



**Framework document of 23 May 2022 on competition
compliance programmes**

Compliance is now a well-established term that refers to both a process and an objective. The objective of compliance is for a company to defend its values and encourage virtuous behaviour so that it fully complies with the rules, particularly competition rules. It is an ethical approach that promotes free and undistorted competition in the economy and allows companies to optimise the management of financial or reputational risks. The term "compliance" also refers to an internal process that is implemented on an ongoing basis within companies, based on "compliance programmes".

In this respect, compliance refers to the internal actions implemented to disseminate a competition culture, ensure compliance with the rules and the accountability of economic actors to promote competition on the merits. Compliance programmes focus both on preventing the risk of breaching competition rules and on detecting and remedying potential infringements. They also evolve according to needs and the changes that occur. Compliance therefore combines three components: preventive, curative and evolving.

Ten years after its framework document of 10 February 2012, the Autorité de la concurrence (hereinafter the "Autorité") wants to adopt a new document marking the importance of competition compliance programmes and providing all stakeholders with benchmarks on the objectives, definition and implementation of such programmes. It considers that, while the development of compliance and competition culture in recent years has enabled economic stakeholders to develop competition compliance programmes, companies should still continue to be encouraged to develop such a programme, either independently or by integrating it into a general compliance policy (in the areas of anti-money laundering and corruption, personal data protection, social, societal and environmental responsibility, etc.) and to devote the resources necessary to ensure its success.

Compliance is everyone's business. The Autorité believes that it is the duty, and in the interest, of economic stakeholders to take all necessary measures to conduct their activities in compliance with competition rules.

In this framework document, it therefore provides a series of guidelines to help ensure the effectiveness of these programmes. These guidelines are supplemented by a broader set of resources that the Autorité is making available to companies and professional bodies to support their compliance efforts. These additional resources are presented in the last section of the framework document.

Compliance and implementation by the Autorité of its institutional means of action

1. The statutory provisions governing the Autorité do not refer to compliance per se. However, Article L. 461-1 of the French Commercial Code (Code de commerce) requires the Autorité to ensure the proper functioning of competition in the economy. This mission is to ensure that the freedom of economic stakeholders to innovate, produce and disseminate quality goods and services at the best price does not give rise to cartels or abuses that undermine the competitive functioning of the economy, other companies, consumers and, ultimately, the growth and well-being of the community as a whole. It implies pursuing a policy of market surveillance and behavioural guidance towards compliance with competition rules, but also promoting the prevention, detection, correction and sanctioning of infringements of these rules.
2. The French Commercial Code gives the Autorité various means to carry out this policy. These tools are not all of the same nature, although their common purpose is to encourage economic stakeholders to conduct and develop their activity in accordance with the objectives underlying the competition rules established by law and by the Treaty on the Functioning of the European Union (hereinafter the "TFEU"), on the one hand, and to dissuade them from violating these rules, on the other. Some of these instruments are essentially repressive or curative in nature. Others take into account, under the conditions they specify, certain initiatives taken by economic stakeholders to prevent infringements, remedy them or assist the Autorité in detecting, putting an end to and sanctioning them.
3. The first and second paragraphs of point I of Article L. 464-2 of the French Commercial Code give the Autorité the power to order companies and associations of companies that engage in anticompetitive practices prohibited by Articles L. 420-1, L. 420-2 and L. 420-5 of the French Commercial Code, and by Articles 101 and 102 TFEU, to cease such practices and to impose financial penalties¹.
4. The settlement procedure, set out in point III of Article L.464-2, allows companies that do not contest the objections brought against them to receive a financial penalty within a range proposed by the General Rapporteur and giving rise to the agreement of the parties.
5. Point IV of Article L. 464-2 of the French Commercial Code allows the Autorité, under leniency, to grant a total or partial exemption from a financial penalty to a company or association of companies contributing to the detection and incrimination of a cartel in which it has participated². Furthermore, since the transposition of the ECN+ Directive, the incentive for companies to expose possible secret cartels is strengthened by the fact that immunity from, or a reduction in, criminal penalties may also be conditionally obtained by natural persons belonging to the staff of the company which first submitted a leniency application.
6. After a reminder of the benefits of compliance programmes (I), this document specifies the conditions and criteria that the Autorité believes must be met in order to guarantee their

¹ The practical procedures for setting financial penalties are described in the 30 July 2021 notice by the Autorité de la concurrence on the method for determining financial penalties, available on the Autorité's website.

