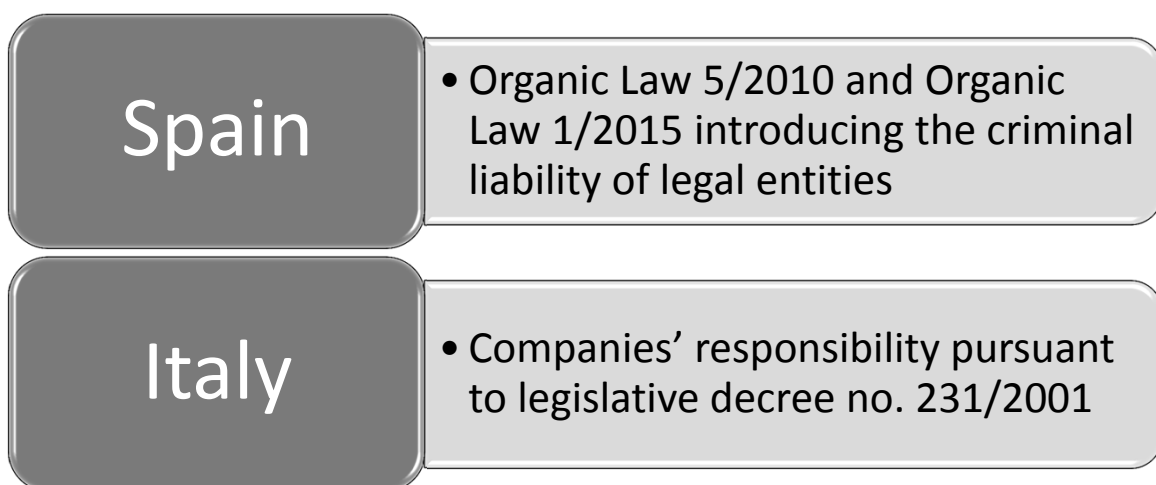
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Compliance – The External « Influences »



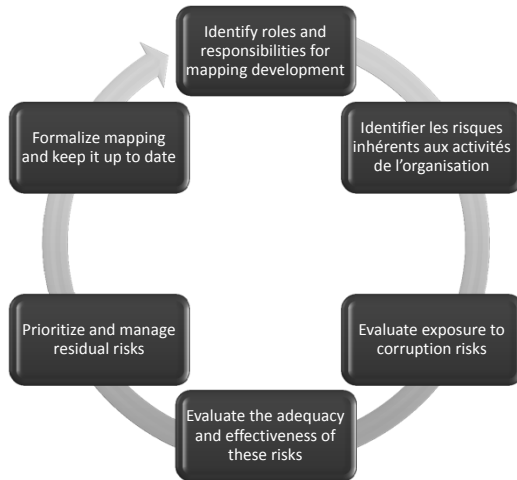
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Other European countries



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Compliance – The External « Influences »



Hard Law

Law N° 2017-339 of 27 March 2017 relating to the duty of care of mother companies and principals

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Compliance – The External « Influences »



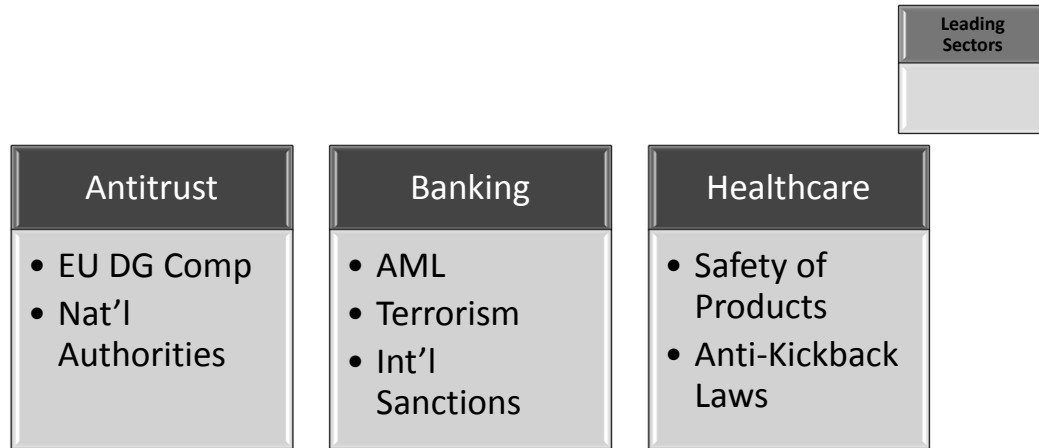
Should we have compliance laws or specific field laws (such as anticorruption)?

