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**APPLICATION, SCOPE AND LIMITS OF COMPLIANCE
MANAGEMENT SYSTEMS**

DOCTORAL THESIS

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List of abbreviations

AktG	German: Aktiengesetz (security law)
AML	Anti-money laundering
BSc	Bachelor of Science
CCO	Chief Compliance Officer
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CECO	Chief Ethics and Compliance Officer
CMS	Compliance Management System(s)
CO	Compliance Officer
COBIT	Control Objectives for Information and Related Technology
COSO	Committee of Sponsoring Organizations and Treadway Commission
CPI	Corruption Perception Index
CRM	Customer Relationship Management
CSR	Corporate Social Responsibility
DOJ	Department of Justice
e.g.	Latin: <i>exempli gratia</i> (for example)
et al.	Latin: <i>et alii / et aliae / et alia</i> (and others)
ERM	Enterprise Risk Management
EU	European Union
FCPA	Foreign Corrupt Practices Act
FSA	Financial Services Authority
HR	Human Resource
ICGN	International Corporate Governance Network
ICS	Internal Control System
IDW	German: Institut der Wirtschaftsprüfer (Institute of Business Auditors)
i.e.	Latin: <i>id est</i> (that is)
IO	International Organizations

IT	Information Technology
KPI	Key Performance Indicators
M&A	Mergers & Acquisitions
MSc	Master of Science
NGO	Non-Governmental Organization
NYSE	New York Stock Exchange
OWiG	German: Gesetz über Ordnungswidrigkeiten (Law against administrative offences)
PACI	Partnering Against Corruption Initiative
PS	German: Prüfstandard (Audit standard)
ROI	Return of Investment
ROCO	Return on Compliance
SCM	Supply Chain Management
SEC	Security Exchange Commission
SLA	Service Level Agreement
SOX	Sarbanes-Oxley Act
TI	Transparency International
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention against Corruption
USA	United States of America

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Introduction

Topicality

As corruption continues, the provocative question raises whether clean business is a wise business choice. Transparency International as one of the accepted non-governmental organizations fighting against corruption publishes a so called Corruption Perception Index (CPI) yearly which shows that corruption is widely spread. Almost daily there are news in the press which tell the public that corruption is omnipresent. In reality corruption is common all over the world. The Transparency International index rates the perception of corruption in the world. Looking back in recent history for the 2009 edition Transparency International stated that “[t]he vast majority of the 180 countries included in the 2009 index score below five on a scale from 0 (perceived to be highly corrupt) to 10 (perceived to have low levels of corruption). The CPI [Corruption Perception Index] measures the perceived levels of public sector corruption in a given country and is a composite index, drawing on 13 different expert and business surveys.”¹ Since then the scoring model has changed, but the reality shows still the same phenomenon several years later: “Based on expert opinion, countries are scored from 0 (highly corrupt) to 100 (very clean). Some countries score well, but no country scores a perfect 100. Two-thirds of the 176 countries ranked in the 2012 index score below 50, showing that public institutions need to be more transparent, and powerful officials more accountable.”²

In 2014 the situation has not changed significantly. In the 2013 report 177 countries were evaluated and again two-thirds of them rank below the index score of 50.³ The index shows that

¹ Transparency International (2009). Corruption threatens global economic recovery, greatly challenges countries in conflict, Retrieved November 20, 2009 from

http://www.transparency.org/news_room/latest_news/press_releases/2009/2009_11_17_cpi2009_en

² Transparency International (2012). News—Features- A look at the Corruption Perceptions Index 2012, Retrieved December 5, 2012 from

http://www.transparency.org/news/feature/a_look_at_the_corruption_perceptions_index_2012

³ Transparency International (2014). Corruption Perceptions Index 2013 – Results, Retrieved April 14, 2014 from <http://cpi.transparency.org/cpi2013/results/>

the least developed economies have the highest corruption index, but the problem of corruption is apparent in most countries of the world.

The current need for research on Compliance Management Systems (in the following just named CMS) is characterized by several developments which were identified in course of the research:

- Corruption endangers economies in both developing and developed countries as it destroys the functioning of markets;
- Apparently corruption is not decreasing by itself;
- Political decision making has not been successful in creating conditions for fair behavior;
- The liability of both organizations and human beings working in organizations has increased;
- The efficiency of CMS is difficult to prove in reality and therefore the deployment of anti-corruption measures is not everywhere granted;
- The ongoing globalization and internationalization entails new risks for organizations as the understanding of business conduct varies between countries and cultures;
- The gap between rich and poor people becomes bigger. Personal and entrepreneurial wealth is not always achieved by means which are legally sound;
- Societies with lower levels of corruption tend to be also healthy economically;
- The legal development enforces a fight against corruption by introducing new norms, laws and regulations which have to be obeyed in the EU or on a global level.

Corruption is not only a problem in the public, but also in the private sector. Governance and assurance topics for the management increase steadily. So does the liability. The current development in the business world which shows a need for well-considered application of CMS as well as postulated requirements from stakeholders like the public, shareholders, employees etc. towards organizations require a closer examination. If the view is widened to other social contexts it can be noted that also there corruption is prevalent. Politicians are involved in corruption scandals⁴ and companies deploy corruptive systems to gain market share.⁵

⁴ Transparency International (2012). Money, Politics, Power: Corruption Risks in Europe, P. 15

⁵ See Brewer, L. (2007). Is there a little bit of Enron in all of us? The Journal for quality & participation, Spring 2007, P. 26

Scandals in the banking world show that rules and laws are willingly broken.⁶ Cynics provoke with the question if the rules are just made to be broken. Transferring this logic to common sense in daily situations it can be argued that people know the traffic rules and laws, but a majority does not obey to them fully. In this light scholars, practitioners and researchers wonder whether rules and regulations help. The debate is ongoing, but if rules and regulations were not installed, ultimately anarchy would be possible – therefore every functioning society does have a set of rules and regulations. Commonly spoken this establishes the foundation for having a basic common understanding of rules enabling a system which aims at facilitating the living together.

Every society needs norms and values – therefore answers need to be found to the questions why the elite lost credibility. These are questions which are asked by the public. If in this context the elite which are also the leaders of business organizations do not display an ethical responsible behavior, the rest of the organization does not necessarily have the motivation to show ethical responsible behavior as it is not practiced to the members. The question arises whether moralizing behavior is helping or whether it is mere self-deception because good will alone does not make a change. Considering the premise that corruption is deemed derogatory to society⁷ the good news is that human beings have a choice. They can reflect on their behavior and choose how to act. But what motivates them and what are the reasons for their behavior is difficult to explain. Within the last years in the business world the term compliance was introduced to describe a conduct in accordance with externally and internally defined standards.⁸ The management of the company has a legal obligation to use compliance⁹ through principle-based policymaking and management the questions concerning ethical and social involvement can be

⁶ Gray, K., Frieder, L. & Clark, G. (2005). Corporate Scandals. The many faces of greed. The great heist, financial bubbles and the absence of virtue and for current media coverage, e.g. on Barclays and HSBC; Bloomberg Businessweek (2012). Bank scandals tarnish London's reputation, Retrieved September 5, 2013 from <http://www.businessweek.com/ap/2012-08-07/bank-scandals-tarnish-londons-reputation>

⁷ Harrison, E. (2004). The 'Cancer of Corruption'. In I. Pardo (Ed.). *Between Morality and the Law: Corruption, Anthropology and Comparative Society*, Hampshire: Ashgate, P. 138

⁸ Common understanding defines external standards as laws, regulations which are prescribed by external stakeholders such as the state or the government and internal standards as instructions, rules etc. which are worked out by the organization for its members.

⁹ Agatiello, O. R. (2008). Ethical governance: beyond good practices and standards, *Management Decision*, Vol. 46, No. 8, P. 1133

solved. Not only in big conglomerates, but also in mid-sized enterprises the number of compliance organizations, structures and also personnel increases.¹⁰ This is a reaction to the loss of billions of euros which is incurred every year by business caused by criminal acts¹¹. In 2013 the World Bank concluded from surveys done with over 130.000 business organizations in 135 countries that over a third of them identify corruption as a major constraint.¹² On the other hand, legal requirements demand a reaction from business organizations: “Companies are held accountable, through their records, for compliance with laws.”¹³ With this trend towards an increase of legal obligations, it can be concluded that CMS are more likely to be installed as an answer to modern challenges. This needs a profound change in thinking if a thorough understanding shall be reached. Single authors recognized that a mix of methods will be necessary for that: “Altering our individual moral thinking, the bases of our assumptions and aspirations, will continue to require multiple approaches, strategies, and incentives if a genuine global ethic is to emerge.”¹⁴ Relying on the government to solve the problem will not help. In a European survey in a representative sample 24 out of 27 member states agreed that the measures taken by the national governments and by the EU will not contribute to the success in fighting corruption. In single countries this opinion was even valuated with a higher percentage: “90% of Greek and Latvian respondents feel that their national government efforts to combat corruption are ineffective – considerably higher than the average EU level of 71%.”¹⁵ Therefore private

¹⁰ Reuters (2013). JPMorgan to spend \$4 billion on compliance and risk controls: WSJ, Retrieved September 20, 2013 from <http://www.reuters.com/article/2013/09/13/us-usa-jpmorgan-risk-idUSBRE98C00720130913> and ADP Research Institute (2012). Competition, Cost Control & Compliance, New Jersey: ADP, P. 8

¹¹ Price Waterhouse Coopers (2007). Wirtschaftskriminalität 2007, Sicherheitslage der deutschen Wirtschaft, Frankfurt am Main: Price Waterhouse Coopers, P. 16

¹² World Bank Survey of Business Managers (2013). Data on corruption, Retrieved March 10, 2014 from <http://www.enterprisesurveys.org/data/exploretopics/corruption#world--7>

¹³ Willis, A. (2005). Corporate governance and management of information and records, Records Management Journal, Vol. 15, Iss. 2, P. 91

¹⁴ Garofalo, C. (2003). Toward a global ethic - Perspectives on values, training and moral agency, The International Journal of Public Sector Management. Vol. 16, Iss. 7, P. 500

¹⁵ European Commission (2009). Attitudes of Europeans towards Corruption. Special Eurobarometer 325, Brussels: EU, P. 45

organizations do have a responsibility to embrace this topic if a decrease of corruption is envisioned.

In organizations the topic ethics is sometimes confronted with cynical reaction.¹⁶ Employees deem that the proposed activities are not serious for example or that the management does not live up to the standards which it sets for the organization. But the need for compliance has been recognized, the implementation of measures has taken place and management wants to know what the quantifiable value add of the compliance function is. The scientific community can help in this regard. It can elaborate ideas where CMS activities are meaningful. It can show which activities seem promising to advance. Unfortunately there is no algorithm for resolving ethical issues. It would be great to find a formula to apply in ethical decision making, but researchers and practitioners generally do not believe that there is a mathematical equation for solving ethical issues¹⁷ or a mathematical formula for the return of investment in compliance.¹⁸ On the other hand there is research evidence that for example the use of certain Corporate Conduct Guidelines diminishes the act of violating given rules. The ethical dimension in organizations has an impact and should be considered within the decision-making process.¹⁹ Both in research and reality this focus is not always prioritized. The results of the work are meant to assist both academia and organizations. The main addressees are researchers in the field and also management of organizations who wish to effectively apply a CMS.

The results also help individual employees as it is shown how they can come to ethical better decisions. Furthermore it helps employees in organizations who are responsible for anti-

¹⁶ McDonald, G.M. & Zepp, R. A. (2007). Business Ethics: Practical Proposals, *Journal of Management Development*, 8, 1, 55-66, P. 55

¹⁷ Bowie, N. (2001). The role of business ethics where next? Is there a role for academics?, *Business Ethics: A European Review*, 10, 4, P. 293

¹⁸ Greenberg, M. D. (2009). Perspectives of Chief Ethics and Compliance Officers on the Detection and Prevention of Corporate Misdeeds, *Conference Proceedings*, Santa Monica: RAND Centre for Corporate Ethics and Governance, P. 12: "A return-on-investment argument for compliance and ethics (and for ethical culture) has been challenging to make, with the result that compliance and ethics may often be viewed by management as a cost center, rather than a revenue center."

¹⁹ Von der Embse, T., Desai, M. & Desai, S. (2004). How well are corporate ethics codes and policies applied in the trenches?, *Information Management & Computer Security*, Vol. 12, No. 2, P. 151

corruption measures as a wide range of activities of CMS has been analyzed and it is discussed which of these activities provide a real value-add. The innovative character lies in the meaningful reduction of CMS activities which are the base to design a CMS that is not a burden, but a help in reality.

Furthermore an approach has been developed which allows for the calculation of savings if a CMS has been adopted.

Research object

CMS in business organizations

Research subject

Application of specific activities related to CMS and their impact to to decrease corruptive behavior

Aim the research

Evaluate the theoretically available means of a CMS regarding their pertinence, test possible combinations of activities and judge which activities do have an impact and should therefore be included.

Research presupposition

Specific CMS activities enhance the conduct of business and have therefore a positive impact for the business.

This can be reached if the risk management of a company addresses specific challenges in their local and international business, a focus on key activities is reached and the CMS is integrated holistically.

Purpose

Corruption is an enduring problem in the business sector. Many initiatives have been started to reduce corruption, but almost daily failures of companies in ethical regard can be observed. The objective of the doctoral thesis aims at providing a theoretical framework on how CMS as means to systematically decrease corruptive behavior in organizations can bring a value add in times when corruption raises in the public perception. As a main part of this objective the

mechanisms in CMS and the relevance of current activities which are applied in CMS will be studied and their relevance evaluated. The expected value enhances the proposition an organization is making in regard to ethical business conduct and shows how a sustainable business relationship with the customers and intermediaries can be reached.

The purpose of the work is to evaluate to which degree CMS have an impact on the business conduct. In a critical evaluation strengths and weaknesses of CMS will be analyzed. It is obvious that every system has weaknesses. In this regard, a CMS or compliance program has its weaknesses, too. It is a framework which gives guidance but not total security. Nevertheless it will be tested how a CMS stands against decisions required in reality and what are the challenges assorted with that. The expected value from the findings is a proposal which parts of a CMS should primarily be used and which are optional to decrease corruption in the most economic efficient way. Following this suggestion organizations can tailor their CMS according to their needs in the business sector predominantly. It will also be discussed why the installation of a CMS does not necessarily prevent from failure. The work will address these challenges and point out which CMS activities are judged dominantly meaningful and which are less meaningful.

Tasks to achieve research purpose

1. To analyze the theoretical concepts in the field of compliance generally and CMS specifically with a content analysis.
2. To substantiate the content analysis by discussions and exploration with theorists researching about ethics and other related topics.
3. To analyze practical situations which demand compliance management activities to understand the phenomenon and compare the theoretical concepts with experiences practitioners can offer.
4. To check if specific situations repeatedly arise and to cluster relevant situations systematically.
5. To develop a framework which is flexible enough to encompass different business situations while addressing the risk profile of an organization.
6. To establish a theoretical model that depicts CMS and can be tested.
7. To design a laboratory experiment which allows for testing of the developed model and to define a measurement method that is suitable.
8. To conduct the experiment to produce empirical evidence about effective and non effective activities regarding CMS.

9. To collect the data, to analyze it with statistical methods and to explain the results.
10. To validate the results with experts in the field ensuring that the theoretical findings are of practical relevance.
11. To derive suggestions from the gained knowledge to enhance future research in the field and give hints to management to evaluate the CMS case for the organization and to decrease corruption systematically.

Hypotheses

The guiding hypothesis of the doctoral thesis is that the application of CMS has a positive impact on the acting of employees in an organizational context. Simulated illegal or unethical behavior should be decreased if a person has been confronted with specific compliance management activities before a decision is taken.

From the guiding hypothesis 5 hypotheses were derived. They are formulated in the following:

1. H_{0IN}: The more information is given the higher the influence on legal/ethical right decision.
2. H_{0CO}: The more independent control activities are known the higher the influence on legal/ethical right decision.
3. H_{0IST}: The more instructions are given the higher the influence on legal/ethical right decision.
4. H_{0SA}: The clearer consequences of misconduct are known the higher the influence on legal/ethical right decision.
5. H_{0RE}: The more reporting activities for CMS are formulated, the higher the influence on ethical right decision.

Methodology

Generally accepted research methods have been applied throughout the work. Throughout the dissertation both qualitative and quantitative methods of economic science have been used. Research methods which were used included expert interviews, surveys and content analysis. As method for testing the hypotheses a laboratory experiment was elaborated. The content development for the laboratory experiment was substantiated by expert sessions. After a pre-test with a focus group in the planning of the laboratory experiment a questionnaire was developed which contained CMS activities. In the laboratory experiment test persons were confronted with ethical difficult situations. The test persons had a questionnaire to answer which consisted of

several rounds. Following the experiment the intention of the experiment was explained and single CMS activities were discussed. For the statistical analysis of the data gathered in the laboratory experiment the software package SPSS was used. The research results were critically discussed with experts in the field to assess the aptitude for practical work.

Novelty of the research

To validate theoretical concepts and to evaluate which possible combinations of elements do have a positive impact it is necessary to have a focus on empirical research. Research until now has been done in separate disciplines, often an integrated view considering decisions, the environmental conditions and the situation of the organization have not played a major role. The novelty of the research lies in several points:

1. Within the available means in a CMS, an identification of relevant features of CMS has been achieved based on an own categorization.
2. Proposal of grouping of most efficient elements in institutional, strategic and operational elements.
3. Design of a model in order to gain highest output in regard to anti-corruption measures.
4. Empirical testing on grouped elements to evaluate cause-effect-relationships.
5. Judgment on the pertinence of the model in order to extract most compliance relevant activities.
6. Evaluation of pertinence through experts in the field.
7. Elaboration of specific approaches and illustration that used mechanisms as for example sanctions do not have an influence at all.
8. A proposal how these newly combined features can be used to also economically decrease corruption is developed to further propel the decrease of corruption.
9. It has been shown that specific elements which are based on control and instruction mechanisms are most promising to foster a CMS.
10. The announcement of certain activities as for example controls can be used to cost-effectively enhance the CMS.
11. Proposal of the connection of risk costs and compliance costs to show the value add of compliance. Based on the findings it is possible to calculate a monetary value add of CMS.

Approbation of results of research

Concerning the approbation of the doctoral thesis including its results of research were discussed and presented in 7 scientific publications and the content of work was furthermore presented at 6 international scientific conferences and during other activities.

The following scientific contributions were published:

1. Gammisch, M. Compliance Management as holistic approach in business Management. In: Conference Proceedings. Riga: International conference on *Current Issues in Management of Business and Society Development*, 2011, pp. 133-142.
2. Gammisch, M. Elements of Compliance Management Systems. In: Conference Proceedings. Fulda: *International conference on Global Business Management Research*, 2011, pp. 13 -23. “.
3. Gammisch, M. Certification of Compliance Management Systems and Compliance Personnel. In: Conference Proceedings, Riga. International conference on *New Challenges of Economic and Business Development*, 2012,, pp. 191-200 (Best Session Presenter Award). Available from http://www.evf.lu.lv/fileadmin/user_upload/lu_portal/projekti/evf/konferences/maijs_2012/Conference_Proceedings_May2012.pdf
4. Gammisch, M. & Balina, S. The Effectiveness of Compliance Management Systems – an Experimental Approach. *Procedia Social and Behavioral Sciences*, 156, 2014, pp. 236 -240. Available from <http://www.sciencedirect.com/science/article/pii/S1877042814060017>
5. Gammisch, M. Value add of Compliance Management Systems. In J. Neuert (Ed.). *Contemporary Approaches of International Business Management, Economics, and Social Research* (pp. 29-32). Berlin 2014, pp. 29-32. ISBN 978-3-73751329-6.
6. Gammisch, M. & Balina, S., Support of risk management through careful selection of anti-corruption measures, *Trends Economics and Management*, Vol. 9, No. 22, 2015, pp. 9-18 ISSN 18028527. Available from <http://trendy.fbm.vutbr.cz/index.php/trends/article/viewFile/301/252>

7. Gammisch, M. Cost aspects of compliance in regard to the value add of applied measures to enhance ethical business conduct, *European Scientific Journal*, Special Edition Vol. 2, 2015, pp. 61-67. ISSN 1857 – 7881. Available from <http://eujournal.org/index.php/esj/article/view/5047>

The theoretical and practical findings were presented and discussed with members of the scientific community in several international conferences. The content of work was presented at the following international conferences.

1. Gammisch, M. Compliance Management as holistic approach in business Management. *International conference on Current Issues in Management of Business and Society Development*. 5th – 7th of May 2011, , Riga, Latvia. Faculty of Economics and Management of the University of Latvia.

2. Gammisch, M. Elements of Compliance Management Systems. *International conference on Global Business Management Research* . 2nd – 4th of December 2011, Fulda, Germany. Faculty of Business of the Fulda University of Applied Sciences.

3. Gammisch, M. Certification of Compliance Management Systems and Compliance Personnel. *International conference on New Challenges of Economic and Business Development*. 10th – 12th of May, 2012, Riga, Latvia. Faculty of Economics and Management of the University of Latvia.

4. Gammisch, M. Translation of values in Compliance Management Systems International conference on Innovative Approaches of Management Research for Regional and Global Business Development. 3rd - 5th of August 2012, Kufstein. Austria. Faculty of Business of the Kufstein University of Applied Sciences.

5. Gammisch, M. The role of Compliance Management Systems in regard to Corporate Reputation. *International Research conference by the European Business Ethics Network* 6th - 8th of June 2013, Pamplona, Spain. Faculty of Business and Economics of the University of Navarra.

6. Gammisch, M. & Balina, S. The Effectiveness of Compliance Management Systems – an Experimental Approach. *International Scientific Conference on Economics and Management* .

23th – 25th of April 2014, Riga, Latvia. Faculty of Economics and Management of the Riga Technical University.

Other activities

The author participated in international and national symposia for businessmen regarding the field of ethics, CMS and value management.

Global Ethics Forum 2012 in Geneva. Compliance Round table for practitioners

Low Medium Voltage and Smart Grid Business Symposium with the topics Compliance management Systems and antitrust. 14th -15th of November 2013, Berlin, Germany.

Supply Chain Summit with the topic Compliance and Procurement. 25th of November 2013, Berlin, Germany.

1. CONCEPTUAL FRAMEWORK FOR COMPLIANCE MANAGEMENT SYSTEMS AND ANALYSIS OF RELEVANCE AND INTEGRATION

CMS are a relatively new appearance in the management sciences. Different to classical business functions as for example controlling, human resources or marketing the discipline compliance is a cross function which combines elements of legal aspects, risk management and audit tasks.

1.1. Key terms and their relation as fundament of Compliance Management Systems

In the following the most common terms are explained, put in context of other research and defined in order to reach a mutual understanding. The emphasis lies on the terms which are pivotal for the questions of the doctoral thesis. Furthermore where meaningful further information associated with the defined terms is provided.

Compliance

The term compliance is frequently applied imprecisely. A few authors argue that the origins of compliance stem from the sector of medicine as for example Börnecke.²⁰ In this explanation the situation is described in which during a treatment the patient complies with the requests of the doctor and therefore behaves in a compliant way. In a business context, compliance can be understood as the adherence to internal and external regulations. Internal regulations might be the code of conduct or special procedures. External regulations are mostly laws or directives to which companies have to obey. “Compliance means meeting all of the legal and business requirements that an organization faces and must demonstrate during the course of operations and in doing business.”²¹ This definition shows that the scope of compliance differs depending on the discipline and more specifically on the business requirements. Sometimes specific topics such as

²⁰ Börnecke, D. (2009). Ethisch Und Rechtlich Konformes Verhalten Von Führungskräften Und Mitarbeitern: Ein Leitfaden mit Musterformularen und Beispielen (German Edition). Erlangen: Publicis MCD Verlag, P. 32

²¹ Lazarides, T. (2007). Comply! Resistance is futile. Information Management & Computer Security, 15, 5, P. 340

data protection or environmental issues are also grouped under the term compliance. Compliance can be understood as wide term as for example in the context of procurement activities, antitrust, environmental issues or data protection. Furthermore it can be noted that a focus on anti-corruption is chosen. Concerning legal requirements it can be stated that in future the scope will be widened as regulatory authorities constantly produce more requirements. A challenge arises as every new rule or regulation which is published makes it more difficult for all companies to comply with all rules.²² It is therefore recommended to explain what is meant with the term as precisely as possible. Furthermore it should be noted that compliance is sometimes used as synonym for anti-corruption. The term is also used as short form for CMS. It is therefore necessary to precisely word what is meant when a request for compliance is made or the topic is discussed. For the purpose of this work and deviating from other authors compliance is defined as adherence to all rules and regulations which have been defined internally and all rules and regulations posed on the organization from external stakeholders such as laws for example. This definition covers relevant legal and organizational requirements and is therefore deemed suited.

Compliance Management System (CMS)

Compliance is a complex topic which encompasses a lot of single activities. These activities must be managed to ensure that the organization is acting in accordance with all laws, regulations and requirements. If this approach is taken systematically, e.g. by including a planning for trainings or communication activities throughout the year, the definition of a CMS is applicable. In the context of this work a CMS is therefore understood as the bundle of activities which enable a business conduct in alignment with requested rules, laws, regulations and also self-imposed requirements. CMS can be technical systems as the name might imply. In reality they are rather a framework which encompasses both technical (e.g. automated workflows) and nontechnical elements (e.g. the installation of a special contact partner or an ombudsman). CMS have as one function the implementation of the compliance strategy and elements and as another function the provision of the context in which processes are applied. For this work this definition

²² Behringer, S. (2010). Compliance – Modeerscheinung oder Prüfstein für gute Unternehmensführung. In S. Behringer (Ed.): Compliance kompakt – Best practice im Compliance Management (pp. 25-44) Berlin: Erich Schmidt Verlag, P. 31

of the CMS allows a modulation which is needed when specific risks are addressed. CMS are necessary to enable a sustainable business for the organization, they are developed to support the business in its daily operation.

Compliance officer

The compliance officer (CO) is a job function independently working from other functions or persons such as finance or strategy. Normally the CO is supposed to work both in operational and strategic tasks. For this work the CO is defined as the person being responsible for implementing and advancing the CMS. He or she has direct access to the senior top management and also support from the board members.²³ The head of the compliance organization is called Chief Compliance Officer (CCO). Synonyms are the Chief Ethics and Compliance Officer (CECO), Chief Ethics Officer, Director of Compliance or Head of Compliance inter alia. The tasks of a CO are the advice of the management concerning risks (which are mainly corruption related), mitigation of these risks and ensuring that regulatory requirements are met. The scope of the risk might vary. Therefore sometimes these risks are not closer defined, but summarized as regulatory risk which has to be identified and managed.²⁴ Furthermore the CO oversees that internal guidelines and requirements are met. Persons who are working as CO normally bring with them a business or/and legal background. Normally the CO acts as internal contact person for the business. The external contacts are not limited to the information requests from public authorities as for example the law enforcement agency, but can include business relationships with other CO or external firms which support in compliance tasks. Sometimes the CO is part of the legal organization, but rather often the CO is assigned on the executive level. Research, marketing, promotion and different risk functions must be addressed constantly by the CO. The understanding of the business and the partnering with the business is important in order to understand the challenges. This point is very important to be a successful CO. The increasing regulation, but also the increase in individual responsibility propel the development of the function. Innovation as for example new laws, new products, or a new strategic partnership shape

²³ Wulf, K. (2012). *Ethics and Compliance Programs in Multinational Organizations*, Berlin: Springer, P. 89

²⁴ International Compliance Association (2013). ICA, Retrieved December 27, 2013 from <http://www.int-comp.org/faqs-compliance-regulatory-environment>

the function and it is the task of the CO to address risks associated with these innovations. Hence it follows that the component of risk management is salient. The person working as a CO must be able to network across different functions. The person should bring seniority, because a communication to the senior management is necessary regularly.

Corruption

Transparency International (TI) defines corruption as the “abuse of entrusted power for private gain. This definition encompasses corrupt practices in both the public and private sectors”.²⁵ This definition is very wide, but most useful if elaborating on the roles between corruption and compliance. It means that whenever persons misuse the power that has been given to them for private purposes and not in regard to their job function, they are handling their issues in a corruptive manner.

The role of corruption is central when discussing CMS. Corruption can be seen as the direct counterpart of compliant behavior. The aim of CMS lies in the reduction of corruption. The private and the governmental sector are both affected by corruption. The governmental sector often has stricter fines for corruptive behavior than the private sector. The level of corruption varies, but in a survey done with more than 130,000 firms in 135 countries it became evident that most companies have been in contact with corruptive practices or requests to bribe: 36,3% of the surveyed companies identify corruption as a major constraint to their current operations.²⁶ The private sector deals with corruption often in the construction, building and infrastructure industry, although other industries are prone to corruption as the pharmaceutical and health industry for example. The more actors are involved and the more complex the structure of a project the higher is the chance that transparency is not given which might lead to corruption. In the public sector as well corruption is perceived as a problem. In a representative survey in the year 2010 and 2011 over 100.000 people in 100 countries were surveyed regarding their views about corruption levels in their countries. Institutions which were perceived to be the most affected by corruption were political parties, police, judiciary and parliament/legislature, followed by the business/private

²⁵ Transparency International (2010). Policy_research/survey_indices/cpi/2010/in_detail. Retrieved March 23, 2010 from http://www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail

²⁶ World Bank Institute (2013). World Bank Survey of Business Managers. Retrieved March 3, 2013 from <http://www.enterprisesurveys.org/Data/ExploreTopics/corruption#World--7>

sector, public officials/servants, education system, media and religious bodies.²⁷ In order to reduce these corruption levels, different approaches are necessary. The first step can be made by means of a reduction of possible corruptive behavior in the own organization. The second step means also a reduction of corruption in the environment which is not directly part of the organization. The reason for that is that corruption destroys markets and the market mechanisms. In a social, liberal market environment the company which sells the best product for the best price should be chosen by the customer. If by corruption interference is given these mechanisms do not work. This can be illustrated by an example: The end customer might get a bad product (or a comparable worse product) with a high price (or a comparable higher price) as the purchaser of the company which is responsible for the packaging was bribed and therefore chooses lower quality. Corruption especially hurts the poor people as in a corruptive environment persons who already dispose over monetary values are privileged. Corruption can occur on every transaction level where two actors meet and come to a business decision. As the person or organization which has the damage due to the corruptive act is not present at the first stage this transaction does not seem to harm anybody. The damage which is caused however is experienced by a third party, the end customer as described above or if governmental projects are concerned and exaggerated prices are paid by the taxpayer finally.

Ethics

Ethics as science can be seen as applied philosophy. The ethical approach deals with concepts of wrong and right, moral principles, values, virtues etc. and often formulates these, too. Another function is the explanation of them. Moral reasoning has become more popular over the last years. At Harvard University the debate about ethical behavior is in vogue and classes can be taken online.²⁸ Ethical theories focus on different aims. In the context of business two ethical theories are intriguing. The teleological ethic focuses on one end which determines the right behavior.²⁹ This means that if the end is considered to be worth while achieving the means may

²⁷ Global Corruption Barometer (2013). Institutions perceived to be most affected by corruption. Retrieved March 3, 2013 from <http://gcb.transparency.org/gcb201011/infographic/>

²⁸ Sandel, M. (2014). Justice with Michael Sandel. Online Harvard Course Exploring Justice, Equality, Democracy. Retrieved February 24, 2014 from <http://www.justiceharvard.org/>

²⁹ Finnis, J. (1983). Fundamentals of ethics, Georgetown: Georgetown University Press, P. 84

be conflict with parties involved. Nevertheless in the light of this theory the approach could be justified. If the aim lies in the reduction of corruption at whatever costs, people who are part of the processes, systems etc. might being treated unfairly for example. The aim itself is considered as highest good achievable. The utilitarian theory focuses on the use which has the biggest positive impact on all persons involved.³⁰ The focus is not placed on only one aim, but all foreseeable consequences must be considered. In reality this is not easy as a careful evaluation of possible outcomes is necessary. Ethics play a major role in the economy as business organizations may become self destructive and unethical behaviors can have a destructive effect on society. A differentiation between micro ethics which focuses on educating managers to take ethical decisions and macro ethics which incorporate ethical concerns into the structure of an organization can be made. There is also research on how ethical philosophies are applied in the work context. McNutt & Batho developed the idea of a value set which encompassed Kant's moral requests.³¹ However a moral philosophical consideration is not the scope of this work. The term ethic is defined specifically for this work to achieve the best outcome possible for the organization and the individual while adhering to all rules and regulations.

Integrity

The word describes traits of the human being in its entirety. Integrity implies reliability to others and truth to oneself. This truth can be relied to the value system human beings have chosen for themselves consciously or unconsciously. It implies responsibility from the individual. Somebody who is integer shows thinking and acting which does not conflict with each other and which does also not harm others. Ideally integrity means that thinking and acting are congruent. Ethical acting requires integrity. On the other hand it must be pointed out that somebody who is not integer can not necessarily be described as corrupt person. Integrity can not be prescribed, but manifests itself in the acting of the individual. The term integrity is defined because human beings who act within the context of a CMS consciously or unconsciously base their acting not

³⁰ Alavudeen, A., Kalil Rahman, R. & Jayakumaran, M. (2008). Professional Ethics and Human Values, New Dehli: Laxmi, Publications, P. 41

³¹ McNutt, P. A. & Batho, C. A. (2005). Code of ethics and employee governance. International Journal of Science Economics, Vo. 32, No. 8, P. 659

only on the framework which is set by the organization, but also on education, values and their perception of the environment. For this work the integer person is seen as the ideal.

Morale

The term morale stems from the Latin word “moralis” and for this work is defined as commonly accepted standards and a common understanding of values. In a community a morale understanding could be that stealing is forbidden for example. The understanding of morale changes over time with evolution. There is no such thing as an eternal morale. Contemporary explanations of morale exist to tell the public how far rules are applicable³² and the topic morale plays also a role in the economy.³³ A moral obligation does not suffice. Morale can be seen as the base to develop societies’ value systems which might lead to concrete laws about how governance in a society might look like. This is the reason why the necessity for CMS increased over the last years. The evolution of laws, social interaction and business demeanor has steadily progressed.

1.2. Business justification for compliance and historical development

The compliance management is a systematic approach to deal with (possible) rule breaking in an organization. Although the need for such an approach has been recognized, the advice on how to work with this issue conceptually and systematically is often done by rather practical recommendations.³⁴ The focus of this work lies on organizations which have as one goal the maximization of profits, typically private companies. Of course there are many other goals which companies fulfill such as the production of goods or the provision of work.

The compliance function is changing as the rules as for example the laws are changing. Looking back in history it is notable that the bribing of a public official a mere 160 years ago was not classified as a criminal act. In Germany in the 19th century chancellor Bismarck confiscated

³² Erlinger, R. (2012). *Moral. Wie man richtig gut lebt*, Frankfurt: Fischer, P. 30

³³ See Sutinen, J. & Kuperan, K. (1999). A socio-economic theory of regulatory compliance, *International Journal of Social Economics*, Vol. 26, No. 1/2/3: “Morality and moral norms clearly influence economic outcomes.” P. 178

³⁴ Hurley, L. (2004). Model Compliance: Avoiding the hard-knocks life so that the sun will come out tomorrow, *The Journal of Investment Compliance*, Vol. 26, No. 2, PP. 43-45

cash from an opponent and held parts of this cash back to influence journalists from the opposition. Such acting was common practice and accepted by the public. Only years later it became obvious that such an acting was not wished and it took another couple of years to declare such acting illegal. Bribing abroad was not illegal until the end of the 1990s. Even worse in Germany bribery abroad could be mentioned in the tax declaration being titled “useful expenses” to reduce the tax burden. Only in 1997 this practice was forbidden. The bribing of public officials is a criminal act in most countries nowadays. The need for a closer look at the topic stems from the current situation: “Political parties, public administrations and the private sector are evaluated as the weakest players in the fight against corruption across Europe.”³⁵ Nevertheless they are in focus of the state prosecutors and the public. Additionally a constant increase in the request for transparency can be noted: “Around the world ethical expectations, if not behaviors, are leveling up.”³⁶ CMS have mainly been developed in the last years. In a survey by Doyle in 2007 two major conclusions that were drawn were:

“1. Respondents were concerned about their lack of systems to proactively manage compliance in such a strategic way that compliance activities could be leveraged to deepen or sustain competitive positioning (whether cost or value based). Respondents were not concerned that they were experiencing over-regulation per se.

2. There was a lack of faith felt by top management and boards of directors in compliance management because of firms’ inability to provide, at any moment, a reliable and comprehensive overview of all compliance risks (...), also mirroring prioritized strategic goals.”³⁷

Nowadays a wide range of laws regulates the acting of organizations. Examples for that are the Sarbanes-Oxley-Act §§ 302, 404, 406, the UK Bribery Act, national anti-bribery laws and reporting obligations resulting from these laws. Other researches also question how internal control structures can be designed “to steer corporations away from such fraud and corruption”³⁸ and comply with requirements. Therefore organizations have developed CMS to

³⁵ Transparency International (2012). Money, Politics, Power, Corruption Risks in Europe. Berlin: Transparency International, P. 3

³⁶ Hamel, G. (2012). What matters now: How to win in a world of relentless change, ferocious competition and unstoppable innovation. San-Francisco: Jossey-Bass, P. 5

³⁷ Doyle, E. (2007). Compliance obstacles to competitiveness, Corporate Governance, Vol. 7, Iss. 5, P. 614

³⁸ Nwabueze, U. & Mileski, J. (2008). The challenge of effective governance: the case of Swiss Air, Vol. 8, No. 5, P.

address these legal requirements. The crucial question however is if the CMS addresses the right problems and also uses the right activities to reach the goals.