² The practical details of this procedure are described in the press release of the Autorité de la concurrence of 3 April 2015 on the French leniency programme. This document will be updated in accordance with Decree 2021-568 of 10 May 2021 on the procedure for total or partial exemption from financial penalties provided for in IV of Article L. 464-2 of the French Commercial Code (Code de commerce).

effectiveness (II); lastly, it presents the role that the various compliance stakeholders can play in contributing to its overall success (III).

I. Competition compliance programmes: WHY?

7. Compliance programmes are programmes by which companies or associations of companies express their commitment to certain rules, as well as to the values or objectives on which they are based, and put in place concrete measures to develop a culture of compliance to prevent, detect and put an end to potential breaches.
8. These programmes are a tangible illustration of proactive governance strategies, through which economic stakeholders express their determination to instil an ethical internal culture in order not only to ensure that their behaviour complies with the rules of law, but also to prevent the risks of infringement of these rules and deal with them without delay when the infringement could not be avoided.
9. The benefits of competition compliance programmes are threefold: they contribute to establishing free and undistorted competition (A), they help prevent certain proven risks (B) and they facilitate the detection of infringements (C).

A. Allow free and undistorted competition

10. Compliance with competition rules allows free competition, which encourages companies to best meet the expectations of their customers, whether consumers or businesses. This competitive dynamic can take different forms: companies can compete on price; they can also differentiate themselves through their innovations, which encourage the emergence of a more diversified offer in terms of both products and services. This competition, which aims to conquer new markets, helps to create new opportunities for growth and jobs while ensuring attractive prices for consumers.

B. Preventing financial and reputational risks

11. Ignorance of competition rules not only entails significant financial risks, but also a major risk of damage to the reputation of the companies and associations of companies involved, which a compliance programme must help to avoid.
12. In financial terms, violations of competition rules, as provided for under French and Union law, can expose legal entities to significant financial penalties of up to 10% of their global turnover. Public and private persons who are victims of a cartel or abuse of a dominant position are, moreover, entitled to obtain compensation for their loss, exposing the convicted companies to the additional burden of having to pay damages. This risk has increased in recent years, particularly in light of the change in the applicable legislative framework resulting from the Damages Directive (Article L. 481-1 of the French Commercial Code (Code de commerce)).

In addition, the ECN+ Directive³, transposed on 26 May 2021⁴, has vastly increased the financial risk to the associations of which the companies are members⁵.

13. It is also recalled that Article L. 420-6 of the French Commercial Code (Code de Commerce) stipulates penalties of up to four years' imprisonment and €75,000 for natural persons who fraudulently play a personal and decisive role in the design, organisation or implementation of anti-competitive practices.

C. Facilitate the detection of violations to achieve compliance

14. The dual function of compliance programmes is to spread a culture of compliance and to facilitate the detection of rule infractions when they occur. Thus, compliance programmes not only ensure compliance with the rules but also ensure that the rules are complied with in the event of a breach.
15. Detection is essential because it will enable the company or association of companies to identify facts that potentially contravene competition law. It is with regard to the analysis of the facts and the applicable legal texts that the company will be able to decide on its actions in order to comply.
16. The competition rules offer companies and associations of companies a choice between different compliance options, depending on the circumstances of the case. The use of settlement and leniency procedures, which have already been mentioned, is an example of possible responses.

II. **Competition compliance programmes: HOW?**

17. The Autorité believes that it is the duty of the economic stakeholders themselves, and in their interest, to take all possible measures to conduct their activity in compliance with competition rules and to prevent possible breaches of these rules. It considers that the implementation of an effective compliance programme can play a key role in this regard, while providing increased guarantees of accountability and security to shareholders and the general public, particularly when the company, or the group to which it belongs, is listed on the stock exchange or controlled by the State.
18. The Autorité, which attaches great importance to the educational and preventive aspects of its competition regulation mission, therefore invites economic stakeholders that already have a compliance programme to ensure that it includes a set of measures concerning competition rules. It encourages those who do not yet have them to do so, emphasising that compliance with competition rules is only one aspect of the overall compliance issue, which may deserve integrated treatment.

³ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

⁴ Ordinance No 2021-649 of 26 May 2021 on the transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

⁵ Study on professional organisations, available on the Autorité's website.

19. For compliance programmes to be effective, the Autorité believes that they should focus on three objectives: preventing the risk of infringement, providing the means to detect and deal with cases of infringement that could not be avoided, and providing for regular updates.
20. Fostering and disseminating a culture of compliance must be the cornerstone of compliance programmes.
21. These programmes cannot therefore be limited to measures designed to inform the corporate trustees, managers, executives, other employees and agents of the company or association of companies in question of the content of the rules and the need to comply with them.
22. This first approach should be supplemented by a set of concrete and effective measures establishing that the company or association of companies is genuinely and proactively committed, at all levels of the hierarchy, to fostering a culture of compliance with competition rules, detecting cases of non-compliance and providing appropriate responses. Otherwise, the internal incentives to comply with the obligation to act in accordance with the law would remain weak and the compliance programme could be considered ineffective or even artificial. The added value of compliance programmes is therefore based on the combination of preventive, curative and evolutionary components.
23. Economic stakeholders will thus reap the expected benefits of a compliance programme if it is designed by and for the company (A) and includes all the elements necessary for its effectiveness (B).