Hard Law

<https://pixabay.com/fr/question-la-d9c3%a9cision-de-la-2003955/>

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Compliance – The External « Influences »



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Antitrust in France

- In the context of a settlement procedure, the Tarkett companies were sentenced to the highest fine: 165 million euros. It appears from the decision that in particular certain information could be exchanged between competitors during trade union meetings.
- The Antitrust Authority specifies that compliance is now one of the expected behaviors of a company:
- "... the development and implementation of compliance programs are intended to be part of the day-to-day management of companies, especially when they are large in size. Commitments to implement such compliance programs are therefore not generally intended to justify a reduction in the penalties for competition law infringements, especially in the case of particularly serious offenses such as agreements and exchanges of information on future prices and commercial policy." (§464)
- The Tarkett 2017 Registration Document, of course, mentions the decision and the exceptional burden of the conviction. Under the risk management section, Tarkett expects the strengthening of its competition law compliance program in 2017: more training, new internal rules, better accessibility to internal rules, a professional alert system, and more in place of an internal control and evaluation mechanism for the competition law compliance program.

Tarkett France, Tarkett, Tarkett AB and Tarkett Holding GmbH

https://www.tarkett.com/sites/default/files/2018%20Corporate%20documents/TARKETT_DDR2017_FR.PDF

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Compliance – the external « influences »

▪ Risk assessment



Risk Management Process– What methodology has the company used to identify, analyze, and address the particular risks it faced?
Information Gathering and Analysis– What information or metrics has the company collected and used to help detect the type of misconduct in question? How has the information or metrics informed the company's compliance program?



The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. Risk assessment procedures that enable the commercial organisation accurately to identify and prioritise the risks it faces will, whatever its size, activities, customers or markets, usually reflect a few basic characteristics.



Corruption risk mapping starts with an objective, structured and documented analysis of the organisation's exposure to corruption risks in the course of its activities. The description covers the impact of risks (seriousness) and the likelihood that they will occur (frequency), matters that are likely to increase risks aggravating factors), and the responses given or to be given as part of an action plan. For the purpose of identifying assessing and managing corruption risk, we recommend following six steps.

Guidelines

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Navigating the Ocean of Anti-Corruption Compliance Guidelines

(with special permission of and thanks to Dr Eduard Ivanov, International Anti-Corruption Academy)

Diversity of guidelines

- domestic/international
- agencies/NGOs/professional associations/private companies...
- general/topic-specific

The « copy-paste effect »

- Example of the OECD Guidelines

Examples of key differences of approaches

- Compliance organization
- Risk assessment
- Third parties management

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Compliance – the external « influences »



Should guidelines be general or prescriptive?

Guidelines

<https://pixabay.com/fr/question-la-d%C3%A9cision-de-la-2003955/>

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Compliance – the external « influences »

▪ Enforcement

B. 2. How is the Compliance Department (or equivalent) of the Inspected Entity organized?

B. 2.1. the general presentation of the Compliance Department (including governance, the detailed and nominative organization chart with the job descriptions, the organization of the compliance function at the level of the Inspected Entity, the description of the tasks entrusted);

B. 2.2. the position of the Compliance Department (or equivalent) at each level of the Inspected Entity (in particular the position of the compliance officer, anti-corruption officer within the subsidiaries if any).

B. 3. What is the academic and professional background of the Compliance Department's members (or equivalent)? Have they received initial or permanent training specific to the fight against corruption and influence peddling?

B. 4. Does the Compliance Department have a dedicated intranet page? Please provide a screenshot of the intranet website dedicated to compliance.