Over the last years knowledge was created concerning possible actions within a CMS both theoretical and by practical developments, organizational structures which might be applied and ideas for competences of persons who work in the profession. The question arises if these ideas, requirements and actions which were often produced for a legal necessity are the right ones. The purpose of the CMS has to be defined clearly to reach the goals associated in whatever way with the term compliance management. In this context it must also be asked why companies failed although they have a functioning CMS. The reason for that is that its elements are dysfunctional or at least partly not functional. Important compliance tasks are not executed and therefore the risk for the company is enlarged. A security which does not exist might be created. One of the tasks of a functional CMS lies in reducing the risks of liability for the Chief Executive Officer (CEO) and the management of a company. The company management is responsible for conducting business in a legal manner. The CMS support the executives in fulfilling this responsibility. The discussion as to which degree the management on the one side and the CO on the other side are liable is ongoing. The CO supports the management and the organization in questions related to the field of compliance. These must not necessarily be anti-corruption topics, but can also concern topics relating to internal policy violations or legal requirements.

In general legal requirements address the organizations themselves or the employees working in the organizations.

1.3. Relevant theories and related research

Research on Corporate Social Responsibility (CSR) proposes that suitable frameworks might be found in quality management and system thinking approach, although a vast number of concepts such as environmental or philanthropic concepts are often covered.³⁹ Until the mid 2000s the “adoption of corporate responsibility (CR) in the commercial world has been limited,

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³⁹ Castka, P., Bamber C. J., Bamber, D. J. & Sharp, J. M. (2004). Integrating corporate social responsibility (CSR) into ISO management systems – in search of a feasible CSR management system framework, *The TQM Magazine*, Vol. 16, Iss. 3, P. 216

to those areas offering economic gains, because scholars have not provided adequate conceptual resources to help managers integrate other aspects of CR into their corporate strategies and operations (...).⁴⁰ This gap has been filled with the practical need for advice, although theoretically foundations are not necessary given by CSR as assumed occasionally. Furthermore CSR is only one possible base for CMS.

Theoretical foundations

Theoretical foundations on hypotheses consider various perspectives. It must be noted that there is no single theory on CMS yet as CMS are based on a variety of functions and works about compliance are therefore cross-functional. For that reason the theoretical foundations have been derived from theories considering corruption, ethics and behavior of employees. From an economic point of view it could be assumed that human beings decide rationally. But the homo oeconomicus which postulates a rational profit-maximizing behavior is not found in reality. Human beings do not decide rationally alone. Other factors play a role, too. Adams formulated in the equity theory already in 1965 that human beings want fair and equal treatment when participating in exchanges.⁴¹ An alternative theory was given by Carrell and Dittrich when they introduced their fairness model.⁴² Although these theories by psychologists aim at the description of employee motivation, there is also an impact on employees' morale. Carrell and Dittrich conclude that a person feeling unequally treated tends to be less motivated to behave in a morale desirable way. Furthermore they might feel unfairly paid in the fairness model. It can be concluded that the unfair treatment might lead to engagement in corruptive behavior if this feeling continues. This thinking is supported by two further theories: "According to cognitive theory, the key variables determining compliance are the individual's personal morality and level of moral development. (...) According to social learning theory, the key variables determining

⁴⁰ Meehan, J., Meehan, K. & Richards, A. (2006). Corporate social responsibility:the 3C-SR model, International Journal of Social Economics, Vol. 33, No. 5/6, P. 386

⁴¹ Adams, J.S. (1965). Inequity in social exchange. Adv. Exp. Soc. Psychol. Vol. 62, PP. 335-343

⁴² Carrell, M.R., and Dittrich, J.E. (1978). Equity Theory: The Recent Literature, Methodological Considerations, and New Directions. The Academy of Management Review. Vol. 3, 2, PP. 202-210

compliance include peers' opinions, and the extent of social influence and individual encounters."⁴³ Both forms of exchanges were also researched in the perspective of corruption. Corruption has been researched using principal-agent theory.⁴⁴ In his research studies which are based on game theory, Jacquemet focuses on the delegation aspect which means that the agent has a conflicting interest when he is paid fairly by the principal. For this research this effect can be neglected, because monetary incentives were not in focus. Fadzil, Haron and Jantan focus also on principal-agent theory in their theory.⁴⁵ Departing from the principal-agent theory the authors argue that auditors act as agents for the company's principals, the management. It is discussed whether the compliance of auditing standards enhances the internal control system and therefore a positive impact of the internal organization can be achieved. The research objectives of the case are companies in Malaysia listed on the local stock exchange. Cressey formulated in the 1950s the fraud triangle which is still used today to explain why human beings engage in illegal activities (see figure 1.1). According to him three factors are necessary to trigger illegal behavior. First of all an occasion which offers the possibility for illegal activity must exist (opportunity). This opportunity must be given or must be created. Secondly the person must feel pressurized to act as for example by an economic hardship (pressure). Financial pressure is very often a precondition for illegal acting. As last factor the cognitive dissonance must be solved (rationalization). This means that the individual has the possibility to explain the illegal behavior to oneself and to others and to justify the deed. The figure below illustrates the combination of factors which lead to illegal behavior. Depending on the case the factors might be in different intensity. This means that on one side a small opportunity for somebody who is under high pressure can lead to illegal behavior. On the other side it would be possible that a person who is not pressurized a lot acts illegally because he or she is confronted with a lot of opportunities.

⁴³ Sutinen, J. & Kuperan, K. (1999). A socio-economic theory of regulatory compliance, *International Journal of Social Economics*, Vol. 26, No. 1/2/3, P. 179

⁴⁴ Jacquemet, N. (2005). Corruption as Betrayal: Experimental Evidence on Corruption under Delegation, *GATE Groupe d'Analyse et de Théorie Économique*, 05-06, PP. 1-29

⁴⁵ Fadzil, F.H., Haron, H. & Jantan, M. (2005). Internal auditing practices and internal control system. *Managerial Auditing Journal*, Vol. 20, No. 8, P. 844 ff.

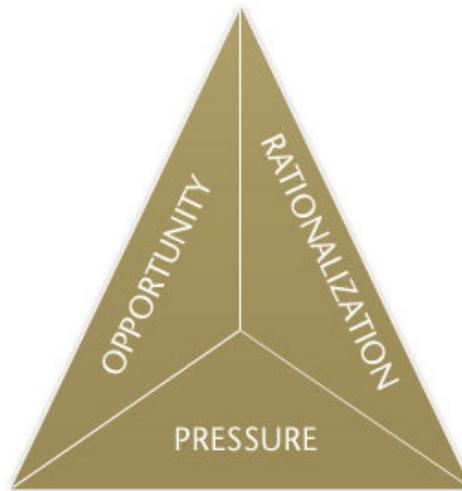


Figure 1.1. Fraud-Triangle

Source: PBC Global (2011). Retrieved March 10, 2011 from <http://www.pbcglobal.com/blog/>

Palazzo et al. use another scheme to explain corruptive behavior. According to him corruption takes place in a morale vacuum which he calls the ethical blind spot. This means that individuals who would not engage in illegal transactions normally can commit crimes if the circumstances lead to a situation in which morale standards are not applied anymore. This ethical blindness is created by proximal context in interaction with the sense making which is done by individuals and organizations.⁴⁶ The aspect of influences exerted consciously or unconsciously by groups has been a popular topic in psychology (e.g. Ash and Mosovics). Furthermore the aspect of deterrence and also research on behavioral decision theory are areas which are more in focus nowadays. Deterrence in this context relates to the fact that a person is punished for misconduct and the punishment leads to the fact that less people engage in the same or similar activities. The application of this aspect can be seen in the actual development in China: For corruptive activities high ranking public officials have been sentenced to death as means of deterrence.⁴⁷ China is executing a major anti-corruption campaign since 2012 against public servants and political party members.

⁴⁶ Palazzo, G, Krings , F. & Hoffrage, U. (2012). Ethical blindness, *Journal of Business Ethics*, Vol. 109, P. 324

⁴⁷ See *The Independent* (2014). China's former Railways Minister Liu Zhijun receives suspended death sentence for bribery and corruption. Retrieved March 23, 2014 from <http://www.independent.co.uk/news/world/asia/chinas-former-railways-minister-liu-zhijun-receives-suspended-death-sentence-for-bribery-and-corruption-8694906.html>

Research has dealt more intensively with the topic compliance and business ethics in the last years, also in an international dimension.⁴⁸ Robertson and Athanassiou analyzed the publication on articles about business ethics. The journals considered were Journal of International Business Studies (JIBS), Journal of World Business (JWB) and Management International Review (MIR). As a result they defined 7 thematic areas in which it is meaningful to conduct further research. These referred also to the themes governance systems and compliance. The following picture gives an overview of related fields of research (see figure 1.2).

Compliance: Fields of research



Figure 1.2. Compliance: Fields of research

Source: Own description

and China Daily (2014). Death sentence for corrupt Party boss. Retrieved March 23, 2014 from http://www.chinadaily.com.cn/china/2014-02/28/content_17313209.htm

⁴⁸ Robertson, C. J. & Athanassiou, N. (2009). Exploring business ethics research in the context of international business. *Management Research News*, Vol. 32, No. 12, P. 1137

Initially, research was carried out in separate disciplines such as for example IT-Compliance⁴⁹, compliance of internal Audit functions⁵⁰, compliance from a legal point of view or compliance in the finance sector, as for example compliance within M&A-transactions or recently in the financial crisis focusing on the behavior of managers in the finance sector. There has been a try to explain the influence of compliant behavior on an institution in the field of finance.⁵¹

There is also a stream of research which deals with the context of corruption in organizations and organizational behavior which provokes or supports corruptive practices. If the CMS is considered holistically a broad view on the research field is necessary. The results of the coherence of organizational theory and compliance are explained in the following considerations. There a diverse forms of organizations and within management science of organizational theory it is possible to cluster these in for example rational, natural and open systems.⁵² The rational systems perspective emphasizes specific goals and a formal well-defined organizational hierarchy. Most companies could be classified into this type, especially bureaucratic ones. If in bureaucratic organisations accountability for the acting is not well anchored and communicated, employees might engage in illegal activity not perceiving their responsibility. The likelihood is increased, because in bureaucratic and especially large organisations it is easier to disguise behavior than in smaller ones. Employees acting intentionally unethically might not be found out as soon in large organizations compared to a similar situation in a small organization. On the other side larger organizations started to establish formalistic procedures to cope with misconduct. An organization with several thousand employees does have totally other requirements than an organization with only several employees.

⁴⁹ Lazarides, T. (2007). Comply! Resistance is futile. *Information Management & Computer Security*, Vol. 15, No. 5, PP. 339-349

⁵⁰ Fadzil, F.H., Haron, H. & Jantan, M. (2005). Internal auditing practices and internal control system, *Managerial Auditing Journal*, Vol. 20, No. 8, P. 847

⁵¹ Edwards, J. & Wolfe, S. (2006). A compliance competence partnership approach model, *Journal of Financial Regulation and Compliance*, 14, 2, P. 140 ff.

⁵² Scott, W. R. & Davis, G. F (2007). *Organisations and Organizing – Rational, Natural, and Open Systems Perspectives*. New Jersey: Pearson Prentice Hall, PP. 1-452.

The natural system perspective has a focus on behavioral aspects. There is a difference between stated goals and persuaded goals. In this theory compliance goals should be aligned with persuaded goals. This would ensure that the compliance goals will be matched. The open systems perspective looks at individuals, their beliefs and the environment they work in. An example would be a software-start-up company. There is a tendency that such organizations have fewer regulations, although of course they are also bound to legal requirements. When looking at the organization in which human beings work, it is possible to differentiate between the economic environments they work in and when taking a decision between situational and personal factors. According to Scott & Davis the best organizational structure is ultimately determined by the environments in which an organization operates. Comparing the different authors and analysing the most important task, it becomes evident that a CMS must fit in the organizational set up to reach highest impact. The CMS should therefore be able to be constantly adapted to the organizational structure.

Organizational cultural aspects

Formal organization structures are necessary, but not adequate by themselves in promoting the ethical behavior of members belonging to the business organization. From a strategic point of view when talking about compliance it is necessary to structure and install processes in the way that company results can be achieved ethically. If the organization does not give clear instructions on how to conduct business in line with internal and external rules or if the organization does not live up to the company values displayed (if there are values installed), making profit in an ethical responsible way can be a difficult task. Furthermore the organization may be at risk due to breaking of law by its employees if organizational culture is neglected. Research therefore emphasizes the need for an open, trustful, and fair organisational culture: “It is important to institutionalize a strong organizational culture that makes discussion of values permissible and actively encourages open discourse about ethical dilemmas and issues of integrity.”⁵³ Cultural influences are discussed controversial⁵⁴, but a cultural predisposition is denied. From an

⁵³ Verhezen, P. (2008). The (Ir)relevance of Integrity in Organizations, *Public Integrity*. Vol. 10, No. 2, P. 136

⁵⁴ Sanyal, R. & Guvenli, T. (2009). The propensity to bribe in international business: the relevance of cultural variables, *Cross Cultural Management*, Vol. 16, No. 3, P. 292

organizational context, it has been argued that “an organization’s collective culture influences both the attitudes and subsequent behaviors of its employees, as well as the level of performance the organization achieves.”⁵⁵ Behavior and acting in a compliant way are interconnected, therefore corporate culture is an important aspect, too. Within this doctoral thesis there is not a specific focus on culture, but the aspect is taken into account when it seems necessary to evaluate to which degree especially corporate culture fits in and to evaluate where limitations of the doctoral thesis are given.

Individual and Organizational Responsibility

Corruption is done by individuals, but individuals act in an organizational context. That means that people bribe using company or private money to close a deal, “win” a project etc. for the firm which employs them. The consequences of corruption are therefore both individual and organizational. On an individual basis every employee is responsible for his or her acting. There is scientific proof that all human beings as members of society are hardwired with both moral and ethical dimension and as well self-interest concerns.⁵⁶ On an organizational level every company is responsible for actions and behaviour which take place in the organization. The selection of employees becomes therefore an important asset.⁵⁷ The non-compliant behavior can cost the company fines, damages its’ image, might lead to the loss of customers who appreciate responsible organizational acting⁵⁸ and internally might lead to the disintegration of the organization possibly. If a striving for profit is done on the fundamentals of business ethics, organizational compliance becomes more important. There is also a growing consciousness that the pressure on companies purposely deviating from norms, standards etc. is augmented from different sides: “With fortified collective efforts, nationally and internationally, by governmental

⁵⁵ Marcoulides, G. A. & Heck, R. H. (1993). Organizational culture and performance: proposing and testing a model. *Organizational Science*, 4, P. 211

⁵⁶ Trevino, L.K & Nelson, K. A. (2007). *Managing Business Ethics: Straight Talk About How to Do it Right*, Hoboken: John Wiley & Sons, P. 25

⁵⁷ Crain, D. W. (2009). Only the right people are strategic assets of the firm, *Strategy & Leadership*, Vol. 37, No. 6, P. 38

⁵⁸ Park, H. & Stoel, L. (2005). A model of socially responsible buying/sourcing decision-making processes. *International Journal of Retail & Distribution Management*, Vol. 33, No. 4, P. 245

institutions, non-governmental organizations and the corporate world, it is becoming more difficult for businesses to perform illicit act and seek illicit interests for long.”⁵⁹ The more transparent individuals, but also organizations become, the more obvious illegal acts become and the greater is the reaction scope. The progressing rise of modern media especially the internet accelerate this movement. Greater transparency on corruptive behavior accompanied by extensive media coverage require more attendance.

There is a potential risk that for example sale targets undermine organizational instructions regarding compliance rules. From an ethical point of view with the concept of the so called decent businessman no one should succumb to “buy” decisions from the business partner. The concept of the so called decent businessman illustrates that. His or her acting is guided by honesty, veracity, principles and integrity. It is only when the wrong mechanisms are applied that this acting is no longer evoked: “Ethical problems arise for the company when its organizational architecture creates perverse incentives that lead employees to choose behaviours that are ethically objectionable.”⁶⁰ Therefore both the individual and the organizational perspective have to be considered.

1.4. Juridical aspects in regards to Compliance Management Systems

Many laws have been introduced to decrease corruption. A myriad of conventions and rules try to prevent misconduct and give a baseline in order to improve the situation. Unfortunately they do not always lead to the intended success.⁶¹ Additionally, the adherence to legal requirements is more often forced by the enforcement of anti-corruption laws which boosted research in the area of specific legal fields such as antitrust law for example. Many international organizations have also exercised their power to influence the legislative by presenting their point of view on anti-corruption as for example the Organization for Economic Cooperation and

⁵⁹ Luo, Y. (2004). An Organizational Perspective on Corruption. *Management and Organizational Review*, 1, P. 138

⁶⁰ Zekos, G. I. (2004). Ethics versus corruption in globalization, *Journal of Management Development*, 23, 7, P. 633

⁶¹ Dorn, N., Levi, M. & White, S. (2008). Do European procurement rules generate or prevent crime?, *Journal of Financial Crime*, Vol. 15, No. 3, PP. 243-260

Development (OECD).⁶² In the following sub-chapters it will be illustrated what kind of influences legal aspects have on CMS. It should be noted however that until now there are no laws or legal regulations how a CMS or anti-corruption system should be constructed.⁶³ Proposals for specific CMS activities which are laid down in a law have been published only recently in Germany.⁶⁴

1.4.1. International legal aspects

The most prominent act in terms of anti-corruption legislation is the Foreign Corrupt Practices Act (FCPA) which was established in the USA in 1977 already.⁶⁵ There are also new legislations which affect companies which operate in their jurisdictions as for example the UK Bribery Act.⁶⁶ A focus is put on American and Anglo-American legislation. The reason for that is that most national laws and also conventions on European level follow this legislation. The following explanations provide a short overview of the most important anti-corruption legislations and are discussed in the context of CMS. The summary is not meant to be final and concluding, but intended to give an overview and an understanding which are the legal foundations on which CMS are supposed to operate.

European and other conventions

On a meta level conventions give a framework for legislation. This framework has to be adopted in the first place. On the European Union (EU)-level, a convention regarding corruption

⁶² OECD. (2007). Policy Paper and Principles on Anti-Corruption, Setting an agenda for collective action. Paris: O. Publishing.

⁶³ Rodewald, J. (2013). Zwischen Perfektionismus und Pragmatismus – wie viel Anti-Korruptions-Management kann, darf und muss ein?. PP. 45-88 In: Compliance Berater, 6.5.2013, PP. 45-88, Frankfurt: Deutscher Fachverlag.

⁶⁴ BUJ (2014). Gesetzgebungsvorschlag für eine Änderung der §§ 30, 130 des Ordnungswidrigkeitengesetzes (OWiG), Retrieved April 30, 2014 from http://www.buj.net/resources/Server/BUJ-Stellungnahmen/BUJ_Gesetzgebungsvorschlag_OWiG.pdf

⁶⁵ United States Department of Justice (2013). Foreign Corrupt Practices Act. Retrieved December 4, 2013 from <http://www.justice.gov/criminal/fraud/fcpa/>

⁶⁶ Legislation UK (2013). Bribery Act 2010, Retrieved December 4, 2013 from <http://www.legislation.gov.uk/ukpga/2010/23/contents>

has been based on the Treaty on European Union in the late 1990s.⁶⁷ Similarly a convention against corruption by the United Nations (UN) has become effective in 2005.⁶⁸ Until now more than 140 countries have ratified the convention. It can therefore be characterized as globally accepted legal base for postulations regarding anti-corruption. Additionally on the meta-level the OECD published in 1997 a convention which deals with the topic of bribing public servants in most European countries. Conventions are an important framework for the topic compliance, but do not directly impact the acting of for example companies in the market place. On national level conventions must be adopted by countries with the act of ratification before they become national law. A direct influence from a framework on compliance management is not notable, but nevertheless the foundation is important as many national legislations are based on it.

Foreign Corrupt Practice Act

The Foreign Corrupt Practice Act (FCPA) dates back to 1977 and was updated in 1998. However it is only until recently that the act has been enforced by public authorities. The act was introduced in the context of the so called Starfighter affair in the 1970s.⁶⁹ In the Starfighter affair the United States of America bought military jets from abroad. Apparently politicians accepted bribes for doing the favor to a few industrial companies to order the expensive fight jets. The act was introduced as a consequence of the misuse of power by politicians and public servants in the country and abroad. It punishes foreign companies which sell products in the USA or do business in the USA or are listed on the New York Stock Exchange (NYSE) and which act illegally. The focus is on the protection of government officials. If a foreign company bribes or intends to bribe an American public servant the company violates the FCPA and is liable in the USA even if the headquarter or in a multinational corporation the mother company is located in another country. The pure fact of acting illegally on American soil is subject to the FCPA. Furthermore the FCPA demands accurate books and records and also the internal accounting checks have to be conducted with due diligence. In the past the act was not enforced regularly, but in the last years

⁶⁷ EUR-Lex (2013). Access to European Union law, Retrieved December 4, 2013 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0625%2801%29:EN:NOT>

⁶⁸ United Nations (2011). United Nations Convention against Corruption. Retrieved June 7, 2010 from <http://www.unodc.org/unodc/en/treaties/CAC>

⁶⁹ Girou, G. (2013). Business Scandals, Corruption and Reform, Santa Barbara: Greenwood, P. 233

the FCPA was enforced by the state prosecutors of the USA against foreign companies more often.⁷⁰ Several foreign companies have considered and partly conducted a delisting of the New York Stock Exchange as the risk for suits is too high in their opinion. As a consequence the companies are or would not be listed on the New York Stock exchange anymore, but of course they can be listed on other financial markets worldwide. National corruption is prohibited in the United States of America (USA) as well, but that is not dealt with in the FCPA, but another statute.⁷¹ Depending on the business activities of an organization, its localization and the fact whether it is listed on the NYSE, the FCPA can play a major role in defining the CMS. It is therefore considered to be one of the most important acts for the installation of a CMS.

The Sarbanes-Oxley Act

The Sarbanes-Oxley Act (SOX)⁷² was created as a reaction to the corruption scandals in the USA, namely by the companies Enron and Worldcom. Employees of the companies manipulated the balance sheets and in both cases the manipulation finally ruined the companies. SOX requests the companies to introduce numerous control mechanisms, improve the documentation and bring transparency to its processes. These requirements are mandatory. Although many professionals and scholars alike complained that with SOX the bureaucracy of the processes was enlarged, there were also positive remarks about process improvements due to synergies which were observed or overlapping interfaces when SOX was introduced. From a compliance point of view SOX elements can still be found in CMS. Typically there are controls which operate on a testing setup of so-called “Tests of design” and “Tests of operating effectiveness”. Often in a CMS control activities are executed and they directly build on the SOX-systematic approach.

⁷⁰ Pacini, C., Swaleheen, M. & Barker, K. (2012). Enhance enforcement of the Foreign Corrupt Practices Act: Improving the ethics of U.S. business practices abroad. In: C. Jeffrey (Ed.). *Research on Professional Responsibility and Ethics in Accounting* (pp. 57-86). Bingley: Emerald Group, P. 67

⁷¹ United States Office of Government Ethics (2013). 18. U.S.C. §201 - Bribery of public officials and witnesses. Retrieved December 7, 2013 from <http://www.oge.gov/displaytemplates/statutesregulationsdetail.aspx?id=77>

⁷² U.S. Security Exchange Commission (2013). The laws that govern the securities industries. Retrieved December 7, 2013 from <http://www.sec.gov/about/laws.shtml#sox2002>

United Kingdom Bribery Act 2010

The United Kingdom (UK) Bribery Act was concluded in April 2010 and came into effectiveness on the 1st of July 2011. The UK Bribery Act aims at fighting corruption in the UK, therefore companies which have a business context to Great Britain are in the scope of the act. It is irrelevant whether the corruptive behavior takes place in the UK or somewhere else. The main offences which are subject to the act are the acceptance or provision of bribes, the bribery of a foreign public servant and missing of so called adequate procedures in the company to fight corruption. Compared to the FCPA the UK Bribery Act is stricter as it also encompasses the private sector. Furthermore facilitation payments are allowed in the FCPA under specific circumstances. These are strictly forbidden in the UK Bribery Act. Therefore in the literature it is argued that the UK Bribery Act 2010 is stricter than the FCPA.⁷³ The development and also legal implications are still outstanding as the introduction of the UK Bribery Act 2010 is rather new. CMS which are newly designed must incorporate the strict requirements if they fall in the area of geographical applicability.

Dodd-Frank Act

On July 21, 2010 the Dodd-Frank Act was enacted in the United States of America, it became effective on August 12, 2011.⁷⁴ The act rewards Whistleblower in that sense that a prime is paid for the whistleblowing activity which leads to monetary sanctions exceeding 1.000.000 USD. The reward is paid by the Security Exchange Commission (SEC). It also has an influence on the development of CMS. A discussion has started as to which degree the monetary incentive does change the whistleblowing culture. In the USA law practices have specialized on maximizing individual profit for whistleblowers.⁷⁵ First payments for whistleblower in exceptional cases also in million amounts have been executed. In a CMS normally the possibility to report misconduct is given. This can be done via an ombudsman, a hotline or web portal for

⁷³ Flint, D. & Surgenor, V. (2010). The UK Bribery Act 2010 v Foreign Corrupt Practices Act of 1977: how different are they and should your business be concerned? Retrieved December 7, 2013 from

<http://www.lexology.com/library/detail.aspx?g=fa55bb1d-f55d-4575-81d3-07acb4cfc0d7>

⁷⁴ U.S. Security Exchange Commission (2013b). The laws that govern the securities industries. Retrieved December 7, 2013 from <http://www.sec.gov/about/laws.shtml#df2010>

⁷⁵ For more information, see <http://secsnitch.com/>

example. Incentives are frequently not used to motivate employees to report. The act might propel the whistleblowing activities which in many organizations are not rewarded (yet).

Legislation in the European Union

From a European point of view international legislation is depicted in different legal foundations such as the Criminal Law Convention on Corruption of the Council of Europe which came into force in July 2002. The aim of the treaty is a “co-ordinated criminalisation of a large number of corrupt practices. (...) States are required to provide for effective and dissuasive sanctions and measures, including deprivation of liberty that can lead to extradition. Legal entities will also be liable for offences committed to benefit them, and will be subject to effective criminal or non-criminal sanctions, including monetary sanctions.”⁷⁶ In the United Nations Convention against Corruption (UNCAC) which came into force in 2005 and which was ratified by more than 140 countries another foundation is given to reduce corruption.⁷⁷ Furthermore the OECD established a convention aiming at combating the bribery of foreign public officials in international business transactions.⁷⁸ Originally this convention came into force on the 15th of February 1999. In 2009 the convention was refined introducing measures to reinforce the combat against corruption. The 34 OECD member states and several non-member states have adopted this convention.

1.4.2. National legislations exemplified

There are national legislations and codices all over the world which address the topic anti-corruption from a governance perspective. In Germany for example the German Corporate

⁷⁶ Council of Europe (2002). Summary of the Criminal law convention on corruption (ETS No.13). Retrieved December 7, 2013 from <http://conventions.coe.int/Treaty/en/Summaries/Html/173.htm>

⁷⁷ United Nations (2013). United Nations Treaty Collection. Retrieved December 7, 2013 from https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-14&chapter=18&lang=en

⁷⁸ OECD. (2013). Organisation for Economic Cooperation and Development – Bribery in international business, Retrieved December 7, 2013 from <http://www.oecd.org/daf/anti-bribery/oecdantibriberyconvention.htm>

Governance codex⁷⁹ exists. The establishment of the German Corporate Governance codex has been executed, its application is not always guaranteed.⁸⁰ The codex gives a best-practice sample for decent business conduct, but not all companies live to up to the requirements. There are special laws on data protection as for example the so called federal data protection act⁸¹ or the German criminal code.⁸² A few of them will be shortly illustrated as they are important corner stones for the anti-corruption legislation and foundation for CMS.

The German criminal code

In the German criminal code the paragraphs 331-335, 299 and 300 deal with the topic of corruption. The paragraphs regulate for example the acceptance and providing of gifts to public servants. Generally spoken public servants are not allowed to take any advantages from third parties. There might be an exception when the superior of a public servant grants the request. But even in this exceptional case, the amount and the constellation under which the advantage was accepted or provided have to be documented and made transparent. The public servant who takes an advantage for the regular work, is subject to a monetary fine or a maximum of three years imprisonment. Furthermore the public servant who takes an advantage in order to violate the given rules, demands an advantage or lets somebody promise an advantage is subject to a maximum of five years imprisonment. The party giving the advantage is liable to similar fines. Whereas the paragraphs 331-335 focus on the public sector, paragraphs 299 and 300 deal with the private sector. The fine which is applied to corruptive behavior may be of monetary nature or imprisonment up to three years. This is also true for foreign business competition. Paragraph 300 is an aggravation for the cases of corruptive behavior. Aggravating circumstances might be that

⁷⁹ Regierungskommission Deutscher Corporate Governance Kodex (2010). Deutscher Corporate Governance Kodex in der Fassung vom 06. Juni 2008, p. 6, Abschnitt 4.1.3, Retrieved February 14, 2010 from <http://www.corporate-governance-code.de/ger/kodex/4.html>

⁸⁰ Börnecke, D. (2009). Ethisch Und Rechtlich Konformes Verhalten Von Führungskräften und Mitarbeitern: Ein Leitfaden mit Musterformularen und Beispielen (German Edition). Erlangen: Publicis MCD Verlag, P. 39

⁸¹ Bundesministerium der Justiz (2013). Federal data protection act. Retrieved December 7, 2013 from http://www.gesetze-im-internet.de/englisch_bdsjg/index.html

⁸² Bundesministerium der Justiz (2013). German criminal code. Retrieved December 7, 2013 from http://www.gesetze-im-internet.de/englisch_stgb/index.html

the corruptive behavior is done on large scale or that the person is member of an organized crime group such as a gang which aims at this specific practice.

Single paragraphs which influence the development of compliance

Compliance is not often mentioned in the laws with its own term. The reason for that is that the Anglo-American term is rather new in the local languages. In many languages the word “compliance” does not exist. In the Spanish language for example there is no translation for the term compliance and the term itself is sometimes misunderstood. In Germany the introduction of compliance for companies which are listed on the stock market exchange is mentioned in the law for securities § 91, paragraph 2 in a general way.⁸³ The organization and development of this responsibility lies in the responsibility of the management. In Germany the act on regulatory offences regulates that a member of the organ is acting culpable if he or she neglects observance measures which are necessary to prevent corporate misconduct from employees in the course of their work in the paragraphs 9, 30 and 130.

A legal corner-stone for compliance is laid down not only in the law for securities, but also in the guidelines of the federal agency for securities.⁸⁴ Companies which deal with sensitive information have to watch these, have to create a secure environment and have to create a compliance function. The objective of the law for securities is the strengthening of trust of the public in the security exchange market. Furthermore the German Corporate Governance codex demands the implementation of a compliance function: It states that the management board has to take care for legal requirements and internal company regulations.⁸⁵ This shows when discussing

⁸³ Bundesministerium der Justiz (2013). Aktiengesetz. Retrieved December 7, 2013 from http://www.gesetze-im-internet.de/aktg/_91.html

⁸⁴ BaFin (2013). Rundschreiben, Richtlinie des Bundesaufsichtsamtes für den Wertpapierhandel zur Konkretisierung der Organisationspflichten von Wertpapierdienstleistungsunternehmen gemäß § 33 Abs. 1 WpHG vom 25. Oktober 1999 ("Compliance-Richtlinie"), Retrieved December 7, 2013 from

http://www.bafin.de/SharedDocs/Downloads/DE/Rundschreiben/dl_rs_1004_MaComp_Compliance-Richtlinie.html

⁸⁵ Regierungskommission Deutscher Corporate Governance Kodex (2010). Deutscher Corporate Governance Kodex in der Fassung vom 06. Juni 2008, p. 6, Abschnitt 4.1.3, Retrieved February 14, 2010 from <http://www.corporate-governance-code.de/ger/kodex/4.html>: „Der Vorstand hat für die Einhaltung der gesetzlichen Bestimmungen und der unternehmensinternen Richtlinien zu sorgen und wirkt auf deren Beachtung durch die Konzernunternehmen hin (Compliance).“

CMS that the responsibility lies with the CEO of a company. Of course the organization of a CMS can be delegated as the tasks associated with it need specialized knowledge, but the CEO of the company is responsible for the installation and regular application of the CMS. In practice this is sometimes neglected.⁸⁶ Examples of corporate misconduct are not only historic, but also of current nature.⁸⁷ This aspect weighs even heavier as Europe is growing further together, further European institutions form and European requirements rise, as for example with the amendment of the 8th EU-directive.⁸⁸ The directive prescribes basic principles similar to the Sarbanse-Oxley Act requirements for Europe. In the past only few guidelines concerning the Compliance organization and the activities were available.⁸⁹ Nowadays more guidelines and activities are derived from the legal requirements. The majority of the countries have ratified the Anti-Corruption Convention and introduced local anti-corruption laws based.⁹⁰ The introduction of anti-corruption legislation itself however is not enough. There are countries which have a strict anti-corruption legislation, but in reality the legislation is not applied in all cases as for example Azerbaijan.⁹¹ The legislation has to be enforced and rigorously applied in order to deter potential misconduct. If national tax legislation is also taken into account to address issues like tax evasion and money laundry the scope is even enlarged.

⁸⁶ Petrick, J. A. & Scherer R.F. (2003). The Enron Scandal and the Neglect of Management Integrity Capacity, *American Journal of Business*, Vol. 18, No.1, Retrieved December 10, 2013 from <http://www.bsu.edu/mcobwin/ajb/?p=126>

⁸⁷ Mishra, A. (2006). Persistence of corruption: Some theoretical perspectives, *World Development*, Vol. 34, No. 2, P. 349

⁸⁸ EUR-Lex (2013), Access to European Union law, Retrieved December 2013, 4, from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31984L0253:EN:NOT>

⁸⁹ Securities Industry Association, Compliance & Legal Division (2005). The role of Compliance, *Journal of Investment Compliance*, Vol. 6, No.3, P. 6.

⁹⁰ Transparency International (2011). 150 countries have now ratified the anti-corruption convention. Retrieved March 30, 2011 from <http://blog.transparency.org/2011/03/21/150-countries-have-now-ratified-the-anti-corruption-convention-2/>

⁹¹ Abbasov, S. (2013). AZERBAIJAN, Swimming in a Sea of Bribes, Despite an Anti-Corruption Tide. In H. Feigenblatt and Global Integrity (Eds.): *The Corruption Notebooks Vol. VII*, (pp. 217-224). USA: Global Integrity, P. 218

1.4.3. Summary and discussion of legal aspects

As shown in the discussion about international and national norms and laws, a CMS is built on legal necessities primarily although specific activities are not outlined in detail. A wider scope is possible, but the core of a CMS must address legal obligations firstly. Otherwise additional features could be judged as superfluous cost block. From the discussion it must therefore be noted that a CMS is not a voluntary, but a mandatory task. The overview of existing legislations which have partly international application shows that many aspects have to be considered when designing a CMS. The wider the scope of the business activities in terms of customers, business models and countries, the wider the scope of the CMS.

The scope of a CMS depends also on the jurisdiction in which it operates. A local company doing only local business must obey national and geographically limited laws and borders. A big conglomerate with international business in a variety of countries does have to obey to a larger amount of legal legislation. Therefore it is quite understandable that often the aspects of the CMS are worked out locally depending on the recommendations by a local legal counsel. It was noted throughout the research that laws and regulations increase steadily giving companies a stricter framework to act in. Companies which do not obey to the legislation run the risk of fines and debarment. A CMS can therefore be used as remedy against the looming legislation in different functions:

- Support in different tasks as for example information sharing to ensure that employees obey to laws and legal requirements
- Demonstration that the organization actively strives to reduce corruption in alignment with regulatory developments
- Clarifying instrument regarding which laws are relevant and which are not relevant.

