

CULTURE AND VALUES IN GLOBAL CORPORATIONS

Rethinking global corporate compliance



Prof. Dr. Bartosz Makowicz

Prof. Dr. Bartosz Makowicz is a university professor at the Faculty of Law, European-University Viadrina in Frankfurt (O.), Germany. He is director of Viadrina Compliance Center which is an interdisciplinary research center and a compliance think-tank.
www.compliance-academia.org

Introduction

In light of the numerous publications, conferences, associations and other compliance-related projects and undertakings, it may seem that everything there is to say about compliance has already been said. However, if this was the case, why would large compliance scandals repeatedly and increasingly become public knowledge, even in those same companies and organisations that are advocating for compliance? The consequences of this are certainly serious. The implicated business does not only cause substantial harm to itself and other stakeholders, but to the entire market. In addition, the national legislature is responding with increasingly stringent laws, whereby a spiral is set in motion: the worse the compliance scandals, the tighter the regulation becomes and therefore, the more confusing and challenging it becomes for companies to behave in a compliant manner. This is based on a simple structure that is deeply rooted in human values: whoever behaves wrongly, shall get punished; and how one must behave is dictated by the legislator. This conception can easily

be transferred to the context of global corporations, who are confronted with varying compliance obligations that must be complied with if they are to avoid being forced to do so by sanctions. But is this very simple approach still the right one? Or should we think about new solutions to reach the goal of ensuring businesses stay compliant?

Rules, values and compliance

On the one hand, rules have to do with human values. Legal acts are based on a social consensus or compromise regarding commonly acknowledged standards and values (at least in democratic political orders). On the other hand, legislators may leave it open as to how requested behaviours should be achieved by the addressees, whilst threatening any wrongdoing with sanctions. The private sector has, for several years, been trying to fill this gap with its own internal self-regulation, with both positive and negative¹ results. This is referred to under the general term of "compliance". But does compliance really only mean to be compliant with legal regulations?

Firstly, the misunderstandings surrounding the basic meanings of the conception of compliance should be clarified: Compliance means simply "rule adherence", while only "Compliance Management System" (CMS) describes the structures and processes which seek to achieve regulatory compliance. Regarding content, however, and so we come to the core, compliance is often misunderstood. Many companies consider CMS as a mere formality, in the sense that the implementation of certain measures – which can then be evidenced by a

¹ Take the VW case where the company had a model compliance management system, but nevertheless experienced a significant event of non-compliance.

certificate – are a simple way to outwardly present the company as compliance-aware to the market.

In this sense, the essence is overlooked. The focus of a CMS should not be the outward portrayal of compliance, but should rather be the members of a particular organisation – of whom we demand compliance with the rules – and their values. This could explain why some compliance efforts have failed so far.

Each instance of non-compliance is value orientated

Imagine an engineer who installs manipulative software, or an official who agrees to the transfer of a higher amount of money in connection with his position. Consider the many people involved in the corruption systems of various global corporations or the representatives of various leading German breweries that fixed the prices of their products. In all of these cases, the culture and values of the acting individuals will have influenced their respective decisions to be non-compliant.

What is being referred to here, are the so-called intrinsic values that control the behaviours of people. And it is at this exact point that a CMS should start. Although the starting point should indeed be risk management determined compliance obligations, methodically, compliance officers should begin by looking at the members of their organisation, their values and cultures and ability to adapt to the basic structures and processes. By doing this, they will promote compliance awareness and sustainable compliance culture.

Compliance of cultures or culture of compliance?

Let us now move to global corporations. The initially value-based compliance approach that is taking place at the national level is going to be a true challenge if such compliance structures are then converted into global corporate structures. The currently encountered practice often leads to dead ends. As a rule, CMS solutions developed in the parent enterprise are transported word for word to other countries, where their implementation is required on site.

By ignoring the cultures in these countries and by failing to take account of the often substantially different

values of the people living in the country of destination, the project of “Global Compliance” becomes destined to fail. Compliance should rather begin by primarily giving respect to foreign orders of values and cultures. The solutions developed in a culture circle in the country of origin should first be adapted to the values and cultural order of the other community. Only after this adjustment (compliance of cultures), can the sustainable compliance culture in these countries be promoted (culture of compliance). Therefore, the two approaches do not contradict but are complimentary to each other in a logical sequence. To put it in other words: there will be no culture of compliance without compliance of cultures.

Deficits and potential

The current deficits in compliance development should rather be seen as its potential. Both through internal, as well as external relations, miscellaneous approaches can be made to promote sustainable compliance culture in national and global corporations.

From an internal perspective, compliance should not be treated as window dressing. Although no CMS in the world will exclude every compliance risk, appropriate value management can promote sustainable compliance culture. To mention a few examples: the much-praised tone from the top must not be the one-time commitment to compliance done by the leadership, rather the top management and all managers should actively promote and support compliance by regularly addressing compliance topics and by treating all cases equally, providing the necessary resources and commitment. Codes of conduct – to give just another example – should not be unfamiliar rules, but rather should be created together with the members of the organisation. This will ensure that their values are taken into account which will then promote the acceptance and recognition of such guidelines. Compliance training activities should not only convey what compliance obligations are but also why it is so important to be compliant, in order to promote motivation, awareness and understanding.

In addition, the external deficits should be seen as potential. Some legislators have already adopted trendsetting laws that turn away from the conventional repressive approach to the development of compliance efforts. In this context, the UK Bribery Act or the latest legislation in Spain, Brazil or Russia should be mentioned,

according to which compliance efforts may be rewarded for sanctioning processes. This trend should be actively developed as the conventional pure sanctioning approach is clearly insufficient. The opportunity lies in appropriate legislative incentives to promote a compliance culture.

Where national legislators are faced with constraints, joint projects between state institutions and economic operators (so-called collective action initiatives) and standardisation efforts by the International Standardization Organization are welcomed. In particular, the standard ISO 19600 Compliance Management Systems published by the International Standardisation Organisation (ISO) at the end of 2014 brings the global compliance expertise to a generally accepted position and makes clear that allowing sufficient scope for appropriate attention to be given to the socio-cultural differences between the individual countries is not only permitted, but explicitly recommended.

Conclusion

The initial phase of compliance development in the 90's was focused on the avoidance of personal liability and damages by adjusting structures and processes from the compliance-specific perspective. It is time to rethink compliance. Compliance should be understood less as legal science and more as human science where the human being, their values and culture are at the centre. Compliance only has a chance of successful survival when internal and external compliance efforts promote a sustainable compliance culture. The conviction has to be anchored in the values that control human decisions. In global corporations this can only be achieved when CMS are themselves first brought into compliance with the foreign values and cultures.

By Prof. Dr. Bartosz Makowicz

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