THE EFFECTIVE PRACTITIONER
THE GLOBAL COMPLIANCE MANAGEMENT SYSTEM: A PRACTICAL APPROACH TO COMPLIANCE ACROSS CULTURES

*By Bartosz Makowicz**

■ Various compliance problems in recent months and years that have led to significant consequences, have occurred in those companies which in part have provided an excellent compliance management system (CMS). Many of these compliance problems concerned not only the business units within a country, but crossed the national borders throughout the corporation structures. Must therefore the assumption be made that CMS and the idea of compliance finally should be considered to have failed?

A return to values and culture, in the context of the establishment and maintenance of a CMS, throughout the global structure of the company and placing an emphasis on the human element could still have a chance to prove the opposite. In this article, Bartosz Makowicz explains why values and culture should be considered as part of a CMS, and how these can be instrumentalized and brought into use in adapting a cross-border CMS. To bring these reflections on global know-how into context, recommendations of the guidance under "ISO 19600 Compliance Management Systems" will be mentioned at corresponding locations.[1]

People, culture and values as the basis of a CMS

Certainly, the essential purpose of a CMS is to avoid non-compliant behaviour. But how can this goal be achieved through particular compliance measures? That culture and values contribute to the success of any CMS significantly, is obvious. Whether it's a company that operates only on the domestic market, or one that is acting globally: In both cases, values and culture play a decisive role in the context of a CMS.

*   **Bartosz Makowicz** is Professor of Legal Science. Founder and Director of Viadrina Compliance Center at the European-University Viadrina in Frankfurt (O.), Germany.

1   See: www.iso.org

THE EFFECTIVE PRACTITIONER
THE GLOBAL COMPLIANCE MANAGEMENT SYSTEM

■ People in focus

On the one hand, people interact with the company or organization in which they are employed. On the other hand, any misconduct or act of non-compliance is the result of a lengthy process. Cases vary from bribes being paid or accepted, prices being fixed amongst competitors, the environment being polluted or personal data being released into the wrong hands. In all these cases the values and culture of those acting outside the rules play a crucial role. Thus, it is clear that people, their values and the cultural environment should be in the cross hairs of operational compliance.

Whereas compliance failures cannot occur without a human element, the same cannot be said of a CMS. Compliance failure is not necessarily linked to the failure of the existing system. In case of a compliance breach, it should be noted if the non-compliant behaviour is the result of a lack of, or incorrect compliance measures (a systemic error) or a conscious decision of the individual person. It may be stated: No CMS in the world will be able to eliminate all risks. Risks of non-

compliance have accompanied humanity since its origins; a famous example would be the behaviour of Brutus against the Emperor Julius in the Roman Empire.

Instrumentalization of values and culture

If the cultural and values of the individuals within an organization is so central to success, then we should seek to use these consciously, to "instrumentalize" values and culture for compliance purposes. This can be done in a twofold manner.

Intrinsic values are those held by individuals and which are responsible for the creation of any pattern of behaviour. These intrinsic, or personal values of the organization members can be affected by various compliance measures, such as training or engaged conversations. With awareness-building activities, compliance-awareness can be specifically developed and managed.

Secondly, considering that values and culture can contribute significantly to increase the effectiveness and efficiency of a CMS, we also know that an individual usually confronts what he or she considers

THE EFFECTIVE PRACTITIONER
THE GLOBAL COMPLIANCE MANAGEMENT SYSTEM

Failure to observe the culture and values of the people you seek to influence will result in counter reactions

to be foreign and/or imposed with caution and resistance. In particular, therefore, any failure to observe the culture and values of the people you seek to influence will result in counter reactions. On the other hand, by listening to, showing respect for, and including people in the process of compliance through consultation and dialogue, acceptance by those same people for the CMS can be strengthened. An early involvement in the development or roll-out of CMS initiatives can also increase overall understanding of the system and its functionalities, and thus overall transparency and trust.[2]

Sustainable compliance culture
Having mentioned, "culture" so many times, one should probably ask what it actually means? Various scientists and philosophers have produced several hundred definitions, as they attempted to explore and define the notion of culture. Most of these definitions, however, have it in common that culture involves the values held by the people that make

up that culture, which in turn is a determinant of their behaviour (so-called intrinsic values). Therefore, values held by individuals is an element of the very culture that induces certain behavioural patterns and can have either a positive or negative impact on the compliance results.