1.5. Significance of Compliance Management Systems

The causes for corruption are various, they include diverging values, a false moral understanding and personal greed. When trying to explain corruptive behavior the fraud triangle which has been introduced is often used. The fraud triangle consists of three sides which represent conditions for an individual to commit fraud. One of its elements which favor illegal

acting is the opportunity to do so and the knowing of a lack in the control system. Therefore it is necessary to align the management and control systems also with the newest legal requirements. It is important that systems are embedded in the processes, so that the actions of employees can be monitored.⁹² Organizational compliance can help to install ethics or value systems so that employees obey to ethical rules⁹³, commonly written down in a code of conduct. The sheer existence of such documents does not guarantee success however.⁹⁴ There is a strong need for organizational leaders to live the rules written down in the code of conduct.⁹⁵ Ultimately, unethical behavior destroys the fundamentals of our economic systems.⁹⁶ Research shows that economies with a high corruption-rate range in the lower ends of the productivity scale. Luo argues that the organizational consequences of corruption are various. One of the findings is that “corruption implies problematic organizational leadership and poor business morality.”⁹⁷ There are ethical issues which can be classified rather organizational than managerial.⁹⁸ Therefore the task to establish an organizational framework which allows for Compliance has to be set by the management⁹⁹ as they present the organizational leaders.¹⁰⁰ They are foremost challenged to implement a culture which combines high ethical standards with high business performance. In

⁹² Willis, A. (2005). Corporate governance and management of information and records. *Records Management Journal*, 15, 2, P. 95

⁹³ McNutt, P. A. & Batho, C. A. (2005). Code of ethics and employee governance. *International Journal of Science Economics*, Vol. 32, No. 8, P. 658

⁹⁴ Von der Embse, T., Desai, M. & Desai, S. (2004). How well are corporate ethics codes and policies applied in the trenches? *Information Management & Computer Security*, Vol. 12, No. 2, P. 153

⁹⁵ Nwabueze, U. & Mileski, J. (2008). The challenge of effective governance: The case of Swiss Air, Vol. 8, No. 5, P. 592

⁹⁶ Zabel, H. (2005). A model of human behavior for sustainability. *International Journal of Social Economics*, Vol. 32, No. 8, P. 721

⁹⁷ Luo, Y. (2004). An Organizational Perspective on Corruption. *Management and Organizational Review*, 1, P. 143

⁹⁸ Trevino, L.K & Nelson, K. A. (2007). *Managing Business Ethics: Straight Talk About How to Do it Right*, Hoboken: John Wiley & Sons, P. 19

⁹⁹ Pies, I. (2008). Markt und Organisation. Programmatistische Überlegungen zur Wirtschafts- und Unternehmensethik. In W. Kersting (Ed.), *Moral und Kapital Grundfragen der Wirtschafts- und Unternehmensethik* (S. 27-58). Paderborn: Mentis, P. 45

¹⁰⁰ Thoms, J. C. (2008). *Ethical Integrity in Leadership and Organizational Moral Culture*. SAGE Publications, Vol. 4, No. 4, P. 421

the long run, the pressure on employees will rather augment than diminish. Partly the reason for this is a striving for profit maximization, sometimes enforced by the shareholder-value-concept. A pure focus on profit and satisfaction of monetary aspirations imposed by shareholders will turn out to be risky in the long term. According to Morley¹⁰¹ this pressure is even greater in emerging countries. Therefore it is of practical relevance that the organizations for which human beings work offer instruments that help to reach their targets in a compliant way. Nevertheless instruments alone can never achieve this, a dedicated management effort is needed.¹⁰²

Basically corruption exists since business has been conducted between different parties and human beings engage in transactions. There has been research in a variety of disciplines admittedly quite often from a legal point of view. Research also deals with the context of corruption in organizations and organizational behavior which provokes or supports corruptive practices.¹⁰³ In the past research has focused on corruption in the public sector. Research literature has addressed such topics as the impact of corruption on the military expenditure¹⁰⁴ or the public health and education system for example. The private sector has been less in focus, partly because legislation in the public sector is a lot stricter than legislation in the private sector. Hence it follows that a benchmarking is reached easier as a defined breakpoint for violation of law (e.g. zero threshold value for the provision or acceptance of gifts) is codified already in the law.

This has changed with the introduction of the UK Bribery Act. Therefore it is sometimes argued that corruption in the public sector can be detected and sanctioned easier. For the purpose of research on the effects of CMS there is no difference between organizational compliance in the public or private sector. One basic problem when researching the phenomenon of corruption is that it is difficult to measure corruptive practices as there is no valid data concerning the volume and quality of corruption in specific countries or sectors. Corruption takes place in an opaque situation not in the public and therefore it can be estimated that we only know about a minority of

¹⁰¹ Morley, C. H. (2007). Corruption and Compliance. *Journal of Financial Crime*, Vol. 5, No. 3, P. 267

¹⁰² Nelson, R. A. (2003). Ethics and social issues in business: An updated communication perspective, *CR*, Vol. 13, No. 1, P. 63

¹⁰³ Luo, Y. (2004). An Organizational Perspective on Corruption. *Management and Organizational Review*, 1, P. 120

¹⁰⁴ Gupta, S., Mello, L & Sharan, R. (2001). Corruption and Military Spending, *European Journal of Political Economy*, 17, PP. 749-777

corruption cases both in the past and at present state. The progress of technology helps to make these opaque situations more transparent: “Media plays an important role in countering corruption, supporting the increase of transparency for the decisions at political level.”¹⁰⁵ Empirical data shows that many people have a negative image about business and its dealings. The perception of a decent business person which used to have the reputation of an honourable person has decreased. In a representative survey with 28.856 participants it became obvious that “[a] third (32%) of Europeans associate people working in private companies with widespread giving and taking of bribes and abuse of positions of power for personal gain.”¹⁰⁶ With the rise of the internet the public knows more about perceived corruption and the provision of advantages in companies or governments. However quite often allegations of misconduct are posted in blogs or open forums which are not always objective when examined accurately. Caution is necessary when evaluating these allegations.

Being confronted with corruption scandals and the pressure of shareholders the responsible persons of an organization need to address the inherent pressure of reaching targets in an ethical way.¹⁰⁷ The question what ethics are and how ethics are perceived differs from organization to organization – but at some stage every organization must ask itself on which set of values it operates. This problem affects especially organizations striving for profit-maximisation, therefore organizational CMS can help in this regard. McNutt & Batho argue that “management need[s] robust rules of conduct within the firm – where these rules are lacking morals can slip and workers may not work to full capacity.”¹⁰⁸ Ultimately these rules have to be lived on a daily basis. According to Scott & Davis an additional step would be an organizational framework or system which controls the acting of the employees and which is necessary in every organization type.¹⁰⁹ One example could be a control framework for employees of the sales force which is in

¹⁰⁵ Matei, L. & Matei, A. (2009). Corruption in the public organizations. Towards a model of cost-benefit analysis for the anticorruption strategies. MPRA (Munich Personal RePEc Archive), P. 20

¹⁰⁶ European Commission (2012). Corruption. Special Eurobarometer 374, Brussels: EU, P. 55

¹⁰⁷ Shashin, A. & Zairi, M. (2007). Corporate governance as a critical element for driving excellence in corporate social responsibility, *International Journal of Quality & Reliability Management*, Vol. 24, No. 7, P. 766

¹⁰⁸ McNutt, P. A. & Batho, C. A. (2005). Code of ethics and employee governance. *International Journal of Science Economics*, Vol. 32, No. 8, P. 660

¹⁰⁹ Scott, W. R. & Davis, G. F (2007). *Organisations and Organizing – Rational, Natural, and Open Systems*

direct interaction with the end customer or an intermediary and therefore it is also at highest risk in engaging in unethical demeanor. Many sales people have understood that organizational compliance can be used as an advantage. There is scientific evidence that there is a rational logic for applying compliance.¹¹⁰ The knowledge that the organization for which they work does not support unethical behavior helps in discussions with the customer about credibility and sustainability. Analogously the procurement department encounters the same challenge as they are the ones responsible for buying decisions. Sometimes this position is prone to be influenced by unethical offers, especially if the organizational structure does not oppose it.¹¹¹

Organizations having recognized this situation use compliance as means to establish integrity in the organization in areas which are risk exposed. The introduction of compliance management goes beyond corporate social responsibility. Corporate Social Responsibility (CSR) models have been developed as suggested by a group of authors.¹¹² A model of compliance management has not been theoretically founded, also there is practical advice.¹¹³ The introduction of compliance management and a compliance organization is often perceived critical as it imposes supplementary burden by e.g. introducing formalisms and additional costs. Especially in economic tense situations and with budget restrictions this might pose a problem.

This practical problem is contradicted by the need of many organizations for organizational compliance. Corruption will never be banned totally, but it is crucial to make sure that sensitive functions understand which means are available to reach the business goal. The end justifies the means is no option for these functions as laid out by the teleological theory. Therefore this dissertation aims at evaluating the effects of applied compliance. The practical gain lies in the verification of applied compliance as it can help the business: “generating new empirical

Perspectives. New Jersey: Pearson Prentice Hall, P. 57

¹¹⁰ Eisenhauer, J.G. (2006). Conscience as a deterrent to free riding. *International Journal of Social Economics*, Vol. 33, No. 8, PP. 534-546

¹¹¹ Dorn, N., Levi, M. & White, S. (2008). Do European procurement rules generate or prevent crime?, *Journal of Financial Crime*, Vol. 15, No. 3, P. 249

¹¹² Castka, P., Bamber C. J., Bamber, D. J. & Sharp, J. M. (2004). Integrating corporate social responsibility (CSR) into ISO management systems – in search of a feasible CSR management system framework, *The TQM Magazine*, Vol. 16, Iss. 3, P. 221

¹¹³ Hurley, L. (2004). Model Compliance: Avoiding the hard-knocks life so that the sun will come out tomorrow, *The Journal of Investment Compliance*, Vol. 5, Iss. 3, PP. 42-45

evidence to establish more directly the ROI [Return Of Investment] of Compliance and ethics activity could be of significant assistance to the business community.”¹¹⁴ The term compliance describes an organization which acts in a compliant way. This means that its actions are in accordance with internal and external regulations. External regulations sometimes afford rapid project management and a concise change management.¹¹⁵ Internal regulations may be values, organizational instructions, procedures, rules etc. whereas external regulations refer to legislation which has to be obeyed, such as the Foreign Corrupt Practices Act, United Nations conventions, local anti-corruption laws etc. It is always a decision of the organization and its managers how to reach obedience to these regulations.¹¹⁶ Practical implications are for example the appropriate choice of an Information Technology (IT) system which supports the compliance with external regulations.¹¹⁷

To ensure that within the organization the topic of compliance is integrated, regular trainings with the employees are necessary, especially with those who have frequent customer or business partner contact as they are exposed to greater risk. Trainings have as objective to sensitize the personnel and transmit knowledge.¹¹⁸ It is a challenge for every organization to address the training need in the first place and to constantly make sure that through refresher activities the themes are not forgotten in the organization. Furthermore there is quite often a regulatory demand (as for example in the finance industry) to prove that employees have been trained in the topics mentioned. Modern learning systems can facilitate the administration of the participants¹¹⁹ and the distribution of training materials. Online trainings are popular and modern

¹¹⁴ Greenberg, M. D. (2009). Perspectives of Chief Ethics and Compliance Officers on the Detection and Prevention of Corporate Misdeeds, Conference Proceedings, Santa Monica: RAND Centre for Corporate Ethics and Governance, P. 21

¹¹⁵ Cusick, A. (2005). Organizational development facilitates effective regulation compliance, *Leadership & Organization Development Journal*, Vol. 26, No. 2, PP. 106-119

¹¹⁶ Sisaye, S. (2005). Management control systems and organizational development New directions for managing work teams, *Leadership & Organization Development Journal*, Vol. 26 No. 1, 2005 , P. 54

¹¹⁷ Lazarides, T. (2007). Comply! Resistance is futile. *Information Management & Computer Security*, 15, 5, P. 343

¹¹⁸ Ambrose, J. (2008). A best practice approach to learning compliance management in regulated industries. *Industrial and commercial training*, Vol. 40, No. 3, P. 142.

¹¹⁹ Little, B. (2005). Compliance: a convincing case for learning management systems, *Industrial and Commercial Training*, Vol. 37 No. 3, P. 125

concepts include interactive learning modules. Organizations use memberships in global anti-corruption initiatives to show their Corporate Social Responsibility Commitment.¹²⁰ Statements concerning the productivity of the applied measures are rare until now. The German research literature on the measurement of compliance is limited, the English literature shows measurement tries using the approach via a Scorecard model.¹²¹ Nevertheless the measurement of the adherence to rules and the costs caused by the application and the installation of a compliance program, project or system are important. It is commonly agreed that the costs of non-compliance, that means the costs which are caused by corruption, illegal behavior etc. are a lot higher than the costs which are accrued from the compliance organization in the long run. Even if a business goal such as a specific sales volume is reached at a first glance, this gain is not reached sustainably. In the context of this research design a model will be designed which has as one aim the evaluating of specific activities. The debate which are the important compliance tasks and which are tasks that are superfluous or are of little value is ongoing.

1.6. Compliance Management Systems as holistic approach

When talking about compliance and its management often the understanding of the meaning varies. In the context of current issues in management it focuses on doing business in the right way touching upon legal obligations, business ethics, moral understanding and cultural differences. Furthermore legal aspects are taken into consideration as well. The pressure from external stakeholders and/or the belief in values inside the business organization are the reason for the existence of a compliance function in companies. Different perceptions with regard to CMS are therefore analyzed considering the impact a CMS does have, the integration in existing processes and the tailoring of CMS arriving at a model development which allows for testing in reality.

¹²⁰ Arevalo, J. A. & Fallon, F. T. (2008). Assessing corporate responsibility as a contribution to global governance: the case of the UN Global Compact, *Corporate Governance*, Vol. 8, No. 4, P. 458

¹²¹ Sethuraman, S. (2007). Turning a security compliance program into a competitive business advantage. *ISACA Journal*, 5, P.3

1.6.1. Relevance of compliance and consequences of non integration

Reports of corporate misdeed of blue chip companies are the most prominent examples of corruption and bribing cases which highlight the relevance of the topic, but every company, also mid-sized ones, has to deal with compliance topics and measures in the organization concerning how an implementation has taken place. One reason is that most legislation in the world require it. It would be too simple to close the eyes turning away with the argument that corruption always existed since business began and therefore efforts to fight corruption are in vain. Almost all states, many companies and non-governmental organizations (NGOs) have come to the conclusion that there is need for anti-corruption legislation. Over a decade ago Transparency International presented a vision of a national integrity system: “By adopting a holistic approach and by co-opting all the principal actors into the process of anti-corruption reform, a country or community can enhance its capacity to curtail corruption to manageable levels.”¹²² Non-governmental organisations like Transparency International, the UN Global Compact and others present efforts on different levels, but “[a]lthough all these initiatives have raised awareness among corporate actors and encouraged greater enforcement of criminal laws against corruption, significant work remains to be done.”¹²³ It is noteworthy that “inappropriate behavior in companies is not caused by the fact that people working there are less ethical than other people but by the fact that not enough attention is given to developing ethical behaviors inside organizations, to enhance a strong ethics foundation of a leadership pattern.”¹²⁴ Within the governance framework there are several authorities in place to ensure that companies obey to laws, rules and regulations. These might be the local tax authority, the state prosecutors or the Financial Services Authority (FSA) in the United Kingdom for example. Researchers argument that in future the regulation will rather increase,^{125, 126} than decrease pressuring companies and

¹²² Eigen, P. (2000). *CONFRONTING CORRUPTION: THE ELEMENTS OF A NATIONAL INTEGRITY SYSTEM*. In: J. Pope (Ed.) (pp. 14-15). Berlin: Transparency International, P. 15

¹²³ Hess, D. (2009). Catalyzing Corporate Commitment to Combating Corruption, *Journal of Business Ethics*, Vol. 88, P. 781

¹²⁴ Rok, B. (2009). Ethical context of the participative leadership model: taking people into account, *Corporate Governance*, Vol. 9, No. 4, P. 462

¹²⁵ McDonald, G. M. & Zepp, R. A. (2007). Business Ethics: Practical Proposals, *Journal of Management*

with such a development the compliance management gets more important and more sophisticated. The executed research supports this view. Therefore the question can be posed what a holistic approach in compliance management looks like. The term compliance management consists of the words compliance and its management. Compliance is defined as the adherence to rules and regulations internally and externally. The management of this adherence is multidimensional. In general compliance management should be understood as an attitude every manager in the company has to live, a toolkit every manager has to use and a topic every employee has to know about. The reason for that is to a lesser degree moralizing about the way work is done or ethically argument for such an understanding but rather practical needs of a company to conduct business in line with the regulatory requirements. Several authors on compliance see this aspect in focus as it is summarized by Seibert.¹²⁷ They argue that it is the aim of compliance management to avoid misconduct thereby protecting the company from lawsuits, fines etc. If the laws represent the framework in which a company operates and these laws are violated, heavy fines may be the consequence which already ruined companies in the past as for example the company Enron. This position focuses on the liability aspect primarily neglecting the aspect of good business conduct.

A holistic approach encompasses both structural and process themes which are elements that ensure that an organization acts in an integer way. If a CMS which is an instrument to reach compliance overall is implemented holistically, the avoidance of fines or liability in general is the consequence. For that purpose a proactive approach towards compliance management is necessary. But in reality this is not always the case. Ludwick points out that “the difficulty most compliance departments face is that they are tied into a way of working that is slow, manually intensive, and reactive. Each time a new regulatory initiative emerges, programs are established and teams assembled to respond to its requirements.”¹²⁸ If this practice is prevailing only a limited success of the compliance system can be guaranteed. Therefore a CMS is advocated

Development, Vol. 8, No. 1, PP. 55-66

¹²⁶ Hamilton, S. & Eckardt, A. (2010). The Economics of Compliance. In: J. Wieland & R. Steinmeyer & S. Grüniger (Eds.). *Handbuch Compliance Management* (pp. 89-109). Berlin: Erich-Schmidt Verlag.

¹²⁷ Seibert, U. (2007). Vorwort. In: C. Hauschka (Ed.), *Corporate Compliance Handbuch der Haftungsvermeidung im Unternehmen* (pp. V-VII). München: Beck.

¹²⁸ Ludwick, K. (2006). Tackling risk-based compliance, *Journal of Investment Compliance*, Vol. 7, No. 4, P. 63

which is wider in its application and which anticipates changes and challenges. “Proactive compliance knowledge management requires direct feed of new legislative information, where possible, into compliance management systems, with the ability of a firm and/or its external advisors (including European Information Centers for example) to generate real-time risk assessments for key impact points.”¹²⁹ Furthermore it analyzes the new developments and evaluates if these have an impact on the current compliance management.

It can also be useful to interact with the regulator in order to achieve a properly designed CMS. Therefore sometimes a partnership approach between regulated company and regulator is proposed.¹³⁰ Proactive compliance management acknowledges also the fact that deviation from appropriate behavior can be individually or systematically. A systematic problem is identified if the reward schemes of a company do not integrate aspects of ethical business conduct (like for example the code of conduct) in their calculation. Incentive systems which focus only on profit and which miss ethical leadership and open communication are the wrong structures to successfully integrate compliance in the business. The public appreciates moral culture.¹³¹ Individual deviation can damage the company, too. In the area of antitrust law, the violation of a single person can lead to a fine up to 10% of the company’s revenue.¹³² Nevertheless the long-term consequences are in general not as heavy as if many employees are involved in corporate misconduct. Normally the replacement of a single person can be faster executed than the exchange of personnel for a whole business entity.

¹²⁹ Doyle, E. (2007). Compliance obstacles to competitiveness, *Corporate Governance*, Vol. 7, Iss. 5, P. 615

¹³⁰ Edwards, J. & Wolfe, S. (2006). A compliance competence partnership approach model, *Journal of Financial Regulation and Compliance*, 14, 2, PP. 140-150

¹³¹ Thoms, J. C. (2008). *Ethical Integrity in Leadership and Organizational Moral Culture*. SAGE Publications, Vol. 4, No. 4, PP. 419–44

¹³² Geradin, D. (2005). The EC fining policy for violations of competition law: An empirical review of the Commission decisional practice and the Community courts’ judgments, *Global Competition Law Centre Working Paper Series*, 03/05, P. 4

1.6.2. Integration of compliance management in the business

A compliance management or program which is bought from external parties and which does not address the company specific risk areas is deemed to fail. Compliance programs should be orientated at the values of a company.¹³³ Decisions in the regard to compliance are seldom black and white. Decision making models have been improved, but in ethical difficult situations they still can not always help. This has been noted by authors in the compliance discipline and also authors discussing decision models.¹³⁴

Unfortunately a CMS can not solve all problems as it can not provide such a wide array of algorithms. Therefore compliance managers are consulted from the business. The employees who engage in business transactions need advice in their decision making process. Quite often the employees do not know how to address this problem. If business decisions have to be taken fast which is often the case it is also possible that a so called “blind spot” in ethical difficult situations enables decisions which are not in alignment with the values.¹³⁵ Such situations are created under extreme psychological pressure as for example in war, but can also be created in business environments when strong social pressure is created by peers or the superiors. In social psychology this was illustrated by the use of the Milgram experiments which tested the obedience to authority.¹³⁶ Therefore the creation of awareness that business decisions can lead to problems is a major challenge to integrate compliance management in the business. The acceptance from the process responsible persons is necessary to create lasting change. Therefore the meaning of the compliance management has to be understood by all employees concerned. A lasting change can only be accomplished if the process changes which were initiated by compliance management are transferred to the process owners in the business thereby enabling them to evaluate their assessment and regularly evaluate the chosen approach.

¹³³ Grüninger, S. (2010). Wertorientiertes Compliance Managements System. In: J. Wieland & R. Steinmeyer & S. Grüninger (Eds.). Handbuch Compliance Management (pp. 39-69). Berlin: Erich-Schmidt Verlag.

¹³⁴ Vroom, V.H. & Jago, A. G. (1988). Managing Participation: A Critical Dimension of Leadership, *Journal of Management Development*, 7, 5, P. 32-42

¹³⁵ Palazzo, G., Krings, F. & Hoffrage, U. (2012). Ethical blindness, *Journal of Business Ethics*, 109, PP. 323ff

¹³⁶ For full information of the experiment, refer to Milgram, S. (2009). *Obedience to Authority: An Experimental View*, New York: HarperCollins.

When talking about compliance aspects like organization, processes, attitude etc. are often mentioned. It should be noted that specific actions like compliance with the human resource (HR) processes or accounting processes are only part of the term compliance. This can also be understood as compliance with the processes an organization has to deal with. Employees have to be convinced of the system. Otherwise an integration of compliance in all relevant business functions like finances, sales, project management etc. is deemed to fail. “The more turbulent and competitive the environment, the stronger the justification for a compliance environment that ensures the people at the top of the business remain loyal, engaged, and unified with the centre.”¹³⁷ A holistic approach focuses on processes, but also the management side, systematic aspects etc. The U.S. Sentencing Guidelines can be seen as one of the main influential factors for CMS as they demand a system which is able to prevent, detect and respond to corporate misconduct.¹³⁸ This already gives an indication of how wide the range is.

The setup of a holistic CMS is complex. There are elements which are necessary such as a code of conducts for example. “It appears that companies who wish to influence ethical standards establish ethical codes as their first step.”¹³⁹ Areas which are essential for a successful compliance management and which are named often, include:

- Ethical code;
- Initial compliance assessment in terms of business activities and target groups/markets;
- Compliance organization;
- Tone from the Top;
- Regulations and policies;
- Communication;
- Training;
- Constant risk analysis;

¹³⁷ Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37, 10, P. 828

¹³⁸ U.S. Sentencing Guidelines (2012). 2012 Guidelines Manual – Chapter 8 - §8B2.1. Retrieved December 13, 2013 from http://www.ussc.gov/Guidelines/2012_Guidelines/Manual_HTML/8b2_1.htm

¹³⁹ McDonald, G. M. & Zepp, R. A. (2007). Business Ethics: Practical Proposals, *Journal of Management Development*, Vol. 8, No. 1, P. 61

- Financial or accounting processes;
- HR processes.

Departing from these theoretical and practical suggestions the research efforts are based on these areas. It should be noted that in the area of trainings in the last years tremendous progress has been made. At the beginning of the 2000s ethical trainings were conceived with cynicism or boredom.¹⁴⁰ Employees did not want to participate in trainings and the value of trainings was not communicated. The state of the art shows that a variety of training is possible such as online trainings which are partly interactive, online seminars, personal seminars with the possibility to directly interact with the trainer etc. The listing of these activities shows basic elements, but it is by no means exhaustive. There are guidelines available by non governmental organisations like the UN Global Compact Guideline, regulators or by private organizations already which mention activities necessary to address challenges.^{141,142} Quite often these guidelines are written in a form of a list which can be ticked off. In the scientific community as one possibility the differentiation between process compliance and business conduct compliance is mentioned.¹⁴³ The term process compliance refers to the adherence of processes whereas the term business conduct compliance refers to the ways business is conducted. This term is broader, but even together with the term process compliance this gives only an almost complete picture. Compliance is in a narrow scope reactive when it focuses on risk avoidance only and it is purely risk driven, it is proactive with a wider scope. It can be understood as a philosophy of business which incorporates behavior of individuals, processes which are embedded in the organizational context as well as other parameters. This is depicted in the following scheme (see figure 1.3.).

¹⁴⁰ Garofalo, C. (2003). Toward a global ethic - Perspectives on values, training and moral agency. *The International Journal of Public Sector Management*. 16, 7, PP. 490-501

¹⁴¹ United Nations (2013). United Nations Global Compact. The ten principles, Retrieved December 13, 2013 from <http://www.unglobalcompact.org/abouttheGC/TheTenPrinciples/principle10.html>

¹⁴² National Housing Federation (2013). Excellence in governance. Retrieved December 20, 2013 from <http://www.housing.org.uk/publications/browse/excellence-in-governance-compliance-checklist>

¹⁴³ Wieland, J. (2010). Compliance Management als Corporate Governance - konzeptionelle Grundlagen und Erfolgsfaktoren. In: J. Wieland & R. Steinmeyer & S. Grüninger (Eds.), *Handbuch Compliance Management* (PP. 15-38). Berlin: Erich-Schmidt Verlag.

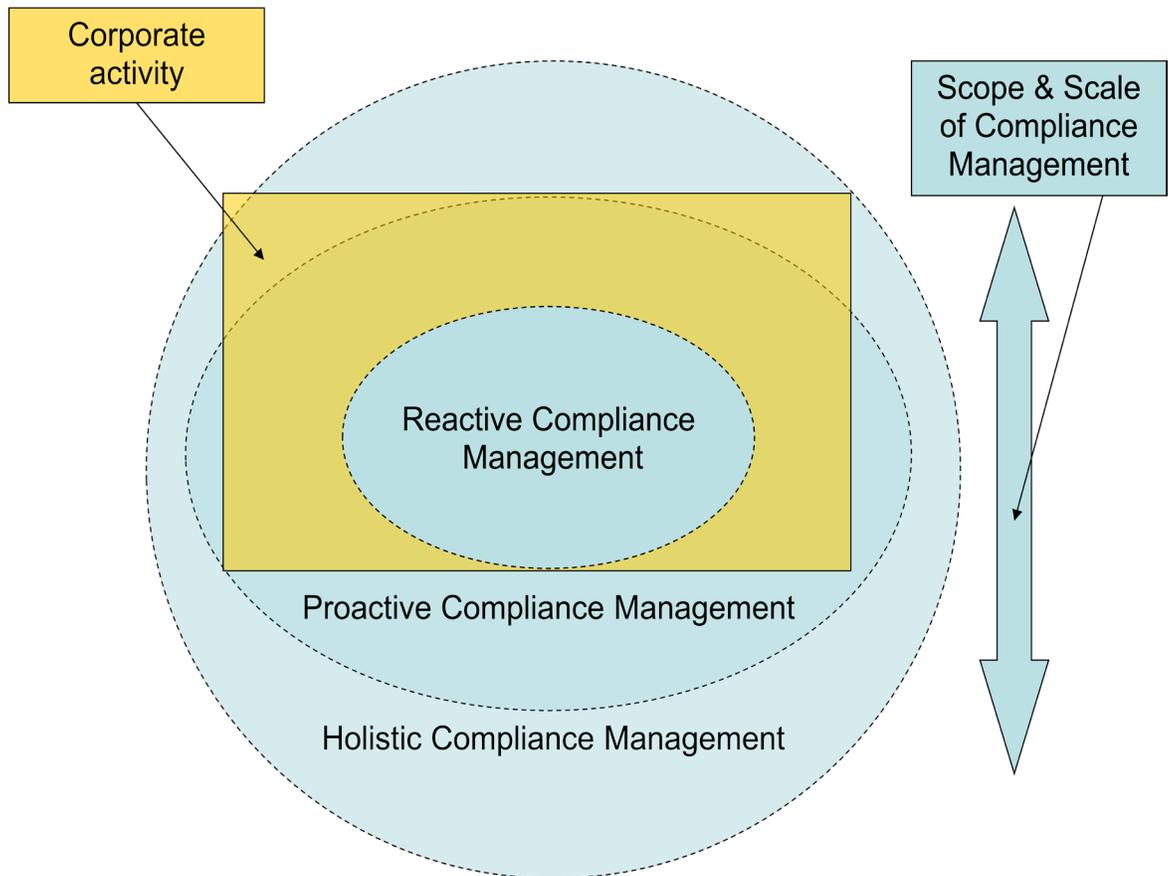


Figure 1.3. Attributed scope and scale of Compliance Management

Source: Own depiction

The figure above shows different development stages of CMS. These are called reactive, proactive and holistic and are depicted in blue ellipse forms. The corporate activity of any organization is depicted by a yellow box. Depending on the type of CMS different intersections are possible. Reactive compliance management has the smallest intersection as it only reacts to corporate activities. An example might be the occurrence of a corruption case. The reactive compliance management ensures that the case is dealt with, possible communication with public authorities or other stakeholder is managed and persons who caused the corruption case are properly taken care of. With this approach, the corporate activity which caused the problem is addressed. Proactive compliance management has a larger intersection with the corporate activity as almost all activity is covered. An example might be a yearly risk assessment which judges on specific compliance issues and the question whether from specific corporate activity, such as

penetrating a specific market, a special risk arises. With this proactive approach problematic activities can be identified at an early stage and subsequently be avoided. Holistic compliance management in this regard covers more aspects than just a reactive and proactive compliance management. A holistic compliance management focuses on liability as well as on proactive elements, but encompasses also elements outside the operating business, activities such as an integration in strategy, vision, etc. – the scope of the holistic compliance management is by definition the widest. From the figure it can be seen that the holistic compliance management has an almost total coverage with reference to the intersection with corporate activity.

Whatever approach is chosen the compliance strategy has first of all to codify the appropriate rules for the implementation of the strategy, secondly guarantee that compliance is anchored in the business and thirdly monitor the compliance management.

The aim of a holistic compliance management is a reduction of compliance cases by integration of the CMS in the organization and strengthening the competitive advantage and innovation. The more effort is invested in the proactive elements of a compliance management the less effort is needed for the reactive aspects. Of course this is only possible for organizations which do not have problems with bribing, embezzlement of company assets on a large scale or which have the current pressure of prosecution because the company has violated laws etc. In this context it would be most important to react to the cases at first and secondly focus on establishing a proactive compliance management. “There should be, after all, only a few real compliance risks that could prove detrimental to a business. The company must comply with all elements of substance. Compliance with the formal elements gives an indication of knowledge of the rules, but not of an embedded compliance culture, and therefore, it is a misleading benchmark. A few key areas that are absolutely militarized the compliance “red zones” have to be established and communicated. In addition, the compliance department should be providing the business with useful and creative information that can help the business gain a competitive advantage.”¹⁴⁴ It is important to note that the compliance function must support the management on strategic level to define the scope of compliance in the organization and the compliance function must also support the business on the operational level with advice for compliance related topics or questions.

¹⁴⁴ Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37, 10, PP. 816-831

However it is not the task of the compliance function to implement compliance in the incentive systems etc. Unless the importance of compliance has not been realized by management and the ownership of the topic been taken, no lasting change will be possible: “The reality is that ethical behavior is simple to understand but hard to apply across all levels of the organization, particularly when the firm does not subscribe to the stakeholder approach.”¹⁴⁵ In an attempt to reach all levels of the organization it can also be discussed whether an integration of a CMS in other systems is useful – or whether it should be seen as an umbrella which unifies other risk systems. If an organizational wide system for the discernment of company risks is established the CMS could be part of it or deliver valuable input for such a risk system. Enterprise Risk Management or elements of risk management systems developed from standard frameworks such as Control Objectives for Information and Related Technology (COBIT) and the Committee of Sponsoring Organizations and Treadway Commission (COSO) can be used to cover also parts of the CMS. Efficiency is gained if an integration of the different systems is given.¹⁴⁶ The important aspect is that a clear responsibility is given and accountability is traceable. Otherwise the mix of different risk systems may lead to the fact that important tasks are not covered in their entirety.

1.6.3. Outsourcing or bundling of activities within the organization

Companies know their business best and they also know their weaknesses best. For that reason the basic idea aims at leaving the compliance activities within the company. Nevertheless this function should be an independent function as it is necessary to evaluate these activities. In reality this is not always given, although organizations see more and more the advantage of a compliance function: “Many companies – financial services, in particular – and also construction and the pharmaceutical companies, have appointed a separate business function to look after the firm’s compliance needs.”¹⁴⁷ The independent functions were wider spread in the finance

¹⁴⁵ Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37, 10, P. 817

¹⁴⁶ Van der Elst, C. (2011). Risk management in corporate law and corporate governance. In: W. Sun & J. Stewart & D. Pollard (Eds.). *Corporate governance and the Global Financial Crisis: International perspectives* (pp. 215-242). Cambridge: University press, P. 230

¹⁴⁷ Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37,

industry, but with the professionalization of compliance also other industries are making use of such a separate function. This could be an internal or external auditor or an independent assessment of a not involved party. One example for the singling out of activities would be an activity as the screening of business partners which might be used by the company as additional resource. If companies do need business partners as they might not have enough resources in the sales force for example a process can be installed to check these partners before contractual commitments are made. This process can be outsourced. Singling out of the compliance management totally is not recommended.¹⁴⁸ An external party might be independent, but it misses the understanding of business necessary for successful compliance management. The CMS should not be seen as only a part of the risk system as it can stand by itself. It should rather be seen as a system which has an overall scope. “Compliance works best when it is embedded and integrated into the organisational culture (...).”¹⁴⁹ Furthermore it can be used as stirring of stakeholder relationships.¹⁵⁰ Similarly to subsume every activity relating to risk under the risk management, the compliance management has been abused to subsume every guideline in the company under the key word “Compliance”. This makes the instruments slow and inept. It would be more advantageous to define works which belong in the scope of compliance. An area which should not be outsourced as it poses a high risk such as the consulting in business projects might be a bundled activity under the umbrella “business project activities”, but several low risk activities such as the classification of customer data in governmental and non-governmental business partners might be singled out. Other criteria for outsourcing might be the emphasis for independence and costs of course. It can be noted that many organizations which operate with whistle blowing systems or an ombudsman have outsourced this activity to an external party occasionally. The reason for that is a clear separation between the own organization and the

10, P. 824

¹⁴⁸ Deloitte (2013). Compliance Outsourcing: Weighing the Risks and Opportunities, Risk & Compliance Journal, Retrieved December 7, 2013 from <http://deloitte.wsj.com/riskandcompliance/2013/11/20/compliance-outsourcing-weighing-the-risks-and-opportunities/>

¹⁴⁹ Edwards, J. & Wolfe, S. (2006). A compliance competence partnership approach model, Journal of Financial Regulation and Compliance, 14, 2, P. 143

¹⁵⁰ Grüninger, S. (2010). Wertorientiertes Compliance Managements System. In: J. Wieland & R. Steinmeyer & S. Grüninger (Eds.). Handbuch Compliance Management (PP. 39-69). Berlin: Erich-Schmidt Verlag.

external service provider. Whatever gets reported to the external service provider remains strictly confidential. With this constellation trust for the reporting person should be created. The person reporting an incident should feel comfortable that the reporting itself does not happen in the organization where misconduct might have happened, but in an external organization or with an external person who dedicatedly will work on this issue. Before sourcing out any activities it should also be kept in mind that the responsibility remains with the organization and more specifically with the management. Therefore it must be ensured that the processes, procedures and the personnel of the subcontractor are adequate to perform the services. Furthermore it should be noted that compliance management has to be ensured through control mechanisms.¹⁵¹ Especially if it is decided that a few activities are singled out this aspect is even more important as otherwise the control is lost, but potential misconduct is still contributed to the company. Contractual outsourcings via Service Level Agreements (SLA) should include the right to perform sample controls or audits to ensure that necessary activities are performed and to ensure the quality of the performance.¹⁵²

In general there is more acceptance among the employees if these controls are integrated in the business.¹⁵³ The problem lies in the missing or badly managed integration therefore creating additional workflows and processes. Ideally a control activity should not be noted as this would mean a perfect integration in the process. And of course the applied controls should be reasonable. Many control systems are over engineered therefore making it difficult for the company to act. This refers to internally developed systems such as an Internal Control System (ICS), but also to control systems which were given by external stakeholders, as the Sarbanes-Oxley-Act for example. When the Sarbanes-Oxley Act was introduced in 2002 it brought with it a wide range of control activities. Unfortunately these controls “were often carried out to excess without taking a holistic approach to what was appropriate and necessary.”¹⁵⁴

¹⁵¹ Morley, C. H. (2007). Corruption and Compliance. *Journal of Financial Crime*, Vol. 5, No. 3, PP. 261-267

¹⁵² Vagadia, B. (2012). Strategic outsourcing. *The Alchemy to Business Transformation in a Globally converged world*, London: Springer, P.100

¹⁵³ Weinberg, S. (2011). *Cost-Contained Regulatory Compliance: For the Pharmaceutical, Biologics, and Medical Device Industry*, New Jersey: John Wiley & Sons. P. 188

¹⁵⁴ Hamilton, S. & Eckardt, A. (2010). The economics of Compliance. In: J. Wieland & R. Steinmeyer & S. Grüninger (Eds.). *Handbuch Compliance Management* (P. 92). Berlin: Erich-Schmidt Verlag.