A. A compliance programme designed by and for the company

24. A competition compliance programme is intended to be part of an overall compliance programme that brings together all the preventive measures implemented by the company (in terms of anti-money laundering and corruption, personal data protection, social, societal and environmental responsibility, etc.).
25. It is crucial for the success of a competition compliance programme that it is designed by and for the company; it is a "tailor-made" project that must be adapted to the markets, activities and products, internal organisation and culture, as well as to the decision-making chain and the mode of governance. This work requires a risk analysis, which leads to the establishment of a map of the identified risks.
26. It is also essential for the company to anticipate any new risks that may arise. It is therefore important to be proactive, through regular monitoring, which will allow the consideration of the major competition compliance issues, which may, moreover, fluctuate over time, depending on changes in the legislative framework, case law and doctrine to date, and the decision-making practice of the competition authorities, as well as on the specific situation of the company and the markets in which it operates. A company that was not previously dominant may become so as a result of an increase in its market share and thus have to be particularly vigilant about the behaviour it adopts. The established risk map should be regularly updated in light of developments that have been reviewed to ensure the continuous improvement of the compliance programme. These successive evaluations and the resulting changes must be documented.

27. In addition to the traditional compliance tools, the digitisation of compliance processes is developing. The use of innovative digital tools such as algorithms programming a compliance by design approach can also be explored.

B. A compliance programme built on key points

28. The Autorité considers that five pillars should guide companies in the development of their competition compliance programme: a public commitment by the company (1), internal relays and experts (2), information, training and awareness (3), control and warning mechanisms (4) and, lastly, a monitoring system (5). These pillars can be adapted according to the diversity of the stakeholders involved to take into account the specific characteristics of each company or association of companies, for example if a company is a small or medium-sized enterprise (SME)⁶.

1. *A public commitment from the company*

29. The first pillar of success is a clear, firm and public statement by the management bodies and, more generally, by all executives and corporate trustees on the need to comply with competition rules and support the company's compliance programme.
30. Management leadership is essential for involving all teams and leading the company to effectively commit to compliance. All organisational levels of the company must be involved: the general management, the technical departments (legal manager, information systems manager and digital strategy manager in particular), as well as the sales teams in the field.

2. *Internal relays and experts*

31. The designation by the management bodies, when the structure of the company allows it, of persons responsible internally for the management of the compliance programme is also a key to success.
32. The compliance officers must:
- be appointed by the management bodies and have sufficient authority and competence to promote and enforce compliance within the company or association of companies;
 - have the necessary time and authority, as well as sufficient human and financial resources, to ensure the effective implementation of the compliance programme;
 - have the ability to directly access the management bodies of the company or association of companies (for example, on the discovery of an infringement);
 - have the autonomy and independence to carry out their mission (e.g. by not being dependent on an operational unit).

3. *Information, training and awareness*

33. The third pillar of an effective compliance programme is the implementation of information, training and awareness measures for the company's employees or the members of the association of companies.

⁶ Understanding competition rules: a guide for SMEs, available on the Autorité's website.

34. These information measures concern:
- the existence, purpose and content of the compliance programme;
 - the meaning and practical scope of the competition rules;
 - the importance and value of complying with these rules in the context of professional activity;
 - the internal mechanisms for obtaining advice or alerting someone to the existence of an actual or potential infringement of these rules.

Not all categories of personnel necessarily receive the same information.

35. The information must also be accompanied by training and awareness-raising activities on competition rules and the practical operation of the compliance programme. Not all categories of personnel need to receive the same actions, which should be adapted according to the professions and their exposure to risk. Conducting a risk assessment is, therefore, a necessary prerequisite to the training and awareness exercises.

4. Control and warning mechanisms

36. The control function, on the one hand, and the warning function, on the other, have distinct purposes, each of which requires specific treatment within the compliance programme. The implementation of these mechanisms is also a key element of an effective compliance programme.
37. Controls must ensure that the compliance programme is being followed at all levels of the organisation. They may, for example, take the form of provisions incorporated into the internal regulations, clauses inserted into employment contracts or individual compliance certificates.
38. Warning mechanisms⁷ must provide the conditions necessary for employees or members of the association of companies to communicate appropriately with the designated compliance officers, whether to seek advice or to alert them to actual or potential infringements. The provision of a "desk", that allows the transmission and processing of information, according to established procedures, is an example in this regard.