On the basis of this fundamental definition, we find a cousin concept termed "compliance culture". According to ISO 19600, this involves the values, ethics and beliefs that exist throughout an organization and which interact with the organization's structures and control systems to produce behavioural norms that are conducive to compliance outcomes.[3]

Goals of the compliance culture
But what exactly does a "compliance culture" aim to achieve? ISO 19600 mentions some specific goals to be pursued through the establishment of a sustainable compliance culture.

---

2   Similar goals of the so-called. co-creation approach, according to which such products are preferably bought, in those developing future consumers were involved.
3   Par. 3.19 ISO 19600:2014.

THE EFFECTIVE PRACTITIONER
THE GLOBAL COMPLIANCE MANAGEMENT SYSTEM

■ One aspect of this is that employees need to understand the relevance of compliance obligations as they relate to their own activities, and to those of their business unit.

■ Secondly, that the remediation of noncompliance issues is 'owned' and actioned at all appropriate levels of the organization, as required. As the saying goes – compliance is everyone's responsibility.

■ Thirdly, that the role of the compliance function and its objectives are valued and employees are enabled and encouraged to raise compliance concerns.[4]

These concrete goals clearly indicate that compliance culture is not an abstract idea, but pursues identifiable operational goals, that in the medium term will result in measurable compliance outcomes for the organization.

---

4   Par. 7.3.2.3 ISO 19600:2014.

Supporting compliance culture under ISO 19600
ISO 19600 advances a considerable catalogue of measures that are recommended in order to successfully promote a sustainable compliance culture. Examples include:

■ a clear set of published values;

■ a management actively seen to be implementing and abiding by the values;

■ consistency in the treatment of similar actions, regardless of position;

■ mentoring, coaching and leading by example;

■ appropriate pre-employment assessment of potential employees;

■ an induction or orientation program that emphasizes compliance and the organization's values;

■ on-going compliance training including updates to the training;

- on-going communication on compliance issues;

- performance appraisal systems that consider assessment of compliance behaviour and take into account performance pay to achieve compliance key performance measures and outcomes;

- visible recognition of achievements in compliance management and outcomes;

- prompt and proportionate disciplining in the case of wilful or negligent breaches of compliance obligations;

- a clear link between the organization's strategy and individual roles, reflecting compliance as essential to achieving organizational outcomes; and

- open and appropriate communication about compliance.[5]

Certainly, not always, and not all of these recommendations should be implemented in any one organization. They rather should be considered and adjusted to the particular needs of the organization, based on the results of a risk assessment and with regard to the principles of proportionality and flexibility.

The approach of Cross Cultural Compliance

Borders as a compliance-challenge
It is already evident that achieving the compliance culture aimed for within one, homogenous organisation is a significant challenge, requiring a certain commitment and allocation of resources. Much greater, therefore, is the challenge of a value-based CMS in a global corporate constellation. Many elements of the CMS, such as a universal code of conduct, a compliance strategy or training programmes are generally developed at the corporate headquarters and are intended to be applied over the entire corporate structure. This process is flawed, however. Unfortunately, it is based on the false premise that the desired

---

5   Par. 7.3.2.3 ISO 19600:2014.

THE EFFECTIVE PRACTITIONER
THE GLOBAL COMPLIANCE MANAGEMENT SYSTEM

goals can be achieved with methods developed, approved and considered appropriate and suitable based on the social norms and values of the country of origin. If the socio-cultural differences in the destination country are not taken into account, a CMS can find itself quickly embroiled in a counterproductive system born of incomprehension and resistance. The imposition of values and a culture born of foreign reference points and perspectives will commonly result in a lack of acceptance and eventual compliance violations born of incongruity.