The holistic CMS considers this risk and strives for necessary but also apt steps of implementation. The aspect of awareness and information is crucial for the success of the implementation of activities. Internally information about compliance enhances the image of the topic, externally information about compliance makes the company more attractive at the capital market for example.

1.6.4. Criticism on holistic Compliance Management Systems

It is easy to say that in certain countries corruption is necessary to conduct business. Without doubt there is truth to the statement that corruption in some parts of the world is wider spread than in others. It has been academically concluded that cultural impact does not play a major role (using Hofstede's scales), although especially practitioners claim that in a few cultures bribing and corruption is inherent.¹⁵⁵ There is research that the motivation for bribing often lies in poverty, highly regulated and an inward-looking economy.^{156, 157} On the other hand it can be witnessed that also in strongly growing economies corruption happens.¹⁵⁸

People who work in these countries, cultures or branches have witnessed corruption or participated in corruptive practices. They know that parts of the public support their view and if they behave illegally they might use their experience as an excuse or justification for their wrongdoing. This can be extended to the whole organization: "Indeed, if the rationalizations

¹⁵⁵ E.g. Interview with Sidney Vianna, Director of Aviation Space & Defense Services for DNV Business Services North America. Interviewer: "Is it appropriate to say that Brazil is emerging from a "culture of corruption"? Vianna: Not really. The culture of corruption is too entrenched at all levels in the Brazilian society. A high percentage of the population in Brazil would not consider a small bribe to avoid a (traffic) speeding ticket as a corrupt act. So, corruption exists in many levels, both within the private and governmental sectors." Retrieved May 3, 2012 from <http://ethic-intelligence.com/experts/89-brazil-anti-corruption-trends>

¹⁵⁶ Sanyal, R. & Guvenli, T. (2009). The propensity to bribe in international business: the relevance of cultural variables, *Cross Cultural Management*, Vol. 16, No. 3, PP. 287-300

¹⁵⁷ Méan, J. P. (2013). ON CORRUPTION AND BRIBERY FIGHTING TO RESTORE TRUST. Retrieved December 13, 2013 from http://ebbf.org/ebbf/knowledge-centre/corruption_bribery

¹⁵⁸ Rock, M. T. & Bonnett, H. (2004). The Comparative Politics of Corruption: Accounting for the East Asian Paradox in Empirical Studies of Corruption, Growth and Investment, *World Development*, Vol. 32, Issue 6, P. 999

become a shared resource in the organization's (or industry's) culture, they may pave the way toward defining the practice as 'business as usual—the way things work.'¹⁵⁹ Sometimes this is even done publicly as for example in TV broadcasts or newspaper interviews. A holistic compliance management must address these realities and can not ignore them if it is meant to be taken seriously. There are companies which show that even in apparently difficult environments business is possible without bribing activities.¹⁶⁰ The rationale behind that is that not all business is corrupt in a country. Being that the case the companies expanding in this countries can focus on the non-corrupt business. Over time the attitude of the local players will change if they are interested in business. Of course this is an ideal state for which it is nonetheless worth striving for. This requires market strength, the ability and willingness to say "no" to corrupt business and also support from other businesses which can form an alliance against corruption in the country. Research shows that "[e]thical behaviour frequently is profitable and especially important in financial services, where business depends as much on reputation as on performance"¹⁶¹

1.6.5. Compliance management as enabling/hindering factor

The question whether compliance management is enabling or hindering depends from the perspective on compliance in general and how it is understood by the management, but also the employees of a company. Realistically compliance management should not be overestimated. Compliance management can not rescue the world and make it a corrupt-free place. Corruption exists since business exists. But compliance management can give guidance in difficult business situations. Several authors evaluate compliance as an enabling factor or even an advantage compared to the competition: "We go further and say that if the compliance leadership and its

¹⁵⁹ Anand, V., Ashforth, B. E. & Joshi, M. (2004). Business as usual: The acceptance and perpetuation of corruption in organizations, *Academy of Management Executives*, Vol. 18, No.2, P. 41

¹⁶⁰ Morrell, J. (2013). Business Shows Clear Commitment to Fighting Corruption in Thailand. Retrieved February 14, 2013 from <http://www.cipe.org/blog/2013/02/01/business-shows-clear-commitment-to-fighting-corruption-in-thailand/>

¹⁶¹ Zekos, G. I. (2004). Ethics versus corruption in globalization, *Journal of Management Development*, 23, 7, P. 632

expertise are a source of competitive advantage to the firm, and the environment in which the firm moves is highly regulated, this is a function that should seriously be considered as having the skills set to lead the future of the firm.”¹⁶² Compliance can be understood as hindering factor in countries where the adherence to law is more difficult. There is no doubt that in specific countries the perceived corruption is higher than in others. The non governmental organisation Transparency International publishes the Corruption Perception Index (CPI) yearly to show the attribution of the perceived level of corruption in a country. That does not mean that in countries with a higher perception rate of corruption bribing is an unavoidable activity. It rather means to put a focus on innovative solutions in such dilemma. Compliance can be seen as an innovation driver for legal and ethical right solutions for difficult decisions. In this context it supports the employees and challenges them to find new solutions. Therefore there can be special primes for the adherence to the compliance program.¹⁶³ In this regard the compliance function would recognize the efforts made by the individuals and would help them in ethical difficult situations. Whereas compliance is understood as an enabling factor, it is possible to generate trust in situations where the conditions are difficult, competition is not prevailing but the need for companies offering products without compromising integrity by paying bribes is given. Critics might argue that especially in these situations compliance is a hindering factor which reduces the chances in the market, but that is only one perspective. One instrument to fight corruption by using compliance management as an enabling instrument is called “collective action”. Collective action aims at using compliance by several companies to operate with fair conditions in difficult markets or branches.¹⁶⁴ There are different engagements possible:

The so called Compliance Pact is a pact which two companies opt for publicly stating that they do not engage in corruptive practises and that they have a zero-tolerance policy against corruption. Theoretically such a pact is also possible between several parties.

¹⁶² Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37, 10, P. 825

¹⁶³ United Nations Office on Drugs and Crime (2013). *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, Austria: United Nations publication, PP. 74-75

¹⁶⁴ Pieth, M. (2012). *Collective action and corruption*, Basel Institute on Governance, Working Paper Series, No13, 1-20, P. 5

The so called Integrity Pact is often used in public businesses. State owned companies oblige potential suppliers to an integrity pact. In this integrity pact clear rules are communicated for the business conduct with each other which is based on trust and fairness. The concept was introduced in the 1990s¹⁶⁵, nowadays in reality it can be seen how Compliance is an enabling factor in the business. In Russia for example 80 German companies declared in April 2010 in Moscow that only clean business will be conducted in Russia. That means that apparently usual business practises as questionable external consultants, inappropriate invitations and presents or bribing activities were banned. The declaration was given in public, the participating companies are monitored by an independent party. Since then the efforts to extent collective actions measures have been fortified and led to the incorporation of the topic in the B20 Summit.¹⁶⁶

Another example is the use of compliance management in national or international associations. If an understanding of base line compliance measures such as basic training of employees in the companies being represented or a code of conduct which is binding for all member companies is reached, an image gain is guaranteed and potential customers looking for integer business partners know that they can trust in the ones being in the association. An example for that in the electro engineering industry is the Transmission and Distribution Network in Europe. The association commits itself to promoting to “promote and to defend the common technical, industrial, economic, environmental and political interests of the European electricity transmission and distribution manufacturing, and product derived solutions industry.”¹⁶⁷

As associations are often powerful and also trendsetter, the measures introduced by the compliance management can be a step ahead of the regulatory bodies which might even decide to take over these measures as mandatory for other branches or associations. For the individual manager who is faced with sales targets in his region or market a collective action engagement of

¹⁶⁵ Transparency International (2013). Global priorities, Integrity Pacts. Retrieved December 14, 2013 from http://archive.transparency.org/global_priorities/public_contracting/integrity_pacts

¹⁶⁶ Horowitz, B. (2013). B20 announces the creation of its Collective Action Hub on Anti-Corruption, Retrieved December 14, 2013 from <http://www.b20russia.com/en/taskforce/transparency-and-anticorruption-taskforce/item/773-3rd-session-of-the-task-force-on-transparency-and-anti-corruption-took-place-within-the-b20-summit-held-in-st-petersburg.html>

¹⁶⁷ Transmission & Distribution Europe (2013). Retrieved December 14, 2013 from <http://www.tdeurope.eu/en/about-td-europe/leaflet/>

his company and that of a competitors company mean that the competition for the customers is done in a legal secure and fair environment. The chances to reach the bonus attached to the performance in the region or market can be evaluated in legally sound terms.

1.7. Conclusion

CMS are scalable. The choice of the scope and the scale of a CMS depends on a variety of factors. The base of a CMS is given by morale perceptions and legal requirements. A holistic CMS also has the task to find out what motivates employees to act illegally or non-compliant. It must analyze the company, its reward schemes and check whether it is appropriate to incentive the employees to act in a legal framework and in the moral standards which are set. Furthermore it is also necessary to look at company values to align the CMS with them: “Values are the key to understanding how to shape employee rule-oriented behavior and are particularly important in motivating employees to voluntarily adopt company values as their own.”¹⁶⁸ The challenge of a successful compliance management lies in its reduction to address necessary operational and strategic requirements from the business. A scope which is too narrow can be limiting, a scope which is too wide leads to a waste of resources. It can not be expected that a CMS covers all possible risks an organization encounters. In order to address future risks CMS need innovative developments.¹⁶⁹ Working on compliance management in this way, it can become a competitive advantage. Companies understanding compliance management holistically choose CMS elements carefully. The sudden end of corruptive behavior is an illusion. But due to media coverage and information access via the internet it is likely that more cases in the future than nowadays will become transparent. The reason is an increase in awareness and increased transparency. As reflection of society businesses with all business functions should acknowledge this development and incorporate a holistic compliance management in their activities to proactively prevent cases of corporate misdeed.

¹⁶⁸ Tyler, T., Dienhart, J. & Thomas, T. (2008). The Ethical Commitment to Compliance: Building Value-Based Cultures. *California Management Review*, 50, 2, P. 34

¹⁶⁹ Wieland, J. (2010). Compliance Management als Corporate Governance- konzeptionelle Grundlagen und Erfolgsfaktoren. In: J. Wieland & R. Steinmeyer & S. Grüninger (Eds.), *Handbuch Compliance Management* (PP. 15-38). Berlin: Erich-Schmidt Verlag.

2. EVALUATION OF SCOPE AND APPLICATION OF COMPLIANCE MANAGEMENT SYSTEMS IN ORGANIZATIONAL CONTEXT

CMS can give guidance for business conduct and serve as catalyst in business conduct, but to decide which CMS fulfils the corporate requirements it is necessary to evaluate causes which trigger unethical behaviour and see what are means to encounter them. Compliance elements vary widely in theory and application. To understand which elements are necessary it helps to decide in which context the elements will be used.

2.1. Compliance project, program and system

The compliance function in an organization encompasses a lot of different aspects. In a business context, one aim may be the establishment as the guardian of law and regulations, as moderator and facilitator in evaluating difficult business decisions and as the keeper of the reputation of the company. It is possible to reach these strategic goals with compliance projects, compliance programs or systematic approaches which might be used to create a system.

A project typically has a defined beginning and an end, dedicated resources and identified deliverables, for example to “go live on the 1st of January 2014”, “consolidate all entities not considered yet until the end of this year”, “enable the transition between March and September for unit Z”. Furthermore project management suggests phases such as definition, planning, realization and the end of a project. Compliance projects are often initiated by external pressure.¹⁷⁰ If the state prosecutor or other companies accuse a company of corporate misconduct, often compliance projects are started to immediate support the management and operational business in crisis situations. The project sponsors who are quite often the top management of a company have an urge to finish the project timely. Deliverables could be, for example, an identification of misconduct over the last 5 years and depending from the result proposing measures for the company within 6 months.

¹⁷⁰ Chandola, T. (2008). The Top 10 Compliance Project Challenges and Opportunities, ISACA Information Systems Control Journal, 5, P. 1

A program is a set of chronological measures which have been defined to address current problems. Often the compliance program is a plan developed by the compliance function agreed upon by management which is executed in the organization. The Federal Sentencing Guidelines suggest to companies to install ethics and compliance programs. “Companies with effective ethics and compliance programs can reduce fines by up to 95%. Those without effective programs can have fines increased by up to 400%.”¹⁷¹ A program is applied over a longer period of time, normally every program has its defined end, even if it is not started with a concrete time frame.

A CMS is a long-term systematic approach which is closely linked to all parts of the company. Ideally it becomes part of the core of the organization and is therefore deeply embedded in the different units reaching from strategic management to operative business, from top management to staff. A CMS is not defined by law. There are basic requirements legally formulated, but depending on a risk assessment the CMS has to be designed for the organization. In the risk assessment also external stakeholders should be considered. Stakeholders like the public, media, politics or shareholders have a strong impact on companies and urge business companies to manage illegal or unethical behavior in their organizations.¹⁷² A CMS can focus on specific topics if business uses only one sales channel for example. It can have a wide scope if the organization has many different business models. Although compliance management has been realized as being important, its realization is often insufficient. Companies still fail audits on CMS both internally and externally.¹⁷³

Compliance management mitigates risk, but can also aim at a value increase of the company. It stands for profitable business and generation of new values. Furthermore these values must be communicated. The compliance management strives for protection from public/external influence meaning that misconduct should be dealt with internally before for

¹⁷¹ Tyler, T., Dienhart, J. & Thomas, T. (2008). The Ethical Commitment to Compliance: Building Value-Based Cultures. *California Management Review*, 50, 2, P. 31

¹⁷² Trevino, L. K., Weaver, G.R. & Reynolds, S.J. (2006). Behavioral ethics in organizations: a review. *Journal of Management*, 32, PP. 951-990

¹⁷³ Bakman, A. (2007). If Compliance is so critical, why are we still failing audits?, *ISACA Information Systems Control Journal*, 1,4, PP. 1-4

example a public prosecutor gets in contact with the organization to investigate about misconduct.

Shareholder management is an aim which is closely linked. Meeting the expectations of investors, policy/law-makers, regulators, customers, suppliers, analysts, employees and other stakeholders is demanding, but important. Not all risks can be foreseen, but there is a chance to address risks which are avoidable. Risks which might be probable include:

- financial damage due to fines;
- loss of reputation;
- deterioration of image;
- additional financial costs due to investigations, internal and external clarifications etc.;
- loss of trust;
- deterioration of business relationships;
- decline of employee morale;
- negative impact on share price;
- negative impact on organization if wrong target object is acquired within an M&A process (e.g. compliance problems with acquired management team).¹⁷⁴

It is deducible from this list that risks are diverse in content and also financial impact, a close cooperation with the risk management function of the organization is desirable. Only with such a cooperation prevention from crisis and penalties, possibly losses is possible. These goals have to be defined by management. Research functions can support the management through studies and analyses to give structural background information.

In order to successfully implement a CMS, the employees have to be addressed and convinced that the CMS serves an important goal: The CMS serves the sustainability of their employer. Sustainability in this context means firstly the future existence of the employer and secondly advantages generated through compliance. The CMS is not introduced to burden the daily work of the employees, but to ensure that the work is done in accordance with all rules and regulations. Although this understanding should be paramount in the workforce, psychologically

¹⁷⁴ Vetter, E. (2008). Compliance in der Unternehmerpraxis. In: G. Wecker & H. v. Laak (Eds.), Compliance in der Unternehmerpraxis, (pp. 29-42), Wiesbaden: Gabler.

it must be worked out how employees react in a work context. Only if the triggers for their behavior are known, these can be used for the implementation and successful endurance of a CMS. The behavior is a key factor for a successful CMS. Repeatedly it was noted that illegal behavior proliferated when superiors and co-workers or colleagues tolerated wrong behavior.¹⁷⁵

On an individual basis, employees more readily react if the success of the CMS affects their acting in general. There must be a link between the CMS and the daily operations which are performed by employees. If the success of the CMS is part of their incentives, the external motivation is higher. If compliance is part of the fixed salary the importance of the CMS might be highlighted, although no special motivation is created to support the CMS.

Employees also act if they can avoid a loss of status, avoid the loss of belonging to the group or the loss of face. “A salient feature of unethical behavior is that it concerns misbehaviors where fundamental interests are at stake.”¹⁷⁶ It also depends on the fact that people are being dependent from others and want to be part of a group: “In situations with a strong majority norm, individuals adapt their opinions and behaviors to those of the majority.”¹⁷⁷ If unethical behavior from other employees is observed it is more likely that employees engage in unethical behavior themselves. These employees typically justify their acting with the remark that other people in the organization do the same or do worse.

A CMS which is formulated on board level, but not implemented in the organization can not succeed. The following figure 2.1. shows exemplary the program of an business organization.

¹⁷⁵ See also: Sutinen, J. & Kuperan, K. (1999). A socio-economic theory of regulatory compliance, *International Journal of Social Economics*, Vol. 26, No. 1/2/3, P. 188: “As moral obligation and social influence are weakened, compliance begins to erode among those who would normally comply with the regulations.”

¹⁷⁶ Kapstein, M. (2008). Developing a Measure of Unethical Behavior in the Workplace: A Stakeholder Perspective. *Journal of Management*, 34, P. 980

¹⁷⁷ Palazzo, G., Krings, F. & Hoffrage, U. (2012). Ethical blindness, *Journal of Business Ethics*, 109, P. 330



Figure 2.1. Ferrostaal Compliance Programme

Source: Ferrostaal (2014). Ferrostaal Compliance Programme - Retrieved December 15, 2014 from <http://www.ferrostaal.com/group-ferrostaal/corporate-compliance-ferrostaal/?L=wiPWytoz>

It can be seen that this program has three focus areas: The area of prevention, the area of detection and the area of response. The separation in these areas makes it possible to assort CMS elements. This program focuses on risk avoidance of systematic corruption and violations in regard to compliance (left column). If all employees are reached with preventive measures as for examples trainings which tell them which kind of behavior is allowed and which is forbidden, the likelihood of misconduct decreases. This would also mean fewer cases of misconduct and therefore less work in the other areas of detection and response. Nevertheless the area of detection is necessary.

The area of detection (middle column) entails investigations, reviews and control activities. Investigations are an instrument to uncover wrong business behavior and shortcomings in the business. Reviews are applied to analyze existing processes and systems to decide if improvements can be made. Finally a CMS can only succeed if the demanded measures are regularly controlled. It has proven that the pure appeal to employees has no long effect. There are many constraints, requests etc. with which employees have to cope on a daily basis. In this working environment, appeals, but also rules or regulations are not always obeyed. It must be differentiated whether this occurs on purpose or by negligence. The aspect of control is therefore necessary. Both the focus on prevention and detection are supported by communication & training activities, internal compliance controls and reporting requirements.

The last area of response (right column) shows the reactive part. If employees decide to violate the rules there will be consequences. These consequences can also be personal in their nature. The installation of compliance in an organization might be triggered by different events. For illustration purposes the history of the compliance at the company Siemens is presented: In 2006 the German company Siemens had a corruption scandal which initiated public prosecution and also private claims against the company. In December 2008 a settlement with the Security Exchange Commission was reached. Siemens was obliged to pay 1 billion EUR. With this settlement no further juridical charges were made against Siemens. In the wake of the scandal, the compliance model was elaborated and fine tuned.¹⁷⁸ The terms for the content of CMS are inconsistent. Terms such as ranges, areas, fields, elements or activities exist. Irrespective which term is used, finally it is important that activities which are deployed show that the CMS has an impact to avoid corruption, to mitigate risks and to help the employees in their daily business. The exemplary shown program has a strong focus on processes to reach desired business conduct. The concentration on only processes can lead to the problem that a too narrow perspective is assumed.

2.2. Identification of relevant risk areas

A CMS has to take into account a broad variety of aspects. Similar to the job profile of a compliance officer a CMS touches upon a variety of disciplines such as for example accounting, controlling, information technology and law. In order to set up a CMS it is necessary to analyze the conditions in which a company operates. This can be done by a formal risk assessment or by contemplation of the management where from a business point of view most risks arise. Risk areas in which compliance is most often needed, because these are the spots where corruption takes place, are characterized below.

- Gifts and the provision of hospitality play a role as a risk area. The offering of gifts or the acceptance of gifts to and from external parties, but also the invitation of externals can be

¹⁷⁸ More information: <http://www.siemens.com/about/sustainability/en/core-topics/compliance/system/index.php>

a risk as it differs both from legal side, but also from the organizational side as the organization can issue different acceptance levels which are binding.

- The area of accounting can be considered as another risk area. In the booking of invoices of services the risk that services are charged which have not been performed is one risk. Another risk could be the transfer of money out of the company.
- External partners are sometimes needed to perform services for the organization as the organization itself does not have the capacity to perform these services. Nevertheless this bears the risk that externals are engaged who do not act in the interest of the organization.
- Payments without contractual basis make it difficult to decide for what product or service the organization pays. Therefore it exists a risk that these payments are exaggerated.
- Project management in its nature deals with multiple parties. The more complex the project is the higher the risk that in this structure persons are acting which pose a risk as they do not obey to the law or formulated rules.
- The purchase department faces a risk as the persons working there are exposed to externals which might have mind to bribe their counterparts in order to receive an order.

These are a few of the risk areas which were elaborated. These areas are taken into account in the list of compliance elements.

In general the ignorance of employees favors wrong acting. But there are not only employee facts, but also organizational ones which hinder or favor corruption. The hypothesis underlying this is that organizational size influences the probability of corruption. Bigger organizations might face a higher risk of corruption than smaller biotopes as individuals are not as much controlled in a big company. Furthermore anonymity is more easily guaranteed due to the size of the organization. Typologies of corruptive organizations were made by Luo¹⁷⁹ who focuses on four types of organizations. On the other side in small organizations with no rules and regulations the level of ignorance might be so high that employees feel left alone when taking an ethical important decision thereby encountering a risk. Smaller organizations do not always have

¹⁷⁹ Luo, Y. (2004). An Organizational Perspective on Corruption. *Management and Organizational Review*, 1, PP. 119-154

the capacity to identify the line between legal practices and corrupt ones.¹⁸⁰ A development which is new is that with the progressing of social media and internet, the transparency gets higher and more cases of non compliant behavior get in the public. Bigger companies therefore face a higher risk as they get more under attack and are closer followed by prosecutors. If the structure is different or the companies are smaller they may not have as many regulations as big ones.

2.3. Elements of Compliance Management Systems

The perceived conception of CMS finds its consequence in the design of compliance management functions and also the persons working in such functions. According to legal requirements, various independent institutes, best-practice in business and non-governmental organizations elements have been identified. Totally 40 elements have been identified in the context of this work. The overviews are not exhaustive, but show typically deployed elements in designed CMS. It should also be taken into account that on the one hand several elements have a wide application as for example the element “Compliance Culture”. On the other hand other elements are very specific as for example the element “Policies”. The elements were gathered from the period January 2008 onwards from research by literature review, in expert interviews, expert discussions and from legal acts. Furthermore they were gathered in different projects.

Experts who have been contacted include Stephan von Appen, Regional Compliance Officer, Siemens; Michael Cullen, Partner, Deloitte, Enterprise Risk Services; Jürgen Pauthner-Seidel, Independent Compliance and Anti-Corruption Trainer and Consultant; Markus Schulz, Chief Compliance Officer, Zurich Life Insurance; Andreas Feege, Partner KPMG. Legal acts on which the doctoral thesis is based are US Federal Sentencing Guidelines¹⁸¹, the Sarbanes Oxley Act¹⁸², the FCPA¹⁸³, the Dodd- Frank Act¹⁸⁴, the UK Bribery Act¹⁸⁵ and antitrust regulations, e.g.

¹⁸⁰ United Nations Office Industrial Development Organization (UNIDO) and the United Nations Office on Drugs and Crime (2012). Corruption prevention to foster small and medium-sized enterprise development, Volume II, Vienna: United Nations publication, P. 3.

¹⁸¹ U.S. Sentencing Guidelines (2012). 2012 Guidelines Manual – Chapter 8 - §8B2.1. Retrieved December 13, 2013 from http://www.ussc.gov/Guidelines/2012_Guidelines/Manual_HTML/8b2_1.htm

¹⁸² U.S. Security Exchange Commission (2013). The laws that govern the securities industries. Retrieved December

for the European Union.¹⁸⁶ Projects which were executed included the auditing truth and fairness of a real estate company's accounting system (2007), the implementation of a compliance program for a sales and service function (2008), a cross check of implemented compliance program in Kazakhstan and Russia (2009), the implementation of Compliance System for energy power distribution business (2010) and the setup of compliance organization and compliance system for the infrastructure and public sector business (2012). A content analysis was executed to determine relevant topics and influencing factors. The result of the content analysis is a comprehensive selection of relevant elements. They are listed by implementation type in regard to necessity and by the level of importance ranging from low, medium and high which they have as possible element for CMS. The importance is rated taking into consideration the usability and the implication which might be reached if this element is applied. As well as the major usability also the origin is listed in the following overviews. Each overview is completed by a short explanation and discussion of the elements to ensure that an uniform understanding is reached.

Implementation types

In the context of the work, the 40 elements were ordered according to their implementation type. The implementation types were developed as it became obvious during research work that a classification is possible. For this judgment three types can be differentiated. The first type is called "Institutional type". This type refers to the organization of a CMS and structures which are connected directly to this. An emphasis is made to the structural and technical setup of a CMS. The second type is called "Strategic type". This type encompasses mid- to long-term considerations and is characterized by high-level engagements of different stakeholders. The

7, 2013 from <http://www.sec.gov/about/laws.shtml#sox2002>

¹⁸³ United States Department of Justice (2013). Foreign Corrupt Practices Act. Retrieved December 4, 2013 from <http://www.justice.gov/criminal/fraud/fcpa/>

¹⁸⁴ U.S. Security Exchange Commission (2013b). The laws that govern the securities industries. Retrieved December 7, 2013 from <http://www.sec.gov/about/laws.shtml#df2010>

¹⁸⁵ Legislation UK (2013). Bribery Act 2010, Retrieved December 4, 2013 from <http://www.legislation.gov.uk/ukpga/2010/23/contents>

¹⁸⁶ European Commission (2013). Antitrust legislation – Competition – European Commission, Retrieved December 20, 2013 from <http://ec.europa.eu/competition/antitrust/legislation/legislation.html>

third type is called “Operational type”. The type refers to the daily operations which need practical handling of matters. The elements grouped together can have a profound effect on the total CMS as they are connected to the structure and strategy, but also the daily operations of CMS. Sometimes a clear attribution is difficult. In these cases the best fit was evaluated and the best fitting type chosen.

All implementation types are required to run a CMS, because they are interdependent. The system character can only be maintained if a meaningful combination of elements is reached. Not all elements must necessarily be implemented, the challenge lies in the meaningful selection. The following table 2.1. shows an overview of elements group according to their type and their influence.

Table 2.1. Typology of elements

Type	Total number	with high influence	with medium influence	with low influence
Institutional	6	0	2	4
Strategic	15	6	7	2
Operational	19	7	8	4

Source: own collection

2.3.1. Institutional elements

Whereas several elements are applied very specifically, several like the institutional elements have a more general application. Natural persons as well as technical equipment are necessary to enable a functional CMS. It could therefore be discussed that they are a precondition to run a CMS. Not for all of the elements this is true, but all of them play a role in the setup. The following table summarizes the institutional elements according to importance (see table 2.2.).

Table 2.2. Institutional Elements of Compliance Management Systems

No.	Elements	Source	Usability	Influence
1	Ombudsman	Best-practice in business	(Anonymous) reporting of incidences	Medium
2	Technical support for systems	Business experience when a large organization is concerned	Optimizes and standardizes Compliance processes	Medium
3	Compliance consultants/ personnel	Offer by consultancies	Quick wins, expert know-how	Low
4	Independence	Condition for successful CMS	Enables impartiality	Low
5	Organization	Best-practice, PS 980	Necessary to deliver high performance	Low
6	Whistleblowing System	Anglo-american law	Anonymous reporting of incidences	Low

Source: own collection

In the following the mentioned elements will be described in detail, focusing on an explanation of their meaning and their function in a CMS. By nature some of the elements have a wider application than others.

Ombudsman

The ombudsman is an external person which can be approached usually via email, phone and/or personally by employees who have concerns about the business conduct. The appointed person is independent from the rest of the organization and therefore unlikely to be conflicted. The range of topics which the ombudsman is responsible for varies according to his specified tasks. It might include topics as anti corruption, antitrust, data privacy, HR topics, fraud etc. Normally the ombudsman guarantees complete anonymity to the persons who approach him. The ombudsman is a necessary element of a compliance system to foster credibility that the topic is taken serious and to interact with the compliance organization.

Technical support for systems

A CMS can be supported by automated processes. These processes relate to specific approvals which have to be given by the compliance organization as for example for entertainment activities or for donations. Especially in larger organizations automated processes

and tools which are supported by information technology provide for seamless workflows and can improve the speed for decisions. In smaller organizations automated processes might not be necessary, but tools can also support there for documentation purposes.

Compliance consultants/personnel

A successful CMS depends on the persons which are part of it and on the same time the innovators who further develop the system. The perception what kind of person a compliance consultant or compliance personnel should be differs according to the specific risks which an organization faces, but also according to the personal estimation of the management. Additionally it must be clarified for which kind of tasks the person are needed. It makes a difference if a compliance consultant is only in the organization temporary to get processes redesigned or to propose a new concept compared to personnel which is employed to stay over several years to ensure that the CMS is functioning. On the one hand in order to be informed about all legislations and be able to judge on their impact for the organization a legal background for a compliance officer is helpful. On the other hand a lot of the elements which compliance consultants and personnel have to deal with are business and process driven. Therefore good process know how and an understanding of the business are key to successfully implement a CMS.

Independence

An element which is important for the success of a CMS is the independence from the compliance personnel towards the management. The more independence is given the more power has the compliance personnel. In this way quality advice and consultancy can be guaranteed. The more dependence is established from the compliance personnel towards the management the less likely are critical remarks and open discussion. If the CEO of a business is the direct manager of a CO the issue of bringing up critical issues might be a risk. The risk that for example a follow-up job or tasks after compliance management is not provided increases.

Organization

As any function in a company the organization of the function itself is crucial. The more complex the workforce and the company is the more weight lies on the organization. “In a

complex business environment, a strong compliance department is essential and perhaps more importantly rare.”¹⁸⁷ A small company with only a few employees does not have a lot of activities in this regard, but the bigger the company gets the more important is the organization. May it be organized in specific departments, units or services. In the next years, it will be more important for smaller companies, too. All organizations can develop a CMS. Independently from the size of the company lies the anchorage of the compliance function in the existing organization. The compliance function must be anchored close to the management to highlight the importance and it must also be independent from the management as it can only guarantee in this way an unbiased evaluation of issues at stake. Therefore also the role of the compliance officer should not be underestimated. It was concluded from expert interviews that the knowledge about the business, the self-image and the perception of compliance officers vary widely. Propositions entailing the skill sets are made by the Ethics Resource Center for example.¹⁸⁸ In reality compliance functions differ a lot from a “one person”-function to functions with several hundred employees. The fundamental principles however do not depend on the size of the organization. If a compliance function is not anchored it will not be able to show its whole effectiveness. Single authors see a centralization also as safest possibility, e.g. Rossi.¹⁸⁹ A strong function perceived by other parts of the organization is a key element to drive a successful compliance management. On the other hand decentralized approaches tend to be closer to the businesses: “A centralized model allows for a standardization of compliance and reporting activities across the organization, which results in efficiencies in training, cross-functionality, communication and resources. In a decentralized model, business units can tailor compliance systems to best meet the demands of their markets, locations, and industries. This enables

¹⁸⁷ Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37, 10, P. 824

¹⁸⁸ ERC – Ethics Resource Center (2010). *Leading Corporate Integrity: Defining the role of the chief ethics and compliance officer*, P. 20

¹⁸⁹ Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37, 10, P. 829: “Regardless of the business model a multinational chooses, the safest compliance strategy is to centralise, which is the only way accountability as custodian, arbitrator, and disciplinarian can be given to the centre.”

managers to monitor compliance activities more closely and involve employees more in the process.”¹⁹⁰

Whistleblowing System

A whistleblowing system creates the possibility to report misconduct. This can be done anonymously or with name, sometimes it also possible to install a whistle blowing system both for internal and external whistleblowers. Advantages of a whistleblowing system lay in the possibility that employees who are far away either from a personal contact or geographically can report misconduct. Sometimes employees revert to such a system as it is their only means of communicating the misconduct, because they fear the local organization (e.g. oppression) for example and do have in this way a possibility to raise their concerns. Only a couple of years ago the installation of anonymous whistleblowing systems was objected by several business leaders as they feared allegations without substantiation against themselves or other employees. This fear can be reduced if the whistleblowing system which is installed takes into consideration these arguments and carefully checks the reports for plausibility and substance.

2.3.2 Strategic elements

The development and the sustainability of the potential which is inherent in a CMS is characterized by strategic considerations. For strategic aspects values play a major role, too. With the elements which are clustered in this part, a comprehensive full picture is envisioned which helps to steer the activities which are meaningful to reach the CMS goals. Ideally these activities are mid- to long-term effective regarding time, so that they do not change frequently. In this way they also give security to the persons being affected by them. The following table summarizes the strategic elements (see table 2.3.) ordered according to importance.

¹⁹⁰ Atkinson, J. & Leandir, S. (2005). Best practices: Organizational structure that supports compliance. *Financial Executive*, 1,1, P. 38

Table 2.3. Strategic Elements of Compliance Management Systems

No.	Elements	Source	Usability	Influence
1	Antitrust information	Antitrust law	Prevents from incidents of antitrust	High
2	Company values	Research on holistic approach	Embeds Compliance in the context of value management	High
3	Incentives	Business experience	Influences personal behavior	High
4	Policies	Already existent in companies	Documents scope of allowed activity	High
5	Integration in Supply Chain Management	Business experience	Mitigates risks in the Supply Chain	High
6	Tone from the top	Research and empirical evidence	Shows firmness of Management	High
7	Anti-money laundering	Legal requirements	Prevents money laundering activities	Medium
8	Compliance culture	PS 980	Embeds Compliance in the organization	Medium
9	Compliance program/strategy	Best-practice, PS 980	Systematic approach	Medium
10	Compliance scope and aims	PS 980	Determines the Compliance activities	Medium
11	Independent assessment	Theoretically derived, useful if resources are not sufficient, already practiced for SOX	Delivers neutral opinion of implemented measures	Medium
12	Monitoring and improvement	PS 980	Enables continuous improvement	Medium
13	Risk avoidance/minimizing	Result of work of responsible persons	Goal of Compliance Management Systems	Medium
14	Collective action measures	Transparency International	Unifies different stakeholders to fight corruption	Low
15	Data protection	National law	Impedes misuse of data	Low

Source: own collection

For one example if the supply chain management (SCM) function is exhibited to major risks, the CMS should address this risk with measures being integrated in the SCM processes (No. 5).

Antitrust information

Compliance encompasses often the area of antitrust. Antitrust is a special law which is applicable all over the world. In the European Union the cartel authority publishes information about more and more cases of for example collusion with competitors. The antitrust law was installed to create fair market conditions for all market players. It has become more important in the last years as the legal enforcement of antitrust regulations is increasing. Company fines of up to 10% of the total sales volume are possible if the antitrust law is broken. The information about this important topic is therefore necessary. The legal departments often do not have enough or none legal counsels specialized in antitrust law therefore the information about this element is sometimes passed on to the compliance organization which ensures distribution. The classification high influence stems from the fact that misconduct of single persons can financially ruin an organization.

Company values

Organizations give themselves visions, missions, strategies and also values. Values can be a fundament for a CMS. If one of the company values is “Honesty”, this would constitute a crucial point to construct a CMS. Values have to be lived in an organization, the mere writing down does not make the organization more effective. Values must also be widely defined as they try to incorporate all employees of an organization. A value like “Excellence” can be applied to every kind of job and every function. Specific values like “sales-driven” do not fulfill this criterion. The classification high influence stems from the finding that values are known widely in the organization by frequently all persons involved and a full coverage is given.

Incentives

Incentives are an element in a CMS to ensure that the persons responsible for the implementation of compliance fulfill this duty. Monetary incentives as extrinsic motivation are imaginable as well as incentives which focus on career promotion. The classification high influence was chosen as incentives do have a direct impact for the individual. In reality that means that incentives can be designed individually to reach compliance goals per person or unit.

Policies

Policies lay out the way in which business is meant to be conducted. Especially in bigger companies, policies are unavoidable as they are the only way to reach employees with the same

message independent from their working situation, their location etc. As they are often published by the board of directors, sometimes they are regarded as being “dictated”¹⁹¹. The first policy should be the foundation for ethical acting in the organization. “It appears that companies who wish to influence ethical standards establish ethical codes as their first step.”¹⁹² The advantage of a policy is that it gives clearance and ideally security in the acting for single employees. For that purpose policies should be written user friendly. In the area of compliance a lot of legal requirements have to be taken care of. These requirements can be formulated in a complex way. It is important that these requirements are explained in a simple language which can be understood by every employee. The policy is also a mean which can be used to test the design of special aspects of the CMS. If a policy is published which content deals with the aspects of invitation procedures for customers for example, this policy can be used to test if the process is installed in the right way.