Enforcement

Guidelines



Translation by Jones Day

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Compliance – the external « influences »

Enforcement



- What are the authorities expecting from the compliance programs?
- Is there a difference of approach depending on the authority and/or the field of law?
- Are the different authorities of your country cooperating?

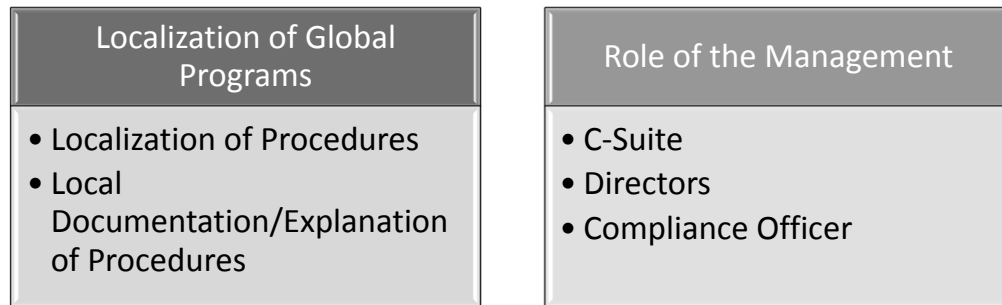
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Compliance – The Internal Organization

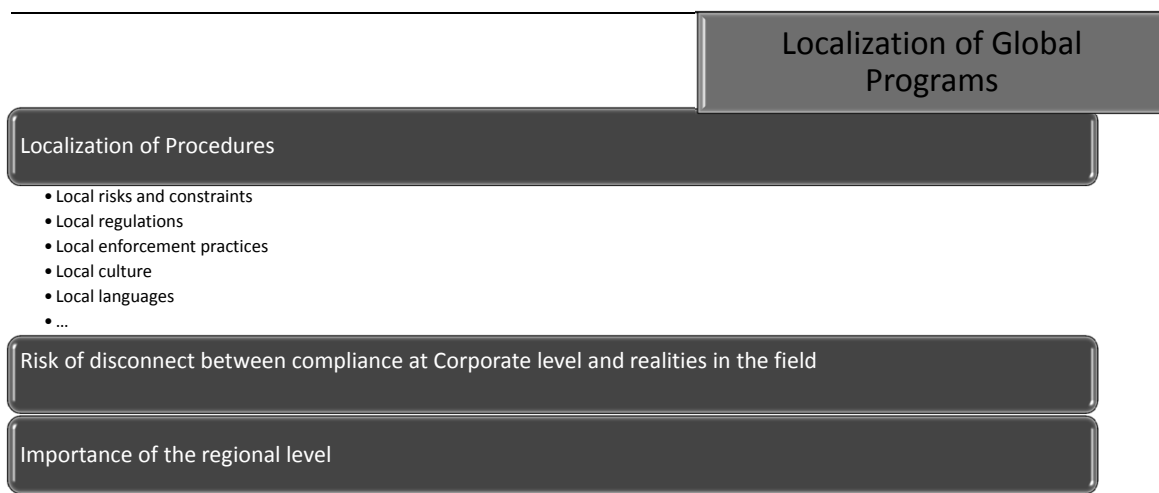
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Compliance – The Internal Organization



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Compliance – The Internal Organization



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Compliance – The Internal Organization

Localization



In your organization, How do you satisfy to requests from local authorities with a global program?

Localization of Global Programs

<https://pixabay.com/fr/question-la-d%C3%A9cision-de-la-2003955/>

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Compliance – The Internal Organization

Localization of Global Programs

Local Documentation/Explanation of Procedures

- Local compliance officer
- Local management system
- Local training

Role of IT tools deployment

Role of internal audits and compliance visits

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Compliance – The Internal Organization

▪ Explanation



In your organization, are the procedures global or localized?

