

FRENCH COMPLIANCE SOCIETY

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Communication has become an indispensable tool for corporate compliance !



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Communication and Compliance: What Are We Exactly Talking About?

This is the convergence of two topics that have become essential for businesses. On one hand, we have communication, or more broadly, reputation management, which has long been a paramount concern for companies. On the other hand, there is compliance, defined as the set of internal procedures aimed at ensuring a company's "compliance" with the legal and ethical rules that apply to it, now occupies an indispensable place in the life of companies.

Formerly limited to financial security, compliance has indeed experienced significant growth with the strengthening of the fight against corruption (Sapin II law of December 9, 2016) and the duty of vigilance (law of March 27, 2017, and pending European directive). The result? Companies, as well as all their executives and employees, are now faced with an increasing number of complex legal tools.

In response to this, companies must harness all the resources that effective communication can offer on these topics.

What are the precise goals to be achieved?

The first goal for companies is to meet legal requirements for the production and publication of certain internal norms and policies. For example, the Sapin II law requires companies subject to it to draft internal policies, including a code of conduct, which is intended to be disseminated to employees internally, published on the company's website, and even communicated contractually to its business partners. Similarly, the 2017 duty of vigilance law obliges larger companies to establish a vigilance plan to prevent serious infringements against human rights, fundamental freedoms, health and safety, and the environment resulting from their activities, those of their subsidiaries, suppliers, and subcontractors, and to publish this plan. Companies are also subject to numerous non-financial reporting obligations, requiring them to communicate on the social, environmental, and societal implications of their activities as well as their governance.

In general, communicating about ethical and compliance best practices always provides an opportunity to showcase a company, its history, culture, and ambitions. Thus, policies such as the code of conduct or the vigilance plan, which primarily respond to legal requirements, can also serve as excellent marketing and communication tools for the company's CSR or "ESG" (Environmental, Social, and Governance) strategy aimed at a broader audience. However, this communication must also address other objectives specific to each target audience.

Internally, the goal is to present the many existing compliance procedures (whistleblower policies, internal investigations, data handling, etc.) as clearly as possible to promote a genuine "culture" of compliance within the company and to convince employees and executives of their company's commitment to these issues. As emphasized by Jean-Claude Magendie and Philippe Mettoux in a recent article in *Le Monde du Droit*, employees' trust in their company's compliance policy is one of the best ways to prevent certain "abuses," especially regarding internal reporting and the use of whistleblower status. Thus, effective internal communication will enable the company to promote a "Speak Up" culture so that employees feel "confident" enough to make reports that the company can handle internally, thereby better managing its risks, including legal risks.

Externally, relevant communication about the company's ethics and compliance can serve both as a risk prevention tool and as a defense and response when such a crisis occurs. Regarding communication to prevent a crisis, its primary aim is to prevent the risk of civil and criminal litigation, as lawmakers have given third parties, including NGOs, the ability to sue companies in civil court under the duty of vigilance law in cases of non-compliance with or absence of a plan. We now see a proliferation of actions taken on this basis, such as against Total, EDF, Danone, Casino, Suez, and others. The companies, therefore, have an interest in carefully managing their communication on the subject.

As for communication in case of response or defense, it happens that companies must deal with leaks in the context of internal investigations initiated within their organization to shed light on reported facts or in the context of ongoing legal proceedings. In this case, external communication will be crucial to convince the general public of the company's sincerity and the effectiveness of its compliance policy to dispel unfounded rumors or to preserve doubt and the presumption of innocence during a possible legal proceeding against the company and/or its members, including in negotiated justice procedures, such as the well-known Public Interest Judicial Agreement (Convention d'Intérêt Judiciaire Public), more commonly referred to as "CJIP."

In practice, how can these goals be achieved?

It is difficult to provide a one-size-fits-all answer to this question because any communication strategy must be tailored based on the specific company, target audiences, timing, and many other factors.

However, compliance has two specific characteristics that should be kept in mind when preparing communication: the complexity of certain legal mechanisms and the fact that there is no zero legal risk, even for the most "compliant" company in the world!

In these conditions, the best communication will be one that is both simple, to be accessible to all, and restrained, to avoid any arrogance that could backfire on the company in case of a confirmed crisis.

The exercise is more complicated than it may seem, which is why it should not be neglected but rather anticipated!