Integration in Supply Chain Management

Focus groups of a CMS are the sales function, but also the supply chain management (SCM) function. The reason for this is that within the supply chain management a risk for passive bribery is given. A person working in the supply chain management in a procurement function might be subject to influence from external partners who want to sell their products. Therefore it is important that the CMS is closely linked to the supply chain management as well.

Tone from the top

The tone from the top or at the top symbolizes the commitment of the top management of the business to compliance conform business behavior. If the management does send an unclear or fussy message about the business demeanor, it is very likely that employees in the organization do not behave in the right way. Leadership must not only be preached, but also be demonstrated in daily business by the management to show that the organization is determined in its way: “(...) actions of corporate leadership will always be the greatest influence, no matter how effective

¹⁹¹ Wolosz, L. (2007). Sound policies and procedures: the basis of a sound compliance program, *Journal of Investment Compliance*, Vol. 8, No.4, P. 8

¹⁹² McDonald, G. M. & Zepp, R. A. (2007). Business Ethics: Practical Proposals, *Journal of Management Development*, Vol. 8, No. 1, P. 61

formal communication of ethics is.”¹⁹³ Leaders must be veracious or prone to veracity, they have to be role models for the rest of the company. Often this aspect is neglected, but employees are very sensitive when the behavior and decisions of the top management are observed.

Anti-money laundering activities

Legislation and also groups in the European Union have been founded to contrast money laundering with the installation of anti-money laundering (AML) responsible persons in organizations. Often organizations are used (also unknowingly) to disguise transactions and making it impossible to trace money transfers. Third parties use this instrument to get the money which is often generated illegally in the official circulation channels. The CMS can detect such activities by manual or IT supported control environments. Both the topic itself and the compliance industry are evaluated at becoming more important in the future: “The sole existence of the AML complex leads to a rise in demand for services by the compliance industry, while the presence of the compliance industry fortifies the demand and the use of software, technology and knowledge.”¹⁹⁴

Compliance culture

The compliance culture of an organization is characterized by the persons working in the compliance organization, but even more by the persons who run the business, e.g. the management function. They must embody the culture of compliance and lead by example to make sure that employees understand the need for compliance. A change from a non compliant culture to a compliance culture takes time and should be moderated by a change management process. If a compliance culture is not (yet) established the installation of a CMS is challenging as first of all the preconditions in which a CMS will exist must be created. The compliance organization can be seen as an enabler of this specific culture.¹⁹⁵ The aspect of national culture is

¹⁹³ Thoms, J. C. (2008). Ethical Integrity in Leadership and Organizational Moral Culture. SAGE Publications, Vol. 4, No. 4, P. 422

¹⁹⁴ Verhage, A. (2009). Supply and demand: anti-money laundering by the compliance industry. Journal of Money Laundering Control, Vol. 12, No. 4, P. 387

¹⁹⁵ Securities Industry Association, Compliance & Legal Division (2005). The role of Compliance, Journal of Investment Compliance, Vol. 6, No.3, P. 8

not considered as it has been discussed in the research community that less the culture, but more the level of wealth determine the likelihood of corruptive practices: “Firms from countries with high per capita income are less likely to offer bribes and vice versa. (...) Some cultural factors are important, though considerably less influential.”¹⁹⁶

Compliance program/strategy

The compliance program or strategy points out the main action fields of a compliance system. Ideally, it is jointly developed with the business in order to satisfy both business and compliance needs. The program and strategy must be aligned with the overall strategy. When implementing it, the time horizon should be discussed, too. The difference between mid-term and long-term is crucial as very different needs for these time horizons can exist. It has to be decided whether local program and strategy adaption should be accepted in case of a big international organization or whether the originally, centrally developed program and strategy are the only resources.

Compliance scope and aims

Scope and aims of compliance depend on the risks, the markets, the countries and the intention which is behind a compliance system. If the compliance system is seen as mechanism to defend when violations of law occur than a rather reactive, narrow scope can be defined. If the compliance system is seen as driving force within the organization than in a risk assessment also compliance aspects would be considered. If a market entry strategy is developed and the compliance scope is defined as preventive than it might come the conclusion that certain markets will not be in the focus.

Independent assessment

The CMS can be assessed both internally and externally. An internal assessment would be typically provided by such functions as risk management, the audit function or an internal quality function. Externally an assessment can be provided by professional service firms or independent

¹⁹⁶ Sanyal, R. & Guvenli, T. (2009). The propensity to bribe in international business: the relevance of cultural variables, *Cross Cultural Management*, 16, 3, P. 295

quality authorities. As an element of a CMS an assessment puts the activities which are performed in the framework of a CMS in perspective to other units in the organization or other organizations allowing for a benchmark. Independent audits have been identified as positive practice to prevent and detect problematic areas.¹⁹⁷

Monitoring and improvement

Monitoring and improvement aspects are an inherent element which must be continuously worked on to ensure an adequate CMS. Depending on the quality state of the CMS the monitoring or improvement aspect is more in focus. A well established CMS needs monitoring of its function and possibly adaption as it evolves. A CMS which shows quality gaps must be improved in certain areas to ensure that is apt to deal with challenges. The aspect of monitoring might be forgotten in the installation phase as the focus lies on swift remedy naturally. Nevertheless already when implementing compliance activities this aspect should be kept in mind.

Risk avoidance/minimizing

The element risk avoidance and risk minimizing can also be characterized as a whole approach in order to run an organization. If it is done excessively it ruins the organizations as it prohibits from innovative decisions and from advancing the organization. If it is done with the right amount it ensures a successful organization which is on the one hand on the safe side and on the other side fulfills all requirements.

Collective action measures

Collective action measures are an element which is rather new in the international compliance community. The idea behind the collective action measures is the following model. In international environments the preconditions for market participants are not the same. Information asymmetry might be extreme and depending on the market and its location individuals might be prone to take bribes. In order to reduce this risk collective actions can be

¹⁹⁷ Price Waterhouse Coopers PWC (2013). Public procurement, costs we pay for corruption, Utrecht: Price Waterhouse Coopers, P. 10

taken. In this context different constellations are possible. A customer might decide with companies who tender for a project an agreement that specific project details have to be published. By applying this to all bidders the preconditions will be leveled eventually. In this way transparency in the bidding process is enhanced and companies know that they can just on quality and price win the bid.

Data protection

Data protection is one possible area of Compliance as the topic poses a risk to the organization in the context that personal data of employees can be misused. There are local laws and European laws which postulate certain requirements from both the organizations and also the person handling the data. Compliance can help to ensure that data laws are less violated and personal rights of individuals are respected. Research on data protection increases as scandals about the handling of personal data occur more frequently. With the progress of IT, data protection will further increase in significance, but until now the impact is judged as rather low.

2.3.3. Operational elements

The daily routines and processes of an organization bear risks in regard to corruption. These risks can be mitigated if anti-corruption measures are applied. The following table summarizes the operational elements (see table 2.4.) according to importance.

Table 2.4. Operational Elements of Compliance Management Systems

No.	Elements	Source	Usability	Influence
1	Code of Conduct	Traditionally applied	General rules of behavior	High
2	Communication internal and external	Best-practice, PS 980	Enhances understanding of Compliance	High
3	Controls (financial)	Requirements of e.g. SOX	Observation of implemented measures	High
4	Information of new laws, regulations and Compliance news	Monitoring by responsible	Guarantees adherence to new regulations etc.	High
5	Instructions	Traditionally applied	Governs behavior	High
6	Reporting	Business experience	Provides internal and external transparency	High
7	Sanctions	Business experience	Demonstrate determination of management	High
8	Advice of business	Best practice	Guarantees accordance with law and internal rules	Medium
9	Business partner screening	Transparency International	Prevents from engagement with corrupt partners	Medium
10	Case management	Best practice	Enables clear tracking of cases and implications	Medium
11	M&A advice	Best practice	Considers M&A Compliance risk	Medium
12	Minority advice	Best practice	Considers minority Compliance risks	Medium
13	Personnel screening	Recommendation by consultancies	Prevents employing persons with dubious background	Medium
14	Project screening	Business experience	Prevents from engagement in corrupt projects	Medium
15	Training	Research and empirical evidence	Impedes wrong behavior and sensitizes personnel	Medium
16	Documentation	Requirements of e.g. FCPA	Necessary to prove evidence and gain transparency	Low
17	Evaluation of donations, sponsorings, etc.	Traditionally applied	Prevents conflict of interest	Low
18	Guidelines	Already existent in companies	Documents scope of allowed activity	Low
19	Payments to risky partners	4-eye principle	Reduction of transgressions	Low

Source: own collection

Concrete steps are necessary to mitigate the risks and they can be very diverse. An operational Compliance goal could be for example the training (number 15) of 95% of the employees within the next fiscal year.

Code of conduct

A code of conduct, code of ethics, behavioral guideline or similar named document establishes the basic requirements the organization expects from every of its members. Independent from job function or hierarchy level the code of conduct applies across the whole organization. Typically it documents the top management attitude how business is supposed to be handled and postulates which kind of behavior is accepted and which kind of behavior is not accepted. A behavior in accordance with laws should be evident but often this aspect is also mentioned. Furthermore topics include the prohibition of bribery, the dealing with each other at the workplace, the management of donations, sponsoring etc. and themes relating to a possible conflict of interest. This may include having shares in other companies, giving preferential treatment to suppliers etc. The CMS may be included, at least a contact address or phone number should be provided.

Communication (internal and external)

Quite often compliance is negatively communicated which is caused by its regulatory status that is innate. Compliance can be seen as limiting factor or constraint of freedom of action. But compliance can also be communicated as umbrella for business conduct which protects from violations of law and helps to foster decent business conduct. The communication of compliance is essential to install the message of decent business conduct in the organization.¹⁹⁸ Professional communication uses different channels to communicate about compliance such as internal newspapers, video messages from the management, email notifications, compliance events, social media etc. Compliance should not be over communicated as this can lead to an adverse effect. Nevertheless both marketing and strategy postulate a regular communication to make sure that

¹⁹⁸ Thoms, J. C. (2008). Ethical Integrity in Leadership and Organizational Moral Culture, SAGE Publications, Vol. 4, No. 4, PP. 419–442

the messages reach the internal and external customers. In combination with communication of other topics such as leadership and compliance or collaboration and compliance the topic will not become boring but it will gain attractiveness. The external communication of compliance is very important, too. Especially when cases of corporate misconduct have taken place external reporting is vital. Companies report about their compliance activities in their annual business reports and also use this communication channel to promote sustainable business from which their shareholder profit.

Controls

Policies, procedures or instructions have to be controlled to ensure that they are followed. The enforcement by a control is necessary to ensure the understanding of the procedures and guarantee that employees behave accordingly to these. In turbulent times, many well intended policies do not help as they are not enforced. In a few organizations the volume of written instructions does lead to the circumstance that employees do not have the capacity to read all of these. The implementation of control mechanisms helps to ensure that all rules and regulations are followed. Furthermore it gives the chance to improve where lacks are identified. But it should also be considered that the controls must focus on high risk areas which may differ from countries or cultures. Compliance controls are also necessary to measure the progress of the CMS as their functioning can be tested.

Information of new laws, regulations and compliance news

The information about laws, regulations etc. is a medium to create awareness about specific topics. It must be differentiated between general information on developments as for example an increasing complexity of laws and regulations or an enforcement by public authorities concerning laws and regulations which might be harmful for the company and specific information. Specific information might be published about special legal requirements, special business risks which might be faced in certain countries etc. The packaging of information is important as an overload of communication activities can lead to the situation that information are not perceived properly anymore and important messages are not heard.

Instructions

Whereas a policy or a circular might provide general information and give a broader framework to a specific topic, instructions are concrete and aim at governing the behavior of employees. An instruction might either restrict the scope of actions of individuals as it sets borders or it can enlarge the scope of actions as it informs about possibilities which were not known. The characteristic of an instruction is that it tends to be detailed and process oriented. Similar to a manual an instruction lays out process steps which have to be followed. The aims which are intended differ. The intended outcome might be a flawless process workflow, the banning of dangers existing with the handling of certain products etc. In the context of CMS instructions normally aim at reaching a specific behavior by employees.

Reporting

Reporting is a necessity for most companies. The obligations can stem from the requirements due to a listing on the stock exchange or to fulfill requirements from credit institutes. Internal reporting as it is recommended for the functioning of a CMS however is a topic which can be defined by the company or organization itself. The usage of Key Performance Indicators (KPI) can increase the reporting activities. It depends also by the organization to define suitable frequencies for reporting. Quarterly, monthly or weekly reporting obligations are examples for different frequencies. More frequent reporting can lead to more control as the data basis is condensed.

Sanctions

Consequences for misbehavior are one factor to influence the behavior of employees. First of all it must be decided what kind of sanctions will be implemented. Commonly used sanctions which are used include warnings which may be either informal or formal and the termination of the working contract. Furthermore the retention of variable parts of the salary such as bonus payment is another option. The announcement of first of all expectations regarding behavior and secondly sanctions if these expectations are not met must be clearly communicated. The severance of sanctions has to be appropriate. Aspects to consider are the kind of misbehavior, circumstances as the environment, but also personal situational factors such as belonging to the company. A deterrence effect can be reached, but it must be ensured that all employees are

subject to the same expectations and no exceptions are granted. Otherwise the sanction practice might be perceived as being unfair by the employees.

Advice of business

The advice of business is a consulting function which the compliance organization provides as service to the management. The decision to penetrate certain markets or apply specific business models may depend on the question whether in specific markets or country clean business is possible or whether bribes can not be avoided. Pointing out these risks and thereby facilitating the management judgment is core of this element.

Business partner screening

Companies do not always have the necessary means in house to conduct their business. Therefore it is common to cooperate with external parties to fulfill contracts. From a compliance perspective this can be dangerous as the external party which is applied does not necessarily have the same standard in terms of ethics as the master company. It is therefore recommended to screen or check the business partner with whom a cooperation is planned. A check in advance could prevent from additional work in the further work progress as partners who do not qualify for a cooperation will not be invited. Transparency International and other NGO claim that the construct of third parties is one of the most used corruption channel. By employing another party the individual does not do the corrupt deed by himself or herself, but the person lets another person do this work instead.

Case management

Cases of corruption in an organization need a professional management. This management is anchored in the compliance organization or an external company, often a law firm. The management includes the dealing with possible cases which might start as pure allegation against certain individuals, clarifications of the issue and the involved persons, interviews with the individuals concerned and follow up measure to ensure that similar misconduct in the future will not occur. The case management is also an element which can be used for reportings and the overall estimation of the development regarding corruption cases in the organization.

M&A advice

Whenever transactions are planned to either acquire a new organization or sell parts of the organization the compliance plays an important role, too. When divesting in parts of the business or when investing in new business opportunities thereby investing in a company for example it should be clarified beforehand whether any hidden risks are also part of the organization to be acquired. This could concern the management which is involved in litigations or the organization which might have a reputation for being corrupt. Other transactions as for example the founding of joint ventures require also M&A advice. Similarly it must be avoided to encounter risks.

Minority advice

Organizations keep shares in minorities for different reasons. One of them is a financial investment and the outlook to profit from the operations of the company. Another might be the legal obligation to provide in specific countries local content. A minority is typically defined as an entity with less than 50% control or shares. Hence it follows that also in regards to the CMS the responsibility lies with the partner or partners who keep the majority. Minority advice can still be a very important element as problematic issues in the organization can lead to image or reputational damages for the minority shareholder. Therefore it should be strived to reduce the risks in the minorities to the extent possible.

Personnel screening

The persons working for an organization and also the compliance organization are the assets of it. Therefore it is most important to attract the best people. In terms of compliance this means integer people. A personnel screening can be used as an element of compliance to ensure the recruitment of integer people who have not had violations of laws and regulations in the past. The process of personnel screening is preventive thereby providing reasonable insurance against misconduct. A person who has a history of non compliant behavior can be found out this way before he or she is employed.

Project screening

Organizations which engage in project business (e.g. construction) potentially encounter a higher risk than organizations which engage in product business. The reason for that lies in the structure of the transaction. Whereas a product business can be described as relatively secure in terms of compliance as the product is sold for a price which might be fix, in project business this

is frequently not given. Project business can become very complex in terms of structure and employed parties which might jointly work together to fulfill the aim of a project. Dependencies between the parties are given and the possibilities for influence are far. Negotiations about the price might develop during the project additionally. Therefore this element should be considered to be implemented as one element of a CMS if project business plays a major role for the organization.

Training

The element of training plays an important role which deserves emphasis. Its role is important as it can be applied as preventative measure to encounter corruption and at the same time as an element to foster the relationship and level of trust with the business. Training allows first of all to inform and teach employees. In this regard it gives indication where behavior might lead to problems and which business conduct is forbidden. Furthermore it clarifies common misunderstandings about what is allowed from the company perspective and which kinds of action are forbidden. The content of trainings varies from rather theoretical trainings which teach theory about corporate misconduct or underlying psychological factors to practical trainings which explain concrete business situation and show the participants how to act accordingly. The form of trainings must vary as only tailored training will be successful.¹⁹⁹ Person-to-person training probably will be most effective as a direct contact between trainer and students is established and questions which arise can be answered directly. But it is also the most expensive form of training in terms of resources as the employees have to get to a specific location which might incur costs and also the resources for training personnel can be enormous depending on the number of employees who should be trained. Limitations of training are that they can only give advice on several situations. In reality there can always be situations which were not taught. Furthermore due to the variety of topics trainings are normally restricted to specific persons. Personnel in the purchase department (e.g. risk of passive bribery) has other requirements than personnel in the sales department (e.g. risk of active bribery). The combination of person-to-

¹⁹⁹ Haynes, A. (2000). The Struggle Against Corruption - A Comparative Analysis. *Journal of Financial Crime*, 8, 2, PP. 123-135

person training with online trainings seems promising as it addresses the topic with different media channels. In online trainings, the participants often have a chance to prove their gained knowledge with a test so that active use can be made of it in the future. The provision of the training also provides the management with the assurance that they have fulfilled their supervisory duties. The larger the organization the more important the organization and automated process of the trainings become. Efficiency can be gained if the training is organized via an electronic system. This is also advisable as reports and trackings can be generated quickly which may be required as proof to show that the organization provided adequate trainings. Especially in industries where this is legally demanded, this can be an advantage.²⁰⁰

Documentation

One of the foundations of a CMS lies in the documentation of decisions. The documentation forces the individual to make a conscious choice and gives a base for evaluating decisions which have been taken. In order to check certain decisions the documentation is crucial. Whether done on paper or via email is irrelevant. It must be noted that there is a risk of documenting too much, therefore the decision to document should always be made in regard to the impact of the decision.

Evaluation of donations, sponsoring, etc.

Donations, sponsoring and other contributions bear the risk that the person giving them is in a conflict of interest. It is possible that the decision for a product or a project is made dependent on a support activity towards a specific charity, sports club etc. Therefore there is a risk that an improper influence is given. The careful evaluation of such activities ensures that this is not the case.

²⁰⁰ Ambrose, J. (2008). A best practice approach to learning compliance management in regulated industries. Industrial and commercial training, Vol. 40, No. 3, P. 143.

Guidelines

Guidelines as well as rules and regulation are the base for the actions which are taken in an organization. The bigger the organization, the more guidelines are applied traditionally. In the discussion about values and rules often it is emphasized that too many guidelines and rules slow down an organization. Nevertheless in order to stir an organization a basic set of guidelines must be applied.

Payments to risky partners

Payments are part of business life and transactions take place every day. The payments to certain recipients can be risky as they might constitute a breach of contract. Illegal payments are one possibility, but also the payments to a partner who has offshore bank accounts are problematic and can be controlled via a CMS. Typically payments are checked and controlled in workflows to reduce the risk of payments which are illegal.

2.4. External evaluation of Compliance Management Systems

When designing a CMS, the responsible persons should already keep in mind different external organizations and stakeholders which might address the organization or which might be addressed by the organization in order to gain an external view. These include:

- Public
- Political institutions
- Regulatory authorities
- Investors
- Audit and consulting companies
- NGOs

The public can demand an account about the business conduct, therefore it is necessary to keep this in mind. Depending on the country where the organization is located and where it operates political institutions and regulatory authorities exert influence. Whenever needed investors influence the business conduct and have a crucial role because they dispose over funds which might be needed by the organization. Audit and consulting companies can bring a value add to the CMS, their services have to be examined by a cost/benefit analysis. NGOs offer to participate

in their anti-corruption activities and global reportings. The participation should be evaluated in the light of advantages for the organization versus efforts needed to participate.

Independent audit standards as assessment benchmark

Independent standards can be used for mirroring the own risk analysis and enhancing it. Nevertheless it must be considered if all business risks are covered. The pure application of a standard must not replace the careful consideration of the own risk assessment. The Institute of Auditors in Germany, Insitut der Wirtschaftsprüfer (IDW), has formulated an audit standard for CMS. This standard is called Audit Standard 980.²⁰¹ Basic areas of a CMS according to the standard are, for example:

- Compliance-culture;
- Compliance-targets;
- Compliance-organisation;
- Compliance-risks;
- Compliance-program;
- Compliance-surveillance and improvement.

Furthermore it gives exemplary differentiated fields which are not all-embracing:

- Antitrust;
- Anti-Bribery;
- Stock exchange.

When designing the CMS these areas can be kept in mind to ensure a coverage of relevant areas. Good compliance needs measurement which is often missing. For that reason a measurement has to be defined which should encompass all relevant elements.

Reporting to third parties

Compliance reporting can not only be done internally, but also externally. If it is defined as the reporting done to externals, these externals might be shareholders or the public in general. It

²⁰¹ Institut der Wirtschaftsprüfer, IDW (2013). Verlautbarungen, IDW Prüfungsstandards, Retrieved December 27, 2013 from <http://www.idw.de/idw/portal/n281334/n281114/n302246/index.jsp>

can also be demanded by regulatory authorities and is partly suggested as it can enhance the position of a company in terms of reputation and image. It is notable that companies which are entangled in corruption scandals and which are seeking to clean up these scandals report substantially more on compliance initiatives etc. than companies which do not have compliance issues. From that point of view the reporting is used as tool to communicate with the stakeholders. There are many different forms to report on Compliance as for example sustainability reporting.²⁰² Compliance reporting has no set KPI, but indicators have been suggested. There are different indicators for compliance reporting as for example the “Transparency International Self-Evaluation Tool”²⁰³ or the “Reporting Guidance on THE 10th Principle AGAINST CORRUPTION”²⁰⁴

Other indicators which are published stem partly from other known organizations:

- Global Reporting Initiative²⁰⁵
- International Corporate Governance Network (ICGN)²⁰⁶
- World Economic Forum Partnering Against Corruption Initiative (PACI)²⁰⁷

The decision on reporting depends on the legal requirements and to a large portion on requirements and the strategic decisions by the management. Companies employing lots of business partners in many high risk countries should focus their reporting on these activities as they bring with them a higher risk and a close monitoring is advised. The more standardized the

²⁰² Hess, D. (2009). Catalyzing Corporate Commitment to Combating Corruption, *Journal of Business Ethics*, Vol. 88, PP. 781-790

²⁰³ Transparency International (2009). *Business Principles for Countering Bribery*. Transparency International Self-Evaluation Tool, Berlin: Transparency International.

²⁰⁴ United Nations Global Compact & Transparency International (2009). *Reporting Guidance on the 10th Principle against corruption*. New York: United Nations.

²⁰⁵ Global Reporting Initiative (2013). Retrieved December 27, 2013 from <https://www.globalreporting.org/Pages/default.aspx>

²⁰⁶ International Corporate Governance Network (2013). ICGN, Retrieved December 27, 2013 from <https://www.icgn.org/>

²⁰⁷ World Economic Forum (2013). *Partnering Against Corruption Initiative (PACI)*, World Economic Forum, Retrieved December 27, 2013 from <http://www.weforum.org/issues/partnering-against-corruption-initiative>

CMS is the more accurate the reporting can be. Whenever lots of manual adjustments have to be made, the reporting gets more difficult.

Certification of Compliance Management Systems / Compliance officers

Once the organization has decided which number and type of elements for the CMS should be installed it is possible to let the CMS be certified. Until now a certification is not mandatory, but it is a mean to show the stakeholders that the organization is willing to let an independent party check the applied system.

Transparency International proposed a voluntary anti-bribery assessment. Institutes such as the Institute of auditors (IDW) in Germany developed a compliance standard which can be used voluntarily (Audit standard 980). There is no norm such as an industry or quality norm to which companies have to obey. Considering the development in certifications for public organizations such as hospitals, schools, but also private companies in the area of environmental, health and security standards, a standardized profile could be helpful to reach a minimum level of security for the organizations. Furthermore external recognition might be gained through the mentioning of the CMS in publications of NGO or International Organizations (IO). As one example the applied CMS of Siemens was mentioned in the EU Anti-Corruption Report 2014 as can be observed in the following excerpt in figure 2.2.

Good practice: the Siemens compliance system

The German private sector has made major investments relevant for anti-corruption policies and compliance procedures in the recent years: In particular, many big German companies have implemented comprehensive compliance strategies, staffed compliance units, and in some cases retreated from markets with a high corruption risk.

An example is the compliance system put in place by Siemens. Legal proceedings against Siemens AG arising from serious allegations of bribery were concluded in 2008 by the prosecution service in Munich and in Washington DC. The two decisions in that case changed the approach to compliance in the business sector. In addition to paying the fines and asset recovery imposed in Germany (approx. EUR 600 million) and in the US (approx. EUR 620 million), and recovering assets, Siemens put a compliance program in place so as to avoid paying the highest amount of fines the US authorities could impose. Under this program, equal emphasis is put on prevention, detection and response given to allegations of misconduct. In addition to the steps taken inside the company, as part of the settlement, Siemens agreed to pay USD 100 million over 15 years to support organizations and projects combating corruption and fraud through collective action, training and education.

Figure 2.2. EU Anti-Corruption Report

Source : European Commission (2014). REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT, EU ANTI-CORRUPTION REPORT, Annex 5, Germany to the EU Anti-Corruption Report, 1-9, Brussels: EU.

Compliance officers stem from a variety of functions. A legal background is not mandatory, but often found as legal personnel knows about laws and the legal consequences of wrong business conduct. On the other side, many processes are business driven and therefore a solid business background is necessary. In order to support the business a mix of lawyers and employees with business understanding is necessary. Only a combination guarantees risk mitigation. A few companies give internal certifications for compliance officers. External certifications are also available.

Certifications for compliance officers have been created for the whole profession as well as for single elements such as compliance training. Furthermore universities also teach compliance sometimes. In the United Kingdom this development started already earlier, but with mixed success: “There are a number of examinations and higher degree courses that compliance staff can pursue, not to mention a variety of quasi-professional organizations that they can join. As yet there is no real sign of consolidation and the overall position remains fragmented.”²⁰⁸ A compliance officer needs good communication skills to address all level of employees in the company. The person must talk straight forward to the management not leaving room for interpretation. Often managers are in dilemma situations in which a compliance officer can help.²⁰⁹ Managers acting in organizations do not have to ethics preached to them, they are supposed to show them in interactive relationship with others which increase the societal value to the institution.²¹⁰

2.5. Conclusion

As CMS vary widely in their content and form the success measures of a CMS should be defined before implementing the system. Only if this definition precedes the implementation the stakeholder will be satisfied. If a CMS aims at detecting wrongdoing in the organization and if with its implementation this detection works better than before then the success of the system is

²⁰⁸ Taylor, C. (2005). The evolution of Compliance, *Journal of Investment Compliance*, Vol. 6, No. 4, P. 58

²⁰⁹ Trevino, L.K & Nelson, K. A. (2007). *Managing Business Ethics: Straight Talk About How to Do it Right*, Hoboken: John Wiley & Sons.

²¹⁰ Verhezen, P. (2008). The (Ir)relevance of Integrity in Organizations. *Public Integrity*. Vol.10, No. 2, PP. 133–149

reached. An organization aiming at preventing compliance violations implementing the same system will not be satisfied with the outcome. In the second case the decrease of compliance cases over a longer period of time would only be an indicator to show whether the CMS is successful or not. According to fellow researchers it is difficult to measure the success of compliance. The number of compliance violations can neither in a positively nor negative sense determine the success of Compliance.²¹¹ In a positive sense it can be argued that through the CMS more compliance violations have been detected. The CMS enables the organization to see more misconduct and get more information about existing problems. In a negative sense it can be argued that the CMS is not successful as there are too many cases. This judgment is subjective of course and a number of cases which might appear high to one person would not appear relevant to another person. The experience with CMS can give an indication about the expected number of cases. Another option to determine the relevance of cases might be the consideration of competitors in the market. Organizations operating the same or a similar environment should be faced with similar challenges and behavior in the market. Only with a stable CMS over a longer period of time it will be possible to use the number of compliance cases as an indicator. This includes that definitions of how a compliance case is defined will stay the same and will not be changed as this might either increase or decrease the number of cases and lead to wrong conclusions. In order to run a both effective and efficient operation a CMS has to be deployed with a steady feedback from business to judge whether the procedures which are in place are adequate, exaggerated or not sufficient. In the search of the optimal CMS key elements should be known and carefully evaluated. Whereas the stringent use of single elements advances the system significantly, a too broad application of too many elements will not bring long lasting success. A focus on key elements seems to be more promising. Certification programs can be designed modularly to focus on the most relevant elements. Topics which are in focus of certifications are for example anti-corruption, antitrust, compliance in certain industries (e.g. insurance, banking), reporting of compliance activities, risk and liability of the compliance responsible person, setup of the compliance activities, value based and rule based compliance management. Furthermore

²¹¹ Behringer, S. (2010). Compliance – Modeerscheinung oder Prüfstein für gute Unternehmensführung. In S. Behringer (Ed.): Compliance kompakt – Best practice im Compliance Management, Berlin: Erich Schmidt Verlag, PP. 25-44

organizations working with CMS successfully and developing these have the possibility to create their own certifications for both the personnel and parts of the CMS.

It has been elaborated that CMS have a positive impact in providing a certain level of protection to the organization.²¹² The framework for applied research depends on the one hand on the findings which elements are useful and on the other hand on the context in which these elements can be tested. In order to have an impact it must be evaluated if in reality a scenario can be constructed which allows for testing. The proposal of an experiment to test hypotheses seems most promising to advance the research. The degree to which certain elements are deployed varies widely. Not all elements are used in all types of organizations. Theoretically it must be assessed which of these elements can be described as essential which have to be implemented and which are negligible, if resources are very limited for example or only a minimum of compliance is to be installed in the organization. The discussion on specific elements provides clarity about often used elements. For the evaluation of pertinent elements experts in the compliance community were interviewed and consulted to judge on the elements which from their perspective have the highest influence. It must be noted that depending on the job function different focus topics were mentioned. A compliance officer working in the banking or insurance industry does place more importance on cash and money related elements as in these industries money transfers in large orders are common. Therefore anti-money laundering activities play a bigger role in this sector than for example in the manufacturing industry. Nevertheless the expert evaluation came to the conclusion of a limited number of elements which they judge pertinent. As not all elements with a high influence were considered necessary the number of elements with high influence was decreased. In a pretest of the experiment these elements were also judged by the participants and deemed pertinent. Furthermore the selected elements were not only judged by compliance personnel, but also 120 managers. 90% judged them to be pertinent in addressing risks in their business.²¹³ These key elements were used as base to construct a decision model which was tested in an experiment. In this context, the model helps to simplify the reality and isolate the influences which lead to specific decisions.

²¹² See also Roberts, R. (2009). The Rise of Compliance Based Ethics Management. Implications for Organizational Ethics, Public Integrity Summer 2009, Vol.11, No. 3, P. 273

²¹³ Gammisch, M. (2014). Feedback on compliance measures in the context of a training concept rolled out 2013.

3. DEVELOPMENT OF DECISION CONTEXT FOR EMPIRICAL RESEARCH IN BUSINESS DILEMMA SITUATIONS

It is worthwhile to discuss the question if CMS matter or not. As shown by the work of Transparency International the need for remedy persists generally. In an survey about ethics at work which was conducted in continental Europe with approx. 3.000 participants it was revealed that honesty is practiced by a majority of 77% in daily routines.²¹⁴ However 22% percent of the respondents felt pressured at work to compromise on ethical standards. This pressure might lead to unethical decisions which could have a negative impact for the company in the long run. A functioning CMS could possibly reduce this percentage. Elements of such a CMS were elaborated in the previous chapter. The question of the value add of CMS was tested in a laboratory experiment which was developed during the work.

3.1. Simulation of a Compliance Management System and the embedded decision model

Based on the content analysis and the expert interviews it became obvious that corruption is a very complex problem. Due to the characteristics of the problem, a research method is needed to overcome this challenge and address specific actions which can be of both theoretical and practical use. An experiment is provided to show possible anti-corruption measures which might be installed in a CMS. The experiment is the best suited method to enhance research on the phenomenon for various reasons: Corruption does not occur in the open, but in reality behind closed doors. Corruption is therefore very difficult to observe or measure in reality. Experiments can be used to simulate situations which trigger certain behavior. This can also be behavior which might be considered illegal. It must be noted that no consistent understanding exists when certain decisions can be deemed as corrupt. Other researchers admit that a definition of corrupt behavior is difficult: “The answer to the question which specific behavior can or cannot be considered as

²¹⁴ Basran, S. (2012). Employee Views of Ethics at Work: 2012 Continental Europe Survey, London: Institute of Business Ethics, P. 4

corruption is complex.”²¹⁵ Private organizations and NGOs have to give their own definition. Transparency International as recognized authority on the topic corruption therefore bases its yearly corruption barometer not on question considering corruption, but the perception of corruption to approach the phenomenon.²¹⁶ For this doctoral thesis scenarios have been developed which constitute a violation of law or would be perceived by experts as corruptive behavior.

CMS are vehicles to fight corruption, the measures which are possible to do so vary a lot. Moral reasoning alone is not sufficient to fight corruption,²¹⁷ a careful selection of concrete measures is decisive for a successful CMS. This selection was done by the method of content analysis and expert interviews. According to other researchers experiments can be seen as chance to propel the development: “We expect a severe impact of experimental research not only on understanding the fundamental causes of corruption but also on developing tools to fight against it and thus to promote growth and social well-being.”²¹⁸ Field experiments to study the phenomenon or parts of it can only in exceptions be used where for example the individual’s behavior might be observed easily and the decision situations are simple. This was done for example to research the lending behavior of individuals at public libraries in Barcelona.²¹⁹ The

²¹⁵ Bobkova, N. & Egbert, H. (2012). Corruption investigated in the lab: a survey of the experimental literature. MPRA (Munich Personal RePEc Archive), P. 15

²¹⁶ Transparency International (2014). Corruption Perceptions Index 2013 – Results, Retrieved October 18, 2014 from http://www.transparency.org/cpi2013/in_detail#myAnchor2: “Corruption generally comprises illegal activities, which are deliberately hidden and only come to light through scandals, investigations or prosecutions. There is no meaningful way to assess absolute levels of corruption in countries or territories on the basis of hard empirical data. Possible attempts to do so, such as by comparing bribes reported, the number of prosecutions brought or studying court cases directly linked to corruption, cannot be taken as definitive indicators of corruption levels. Instead, they show how effective prosecutors, the courts or the media are in investigating and exposing corruption. Capturing perceptions of corruption of those in a position to offer assessments of public sector corruption is the most reliable method of comparing relative corruption levels across countries.”

²¹⁷ Renner, E. (2004). “Wie lässt sich Korruption wirksam bekämpfen?” Vierteljahreshefte zur Wirtschaftsforschung, 73, 2, P.6

²¹⁸ Bobkova, N. & Egbert, H., 2012. Corruption investigated in the lab: a survey of the experimental literature. MPRA (Munich Personal RePEc Archive), P. 19

²¹⁹ Aspestequia, J., Funk, P., Iriberry, N. (2011). Promoting Rule Compliance in Daily-Life: Evidence from a Randomized Field Experiment in the Public Libraries of Barcelona, Source, P. 18

field experiment focused exclusively on the decision to bring back a book on time or not. For the simulation of CMS a lot of different scenarios were created which might not emerge in the field in such a condensed form. Furthermore a manipulation of the variables in the field could have legal and economic consequences which must be avoided. Therefore a laboratory experiment is deemed more suitable as research method. As it is not possible to attract professional business managers for a laboratory experiment all at the same time, it was decided to conduct the experiment with students of management science. The set-up is therefore a simulative environment of entrepreneurship. The experiment with a simulation of a business environment is also a learning environment for future business manager. Therefore it can have an impact on their behavior as the intention of the whole procedure was also explained to the participants after the experiment was finished. It must be noted that students of management in the future will be working as business managers and they might be put into business dilemma situations which they faced in the experiment. The experiments can be judged as preparation and sensitization for the real life scenarios which await them after university. The results can be generalized as the decisions taken in the role as business development managers did not include a very specialized role. Each scientific research methods has its advantages and disadvantages. As triangulation and to neutralize the disadvantages of the experiment as for example the artificial atmosphere, all measures were discussed by experts and by practitioners. The experiment was used to test whether assumed cause-effect relationships are valid. In order to reduce general distortion to a minimum, the experiment was set in the context of a business game. The participants were told that they are about to participate in a business game experiment, but they did not know the intention of the game. The business game represents a context which allows for empirical variables that can be tested. The research question postulates that specific CMS activities enhance the conduct of business and have therefore a positive impact for the business. In order to test this question the model underlying is based on the assumption that the return on compliance (ROCO) depends on the effect applied compliance measures have on the decision making of individuals. The results of the decision making process are tested in questions (possible answers include “Certainly”, “Almost certainly” etc.) with a treatment group and are compared with the results of a decision making progress by a control group who also participates in the experiment. If there is a difference between the two groups in the decision making process and the decisions reached it can be concluded that certain compliance measures do have an impact. If in reality the compliance measures can be calculated with costs (e.g. printing of communication material and

costs for distribution), it could also be calculated which measure has the highest impact in terms of cost-effectiveness. The theoretical conception implies that human beings act better if they have been sensitized ethically otherwise an investment would be superfluous.