To avoid this scenario, an approach to Cross Cultural Compliance is currently being developed at the Viadrina Compliance Center. This work faces two important challenges.[6]

■ The organization has to achieve the same compliance standards throughout the global structure, thereby requiring an adjustment to the principles developed at headquarters in order to accommodate the diverse values and cultures of the host countries; those in which their subsidiaries are resident.

■ There is the dogmatic scientific challenge that no research on such reverse influence has been done so far. Only a few approaches in the scope of comparative cultural research and the field of intercultural management as well as communications research can be applied.

Impact of globalization on cultural identity

Another difficulty comes on top: The understanding of what national borders means in today's world must be seen from the perspective of a far advanced globalization, and the tight interdependence of national economies. Often, when trying to define the borders of social or regional cultures for CMS purposes, these cultural circles are no longer defined by reference to national

6   The topics covered here are the subject of a three-year research project at the Viadrina Compliance Center. Further information: www.compliance-academia.com

THE EFFECTIVE PRACTITIONER
THE GLOBAL COMPLIANCE
MANAGEMENT SYSTEM

THE TRAGEDIE OF IVLIVS CÆSAR

borders, but rather by affiliations independent of borders.

En fine, what methods can be used?

Basic Orientation: CMS as the value management system

We believe that a total rethink is required and that a CMS also needs to be viewed as a value management system. For this purpose, a simple model of continuous improvement can be borrowed from the quality method science, the so-called PDCA cycle (Plan > Do > Check > Act).[7]

Prior to any other step (*plan*), the existing values and culture of the destination country must be detected and understood. When determining the inventory of values, analogously the values and interests of the company and the objectives and expectations of all stakeholders should be considered. For that purpose several proven measures from the field of social sciences can be used.

In the second step of the implementation (*do*), the pre-existing elements derived from the assumed values of the "home" country of origin should be adjusted based on the results obtained in the destination, host country.

As a third step (*check*), an evaluation should be conducted to assess if the derived values and culture have been considered sufficiently. This can be done through various survey and other inquiry techniques, samples or exercises.

In a final fourth and iterative step (*act*), the system should be improved. If necessary, existing measures may be adjusted or re-assessed for impact in order to make the system more effective and more efficient overall. This process clearly raises the question of cost that must be seen against the constant improvement in the effectiveness and cost optimisations of the CMS.

Application of culture as a formative factor for management

If a CMS is supported by a simple value management system, a compliance officer may derive valuable criteria for the embodiment of its CMS. As support of this claim, the research of *Hofstede* can

---

7   Known also as *Deming* or a *Shewhart* cycle.

THE EFFECTIVE PRACTITIONER
THE GLOBAL COMPLIANCE MANAGEMENT SYSTEM

be used. In his study it was observed that, depending on the country concerned, people (here, employees of a company) have different attitudes and relationships to power and authority. There are countries in which people prefer working as a team or as a community, whereas in others there is a preference to work autonomously. In certain countries, conflicts are studiously avoided, whilst in others they are readily accepted, etc. Furthermore, independent of Hofstede's work, different national symbolism, customs and value systems have to be considered. Thus, there are cultures where religion, or where the family, is a dominant influence on behaviour. Simply put, the very same number can be considered a lucky charm in one country, and in another country as an unlucky number. These and other criteria need to be brought together with the above-mentioned procedure to produce such values as should be considered as fundamental for the concrete elements of the CMS, which will be explained below on the basis of selected examples.