5. A monitoring and updating system

39. Lastly, the success of a compliance programme depends on the ability of the company or association of companies to monitor its implementation.

Such a system must include the establishment of a procedure for handling requests for advice and alerts (how are they reviewed and what response is given) and a procedure for sanctions in the event of a breach of the compliance programme.

In addition, it is recalled that the compliance programme must be regularly updated in light of developments to ensure its continuous improvement.

⁷ Law No. 2022-401 of 21 March 2022 to improve the protection of whistleblowers, transposing Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019 on the protection of persons who report breaches of Union law.

III. Competition compliance programmes: WHO?

40. The Autorité recognises the vital role played by compliance stakeholders, each of whom, at their own level, contributes in a specific way to the dissemination of a culture of compliance: companies and external experts (A), professional bodies (B) and institutional partners (C).

A. Companies and external experts

41. Companies are at the heart of the compliance process. While the compliance function requires clear impetus from senior management, in practice it relies on the actions of the compliance officers who carry out this mission on a daily basis. It is important that they have all the necessary resources to do so. All compliance officers have a demanding job, which requires expertise and calls for both educational and authoritative skills: the ability to advise and dialogue, the ability to adapt to the culture and technical nature of each internal level of the company and, at the same time, the ability to control the activity of the departments and make decisions.
42. The company's unique knowledge of the product, service, market or sector can be reinforced by external expert advice, including from law firms, bringing additional expertise to the compliance department.
43. External experts, and in particular competition lawyers, can be involved at various stages. This may include advising the company or association of companies on the design of its general compliance policy, assisting with the practical implementation of compliance programmes, explaining these programmes and raising awareness of their objectives among all personnel through training, and regularly evaluating the compliance programmes and behaviour of companies or associations of companies through legal audits, to detect and correct possible malfunctions in their programme or breaches of competition law. External experts also have an essential advisory role to play in ensuring that the company or association of companies adopts the right reflexes when a breach has been detected.
44. In the case of SMEs, the use of external experts can also make up for the absence of an internal compliance position.

B. Professional organisations

45. Professional organisations are intended to bring together all the companies in the same profession or sector, and the trade unions representing the companies. Their primary objective is to represent and defend the interests of all companies in a given profession or sector.
46. These organisations can fully contribute to the dissemination of good practices to their members and can guide them in compliance matters. For such an exchange to be productive, it is important that companies make their needs known, on the one hand, and that professional associations organise their assistance in an appropriate manner⁸, on the other.

⁸ See the study on professional organisations, mentioned above.

47. Moreover, as with companies, it is the duty of professional organisations to take all the necessary measures to conduct their activities in compliance with competition rules.

C. Partner institutions

48. The Autorité de la concurrence and the DGCCRF are partner institutions for companies and professional organisations. They both play an important role in facilitating a culture of compliance in several respects.

49. The Autorité assists economic stakeholders in their compliance efforts in several ways.

- *By producing a reference decision-making practice*

The Autorité rules on many contentious cases. This decision-making practice serves as a benchmark for the application of competition rules. Decisions are reasoned and, in addition to the stakeholder involved, can enlighten all stakeholders who could be concerned.

- *By developing a diversified consultative practice*

The Autorité produces opinions and conducts sector-specific inquiries, in which it issues recommendations that provide an interpretation of identified problems. The Autorité thus provides diagnoses on the functioning of certain markets, which makes it possible to support stakeholders, who can correct or anticipate their behaviour in these markets.

- *By providing targeted compliance tools*

The Autorité regularly produces guides and studies, which set out its analysis and practice in order to guide stakeholders on current issues and be as in tune with their concerns as possible. The study on professional organisations and the guide for SMEs have already been mentioned. Other publications focus on mergers, distribution and digital, for example.

- *By implementing a communication policy for a wide audience*

The Autorité communicates widely in the interests of the public and the stakeholders on competition rules and their virtues, as well as on its decisions and opinions.

It includes "Compliance" boxes in its press releases, to make operators more aware of the points of concern.

Its website also has a space entirely dedicated to "Compliance" in the "Competition and You" section. These pages include many educational materials, such as the publications already mentioned, as well as infographics and videos aimed at different types of audiences.

The Autorité is mobilising a range of resources to spread a culture of compliance to as many people as possible.

50. The DGCCRF is also working to promote compliance with competition rules as close to the field as possible, in particular with public procurement stakeholders and SMEs.

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