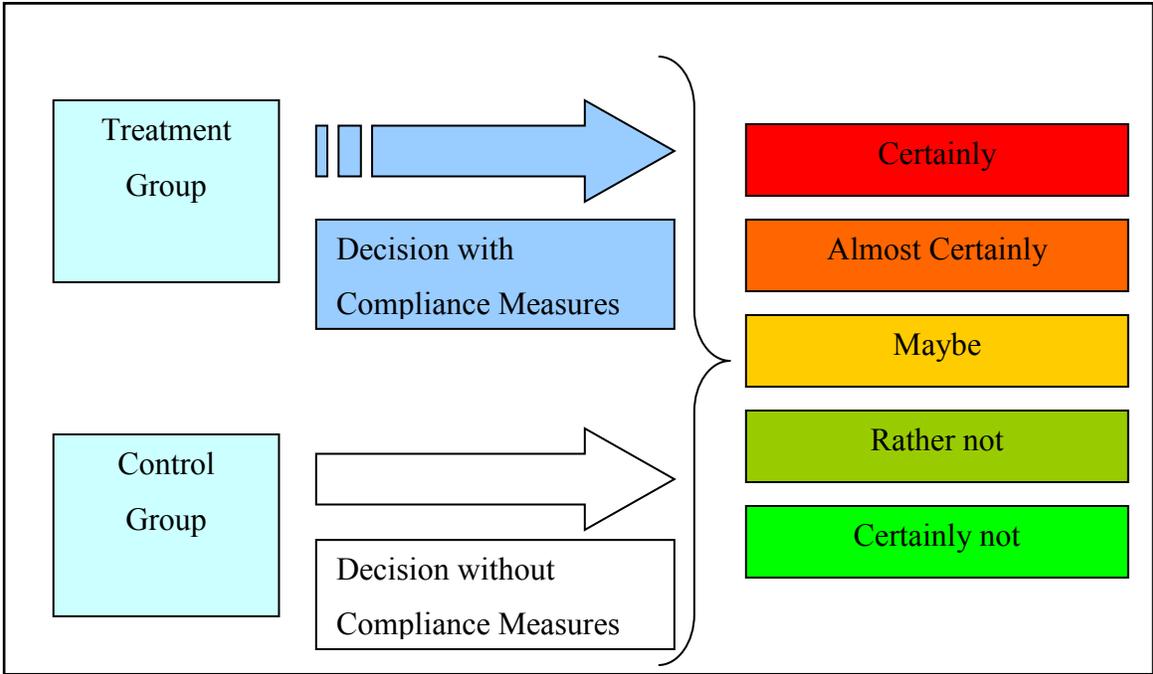


Figure 3.1. Theoretical conception of model

Source: Own illustration

The figure above (figure 3.1.) shows the conception of the model which was used to research the behavior in contexts where compliance measures had been applied and in contexts where no compliance measures were applied. On the left hand side the two groups are depicted which participated in the experiment. In the middle section the decision making process is shown. The upper arrow is fragmented to show that the decision process is influenced by treatment activities which were executed in so called compliance measures. As indicated in the picture both the treatment group and the control group come to a decision. The color coding of the different answer possibility symbolizes the degree of ethical rightness. An answer with the highest ethical content would be “certainly not” with a green color. An answer with the lowest ethical or non ethical content would be “certainly” with a red color.

3.2. Development of decision scenario

The phenomenon compliance is complex and characterized by many influences. Compliance in this context depicts measures against corruptive practices. A commonly accepted methodology to test theories has not been developed yet. Nevertheless it is the aim that the measures have to be researched in terms of effectiveness.²²⁰ In order to test the theory a controlled environment is necessary to separate variables. The laboratory experiment was chosen as research method as the cause-effect relationship can be studied with a high degree of control. Furthermore there is a chance to advance research in this particular field. Other researchers see experiments as an important instrument in this regard. “If shown to be externally valid (i.e. to be relevant for the real world), then laboratory experiments could become one of the most effective tools to study corruption.”²²¹ The data gathered in experiment sessions shows the answering behavior of test persons and was used to test the hypotheses on the different variables.

The following remarks elaborate on the measurement-theory, scale theory, test theory and fault theory. The validity can be limited due to different effects such as the testing effect / Hawthorne effect if participants realize that they are participating in an experiment. It has also been argued that hypothesis guessing poses a potential problem.²²² To enhance the validity and minimize testing effects, the participants were told that they are participating in a business game. This set up was not questioned by the participants as they were told that their mission was the fulfillment of a theoretical job profile of a business development manager. The laboratory experiment with a questionnaire is judged valid as it measures the answering behavior of the participants. Internal validity is reached if the results perceived can be traced back to the manipulation of the independent variables. If only the treatment is manipulated the internal validity is higher. The laboratory experiment focuses exclusively on manipulation of the

²²⁰ See studies as for example PWC (2013). Public procurement, costs we pay for corruption: „More research on ways to measure effectiveness of instruments and practices to prevent, detect and investigate corruption is thus recommended. (...) it is difficult to draw clear-cut conclusions on the effectiveness of anti-corruption measures.” (P. 10).

²²¹ Armantier, O. & Boly, A. (2008). Can corruption be studied in the lab? Comparing a field and a lab experiment. Québec: Cirano, Scientif Series, P. 21

²²² Lehmann, D.R., Gupta, S. & Steckel J.H. (1998). Marketing Research. Reading: Addison-Wesley, P. 148

treatment to gain high internal validity. The external validity is characterized by the degree to which the results can be generalized. Generally field experiments show a higher degree of external validity as the setting is more real than the artificial setting in a laboratory. The laboratory experiment was chosen to create the highest internal validity possible. An estimation of the degree of external validity was planned in the analysis phase. As measurement a questionnaire was designed with a scale range. Reliability is given as the laboratory experiment decreases the risk of chance and repetition would yield similar results. It would not make a difference if the laboratory experiment was conducted with other students. The experiment can be judged objective as no influence on the test group was exercised. No incentives which might distort the result were given or promised to the participants. Furthermore the judgment of test persons does not depend on the person who conducts the test. The participants were also not known to the experimenter.

3.3. Instrumental setting of dilemma situations

The experiment was set in a class of students attaining Bachelor and Master degrees at two universities. These are the University of Latvia in Riga and the University of Applied Sciences in Fulda. The profile description of the persons who participated in the experiment is a class of Bachelor (BSc) and Master (MSc) degree MSc students, both male and female, internationally mixed. The age is in the beginning 20s mainly. The logic of sampling required the choice of a sample of students to participate in the experiment. The sample size was determined by scientific convention and group size of 29 students respectively 30 students for the first experiment and 29 and 40 students for the second experiment. The experiment took place at the University of applied sciences Fulda from the 05th to 06th November 2012 and the University of Latvia in Riga from the 28th to 30th May 2013. In total 58 persons in the treatment group were tested with 70 persons in the control group. Two classes of students were separated into groups. The two groups can be characterized as equal as the members of the group share similar profile descriptions. In the first experiment in Fulda 59 persons were tested. The treatment group consisted of 29 persons, the control group of 30 persons. In the second experiment in Riga 69 persons were tested. The treatment group consisted of 29 persons and the control group of 40 persons. Overall the population for the laboratory test consisted of 128 test persons, whereas 58 had a treatment

and 70 did not receive a treatment. The separation criteria for the laboratory experiment were a class with information on compliance management activities and a class without information on compliance management activities. A group of individuals was separated into two subgroups at random. The behavior of the experimental group with treatment is compared with the control group without experimental treatment. A significant difference in the mean between these two groups leads to the conclusions of a causal influence of the experimental conditions.

Decisions are depicted through the measurement of an adjusted inverted ordinal scale with the following grades:

1. Certainly
2. Almost certainly
3. Maybe
4. Maybe not/Rather not
5. Certainly not

The results of the questionnaire were analyzed using an independent Mann-Whiney test. A set of dilemmas in the context of business decisions mixed with non critical questions to defocus from the topic compliance and make participants feel comfortable was presented. The handed out documents were mainly moral dilemmas in a “business game” on paper sheets which had to be marked by a pen. The design of a questionnaire was chosen as it allows testing the hypotheses in a controlled way. In total 3 questionnaires were conceptualized. The answering possibilities followed a strict regime and the same structure in all questionnaires. Furthermore with the general introduction a time plan was announced. The decision not to incorporate “I don’t know” answers possibilities had the intention to oblige participants to deliver an answer. The data collection was done by questionnaires which were anonymously filled out. According to scientific convention 30 items were tested.

Content

The full materials of the laboratory experiment are available in the in appendices 4 and 5 for the treatment group and 6 and 7 for the control group. The students were informed that they are to be participating in a business game with the aim to research on current attitudes towards decision in the area of business management. The game consists of several rounds. The

separation into different rounds gives the possibility to give additional information and keep the conditions stable. The business game was explained and a short introduction to the company in which the game takes place, was given. The participants had the possibility to ask questions for clarifications which was used in 5 cases. Before the participants started with their work general information was handed out to the participants which included the following information:

- Imaginary international company “Health & Youth” being active all over the world selling medical equipment, totaling 3 billion € in sales in 2012;
- 30.000 employees worldwide;
- Headquarter in Europe where the participants of the experiment are also working;
- The participants are supposed to be working with the company for 5 months, it is still 3 months until the fiscal year is over.

Additional information was handed out including a CEO message and description about the company. The information of the group with experimental treatment differs as it was enriched by specific CMS activities. The manipulation of variables of the treatment group was done by altering the scenarios which were given to the control and treatment group. This might include the mentioning of specific sanctions, controls or special activities. Furthermore specific information was handed out to the treatment group to sensitize this population ethically. During the whole experiment it was forbidden to consult with other participants in order to come to own conclusions. In one case during the experiments the advice was given that talking is forbidden. Questions for clarifications and translation purposes were permitted. Totally 4 clarifications on the content and 11 clarifications for English words were provided during the experiment.

Description of general documents which were handed out

The first set of general documents for the experimental group (the company with CMS which receives the treatment) contained a CEO statement with focus on ethics and a clear tone from the top in terms of compliance:

„Health & Youth“ is proud to be one of the leaders in manufacturing and selling medical equipment world wide. With sales totaling three billion € in sales in the last fiscal year and over 30.000 employees world wide who contributed to that we had a successful year.

This year our strategy remains in place, we call it “Efficient growth”. The strategy will be explained to you by your local management, but for the time being let me assure you that our number one business goal is growth. We want to triple our market share with all fair means! Sales success is the driver of our company! We need to develop new markets and serve our existing customers who guarantee us regular sales volume. With our lean organizational structure we are ready to address new challenges.

I count on you and your engagement!

Our core principles

Our company and its vision: *Our vision is a better world where diseases can be cured and human beings help each other. It is our task to provide medical equipment wherever needed thereby making the world a better place for mankind.*

Our company and the customers: *The customers are most important to us. When the customer is happy and buys our product we can be happy, too.*

We are especially careful when interacting with customers from the public sector. Quite often they are not allowed to take any advantages such as invitations for entertainment for example. A present might be perceived as a bribe.

Our company and the competition: *It is good to know about the competition, but we are careful when interacting with the competition. There must be good reasons to get together with competitors as for example common R&D activity. Otherwise allegations concerning antitrust might be made against the company.*

Our company and its employees: *We respect each other, are honest and we honor the law. If we do have another work or side business in addition to our main job, HR needs to be informed. No decision must be made on personal interest but only for the best of the company.*

No employee is allowed to abuse his function to demand/accept personal advantages from internals and/or externals.

The second set of general documents for the control group (the company without CMS) which contained a CEO statement without focus on ethics and no tone from the top in terms of compliance:

„Health & Youth“ is proud to be one of the leaders in manufacturing and selling medical equipment world wide. With sales totaling three billion € in sales in the last fiscal year and over 30.000 employees world wide who contributed to that we had a successful year.

This year our strategy remains in place, we call it “Efficient growth”. The strategy will be explained to you by your local management, but for the time being let me assure you that our number one business goal is growth. We want to triple our market share! Sales success is the driver of our company! We need to develop new markets and serve our existing customers who guarantee us regular sales volume. With our lean organizational structure we are ready to address new challenges.

I count on you and your engagement!

These documents were handed out to the participants together with a questionnaire for the first round. The questionnaire of the first round was collected and followed by the hand out and collection of questionnaires for further two rounds.

3.4. Formulation and concretion of compliance hypotheses

The hypothesis was developed considering that the decisions and the acting of managers is more in line with the proposed rules and laws if specific elements of a CMS have been introduced as guidance to the participants compared to a condition where no such elements were given. The theoretical hypothesis was formulated in an empirical hypothesis which can be tested in reality. The theoretical hypothesis states that specific CMS activities enhance the conduct of business and have therefore a positive impact/value add for the business. The deducted empirical hypothesis postulates that the decision towards illegal/unethical behavior decreases if a person has been

confronted with specific compliance management activities in contrast to a person who has not been confronted with specific compliance management activities before taking decisions. For the null hypothesis for a Mann-Whitney test the assumption was made that the level of agreement for the hypothesis that ethical right decisions are chosen is equally distributed in treatment and control group. In order to test the model, an operationalization was necessary. For the operationalization a difference is made between the independent and dependent variables.

The theoretical construct is depicted by several variables. The decision to focus on certain elements of a CMS is based on the fact that in theory an indefinite number of elements is possible. The most common elements are depicted in the chapter about elements of a CMS. It is theoretically deductable and imaginable that a CMS does have a positive effect, but which elements the most helpful are and which are superfluous or do have only little impact has not been researched. Theoretically a differentiation between personal interest and a broader perspective for the good of the organization can be made. “The sociology literature contains two basic perspectives on compliance: instrumental and normative (...) [T]he instrumental perspective assumes individuals are driven purely by self-interest and respond to changes in the tangible, immediate incentives and penalties associated with an act. The key variables determining compliance are the severity and certainty of sanctions. The normative perspective emphasizes what individuals consider just and moral, instead of what is in their self-interest. Individuals tend to comply with the law to the extent that they perceive the law as appropriate and consistent with their internalized norms. The key variables determining compliance in the normative perspective are individuals’ perceptions of the fairness and appropriateness of the law and its institutions.”²²³ For the purpose of a realistic approach the top elements of a (successful) CMS were determined and in discussions the answers were clustered. It was determined that with a selection of the elements a (successful) CMS can be established. The operationalization is the transfer of CMS elements into variables. Information of the most relevant influencing factors is shown through the results of the hypothesis testing.

²²³ Sutinen, J. & Kuperan, K. (1999). A socio-economic theory of regulatory compliance, *International Journal of Social Economics*, Vol. 26, No. 1/2/3, PP. 179

Table 3.1. Independent variables and their description for the experiment

Independent variable	Description for experiment
Information	Short company description focusing on employees including core principles and facts which are given for specific situations.
Controls	Announcement of the internal audit function and by the application of 4 eye principle/ sign-off by superior.
Instruction	Reference to a work guidance or specific advice which is relevant for the employees.
Sanctions	Cases of employee who violated company guidelines/law and mentioning of the fact that employees who breach the law are sanctioned (e.g. dismissal).
Reporting	Regular reports concerning misconduct and reports concerning the own work of employees.

Source: Own depiction

The table 3.1. shows independent variables and their description for the experiment. Values of variables are generally the existence or non-existence of a specific value as a direct comparison between treatment and control group is aimed at. Generally variables encompass punishing and rewarding aspects as both play a role in the avoidance of corruption. Punishing elements have been tested in experiments before and have been attributed an effect on curtailing corruptive behavior: “(...) results also show that a more effective punishment regime leads to less corruption.”²²⁴ Possible independent other variables are not in focus of the research as they account for only a limited explanation potential of effective measures in a CMS. The variables which were selected have the potential to have the biggest influence on the decisions. The independent variables named in the hypotheses are influenced through sub-variables which are

²²⁴ Cameron, L., Chaudhuri, A., Erkal, N. & Gangadharan, L. (2005). Do Attitudes Towards Corruption Differ Across Cultures? Experimental Evidence from Australia, India, Indonesia and Singapore, University of Melbourne, Research Paper Number 943, PP. 1-48.

named in brackets. In the following independent variables are defined, single hypotheses are formulated and discussed.

- a) Degree of information about compliance (code of conduct, tone from the top, company values, antitrust information, communication measures)

Hypothesis: The more information is given the higher the influence on legal/ethical right decision. The information aspect has preventive character. Information concerning compliance must be communicated in the right way to the target group and also the right state of mind of the target group. Public consent to corruption which states that “it is normal” destroys every system set up with the intent to decrease corruption. Research emphasizes the role which companies give to the publication of information as for example codes of conduct: “It appears that companies who wish to influence ethical standards establish ethical codes as their first step.”²²⁵ In general these expectations are followed: “one can probably expect increased compliance with non-mandatory codes of governance”²²⁶. The same is assumed for the information provided by the top management of a company. Rossi argues that “a new chief executive officer (CEO) must be ethically aware.”²²⁷ It is up to him or her to set the right tone of importance in the organization. Furthermore she argues “The compliance leader of today must be able to give unequivocal guidance as to what constitutes the duty of the firm (...)”²²⁸. If general information is given to the employees it must be assured that this information reaches the target group. It is not guaranteed that ethical guidelines are also read by the employees. For the experiment the treatment group received specific information content as for example core principles which place a high degree on ethical behavior. Therefore the level of specific information for the treatment group was higher. It included a higher level of volume on ethical acting, but also specific information how the

²²⁵ McDonald, G. M. & Zepp, R. A. (2007). Business Ethics: Practical Proposals, *Journal of Management Development*, Vol. 8, No. 1, P. 61

²²⁶ Heneghan, J. & O'Donnell, D. (2007). Governance, Compliance and legal enforcement: evaluating a recent Irish initiative, *Corporate Governance*, 7, 1, P. 58

²²⁷ Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37, 10, P. 817

²²⁸ Rossi, C. (2010). Compliance: an over-looked business strategy. *International Journal of Social Economics*, 37, 10, P. 825

management of the organization sees the role of compliance. In the materials provided the treatment group received the information that the organization should grow ethically (“We want to triple our market share with all fair means!”).

- b) Degree of control of work (audit of project management, screening of personnel, financial controls)

Hypothesis: The more independent control activities are known the higher the influence on legal/ethical right decision. It is assumed that controls can guide the behavior of employees. The variable has both preventive and detective character. A control activity can be placed in an approval workflow or after events have taken place. “Adequate control is considered to be present if administrative management has planned and organized in a manner, which provides reasonable assurance that the organisation’s objectives and goals will be achieved efficiently and economically. Reasonable assurance is provided when cost-effective actions are taken to restrict deviations, such as improper or illegal acts, to a tolerable level.”²²⁹ A differentiation must be made between manual and automated controls. Manual controls might be samples which are drawn by the audit function during an internal audit, automated controls are system immanent. The selection of controls changes “(...) as the degree of automation of the business processes differs from company to company, the choice of controls also differs.”²³⁰ For the experiment both samples for automated and also for manual control were given.

- c) Degree of instructions (work description for the acting with business partners)

Hypothesis: The more instructions are given the higher the influence on legal/ethical right decision. Instructions can be given on different layers of the hierarchical organization. A top-down approach normally gives general guidance and rules from the top level which have to be refined on sub levels. It can be the case that in a very small unit consisting of only a few

²²⁹ Fadzil, F.H., Haron, H. & Jantan, M. (2005). Internal auditing practices and internal control system. *Managerial Auditing Journal*, Vol. 20, No. 8, P. 847

²³⁰ Schumm, D., Anstett, T., Leymann, F. Schleicher, D. & Strauch, S. (2010). Essential Aspects of Compliance Management with Focus on Business Process Automation, In: *Proceedings of the 3rd International Conference on Business Processes and Services Computing (BPSC) - INFORMATIK 2010, 27-28 September 2010, Leipzig, Germany*, P. 132

employees detailed instructions are given. It must be considered that instructions are not in contradiction with other regulations: “Policy statements naturally suffer from some of the same defects as ethical codes. Policies cannot cover all possible situations; they are not prioritized, and they may lead to conflicting and potentially incompatible instructions.”²³¹

d) Sanctions (disciplinary measures announced or executed)

Hypothesis: The clearer consequences of misconduct are known the higher the influence on legal/ethical right decision. Sanctions are used to discipline employees as reaction to misconduct. Depending on national laws different forms of sanctions are possible. Warnings either informal or formal in nature give can be characterized as the first step in the classification. The warning is a HR instrument which can be used to point out to the employee that similar conduct in the future will lead to the termination of the work contract. Research in the area of sanction activities has concluded that a warning effect can be reached in regard to discovery: “there is support that the probability of detection and sanctions has a stronger deterrence effect on the violation behavior of individuals”²³²

e) Reporting (quarterly report on violations of compliance activities)

Hypothesis: The more reporting activities for CMS are formulated, the higher the influence on ethical right decision. Reporting requirements force the person reporting to give regularly the status of activities related to CMS such as KPI, violations etc.

These are the independent variables which have the highest impact according to theoretically compared concepts, theories and expert interviews. General compliance management activities which will be controlled and therefore should not have a distortional influence are the organization itself, a helpline or whistleblowing hotline, the announcement of compliance officers, a basic compliance understanding, common policies, an ombudsman etc.

²³¹McDonald, G. M. & Zepp, R. A. (2007). Business Ethics: Practical Proposals, Journal of Management Development, Vol. 8, No. 1, P. 62

²³² (Heineke, 1978; Viswanathan, 1992), (...) in: Gul, F., Ng, A., Yew, M. & Tong, M. (2003). Chinese Auditors' Ethical Behavior in an Audit Conflict Situation, Journal of Business Ethics, 42, P.380

To make the variables measurable for the experiment, indicators have to be defined. An ordinal scale is deemed appropriate as an indicator and suitable for measurement. The ordinal scale was used as an indicator for the following variables.

1. Information: If information on the compliance program is given as for example with a code of conduct or statement from the CEO than decisions should be taken more informed and the breaking of rules would be prevented. Short information on the existence or non-existence of information. The type of information plays a role (document as flyer and brochure, web courses, training, statements) as well as the channel as information from colleagues for example. To make the variable measurable the level of specific information was chosen.
2. Control: If certain activities are controlled as for example the spending behavior than employees also behave in the proposed context. The number and intensity of control activities related to compliance plays a role, too.
3. Instruction: If instructions are meant to have a positive impact than the number of instructions and their content which is handed out for specific topics should be considered.
4. Sanction: If an announcement of the possibility of sanctions and the fact of cases of people against whom sanctions were given is made, a change in the answering reaction may be possible.
5. Reporting: If requirements concerning content and frequency are made, employees may consider their behavior. Reporting in this context refers to internal reporting obligations.

3.5. Conclusion

In general the definition of the phenomenon which is explained is the difference in acting concerning a decision to engage or not to engage in illegal/unethical behavior influenced by CMS

activities which promote acting in accordance with rules and laws. The opposite would be a decision not in accordance with rules and laws. The observed variable is the outcome of this influence. Therefore a business decision in accordance with law and ethical requirements can be characterized as a function of the application of specific CMS activities. An indicator for the “Degree of acting, chosen decision in accordance with rules and laws” is given by the ordinal scale. The answers which are given in the experiment range from total agreement to total disagreement. Summarizing the set-up of the experiment it must also be paid attention to confounding variables. Confounding variables could be created by a person during the experiment who interferes with the decision process. In an office environment using a field experiment approach this is likely to happen, but in a laboratory test this situation was avoided and did not happen. Another factor might be the influence which is given by copying answers from another test person. This influence is deemed little as the test persons were told that they are not competing for the right answer. Furthermore the test persons were under observation by the experimenter. The attitude of students might be a confounding variable as they might judge the experiment as artificial. This is a limitation which is inherent to laboratory experiments. Furthermore another limitation might be the age as confounding variable as the students do not have the same level of maturity, experience and personal history as managers. These possible influences are accepted as the general reduction from the complex problem corruption to a model is decided on purpose to advance research knowing that only a small step is possible within the context of this work. With the formulated hypotheses which are tested in the laboratory experiment it will be shown whether the modification of the variables has an influence or not.

4. RESULTS OF PERCEPTION OF COMPLIANCE MANAGEMENT SYSTEMS

A Mann-Whitney test for two independent sample groups was used to evaluate whether there is a difference in ethical decision making. The decision making process was set in the context of a business game. The assumption is that there is no difference between the two groups when making decisions. The data was analyzed using SPSS software.

4.1. Trend analysis of answering behavior regarding five hypotheses

Within the laboratory experiment 58 test persons in the treatment group and 70 test persons in the control group participated. The test persons were monitored by at least one and a maximum of two observers. The questionnaires which were used provided five answering possibilities which indicate the degree of consent given in the statements. The applied ordinal scale in table 4.1. below gives a ranking by value ranging from 1 to 5. The inversion of the scale indicates a value of 5 for the ethical highest value in the scenarios and a value of 1 for the ethical lowest value. The ethical highest value is scored with the answer “Certainly not”, the ethical lowest value is scored with the answer “Certainly”.

Table 4.1. Applied ordinal scale and answering behavior

Answer	Ordinal scale value	Number of answers	%
Certainly	1	381	14
Almost certainly	2	607	23
Maybe	3	462	17
Rather not	4	715	27
Certainly not	5	509	19
		2.674	100

Source: own illustration

The ordinal scale allows for a Mann-Whitney test to judge on the preferences. Totally, 30 items were tested in specific scenarios requesting decisions from the participants. Also dummy items

were introduced to distract from the real aim of the business game. The variables *Control*, *Instruction*, *Sanction* and *Reporting* were tested in 4 items each. The variable *Information* was tested in 5 items. Additionally the variables *Information* and *Sanction* were also introduced to the treatment group with general notes at the beginning of the different rounds of the experiment. The table above shows the answering behavior of all participants. In total 2.674 answers were generated. The overall distribution shows an answering behavior with 37% to an ethical lower answer and 46% to an ethical higher value. In total three questionnaires were handed out to the participants. The first questionnaire covers 24% percent of the variables (excluding the variable *Instruction*), the second and third questionnaire each cover 38% of the variables. The reason for a smaller coverage in the first questionnaire results from the necessity to use the first questionnaire also to convey general information and to make the participants familiar with the set-up. Therefore a smaller population of scenarios was chosen.

The group statistics were analyzed regarding trends and patterns relating to the variables. In order to calculate the middle ranks a non-parametric testing was used. In the following the value of middle ranks is used to illustrate the placement in a population from 128 persons. For the testing procedures all places were ordered by rank and per group the middle rank was calculated.

Variable Information

It was tested if the variable *Information* had an influence on the decision of the test persons regarding ethical decision making. People who received specific information regarding the dealing with competitors decided ethically better than those who did not receive such information. The treatment group was informed via a separate document which stated in the core principles to be careful when interacting with the competition. In the treatment group a middle rank with a value of 73,71 was reached, indicating that they would not engage in illegal activities with competitors contrary to 56,87 in the control group. The proposed activities included a weekend-trip skiing paid for by the competition to get to know each other and get a common understanding of the market and the customers. The agreeing to accept an invitation could be explained by missing knowledge or deliberate acting against the core principles in the control group. Concerning actively engaging in illegal activities such as adapting the prices it can be concluded that a middle rank with an average value of 66,85 in the treatment group was reached indicating that they would choose rather not to engage in an activity which would be illegal

compared to 62,55 of the control group. It can be concluded that there is a common understanding that agreements on prices are illegal. The difference of 4,30 between both groups could be explained by a CEO-statement which was given to the treatment group. In the statement it was demanded to gain market share in a fair way from the treatment group. The control group had only the information to gain market share. No special CEO-statement was given.

Considering the engagement of a dubious export agent the treatment group decided slightly better than the control group. A middle rank with an average value of 65,35 of the treatment group shows rather non engagement in business transactions compared to a middle rank of 63,79 of the control group. In the scenario of the invitation of top customers, the test persons were asked whether they would spend parts of the budget which is left over to invite externals for roughly 5.000 € per person. As also public customers were invited this business conduct can be clearly marked as illegal behavior as such an invitation is forbidden by law. The scenario was conceptually designed to put pressure on the participant as in the situation the superior who was a strong influence on the individual supported the idea of an invitation. Overall the tendency to invite these customers was rather high. With an average middle rank of 65,41 the willingness to invite these externals guests is slightly higher ranked in the treatment group. In the control group an average value of 63,74 and a rank sum of 4462,0 indicate almost certain invitations. The last scenario requested a decision of whether to accept obvious lying or not. The treatment group was provided with the values of the company which include as one value honesty. The average value of 69,00 of the treatment group indicates a strong rejection of lying, but also the control group strongly objects lying with a middle rank with an average value of 59,80. Therefore the conclusion is that a common sensitization has taken place already.

Variable Control

For the variable *Control* one test person in the treatment group and another person in the control group did not answer all questions. Therefore the answers are concluded from 57 to 58 test persons in the treatment group and from 69 to 70 persons in the control group. It was tested if the variable *Control* had an influence on the decision of the test persons regarding ethical decision making. In the scenario “Making a donation” the treatment group was informed that spending activities are checked by the internal audit function to evaluate sponsoring activities and donations. Therefore the unethical even if not illegal spending activities are scrutinized. With this information a middle rank of 73,89 was reached concerning the question if the donation which a

friend requested would be accepted. On the other hand an middle rank of only 55,69 was reached of the control group. Hence it follows that donations would rather be made than rejected on average in the control group which is not in scope of an audit which is executed by the audit department. In the treatment group the knowledge about an audit function which might check spending behavior leads to a higher rejection rate. In another scenario the two groups were confronted with an apparently legitimate payment request by an external partner. The treatment group knew that a specific control disapproved the payment to the external partner. With this information a strong rejection of the payment request was reached with a middle rank of 81,65. Compared to that the control group with no indication of disapproval was on average less sure about a rejection. A middle rank of 48,51 indicates a position with an inclination to rejection in evaluating whether a payment should be made or not. The announcement of a future audit to control the activities and scheduling of a concrete date for the treatment group had little influence on the decision behavior. The groups were asked about simplifying documentation in the sense of stopping the documentation of several decisions therefore decreasing transparency in their area of work. In the context of the increased controlling activity by the audit function, the treatment group shows a slightly higher tendency to keep the existing documentation with a middle rank of 67,34 while the control group remains slightly below in that question with a value of 62,14. The scenario which asked for a payment to a supplier differentiated between an existing control for the treatment group by the execution of the so called 4 eye principle and the non-existence of a control. The so called 4 eye principle is based on a segregation of duties concerning the persons responsible for the handling of transactions. It means that the person who transfers the money or makes the payment can not be the same person who oversees and judges if the payment is allowed. This separation of roles guarantees that only approved payments are executed. With a middle rank of 73,85 the treatment group shows a higher value than the control group with a middle rank 55,72. Both groups rather disapprove the payment, also a tendency towards indifference can be concluded.

Variable Instruction

For the variable *Instruction* one test person in the treatment group and another person in the control group did not answer all questions for all items. Therefore the answers are concluded from 57 to 58 test persons in the treatment group and from 69 to 70 persons in the control group. For the scenario to employ a business consultant, the mere existence of an instruction has an

impact on the test persons. In the treatment group a middle rank of 66,18 indicates that the business consultant will rather not be employed. The control group which was unaware of the instructions gained a middle rank of about 61,28. This average is still rather rejecting, but slightly below the treatment group. The decision to borrow a company asset for private reasons was rejected by both the treatment and the control group. The existence of an instruction led to a middle rank of 72,03 in the treatment group which would reject, the non-existence of an instruction in the control group led to a middle rank 56,46. In a scenario concerning new cooperations and partnerships in South America a Mergers and Acquisition situation was depicted. In this scenario a few proposals need an evaluation. In the treatment group an instruction helped the test persons to estimate the risk level. While in the control group a middle rank of 43,04 indicates a high probability to engage in the deal in the treatment group the existence of an instruction led to the discernment of unforeseen risk which resulted in a rather negative response. With a middle rank of 90,36 concerning a rejection of the M&A deal, a participation is unlikely. In a situation of interaction with authorities at the airport, the threat of contractual fines (up to 2 Mio. US\$) made both the treatment and control group accept the payment of a facilitation fee which can be illegal. While in the control group an average of rejecting the request of such a payment with a middle rank of 57,03 low, it is worth-while mentioning that the treatment group rejects the payment with a middle rank of 73,52. Even the written hint “The company instructions forbid such kinds of payments.” does not have a bigger influence. It is therefore concluded that business needs combined with contractual threats do override company given instructions.

Variable Sanction

For the variable *Sanction* one test person in the treatment group did not answer all questions for all items. Therefore the answers are concluded from 57 to 58 test persons in the treatment group and 70 persons in the control group. The first item testing of the variable *Sanction* asks the participants about their estimations in regards to employee behavior according to the internal rules. In the treatment group it is pointed out that behavior which is not in accordance with the company rules will at least be sanctioned with an informal warning. In the treatment group the majority of participants guesses that employees will not breach the rules if sanctions are known to them. For the treatment group a middle rank of 67,06 is reached. The control group shows a middle rank of 62,38 for the statement that employees will not breach the

rules. It can therefore be concluded that the deterring effect of sanctions is limited regarding to the obedience to formal rules. Classical misconduct as theft of company assets is neither tolerated by the control group nor the treatment group. A specific treatment for that item was not chosen as it can be characterized as common knowledge. The only influence from the core principles given out as additional information in the first round is the statement "...we honor the law". In the treatment group a middle rank of 62,07 was reached indicating that the dismissal of the employee as a sanction would be the right action. For the control group a middle rank of 66,51 was reached indicating the same conclusion even slightly above the value of the treatment group. The situation of the notification that an employee is giving business to a friend breaching company rules yielded surprising results. The treatment group indicates with a middle rank of 65,39 that the employee should rather not be kept in the workforce. The control group comes to the same conclusion, with a middle rank of 62,86. It appears that although the treatment group has been given a clear statement on giving advantages to individuals ("No decision must be made on personal interest but only for the best of the company.") there has been no effect on the treatment group. The control group which did not receive any information on the topic at all scored almost identical. The situation of passive bribery of a purchase manager who accepted a gift was seen by the treatment group negatively with a middle rank of 69,42, whereas the control group was headed in the same direction with a middle rank of 60,42. It must be noted that a direct treatment was only given for the first item. The other items were modified by general information which informed about sanctions, but they were not linked to specific scenarios. It is concluded that sanctions which are directly linked to actions do have a deterring effect, but the activities per se are rather weak instruments to stir ethical right behavior.

Variable Reporting

For the variable *Reporting* one test person in the treatment group and another person in the control group did not answer all questions for all items. Therefore the answers are concluded from 57 to 58 test persons in the treatment group and from 69 to 70 persons in the control group. The report on company rules violation is mentioned for the treatment group. Although the treatment group is informed about the existence of such a reporting it does not have an impact on their acting which would lead to ethically better acting. The treatment group has a middle rank of 55,69 rejecting circumventing internal rules. That means that the majority does consider breaking the rules knowing that it will be reported about them. On the contrary, the test persons who did

not read the report (the control group) have an ethically better acting with a middle rank of 70,14 rejecting circumventing internal rules. Apparently a reporting about ethical wrong behavior in general does not lead to a change in decision making. Furthermore, it is concluded that the fact that the reporting states a constant number of persons breaking the rules, the test persons can use the reporting for the justification of their acting. The fact that personal reporting requirements are created does lead to a little difference in acting. Together with the announcement that the reporting will be shown to the head of the department, a middle rank of 72,16 in the treatment group is reached concerning rejecting the question if customers are invited for the 3rd time in a month. It can be concluded from the answer pattern that the majority would still invite customers even if a reporting requirement is given. In the control group where such requirement is not given the middle rank of 57,14 considering rejection indicates that there is no concern of misconduct for this group. In the scenario theft of company assets, reporting requirements do have a positive impact on problem consciousness. In the treatment group which does have a monthly reporting a middle rank of 65,85 is reached rejecting the question that theft can not be controlled. In the control group this opinion is also gained, but to a lesser degree with a middle rank of 61,56. The situation of a business lunch which costs the test persons are asked to cover led to wide acceptance. In the treatment group a middle rank of 66,99 was reached indicating that with certainty or almost certainty the costs for the lunch would be covered by the test persons. The fact that the treatment group was informed that the costs had to be reported to their superior did apparently only have a minor impact. The control group scored similarly with a middle rank of 62,44 indicating that in the control group the costs would even be borne more readily. It is therefore concluded that the variable did not have a high influence.

4.2. Evaluation and discussion of results including limitations

After a general discussion of the general results specific hypotheses will be discussed, followed by an inter-group analysis.