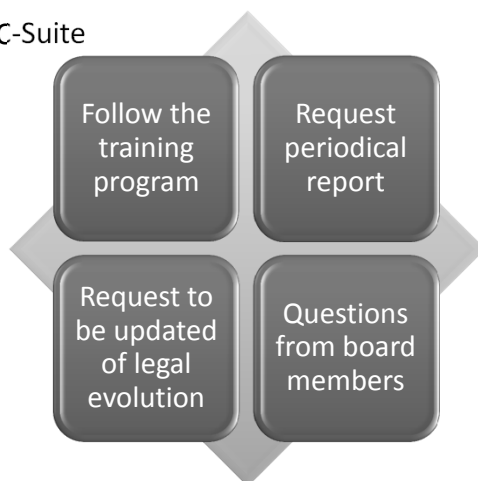
Localization of Global Programs

<https://pixabay.com/fr/question-lad%C3%A9cision-de-la-2003955/>

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Compliance – The Internal Organization

▪ C-Suite



Role of the Management

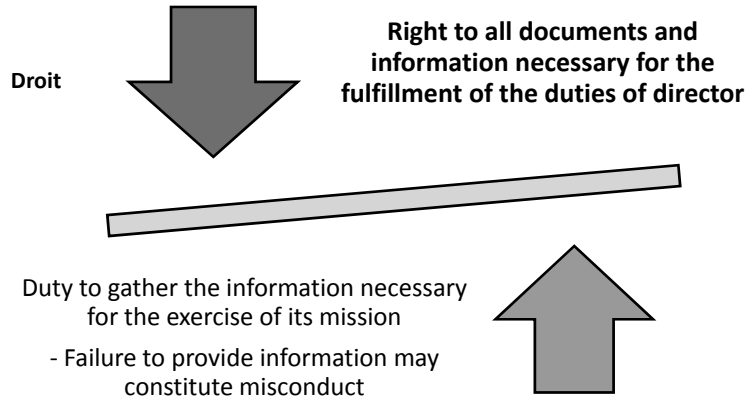


<https://es.kisspng.com/kisspng-30zupj/preview.html>

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Mission of the board meeting

Right (and duty) of information



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La Soft Law



MEDEF

Mission du CA

Code de gouvernement d'entreprises des sociétés cotées

It regularly reviews opportunities and major risks such as financial, legal, operational, social, societal and environmental risks as well as the actions taken as a result. It ensures the quality of the information delivered publicly.

It is aware of market developments, the competitive environment and the main issues facing the company, including in the area of social and environmental responsibility

It ensures, where appropriate, the establishment of a system for preventing and detecting corruption and trading in influence. He receives all the necessary information for this purpose.

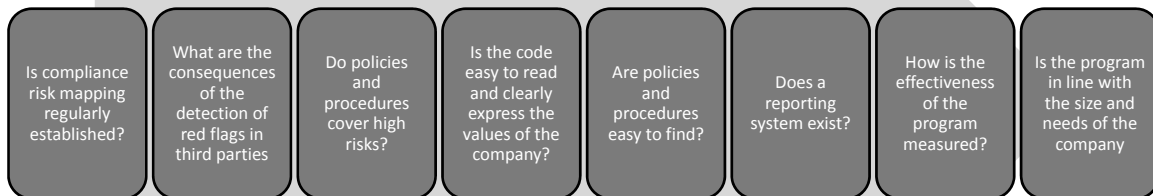
It also ensures that executive corporate officers implement a policy of non-discrimination and diversity, particularly in terms of balanced representation of women and men in governing bodies.

New

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Compliance – Conseil d'administration

Questions of the board members



Depends on the existence of a specialized committee of the board of directors

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Compliance – The Internal Organization