■ TRAINING AND COMMUNICATION
The goals and functions of a compliance

training programme are described in ISO 19600:

"*The objective of a training programme is to ensure that all employees are competent to fulfil their job role in a manner that is consistent with the organization's compliance culture and its commitment to compliance. Properly designed and executed training can provide an effective way for employees to communicate previously unidentified compliance risks.*"[8]

A training should thus be understood not merely as instruction, but as an essential part of internal compliance communication and even a source of risk assessment. But is training identically performed in all cultural circles? The answer is, unfortunately: NO. Depending on the values and culture, other training methods must be applied to achieve the broader purpose of training, especially when aiming for a higher level of compliance awareness as a basis for a sustainable compliance culture. Whether using teacher-centred teaching, group work, case reviews, role-play or other methods, in every case, they have to be

---

8   Par. 7.22 ISO 19600:2014.

THE EFFECTIVE PRACTITIONER
THE GLOBAL COMPLIANCE MANAGEMENT SYSTEM

Simply put, the very same number can be considered a lucky charm in one country, and in another country as an unlucky number

chosen so that the participants are also actively involved – and still having fun!

■ TONE FROM THE TOP

An essential element for any CMS is always that the good example should demonstrably come "from the top". But this will not work for all value systems and cultural circles. If a CMS is introduced in a state-owned enterprise in an autocratic state, where top management is appointed by the local despot, it does not necessarily mean that others will follow their example (the tone from the top will fail as a compliance measure). Quite the contrary: The position towards the leadership in such countries is often adverse, even when compared to their circles.

■ CODE OF CONDUCT

In most CMS, a so-called code of conduct is implemented. A fundamental error in the extension of CMS that is developed at headquarters, is that the same code is adopted in all business units in all host countries, irrespective of varying local interpretations. In the worst case, the wording of the code of conduct may lead to a situation where employees abroad are instructed to violate laws in their own

jurisdictions, or where the prescribed behaviour, may not be illegal, but still runs counter to their inner values. This leads to the emergence of conflicts of interest, and code evasion attempts that result in a specific compliance breach. A code of conduct that has been properly adapted to the values and culture of the destination country, not only prevents these situations, but will enhance its functionality overall.

■ WHISTLEBLOWING SYSTEMS

The last example originates from the field of compliance communication. In many organizations currently, so-called "whistleblowing systems" are introduced to provide an easy and effective channel of communication for suspected misconduct. Evidently, there are companies with operations in countries where such systems have been implemented, but have never been used. Are local social pressures such that reporting misconduct involving host country citizens operating in accordance with accepted local customs, even if unacceptable in the home country of origin, will itself be seen – incorrectly – as disloyal. Even worse: Such a conviction

Only an organization with a compliance management system which is inclusive of the values and culture of all its members will achieve the desired aim

can be so deeply rooted in the values of the destination country that breaching it may lead to social exclusion of a potential whistleblower, a cost that is too high for the individual to accept.

Resume

Compliance Management Systems target the compliant behaviour of all organization members. On the other hand, this behaviour is based on values and culture that influence the decision for and/or against compliance. Considering the impact of values and culture is crucial, therefore, for the effectiveness of the CMS. The human being and her/his values should therefore be within the focus of each compliance officer. A special challenge arises when a CMS is implemented in a foreign value system. Solutions developed by head office without regard for destination countries will normally not be able to work without due regard to the socio-cultural differences that exist in those other countries: A cross-cultural compliance approach, such as we advocate for here, is necessary to ensure relevance and engagement in a multi cultural organisation. Only an organization with

a compliance management system which is inclusive of the values and culture of all its members will achieve the desired aim of reaching every single person in the company in a meaningful manner, and creating respect amongst members for the desired standard of behaviour: in the sense of compliance.   ■

The image on page 37 is of a sculpture at the Folger Shakespeare Library in Washington, DC by sculptor Gregory, 1932.

Bartosz Makowicz is a professor at the Faculty of Law, European-University Viadrina in Frankfurt (O.), Germany. He is co-founder of the Viadrina Compliance Center, which is an interdisciplinary research center and a compliance think-tank. He is a member of the Academic Advisory Council of many compliance associations and journals such as the Professional Association of Compliance Managers. Furthermore, Bartosz is the author of numerous publications on compliance and editor-in-chief of the German journal "COMPLY."
He speaks at various national and international congresses and provides training and lectures on compliance.