4.2.1. General remarks to decision behavior

For the Mann-Whitney test the values of the treatment group and the control group which are compared are placed in one group. Following this approach each value is given a rank according to the position in the group. In the next step the sum of ranks is calculated for both groups separately. Based on the calculated sums the hypothesis that both groups are the same is

tested. The null hypothesis (H0) postulates that there is no difference between the two groups. If the null hypothesis is true the average values of the middle ranks of the two groups should be similar. This means that the value of the treatment group and the control group in the rank order should be distributed equally approximately. If H0 is not true the alternative hypothesis (H1) is valid. For the rejection of the null hypothesis the significance level of 0,05 is chosen as accepted scientific convention. A rejection of the null hypothesis on a significance level of 0,05 can be made for 9 items. These 9 items relate to 4 variables of the 5 variables tested. 2 out of the 4 variables showed a strong influence on the item. The results of the item analysis are presented as follows:

Table 4.2. Overall result of items with significance level <0,05

Variable	Item	Significance level
Control	Making a donation	0,004
Control	Payment to "black listed" external partner	0,000
Control	Payment to supplier	0,004
Information	Invitation to go skiing with competitor	0,009
Instruction	Video_Beamer	0,010
Instruction	Facilitation Payment	0,005
Instruction	Mergers and Acquisition	0,000
Reporting	Reading News	0,034
Reporting	Documentation of invitations	0,017

Source: own illustration

The table 4.2. shows that for 4 variables items could be identified which can be judged as different. For the variable *Sanction*, for no item the null hypothesis could be rejected. For all other items relating to the hypotheses the group means can not be judged as significantly different.

4.2.2. Evaluation and discussion of specific hypotheses

In the following sections specific hypotheses on CMS will be addressed. The answering behavior of the participants for the relevant variables and items will be depicted.

Hypothesis on Information

The variable *Information* was tested in 5 items: “Adapting pricing strategies”, “Logistic partner East Europe”, “Invitation go to skiing with a competitor”, “Invitation Top customer to ski event” and “Accepting lying”. For one of the items, the item “Invitation to go skiing with a competitor” the Mann-Whitney test shows a value for the variable *Information* of 73,71 for the middle ranks which indicates that the hypothesis both groups are the same (H0) is rejected. As the assumption of equal middle ranks is rejected, it can be concluded that there is a significant difference between the groups concerning the variable *Information* in the item “Invitation to go skiing with competitor”. The alternative hypothesis for the variable with that item would be “The more specific information is given the higher the influence on legal/ethical right decision”. There seems to be therefore a significant difference in acting when people are sensitized concerning the dealings with competitors by information in contrast to a situation where this information is not given.

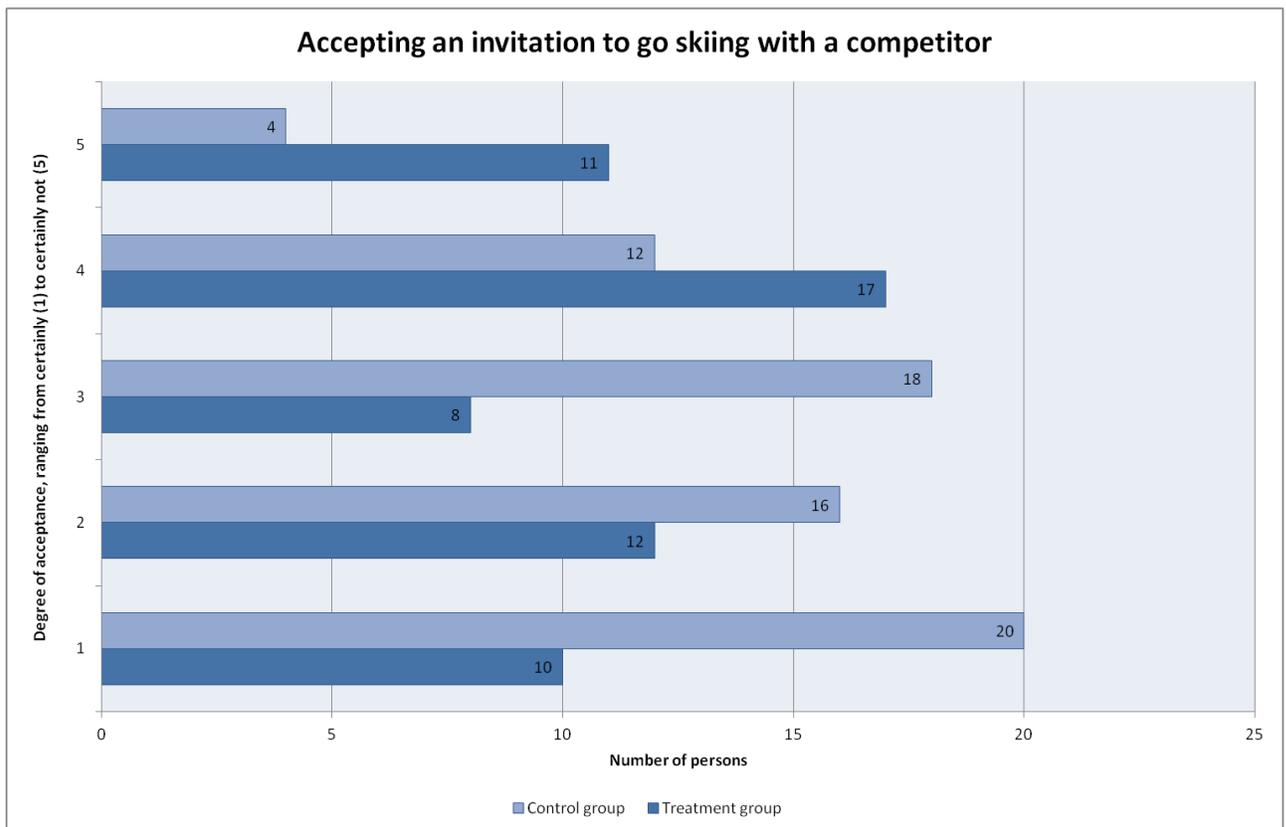


Figure 4.1. Accepting an invitation

Source: own illustration

As shown in figure 4.1. in the experiment out of the 70 persons who were not sensitized ethically, 20 would certainly accept an invitation and 16 almost certainly. From the treatment group only 10 would certainly accept an offer and 12 almost certainly. Contrary a strong rejection towards an invitation is given by the treatment group in which 11 persons would certainly not accept an invitation and 17 persons would rather not accept an invitation. The analysis shows a difference of ranks between the two groups of 16,84 for the middle ranks. The manipulation of the variable was done via a specific information in the handout. In the handout it was requested to be careful when interacting with the competition and that there must be good reasons for getting together with the competition. Furthermore with a two-tailed asymptotic significance value of 0,009 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons accepting an invitation from a competitor to go skiing to the same degree can be rejected with an error probability of 0,9%. This means that the hypothesis H1 is valid for the population.

For the items “Adapting pricing strategies”, “Logistic partner East Europe”, “Invitation Top customer to ski event” and “Accepting lying” the hypothesis H0 could not be rejected.

Hypothesis on Control

The variable control was tested in 4 items: “Making a donation”, “Payment to "blacklisted" external partner”, “Announcement of Audit” and “Payment to supplier”. For three of the items, the Mann-Whitney test shows an asymptotic significance value of 0,004, 0,000 respectively 0,004 which indicates that the hypothesis both groups are the same (H0) is rejected. As the assumption of equal middle ranks is rejected, it can be concluded that there is a significant difference between the groups concerning the variable *Control* in the items “Making a donation”, “Payment to "blacklisted" external partner” and “Payment to supplier”. The alternative hypothesis (H1) for the variable with these items would be “The more independent control activities are known the higher the influence on legal/ethical right decision.” There seems to be therefore a significant difference when control activities are known and applied as control activities play a major role in enforcing standards and ensuring accordance with rules and regulations.

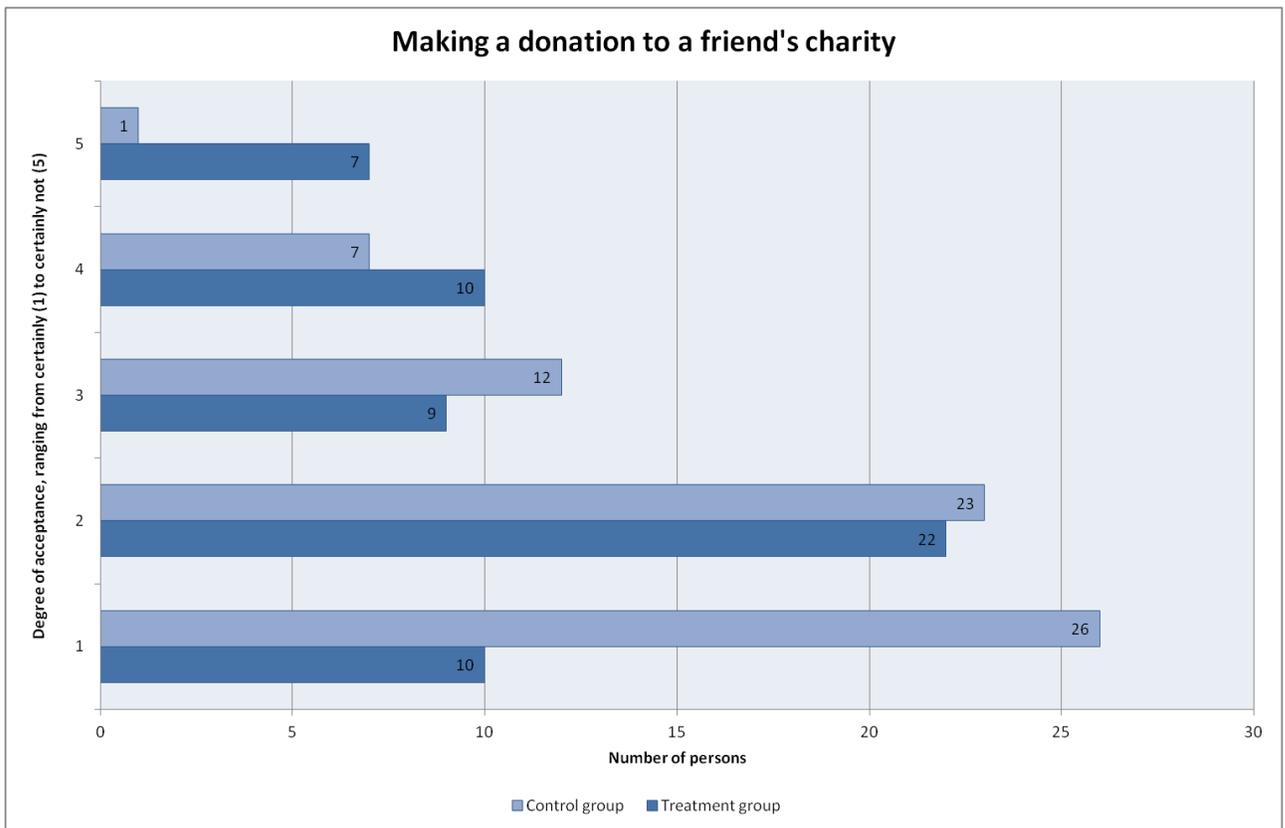


Figure 4.2. Making a donation

Source: own illustration

As shown in figure 4.2. in the experiment the participants were asked whether they would make a donation to a charitable organization which was recommended by a friend. The friend who asked for the donation is indicating that he is interested in business with the company. The situation is from a compliance perspective critical as a conflict of interest might be given. The experiment participants who are responsible for developing the business, might only be capable to secure more business or this specific business if they make a donation. They would favor a friend by making a donation to an organization which was recommended by the friend. 26 persons in the control group would certainly make a donation contrary to only 10 persons in the treatment group. It is obvious that the mentioning of the audit function with its controlling activity has an impact. Interestingly the pure mentioning does not prevent the test persons from making the donation, but the likelihood is diminished. 22 persons in the treatment group would almost certainly follow the request for donation while 23 persons in the control group would almost certainly make the donation. The fact that 7 persons in the control group compared to 10

persons in the treatment group would rather not make the donation underpins the impact of the mentioning of an audit. The analysis shows that the manipulation of the variable decreases the tendency towards the payment. This is confirmed by a general higher level of rejection in the treatment group. Furthermore with a two-tailed asymptotic significance value of 0,004 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons making a donation to the same degree can be rejected with an error probability of 0,4%. This means that the hypothesis H1 is valid for the population.

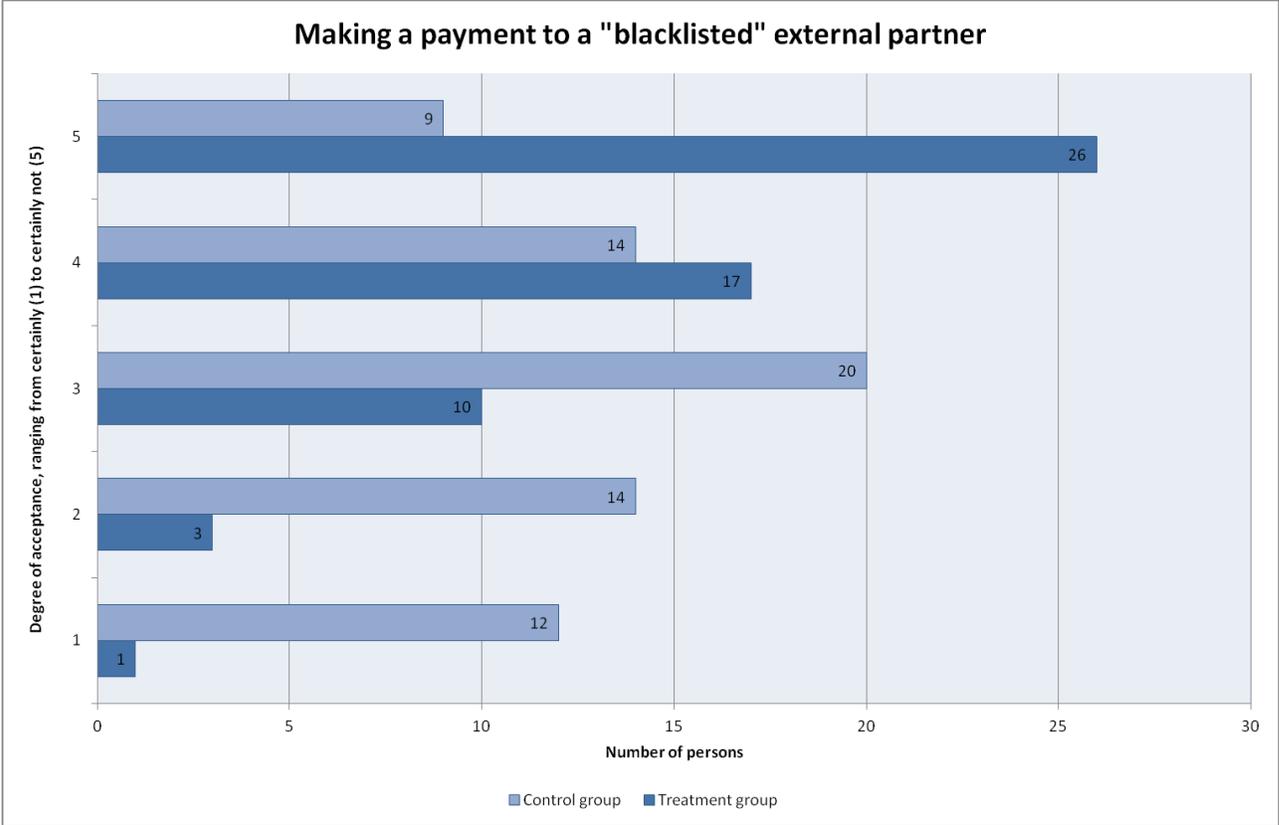


Figure 4.3. Payment to external partner

Source: own illustration

The item payment to “blacklisted” external partner in figure 4.3. shows a clear differentiation between treatment group and control group. While in the control group 12 people make the payment, in the treatment group this is considered by only 1 person. For 26 people of the treatment group making a payment is not an option. The clear differentiation can be explained by the manipulation of the variable. While in the control group no specific control activities were

given and the external partner did not show any noticeable problems, in the treatment group control activities revealed suspicions. This led to the fact that 26 persons in the treatment group would certainly not make the payment. Furthermore with a two-tailed asymptotic significance value of 0,000 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons making a payment to the same degree can be rejected with an error probability of 0%. This means that the hypothesis H1 is valid for the population.

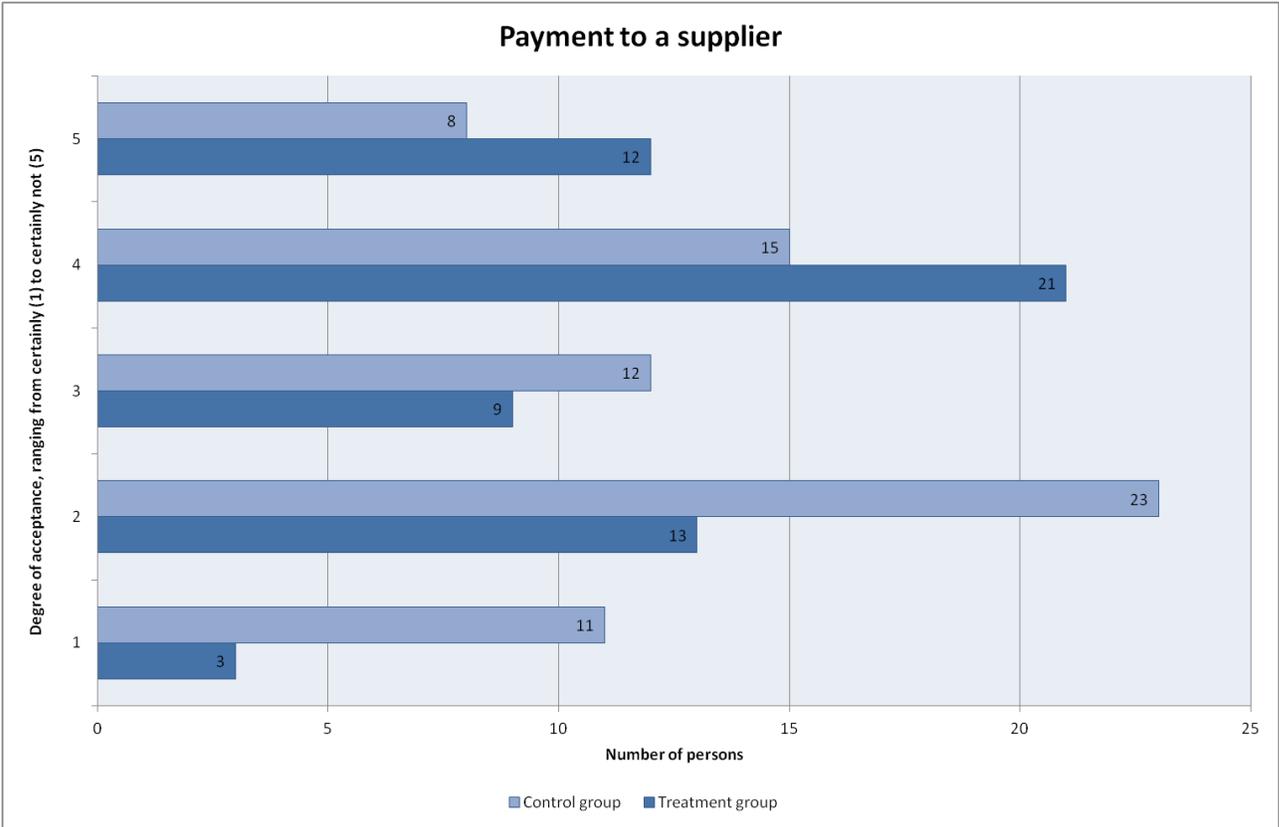


Figure 4.4. Payment to a supplier

Source: own illustration

As shown in figure 4.4. in the experiment the item “Payment to a supplier” was used to evaluate whether control activities such as the 4-eye principle are helpful in order to decrease corruptive behavior. Corruptive behavior can occur, if requests for payments are made and the transfer of money is made without necessary oversight or control. A typical example for that would be the collusion between an employee in the accounting department and a supplier which fakes bills or charges overprized services. If the two persons cooperate it is difficult to prevent

such behavior. In order to decrease such a risk the oversight of a third party is introduced who controls the payment activities. In the scenario out of the control group of 69 persons 11 would certainly pay the supplier and 23 almost certainly. This is contrasted by 3 persons in the treatment group concerning a certain payment and 13 persons concerning an almost certain payment. With a two-tailed asymptotic significance value of 0,004 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons making a payment to the same degree can be rejected with an error probability of 0,4%. This means that the hypothesis H1 is valid for the population.

For the item “Announcement of Audit” the hypothesis H0 could not be rejected. The sheer announcement does not alter the behavior significantly. Generally, it can be concluded that control activities are necessary to establish a functioning CMS. As the experiment shows however, not every control is suited to decrease violation of rules. Another aspect concerning control activities must be taken into account from a different perspective. If control is meant to be decreased in the future and also work places become more flexible and virtual in their conception, organizations have to rely on employees with a sound ethical understanding who propel the business. This change must be lived by the managing function: “If practitioners prefer to remain as managers who “do things right”, aim for stability and control, and thereby enact compliance roles, they are unlikely to change their organizational culture. However, when practitioners think of themselves as leaders who “do the right thing”, then it is possible for them to engender change in their respective organizations.”²³³ Control activities must therefore be tailored to the specific risk in order to decrease corruptive tendencies.

Hypothesis on Instruction

The variable *Instruction* was tested in 4 items: “Video Beamer”, “Mergers and Acquisitions”, “Check of Business Consultant” and “Facilitation Payment”. For three of the items, the Mann-Whitney test shows an asymptotic significance value of 0,010, 0,000 respectively 0,005 which indicates that the hypothesis both groups are the same (H0) is rejected.

²³³ Sison, M. (2010). Recasting public relations roles: agents of compliance, control or conscience. *Journal of Communication Management*, 14, 4, P. 333

As the assumption of equal means is rejected, it can be concluded that there is a significant difference between the groups concerning the variable Instruction in the items “Video Beamer”, “Mergers and Acquisitions” and “Facilitation Payment”. The alternative hypothesis for the variable with that item would be “The more instructions are given the higher the influence on legal/ethical right decision.” For the item “Check of Business Consultant” the hypothesis H0 could not be rejected.

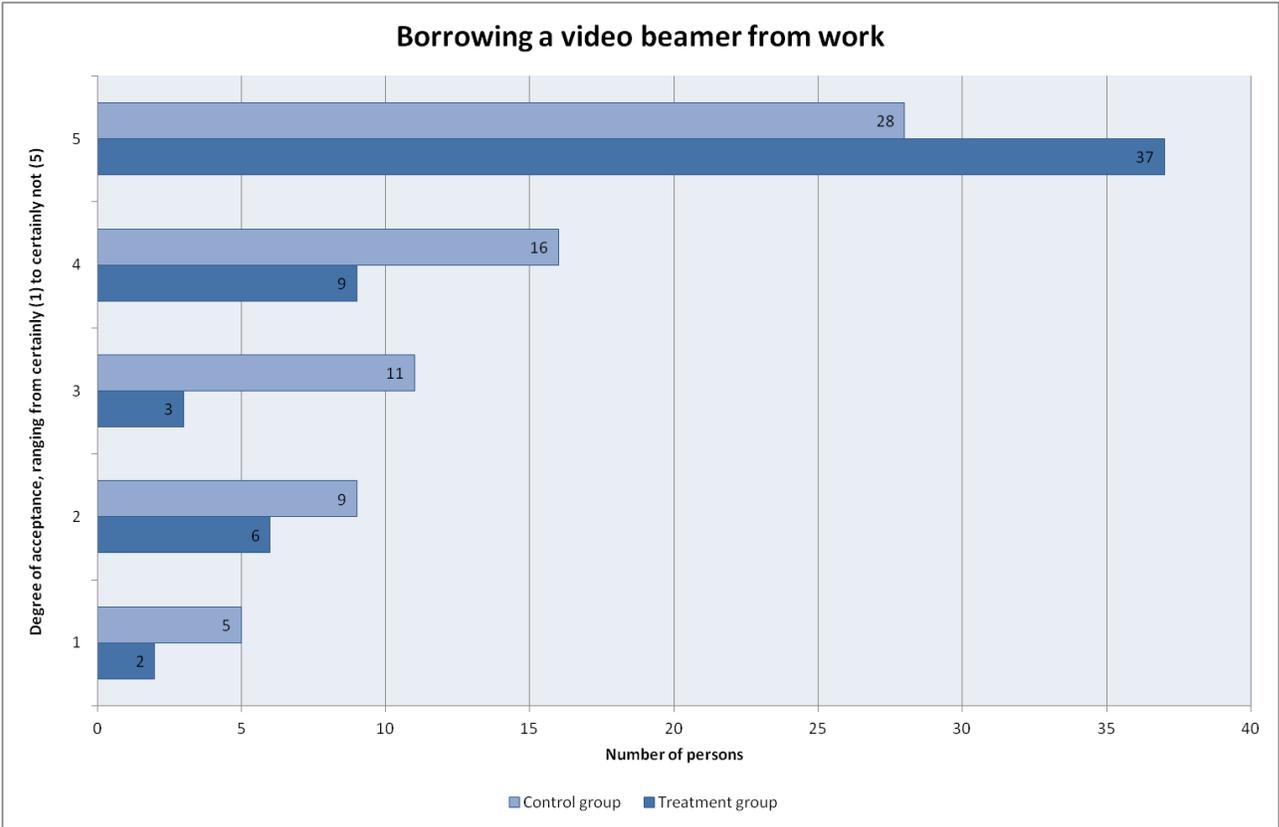


Figure 4.5. Borrowing a video beamer from work

Source: own illustration

As seen in figure 4.5. in the item “Video beamer” both the treatment and the control group are mainly of the opinion that the borrowing of company assets for private purposes is not in the interest of the organization. The treatment group was manipulated in the way that a hint was given to them as it was written down that borrowing the beamer overnight is forbidden. The control group which did not have this hint shows similar answering behavior, but a stronger tendency towards a higher degree of ethical behavior is noted in the treatment group. With a two-

tailed asymptotic significance value of 0,010 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons borrowing a company asset can be rejected with an error probability of 1,0%. This means that the hypothesis H1 is valid for the population.

As noted before this range is small, but the instruction does have a significant influence.

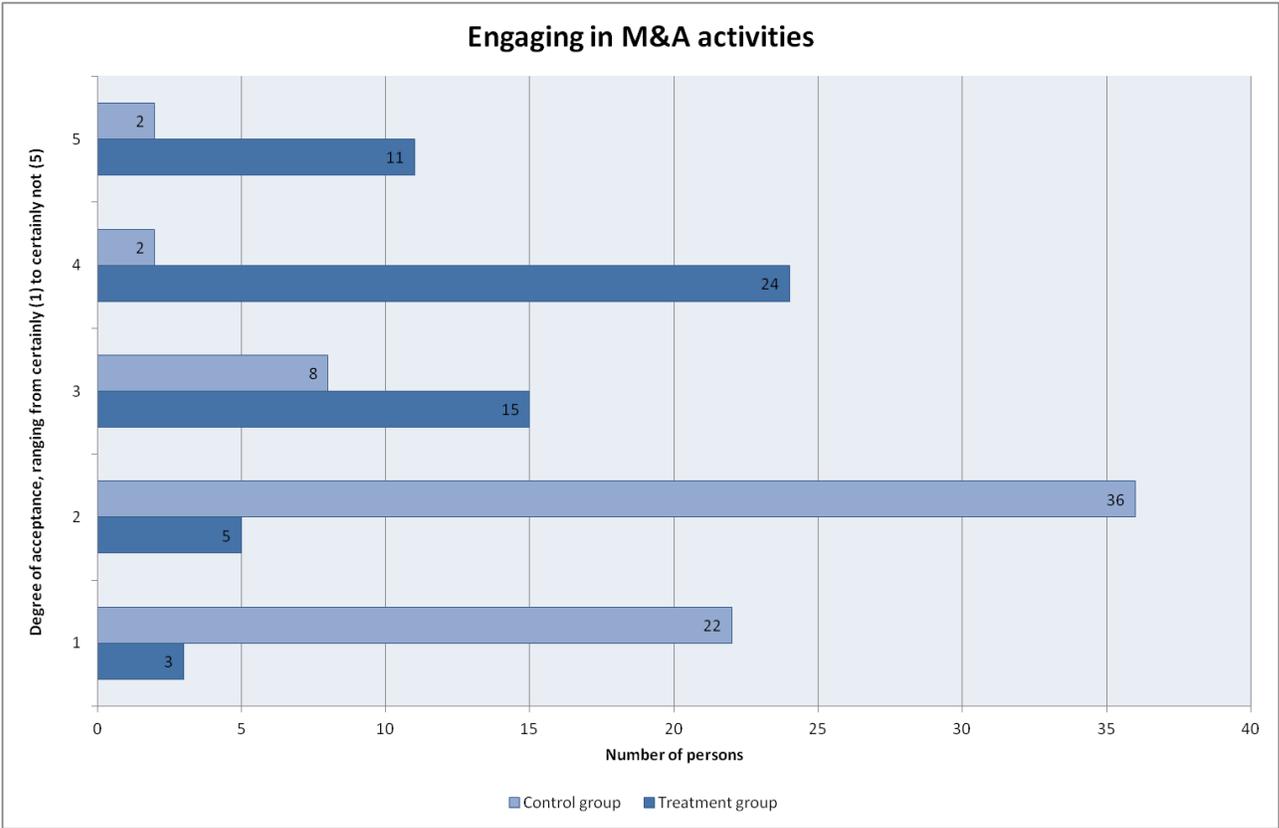


Figure 4.6. Accepting an M&A-Deal proposal

Source: own illustration

As shown in figure 4.6. the item “Mergers and Acquisitions” shows a strong degree of consent in the control group. 22 persons would certainly and 36 persons would almost certainly accept the proposals. In the treatment group this is only true for 3 persons concerning a certain acceptance. In the treatment group 24 persons would rather not accept the proposals and 11 persons would certainly not accept the proposals. The significant difference lies in the manipulation of the variable. The treatment group was informed that M&A specific instructions revealed risks which are not covered. Furthermore with a two-tailed asymptotic significance

value of 0,000 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons accepting the proposal for a M&A Deal to the same degree can be rejected with an error probability of 0%. This means that the hypothesis H1 is valid for the population.

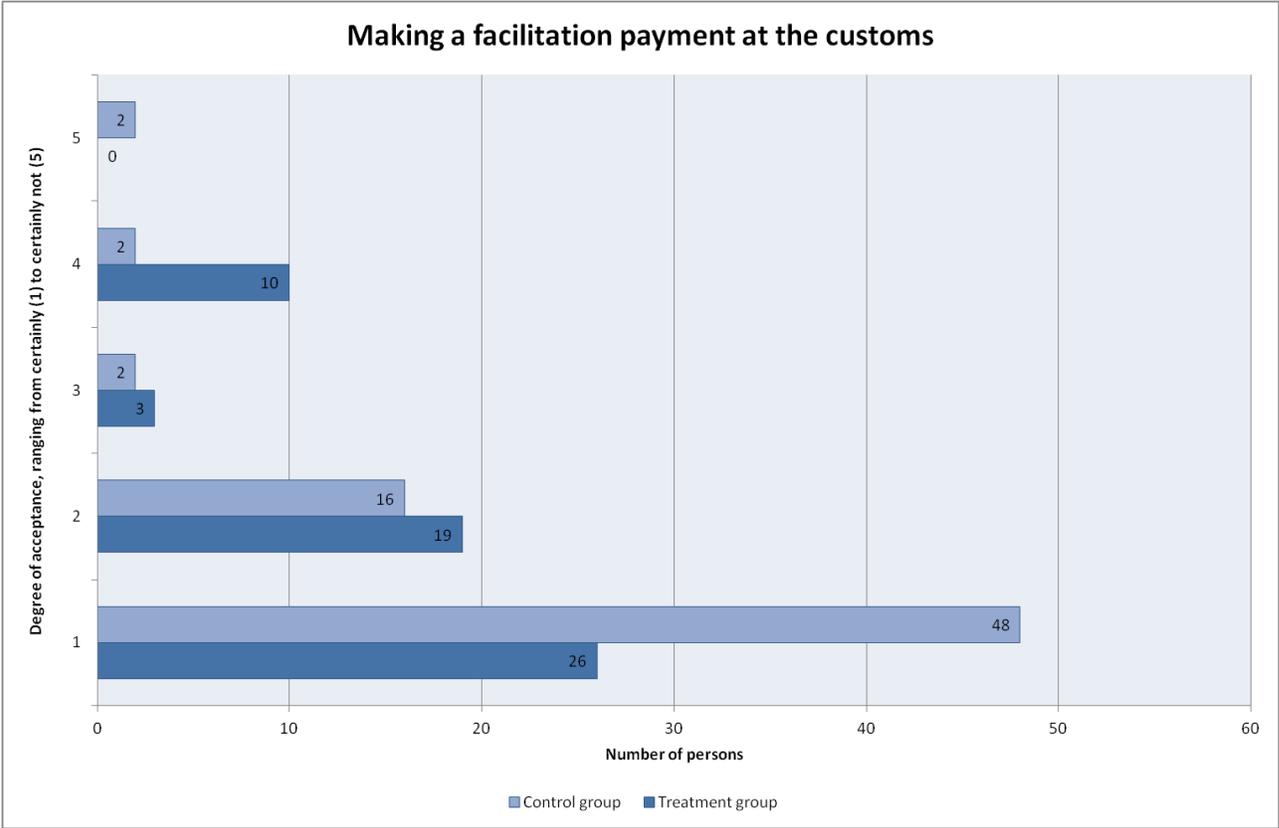


Figure 4.7. Making a facilitation payment

Source: own illustration

The third item facilitation payment shows a high degree of consent from both treatment and control group as depicted in figure 4.7. above. 26 persons of the treatment group and 48 persons of the control group would make a facilitation payment to customs authority. The instruction which forbids such kind of payments was given to the treatment group, but even with this instruction almost half of the person in the treatment group would make a facilitation payment in the situation which puts a lot of pressure on the participants in the experiment. The participants were confronted with a situation in which a team member is held up at the airport. Only with the payment of US\$ 150 which is requested by the authorities at the airport in Nigeria the person can pass. This shows that the introduction of an instruction does have a significant influence, but the

instruction can not hinder the engagement totally. The rejection by 2 persons in the control group, but no persons in the treatment group reveals that there are individuals who judge despite the fact that they did not receive an instruction in an ethically right way. Furthermore with an asymptotic two-tailed significance value of 0,005 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons making a facilitation payment to customs authorities to the same degree can be rejected with an error probability of 0,5%. This means that the hypothesis H1 is valid for the population. This result underpins research on regulatory aspects which deem coercive measures success factors: “Coercive enforcement measures remain an essential ingredient in any compliance regime, even where a high degree of compliance is realized via the twin forces of moral obligation and social influence.”²³⁴

Hypothesis on Reporting

The variable reporting was tested in 4 items: “Reading News”, “Documentations of invitations”, “Invitation of 3 customers” and “Awareness of theft”. For 2 of the items, the Mann-Whitney test shows an asymptotic significance value of 0,034 respectively 0,017 which indicates that the hypothesis both groups are the same (H0) is rejected. As the assumption of equal means is rejected, it can be concluded that there is a significant difference between the groups concerning the variable Reporting in the items “Reading News” and “Documentations of invitations”. The alternative hypothesis for the variable with that item would be “The more reportings are required the higher the influence on legal/ethical right decision.” For the item “Invitation of 3 customers” and “Awareness of theft” the hypothesis H0 could not be rejected.