▪ C-Suite

Role of the Management



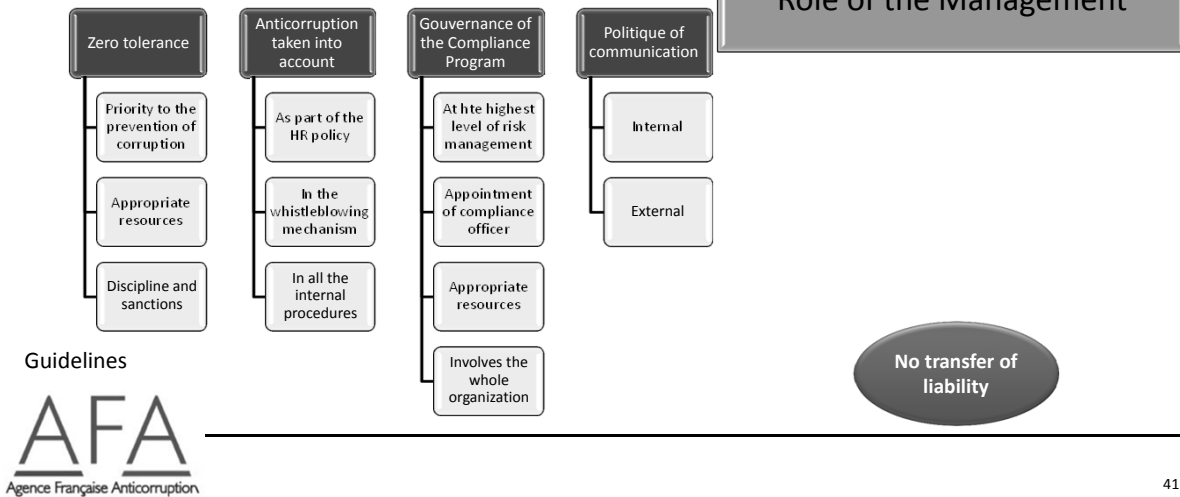
In your organization, How much is the Board involved in Compliance matters?

<https://pixabay.com/fr/question-la-d%C3%A9cision-de-la-2003955/>

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Compliance – Direction

Directors



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Compliance – The Internal Organization

Directors



Role of the Management

In your organization, How much are the Directors involved in Compliance matters?

<https://pixabay.com/fr/question-lad95C39aBcision-de-la-2003955/>

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Compliance – The Internal Organization

- Compliance Officer

Role of the Management

Guidelines



Ressources

Indépendance

Positionnement

Compétences

Visibilité /
communication

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Compliance – The Internal Organization

- Compliance Officer

Role of the Management

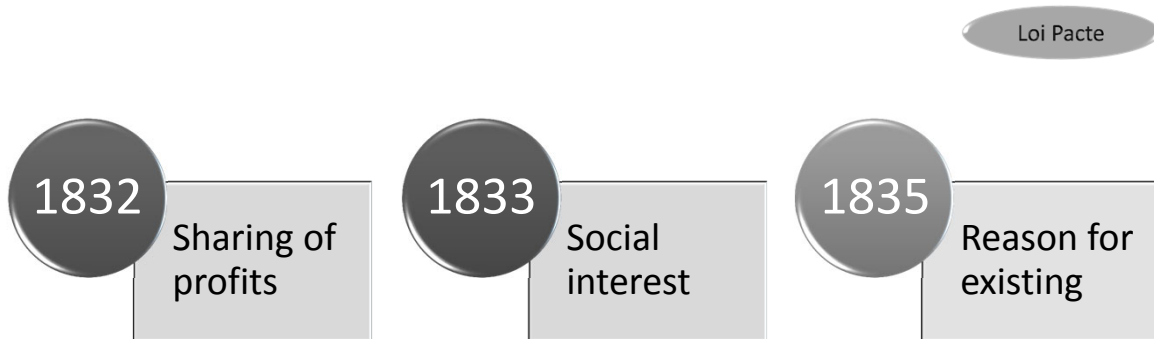


In your organization, How senior and independent
is the Compliance Officer ?

<https://pixabay.com/fr/question-la-d9c3%a9cision-de-la-2003955/>

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Last innovation



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La société à mission – B Corp

Notre ambition : LA CERTIFICATION B CORP

Aujourd'hui, les grandes marques et les entreprises sont appelées à rendre compte des intérêts qu'elles servent réellement. Pour Danone, c'est en répondant à cette attente de façon simple et directe que l'entreprise et ses marques pourront renforcer la relation de confiance qu'elles entretiennent avec l'ensemble de leurs parties prenantes : les salariés, les consommateurs, les distributeurs, les partenaires commerciaux, la société civile et les gouvernements. C'est pour cette raison que l'entreprise a rejoint le mouvement B Corp.



<https://www.danone.com/fr/about-danone/sustainable-value-creation/BCorpAmbition.html>

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