

The Case for Compliance: Why UK and EU Businesses Should Continue to Invest in Their Compliance Programs

Client Alerts

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On 20 March 2025, enforcement agencies from the UK, France and Switzerland affirmed their shared commitment to tackling international bribery and corruption and founded a new taskforce to strengthen collaboration. Director of the Serious Fraud Office (SFO), Nick Ephgrave, stated that the coalition “*reaffirms our individual and collective commitment to tackling the pernicious threat of international bribery and corruption*”.

The announcement comes weeks after the Trump Administration signalled a significant shift in its approach to Foreign Corrupt Practices Act (FCPA)^[1] enforcement, by issuing an Executive Order on 10 February 2025 that pauses new FCPA enforcement for 180 days, subject to exceptions granted by the Attorney General. Jenner’s client alert, “Trump Administration Calls for a Pause on New FCPA Enforcement, but Don’t Abandon Compliance Programs Just Yet,” analysed the Executive Order and cautioned companies against hastily overhauling their anti-bribery policies or reducing compliance efforts.

With the proverbial stick of FCPA enforcements on ice, some companies may be tempted to reduce their investment in their compliance programs. However, the announcement by the UK, Swiss and French authorities serves as a timely reminder that the FCPA is not the only driver for anti-bribery compliance efforts. Compliance should still be front of mind for businesses operating in the UK and Europe. In particular, and as we will go on to discuss:

- Businesses operating in the UK and Europe are subject to tough, extra-territorial anti-bribery laws
- Bribery is not the only risk compliance programs are designed to address
- Companies in regulated sectors will continue to face especially stringent anti-bribery and corruption compliance obligations
- There are commercial risks associated with non-compliance

- Suppliers to government are required to uphold integrity standards or risk debarment from public contracts
- Non-US companies could become a target of U.S. FCPA enforcement once the 180-day pause is lifted
- The Executive Order is not a shield from liability in the U.S.

1. Businesses operating in the UK and Europe are subject to tough, extra-territorial anti-bribery laws

It goes without saying that the FCPA is not the only driver for anti-bribery compliance efforts; the UK and various European states also have tough anti-bribery laws with extra-territorial effect.

Under the UK Bribery Act 2010 (UKBA), British citizens, residents, and companies are prohibited from bribing foreign public officials and from commercial bribery between private sector entities. Commercial organisations are also liable for failing to prevent bribes paid anywhere in the world for the benefit of the commercial organisation by anyone providing services on its behalf. Commercial organisations will have a full defence if they can show that despite a particular case of bribery, they had an adequate bribery compliance program.

The failure to prevent bribery offences does not only apply to commercial organisations that are registered in the UK but also applies to commercial organisations which “carry on business” in the UK, irrespective of where they are incorporated and also irrespective of whether the underlying bribery committed would fall within the UK’s jurisdiction. Any company with a “demonstrable business presence” in the UK would be caught.

There are also many European anti-bribery and corruption laws. By way of example, both Spain and Germany have a Criminal Code which criminalises bribery and corruption in business, and the Sapin II Law in France requires that French companies and global corporations in France prevent corruption. The extraterritorial jurisdiction seen in the UKBA is also present in other countries’ equivalent laws, for example in France, liability for corruption is provided if an offence is committed abroad and if all or part of the person’s economic activity takes place in France.

The announcement by the UK, French and Swiss authorities shows that while FCPA enforcement in the U.S. might have been paused, the UK and Europe remain committed to enforcing their anti-bribery and corruption laws.

2. Bribery is not the only risk compliance programs are designed to address

Whether in the U.S., UK or otherwise, companies face a multitude of legal and regulatory risks which their compliance programs are designed to mitigate. These include anti-competition, sanctions and trade controls, fraud, data privacy, human rights, ESG (Environmental, Social, and Governance) and

supply chain governance and more. The risk of enforcement in relation to these risks in the U.S., UK and around the world is not changed by the Trump Administration's stance on FCPA enforcement. For example, the UK Government recently introduced a new offence of failing to prevent fraud, where UK companies and companies operating in the UK may be shielded from prosecution where they have reasonable fraud prevention procedures as part of their compliance programs. (See our client alerts – *Failure to Prevent Fraud – What Do You Need to Know About the New Corporate Offence?* ; *What Do You Need to Know About the New Corporate Offence? (Part 2)*)

More broadly, scaling back on bribery compliance could undermine companies' hard-fought battles to cultivate robust cultures of compliance and ethical behaviour. When a company reduces its focus on anti-bribery efforts, it risks sending a message to employees that cutting corners may be acceptable which risks creating an environment where unethical behaviour and misconduct of all kinds is more likely to flourish.

3. Companies in regulated sectors will continue to face especially stringent anti-bribery and corruption compliance obligations

A robust compliance program is critical in regulated industries, such as healthcare, financial services, energy and pharmaceuticals, where companies are required to adhere to a complex web of integrity-based regulations.

For example, the Financial Conduct Authority (FCA), the UK's financial sector regulator requires companies to establish and maintain effective systems and controls to mitigate financial crime risk (including but not limited to bribery and corruption). The FCA also has scope to take action where a firm has deficient anti-bribery systems and controls regardless of whether or not bribery has been found to have taken place. The FCA's recent fine of the London Metal Exchange for inadequate systems and controls demonstrates the FCA's focus on compliance. Another example is found in the Association of the British Pharmaceutical Industry Code of Practice which prohibits gifts for personal benefits from being given to healthcare professionals.

In regulated sectors, non-compliance with regulatory requirements more broadly can lead to severe consequences, including significant financial penalties, reputational damage and even loss of business licenses.

4. Commercial risks associated with non-compliance

Non-compliance with anti-bribery and corruption laws can also open companies up to additional commercial risks, such as contractual claims as well as costly reputational damage.

Commercial and financial agreements typically require parties to warrant their compliance with anti-bribery, sanctions and other laws. Failing to comply can result in breaches of contract, leading to significant financial consequences, including termination of agreements and damages. Even if one

party to a contract decides to water down their warranties, other parties may not, and this can cause unnecessary friction and delays in a contractual relationship.

There are also significant reputational ramifications for failing to mitigate against bribery and other compliance risks. Companies' share prices typically suffer following a compliance scandal. Earlier this year, British gambling company Entain saw its share price fall by over 20% following a bribery investigation in the UK, and in late 2024 Indian conglomerate Adani Group's flagship company had its shares drop by 22.61% after fraud and bribery charges were brought against the Group's chairman in the U.S.

5. Suppliers to government are required to uphold integrity standards or risk debarment from public contracts

Companies found guilty of violating anti-bribery laws and other compliance offences may face suspension or debarment from participating in future government contracts. Under the UK's Procurement Act 2023 which came into force in February 2025, the UK Government will maintain a public debarment list, which will list suppliers, and their subcontractors, who are either excluded or excludable from participating in public procurement tenders. Suppliers can be added to the list based on either mandatory or discretionary grounds. Mandatory grounds such as convictions of fraud or bribery automatically prohibit a supplier from bidding on future contracts. Discretionary grounds, however, encompass poor conduct that does not necessarily constitute an offence to trigger mandatory exclusion, but contracting authorities are nevertheless advised to exercise caution and may choose not to award them new contracts. The discretionary grounds are fluid, and may include "conduct which calls into question a supplier's integrity". (*see: Client Alert: UK Government Suppliers Need to Mind Their Ps and Qs Now That the New Procurement Act Is in Force*).

Similar risks of debarment from public government contracts exist in the EU. The EU Procurement Directive (Directive 2014/24/EU) makes it mandatory for contracting authorities to exclude companies guilty of corruption or money-laundering from public procurement processes. For corruption offences, the definition is extended beyond the EU definition and includes corruption as defined in the national law of the relevant governing body, potentially widening its scope. There are also discretionary grounds for exclusion in the Directive which, for example, give contracting authorities the ability to exclude companies for "grave professional misconduct, which renders its integrity questionable". Companies wishing to participate in EU public contracts therefore face a high risk of debarment where they violate anti-bribery laws.

6. Non-U.S. companies could become a target of U.S. FCPA enforcement once the 180-day pause is lifted

The Executive Order directs the Attorney General to develop new guidelines for future enforcement consistent with "the President's Article II authority to conduct foreign affairs," the "prioritiz[ation of] American interests," "American economic competitiveness with respect to other nations," and

“efficient use of Federal law enforcement resources.” It is therefore possible that non-U.S. companies could face a higher risk of FCPA enforcement after the 180-day pause is lifted.

There is an emphasis in the Executive Order on the need for U.S. companies not to be hamstrung by disproportionate anti-bribery enforcement and on American companies being able to compete in the global economy, which suggests that non-U.S. multinationals, including companies operating in sensitive sectors that compete with U.S. companies, may remain in the crosshairs of FCPA enforcement. While the Executive Order indicates that the U.S. Department of Justice may elect not to enforce the FCPA against American citizens and companies in situations where such enforcement could put them at a competitive disadvantage, it may more sharply focus on foreign entities that the administration perceives to have been operating at an advantage over U.S. companies.

Currently, roughly 40% of FCPA defendants are foreign entities. Of the 10 largest FCPA fines, 6 involved non-U.S. companies, with 4 of the 5 highest fines imposed upon European companies.

7. The Executive Order is not a shield from liability in the U.S.

More generally, absent an act of Congress, the FCPA remains law. The Administration’s current enforcement approach does not provide immunity or guarantee that priorities will not change. Given the FCPA’s statute of limitations is five or six years depending on which provisions are engaged, these policy announcements are not a complete liability shield as FCPA liability may outlast the current administration.

With so much at stake and with UK and European prosecutors expressly committed to tackling corruption, the message for businesses operating in the UK and EU is clear – now is not the time to ease up on compliance efforts.

Footnotes

[1] The FCPA’s anti-bribery provisions make it illegal for companies or individuals to corruptly give or offer anything of value to foreign officials to improperly influence them for the purpose of “obtaining or retaining business.” These provisions apply not only to U.S. companies and individuals but also to companies listed on U.S. stock exchanges, as well as foreign companies and individuals whose actions fall under the FCPA’s jurisdiction. The accounting provisions—which apply only to companies whose securities are listed in the U.S. – require “issuers” to maintain accurate records and internal accounting controls.

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