²³⁴ Sutinen, J. & Kuperan, K. (1999). A socio-economic theory of regulatory compliance, *International Journal of Social Economics*, Vol. 26, No. 1/2/3, P. 187

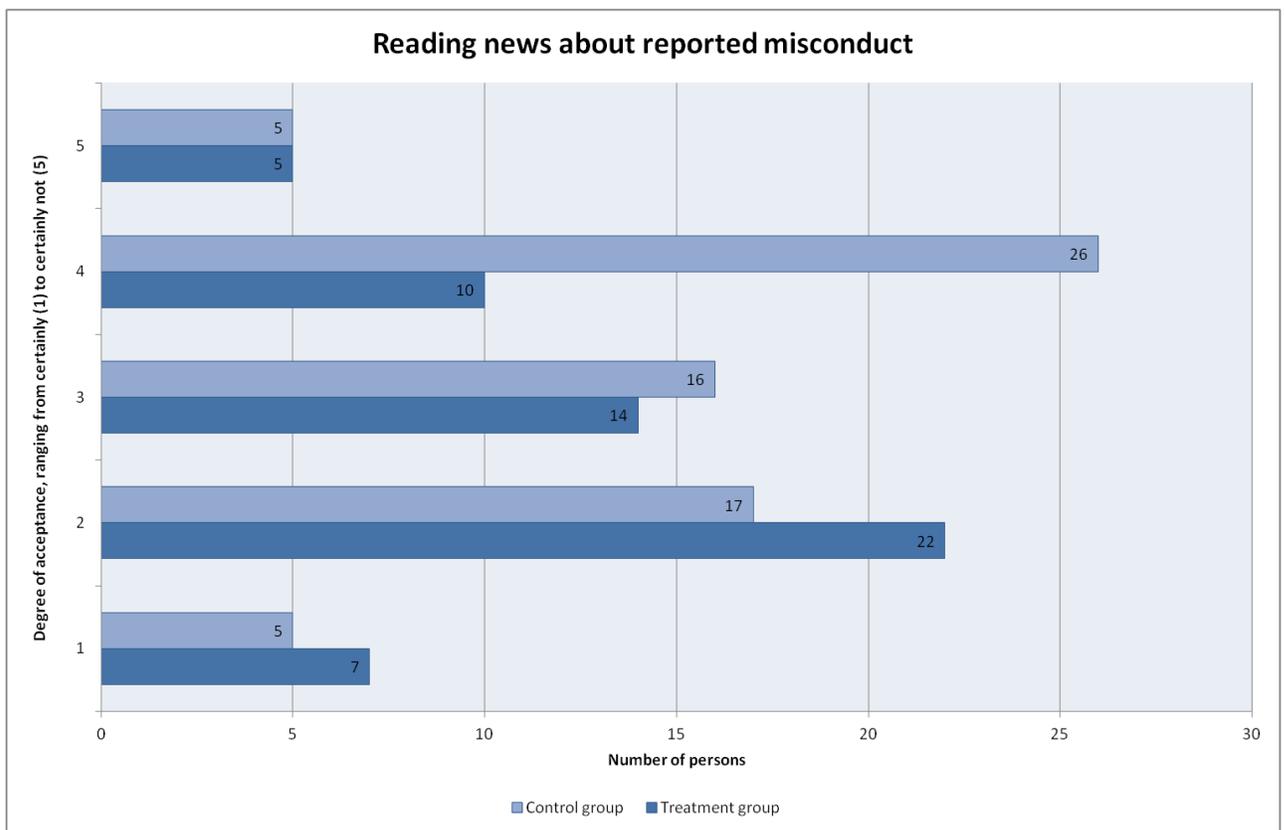


Figure 4.8. Reading news about reported misconduct

Source: own illustration

As shown in figure 4.8. in the item “Reading news” both the treatment and the control group are confronted with a scenario to circumvent existing internal rules to reach sales targets. The treatment group was manipulated by the fact that they were given information about a report which stated that the number of people who break company rules stays constant. The control group did not receive this information. It is striking that the control group scores ethically better than the treatment group generally. Hence it follows that the content of the report plays a major role in decreasing corruptive behavior. If reporting shows that corruptive or unethical behavior is tolerated, people feel reaffirmed in their unethical actions. With a two-tailed asymptotic significance value of 0,034 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons being sensitized ethically to the same degree can be rejected with an error probability of 3,4%. This means that the hypothesis H1 is valid for the population.

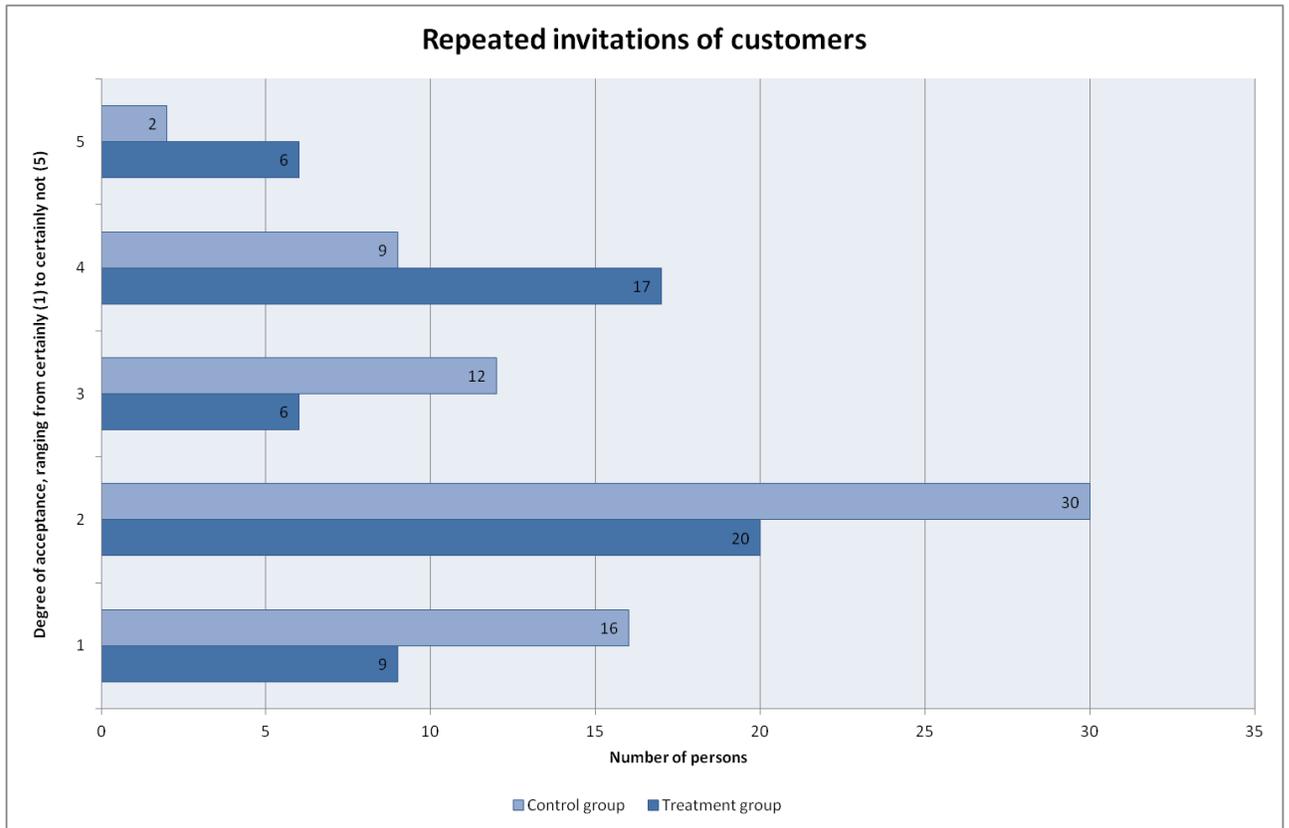


Figure 4.9. Repeated invitations of customers

Source: own illustration

The second item “Documentation of invitations” shows a strong influence in the taken decisions depicted in figure 4.9 above. In the experiment out of the 69 persons who were not sensitized ethically, 16 would certainly invite customers for the third time and 30 almost certainly. From the treatment group only 9 would certainly make a repeated invitation and 20 almost certainly. Contrary a rejection for a repeated invitation is given by the treatment group by 6 persons who would certainly not make an invitation and 17 persons who would rather not make an invitation. The manipulation of the variable was done via the request for the treatment group to document their decision to invite customers repeatedly and report this to the superior. In the handout it was requested to be careful when interacting with the competition and that there must be good reasons for getting together with the competition. Furthermore with an asymptotic two-tailed significance value of 0,017 it can be concluded that the hypothesis concerning ethically sensitized persons and ethically not sensitized persons making an invitation of customers to the

same degree can be rejected with an error probability of 1,7%. This means that the hypothesis H1 is valid for the population.

Hypothesis on Sanction

The hypothesis on sanction could not be rejected as the Mann-Whitney test for the items did not reveal any significant differences. Therefore there seems to be no difference between the treatment and the control group. This refers to all items which have been tested.

Inter group analysis

From the 5 individual variables not all could be attributed a high influence to stir ethical better behavior. In a further analysis the similarities between the German and Latvian population were researched. In the context of the variable *Information* for the Latvian population the provision of information material in general does not have an effect for changed decision making. For the German population general information material does have in one item an effect, namely the acceptance of an invitation by a competitor. The provision of general information material is limited for the German population, too. For the variable *Control* the analysis revealed for two out of four items the Latvian population shows a significant difference between the treatment and the control group. These two items are the “Payment to blacklisted external partner” with an asymptotic significance of 0,002 and the item “Payment to a supplier” with an asymptotic significance of 0,001. The German population shows also a significant difference between the control group and the treatment group for two out of four items. One of the items is the “Payment to blacklisted external partner” for which an asymptotic significance of 0,000 is reached. For the other item “Making a donation” an asymptotic significance of 0,014 is reached. Apparently both groups disapprove the payment of blacklisted external partners which is positive. For further control activities the announcement of checking of sponsoring and donation activities has a stronger influence on the German than the Latvian population. On the other hand the Latvian population would not make a payment to a supplier which hasn’t been double checked with another person. In the total population 3 items show a significant difference. Concerning the variable *Instruction* for two out of four items the Latvian population shows a significant difference between the treatment and the control group. These two items are the “Video beamer” with an asymptotic significance of 0,033 and the item “Mergers & Acquisitions” with an asymptotic significance of 0,000. The German population shows also a significant difference

between the control group and the treatment group for two out of four items. One of the items is the “Mergers & Acquisitions” for which an asymptotic significance of 0,000 is reached. For the other item “Facilitation payment” an asymptotic significance of 0,024 is reached. In the total population 3 items showed a significant difference. An 100% identical answer is reached concerning the engagement of an M&A transaction. It can be concluded that there is total agreement between both groups. Clear instructions about borrowing of company assets are consciously refused by one part of the population. A reason might be that the probands judge themselves superior to written instructions. On the other hand facilitation payments are more likely to be not to be made by the German population when treatment is given. For the variables *Sanction* and *Reporting* no discrepancies were shown. As there is no difference regarding the variable *Sanction* between the two groups it can be concluded that general sanctions or mentioning of activities does not have an influence on the groups. Only specific activities might have an influence. For the variable *Reporting* neither the Latvian nor the German population does show strong differences between treatment and control group. In fact the overall significance levels are the weakest with a value of 0,034 for “Reading News” and 0,017 for “Documentations of invitations”.

Overall, the hypothesis H0 could be rejected for 4 of 5 variables, as a significant difference between the treatment group and the control group was calculated in specific items. For one variable the significance level does not allow for rejection of the hypothesis H0. From the item analysis it can be shown that not all items led to this conclusion. A few of the items apparently do not have a significant influence. It appears that given information must be very precise and concrete otherwise it does not have the desired effect. General information is not helpful. Sanction mechanisms obviously play a minor role in improving ethical behavior. The reporting schemes or requirements do also not have a major impact on the sensitization of ethical acting. Practical conclusions are that CMS do have a positive influence generally. The highest influence can be attributed to activities which are based on Information, Controls, Instructions and Reporting. However these activities must be designed specifically to individual needs.

4.2.3. Reflection of results and critical discussion

Both in research and reality a tendency exists to either make the allegation that compliance is helpful for modern business conduct or to reject compliance in total. In reality, the opinion that

in several countries or industries corruption is necessary and therefore compliance activities are in vain is also articulated. The country argument also encompasses the question whether specific cultures are more prone to corruption than others. This topic is not in the focus of this dissertation, but while analyzing data from the laboratory experiment it was compared how the Latvian population stood in comparison to the German population. An ethnological research could enhance the research in this regard as a cross border managing approach is perceived to be more complex than the managing of conduct with a homogeneous culture.²³⁵ For theoretical purposes it is task of research to find out if certain activities do have an impact or not. Possible criticism could be that the conception about compliance activities might be perceived as trivial and logic. On the other hand critics allege that all compliance measures are in vain. Therefore the question which is the most promising activity is worth to be discussed. A CMS does not guarantee from failure in challenging environments. There are limits as to what a CMS can achieve, but it is worth to look at areas for improvement as in such a way the risk can be reduced. The reason for that is that in reality a myriad of influencing factors affect decisions as for example opinions from colleagues. A CMS can address only a limited number of risk areas which have to be selected. In the experiment it was successfully achieved to reduce the number of other influencing factors. The empirical part shows that the conception is not as trivial as it might be perceived by critics and that only in certain cases significant differences were made between the treatment group and the control group.

Triangulation with experts

In order to evaluate the results from the laboratory experiment further and determine whether the results have an impact in reality, experts in the field were interviewed. The experts were selected from different industries such as automotive supplier industry and pharmaceutical industry for example to guarantee an industry unbiased evaluation. By means of semi-structured interviews the results were discussed. The results, theoretical considerations and deductions were confronted with practical experiences and expert opinions.

²³⁵ Martin, A., Altizer, L. & Barrera, V.G. (2014). Understanding Compliance Risk Across Emerging Markets. *Journal of Business Compliance*, 1, 14, P. 14

Concerning the variable *Information* it was confirmed that specific information helps the employee to come to better ethical decisions. Therefore the provision of specific information concerning the acting in a competitive environment has also in reality a positive impact. Also the experiment did not show an impact of general information on the treatment group, this general information which might be provided through the tone from the top or a code of conduct is evaluated as highly important for an effective CMS. A possible explanation for the fact that general information did not have a high impact in the experiment might be that in reality it takes time till general information is accepted and internalized by the employees. Information has to be cascaded from the top management to the middle management etc. The middle management typically acts as multiplier of information and it takes time until general information is received by the employees. Therefore in the experiment the stimulus with single provisions of information might not be high enough to lead to an impact. Another expert stated that too general statements can also have a contrary reaction. Employees might judge that the authenticity and credibility displayed does not fit to the person who makes the announcement. The personal involvement of the management and the concrete acting are more important than what is written in brochures.

Discussing the results concerning the variable *Control* the experts explained that in reality also not every control helps. There is a danger that people stop thinking if there are too many controls implemented. It should also be considered that too many controls give a false security in the sense that employees think everything is controlled and they have no obligation to think for themselves or feeling being put under tutelage. It is also possible that too many controls lead to behavior which is compliant but produces a lot of frustration. It can lead to a situation where the single employee is not seen as trust worthy. This might harm the business not instantly, but in the midterm as employees might engage less. Ideally controls should be placed in the process to avoid additional work. From an expert point of view it is remarkable that the 4-eye principle shows impact as this is discussed heavily at the moment between practitioners. The experiment supports the argumentation that the 4-eye principle basically is apt as a control mechanism. The fact that not only implemented, but also announced control activities have an impact is very interesting and useful for the experts. It should be used more often in reality as it is a cost-effective device to influence the decision making of individuals.

It was noted by one of the experts that concerning the variable *Instruction* the scenario of the case of a possible contractual fine because of the denial of a facilitation payment is worthwhile pondering. If the company culture fits, the escalation should help. Instructions focus always on

very narrow situations. Instructions are good for specific situations and for employees who need clear direction. The problem is that in reality dilemmas bring people in a myriad of decisions. In reality compliance should be based on principles. People are forced to think for themselves. The reliance on only instructions is too risky. It must also be considered that often employees who violate instructions want to help the company. This leads to the discussion about why an employee breaks willingly a formalized instruction. If the tone from the top is not used properly, people violate instructions. Another expert pointed out that the power of instructions can be strengthened with the combination of sanctions. If people are told what kind of sanctions they can expect when they violate an instruction more adherence can be expected.

The effects of the variable *Sanction* were discussed controversially. In the experiment no significant difference could be shown between treatment and control group. Generally sanctions are evaluated as an appropriate activity to come to an effective CMS. However it was mentioned that statistics alone or general remarks as given in the experiment do not help. A direct impact for the individual must be given. In reality the highest impact is reached if sanctions happen in the immediate environment of a person. Organizations want concrete anonymous cases to which they can relate. If a CMS is running and implemented then sanctions do have a positive impact and enhance the efficiency. It was also acknowledged by one expert that it is difficult to demonstrate sanctions in a laboratory experiment which might not have such a deterring effect. For the variable *Reporting* the experts think that transparency created by reporting is helpful. One expert noted that if you do too much (as for example in the “Sunshine Act” which is applied in the medicine sector), the employees fulfill the reporting requirements, but are very frustrated. The amount of work which is put into reporting activities does not necessarily generate an ethical better outcome. Reporting about misconduct which is not followed up and which is delivered on an information basis can provoke negative actions as employees might think that unethical behavior is tolerated. Factors which are promising are a reporting which shows that misconduct is not tolerated, that mistakes are followed up and that sanction mechanisms are applied. One expert noted that in reality it must be understood that basis reporting helps in unimportant cases only. It can be seen as the minimum requirement. The reporting can be further developed if it is combined with an approval process concerning the activities about which reporting takes place. In very difficult conflict situations the reporting requirement does not help as the pressure on the individual is too high.

Overall it can be stated that the experts judge the results as valid and support the results gained in the experiment. The experts confirm the elements which have an impact. Furthermore they also believe that the CMS must be specifically designed to meet the organizational needs. One expert paraphrased it saying that technical elements are necessary, but on the long run, the right understanding, a strong company culture and a strong compliance culture are the success factors. Experts who were interviewed included Matthias Bruetting, Compliance Officer at Leoni; Juergen Pauthner-Seidel, Independent Compliance and Anti-Corruption Trainer and Consultant; Michael Thun, Chief Compliance Officer of Boehringer Ingelheim.

Considering the feasibility in reality nevertheless particular interest should be paid to the disadvantages and the advantages of the laboratory experiment.

Disadvantages of the laboratory experiment

Due to the nature of the experiment no social context is given in the laboratory. That means that participants might behave differently than they would in their normal social environment with peers, superiors etc. who might be colleagues. This artificial atmosphere might lead to results which are not applicable in reality. The validity is first of all given for the context of the experiment. As the sample group is small, internal validity is granted, but limited external validity is given. This means that results are limited valid for the experiment. The fact that an experiment is a no real life situation and therefore is not able to lead to real life results was taken into account by creating scenarios which actually happened in reality. These scenarios were made anonymous and brought to the attention of the participants. The disadvantage that results can not be generalized does not weigh too heavy as specific conclusions were drawn from the research work. A possible bias exists as participants might have been aware that they are participating in an experiment and for that reason the answers are not to be generalized with the risk that certain answers were desired. The confounding effects have been mentioned already. The participants were informed that there is no desired outcome and that no wrong answers are possible. Control and systematic manipulation are necessary to understand complex cause-effect relationships. The artificial setting is planned on purpose. Mundane realism characterized the transfer possibility in the reality. Experimental realism characterizes the degree of which participants experience the

situation as real and act normally.²³⁶ In discussion with the participants it was worked out that the scenarios were perceived as realistic and the participants did not have the feeling and the knowledge that they were participating in an experiment. Three of the participants stated that they would have liked to have more specific information on a scenario to come to a better decision.

Advantages of the laboratory experiment

A model depicts reality in a simplified way. It was the aim to establish a model which is flexible and can be adapted as the more sources or input is used the more diverse models are possible: “As compliance sources possibly give leeway in the interpretation, it is unlikely that two companies have exactly the same set of compliance requirements, or the same implementation thereof.”²³⁷ Unlike the model which is proposed by Schumm et al. which is focusing primarily on business processes and controls, the elaborated model is designed to encompass the most relevant compliance activities. It was decided to test the model in a laboratory experiment in order to test specific compliance activities. The reason to use a laboratory experiment has to do with the structure of the phenomenon corruption and its counterpart compliance. “Due in part to its covered nature, the analysis of corruption has been challenging to economists. Experimental economics, on the other hand, could become the most promising approach to understand the determinants of corruptibility, and test possible anti-corruption measures.”²³⁸ The testing of anti-corruption measures can be modulated if the CMS is considered as the unit detaining these measures. Compliance activities are measures applied with or without cause to prevent corruption. The existence of cause does not necessarily change the model, but it may put the focus on specific topics. Cause in this context might be the external

²³⁶ Dobbins, G.H., Lane, I.M. & Steiner, D.D. (1988). A Note on the Role of Laboratory Methodologies in Applied Behavioral Research: Don't Throw the Baby Out With the Bath Water. *Journal of Organizational Behavior*, 9, S. P. 285

²³⁷ Schumm, D., Anstett, T., Leymann, F. Schleicher, D. & Strauch, S. (2010). Essential Aspects of Compliance Management with Focus on Business Process Automation, In: Proceedings of the 3rd International Conference on Business Processes and Services Computing (BPSC) - INFORMATIK 2010, 27-28 September 2010, Leipzig, Germany, P.132

²³⁸ Armantier, O. & Boly, A. (2008). Can corruption be studied in the lab? Comparing a field and a lab experiment. Québec: Cirano, Scientif Series, P. 3

influence for example by public prosecution as a case of bribery was reported or by the tax authority which is demanding clarification concerning suspicious payments. Advantages of the laboratory experiment were first of all a high degree of control. With this high degree of control it was possible that variables can be manipulated in specific regards. The manipulation was done by the experimenter. This high degree of control was an advantage. Compared to a field study the laboratory experiment was relatively quickly possible and incurred relatively low costs. Compliance with formulated rules has been researched recently in a field experiment.²³⁹ But no focus on anti-corruption was given. Nevertheless it can be concluded from the field experiment, that a positive impact on behavioral compliance can be shown when communication measures such as emails are used to remind people of their contractual duties. The challenge lies in the application of the same testing conditions. “While much more research is needed to determine the efficacy of these methods, scientific experimentation under controlled conditions will be difficult indeed. In order to compare method A with method B, identical environments are necessary.”²⁴⁰

Cause-effect problem

From an impartial point of view concerning the independent variables which are manipulated it is not known certainly that these manipulations are responsible for the results. It must be considered that possibly other variables do have an influence which was not tested. It can be argued that students may act differently than people with business experience. Furthermore the age of students may be a problematic factor as life experience is limited compared to older participants. The question whether students behave differently in a laboratory experiment was researched already. For theoretical conceptions / theory testing it could not be shown that students act differently than other populations.²⁴¹ For applied research there has been no case

²³⁹ See Aspestequia, Funk & Iriberry, 2011. However the focus in this recent research was on compliance with ordinary rules in a public library. Aspestequia, Funk & Iriberry researched who of the persons borrowing of a public library responded to reminders which were given to parts of the research sample in order to remind the borrowers to return the books to the library.

²⁴⁰ McDonald, G. M. & Zepp, R. A. (2007). Business Ethics: Practical Proposals, *Journal of Management Development*, Vol. 8, No. 1, P. 64.

²⁴¹ Dipboye, R.L. & Flanagan, M.F. (1979). Research Settings in Industrial and Organizational Psychology: Are Findings in the Field more generalizable than in the laboratory? *American Psychologist*, 34, PP. 141ff

reported that there are differences in the acting between student groups. One interesting theory for that is that all people engaging in business activities and working as managers pass through similar systems of education. Therefore a person who has finished university and works in a business context applies the same structures and tools he or she has learned at university. Following this train of thought other persons who did similar studies, maybe even at the same university, will come to similar conclusions. With this socialisation or cultural programming it can be argued that all managers receive similar programming meaning that they may decide in similar patterns, no matter whether they are students or further progressed in their careers.

4.3. Costs and value add of compliance

The question about costs and value add of compliance is very important in reality and demands a discussion with a broader horizon. The value add can be defined in different terms such as image, reputation, internal improvements etc. For the purpose of the doctoral thesis a monetary definition is in scope. The value add is defined as the positive impact reached compared to a scenario where no impact from specific activities to reduce the overall costs is reached. Always keeping in mind that compliance is a cost driven function in the first place which is characterized by its governance character and primarily does not focus on profit, compliance management costs depend on the size of the organization, the quality etc. The basic costs to bear in mind are personnel costs, travel costs and infrastructure costs such as office space. CMS aim at risk reduction, therefore when a risk definition is created, it can be tried to mitigate this risk with specific activities. A risk for an organization may be defined as the impact it has on the organization (e.g. financially) and the probability of realization. This can be illustrated by one of the scenarios from the experiment. In one scenario participants of the experiment were asked whether they would make a facilitation payment to get through the customs quicker. This scenario is deemed realistic as the fact that facilitation payments at the borders are made in specific countries has a high probability. The impact of a facilitation payment is rather low for the organization, on an imaginative scale from 0 to 10, where 0 means no impact and 10 means high impact. The reason for that is that the execution of a facilitation payment can lead to investigations or fines, but they would be limited to a small number of persons being involved, possibly single persons. If not executed in a systematic way, the

organization itself would most likely be in focus of an investigation. In the example the facilitation payment might have an impact of 2, this means a rather low impact. The probability from 0 to 10 might be 4. This guessing is based on the experience management has with the application of such a forbidden practice. A simple formula could be formulated as impact times the applicability to calculate the risk for the organization. This risk could be evaluated with a monetary value connected to the calculated value. It must be kept in mind that risks are always a construct of perceptions. Risky activities for one group of persons might be completely risk free for another group of persons. The activities which are applied to prevent facilitation payments are the use of instructions, the information via a circular regarding the topic and the possibility to call a hotline telephone number with a compliance specialist who can consult. Detective mechanisms might be based on control activities. As long as the costs of compliance measures applied are smaller than the risk costs materialized in the risk scenario the application of CMS seems meaningful. For that purpose it is necessary to enhance the risk assessment with the costs which are incurred. If compliance measures can prevent the materialization of risk, the general equation would be: Calculated risk costs - Costs of compliance = Value add of compliance.

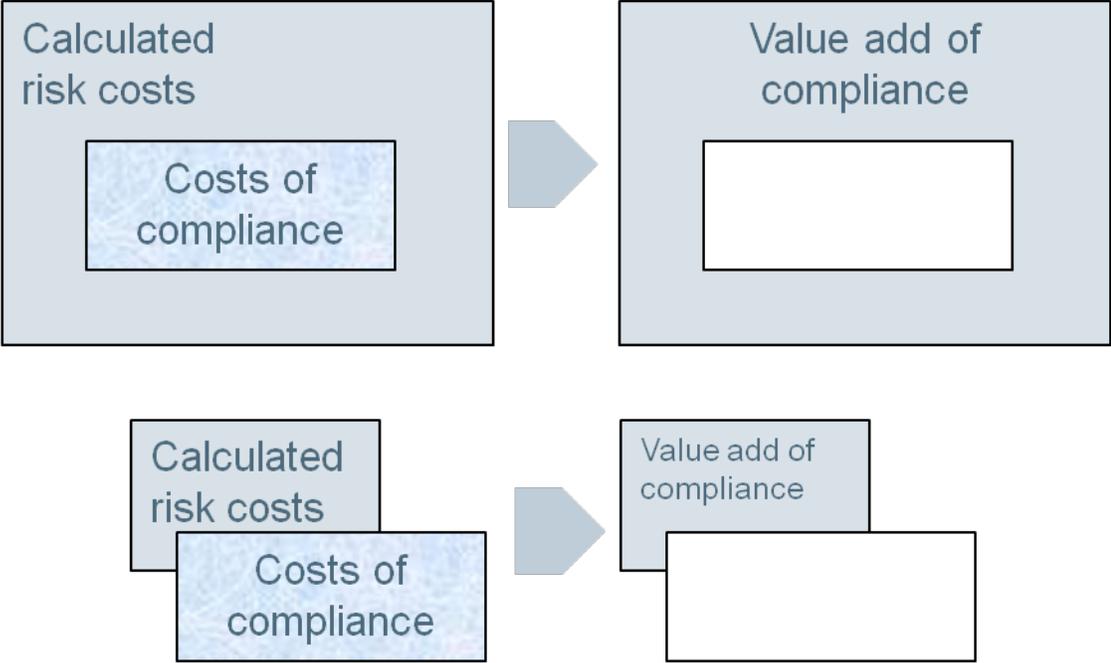


Figure 4.10. Relationship between costs and value add of compliance

Source: Own depiction

The figure 4.10. above shows that the value add of compliance depends on the calculated risk costs and the costs of CMS activities which have been deducted from them. The benefit over the period of time would be to see what kind of risks can be addressed via CMS and which have also a financial impact. Costs depend on the maturity of the CMS and the concrete activities as for example the roll-out of a training concept. If with the training concept and activities an antitrust violation can be avoided a significant million € saving can be reached which would be an enormous value add. Admittedly the monetary consideration is only one way to look at the value add of compliance. A pure focus on costs would be a limiting view as effects which are not easily measurable are not considered. The costs which compliance activities inherently cause must be seen in proportion to the risk costs. If risk costs are very high then seemingly moderate to high costs of compliance can still produce a value add as the value add outweighs the risk costs. The same costs of compliance in a risk free environment do not produce a value add as they can be judged superfluous. In a risk free environment expenses for compliance can be saved. Therefore a regular cost monitoring seems necessary. Only with a holistic view on both costs and value add a weighted judgment of the right balance is possible.

4.4. Conclusion, outlook and suggestions

CMS do have a positive influence generally. The highest influence can be attributed to activities which are based on Information, Controls, Instructions and Reporting. However these activities must be designed specifically to individual needs. The postulated hypotheses could be kept partly. A tendency was shown that a CMS does have a positive impact on the acting. However not all hypotheses could be kept. Furthermore the difference between the means of the two groups were sometimes marginal so that not always a cause-effect relationship could be concluded. For the practical part, it is suggested to evaluate existing CMS in the light of the newly gained knowledge. In this way the scope of a CMS could be evaluated. A cost-benefit analysis would be an option to judge whether costs could be reduced and a focus on the activities which bring most value-add would be reached. For the theoretical part the validity of the experiment could be further extended by enlarging the sample group. Therefore the design of a further experiment would be a logical step. Within the compliance management a black and white view is limiting. Compliance management deals at its very heart with the dilemmas in daily

operations. These dilemmas need careful and weighted judgment. If management wants to improve their ethical standing than it must take the time to think about its position: “Without adequate direction and well thought-out plans based on existing research findings, it is difficult for those responsible to manage and enhance the ethical behaviour of employees.”²⁴² The deployment of a CMS might lead to new alternatives which were not even thought about before. It is not the focus of a CMS to forbid all activities, but to govern the compliance program for the organization in order to ensure behavior in accordance with the law, but also in order to promote ethical business. A perceived gap between compliance requirements and the degree of free will within the employees can be bridged via the formulation of values: “We argue, consistent with the findings of others in the field of ethics, that a values-based approach, in which organizations seek to motivate employees to develop and act on ethical values is a more effective approach to managing rule adherence. This argument is supported by empirical research, which particularly points to the importance of values as an antecedent of accepting rules.”²⁴³ In the future the topics risk management, quality management and compliance are likely to grow together. A combined function will enable organizations to apply a lean compliance management while addressing all, but not only legal requirements for the right business conduct. An umbrella function which encompasses all governance topics might be an option for the future. With the gained knowledge, future research can focus more on aspects of values and also the calculation of costs of compliance activities. Single activities as the conduction of trainings might have a basic positive effect, but the timing and number of trainings which are prescribed as mandatory could have a negative impact on the employees. Therefore it is necessary to consider the single topics always in conjunction with the broader picture. Another area of research would lie in the area of cultural aspects. There are researches who propose cultural influences and economic strength: “(...) prosperous countries create an environment where firms are able to conduct business ethically. Firms based in affluent countries internalize ethical business practices that they are likely to transmit in their international operations.”²⁴⁴ The internationalization is therefore seen as a mean

²⁴² McDonald, G. M. & Zepp, R. A. (2007). Business Ethics: Practical Proposals, *Journal of Management Development*, Vol. 8, No. 1, P. 55

²⁴³ Tyler, T., Dienhart, J. & Thomas, T. (2008). The Ethical Commitment to Compliance: Building Value-Based Cultures. *California Management Review*, 50, 2, P. 43

²⁴⁴ Sanyal, R. & Guvenli, T. (2009). The propensity to bribe in international business: the relevance of cultural

to multiply best-practices regarding ethical behavior. The question about the ideal CMS is foremost a question about the risk portfolio, the size of the company and the attitude of its employees. An organization being located in rather low risk countries and operating in these countries is exposed to a relative low level of risk and might therefore not need a sophisticated CMS. Multinational conglomerates are encountered with a higher risk portfolio as they operate in lots of countries, several of these are more risky countries. The size of the company has also an impact of the CMS. A small or medium enterprise might not have the need to formulate a CMS as the owner can give clear directions and the employees know what is expected of them. The bigger the organization the more probable is the need for a stronger formulated CMS. Training activities which are necessary as preventive measure are resource intensive and demand if done on a personal base a CMS which has the capability to provide personal trainings, possibly tailored to specific target groups.

The research shows that certain elements do have a substantial impact. In reality the focus should be on CMS elements which have a high impact.

Recommendations for researchers

- Utilize the results concerning specific items with significant influence to develop a model with key performance indicators or metrics to steer a CMS
- Unify the approaches of process compliance and business conduct compliance to the proposed holistic compliance management
- Elaborate on interfaces to related disciplines as the risk management in order to enhance the value add of CMS
- Utilize the results on control, information, instruction and reporting activities to substantiate research on risk management (both top-down and bottom-up)
- Examine cross-functional disciplines as for example moral philosophy or educational sciences to obtain an even more complete assessment of the value debate

- Combine research results with country cultural research to enhance proposed activities with a cultural specific application
- Enlarge the focus to compliance and social media taking into account the impact of new communication channels to shape the compliance image of an organization
- Evaluate whether a field experiment in the context of organizational culture could enhance the results
- Align with researchers who conduct studies on corruption levels in countries to propose most relevant activities
- Triangulate own research with results obtained to enlarge research methods
- Develop an integrated approach for the governance framework of organizations

Recommendations for practitioners

- Implement based on the findings high ethical standards while keeping high business performance
- Utilize the results to reflect on the implemented measures and identify possible gaps both in organization and processes
- As not all compliance elements do have a positive effect, an analysis of the risk is crucial in order to select the right elements and establish a cost efficient CMS
- Provide data and access to test the theoretical model and allow for mockup demonstrations to familiarize with the topic
- Calculate the business case for the implementation of a new CMS in comparison to the current situation
- Rethink efforts put into risk management and evaluate them in the light of the new findings
- Combine the CMS with already existing systems as for example an Enterprise Risk Management to realize efficiency gains
- Decide whether to anchor compliance in the incentive system of the management to reach organizational-wide acceptance
- If a CMS is already in place, judge on the necessity of a certification by an external

- Align activities with the knowledge-base of employees to avoid redundancies in learning experiences
- Judge on risk costs and compliance costs to figure out whether a capital efficient CMS is established
- Use the results in connection with sources which are available in the organization in real life as for example audit reports to evaluate if patterns in specific acting exists
- Develop trainings on the risk area most relevant such as anti-corruption, antitrust and specific topics such as gifts & hospitality
- Focus activities on most relevant topics for the organization, consider an holistic approach including topics like Anti-Money-Laundering or data protection
- Use compliance as competitive advantage when addressing new customers

Recommendations for regulators

- The number of laws and regulations is considered high already, therefore carefully evaluate the introduction of new restrictions against the benefit of more transparency
- The enforcement of existing laws and regulations can be strengthened in order to receive a better adherence by market participants
- CMS activities can be recognized as efforts when violations take place in order to determine a degree of penalty which is deterrent but adequate
- Appreciate the efforts brought forward by both public and private organizations and institutions to contribute to the debate against corruption
- If misconduct occurs, acknowledge preventive measures such as the voluntary application of standards or best practices, e.g. control activities in dealing with business partners
- Include data protection laws to the realm of Compliance to enforce standards
- Increase the transparency of organizations in the combat against corruption, e.g. by introducing a mandatory register with company profiles for public bidding procedures

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Appendixes

1. Intermediate data

Intermediate data clustered for variables of the total population

Mann-Whitney test for variable Control

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Making a donation_Control	Treatment	58	73,89	4285,50
	Control	69	55,69	3842,50
	Gesamt	127		
Payment to "black listed" external partner_Control	Treatment	57	81,65	4654,00
	Control	69	48,51	3347,00
	Gesamt	126		
Payment to supplier_Control	Treatment	58	73,85	4283,50
	Control	69	55,72	3844,50
	Gesamt	127		
Announcement of Audit_Control	Treatment	58	67,34	3906,00
	Control	70	62,14	4350,00
	Gesamt	128		

Statistik für Test(a)

	Making a donation_Control	Payment to "black listed" external partner_Control	Payment to supplier_Control	Announcement of Audit_Control
Mann-Whitney-U	1427,500	932,000	1429,500	1865,000
Wilcoxon-W	3842,500	3347,000	3844,500	4350,000
Z	-2,885	-5,211	-2,846	-,824
Asymptotische Signifikanz (2-seitig)	,004	,000	,004	,410

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Information

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Invitation to go skiing with competitor_Information	Treatment	58	73,71	4275,00
	Control	70	56,87	3981,00
	Gesamt	128		
Adapting Pricing strategy_Information	Treatment	58	66,85	3877,50
	Control	70	62,55	4378,50
	Gesamt	128		
Logistic partner East Europe_Information	Treatment	58	65,35	3790,50
	Control	70	63,79	4465,50
	Gesamt	128		
Accepting lying_Information	Treatment	58	69,00	4002,00
	Control	69	59,80	4126,00
	Gesamt	127		
Invitation Top customer to ski event_Information	Treatment	58	65,41	3794,00
	Control	70	63,74	4462,00
	Gesamt	128		

Statistik für Test(a)

	Invitation to go skiing with competitor_Information	Adapting Pricing strategy_Information	Logistic partner East Europe_Information	Accepting lying_Information	Invitation Top customer to ski event_Information
Mann-Whitney-U	1496,000	1893,500	1980,500	1711,000	1977,000
Wilcoxon-W	3981,000	4378,500	4465,500	4126,000	4462,000
Z	-2,615	-,690	-,246	-1,489	-,264
Asymptotische Signifikanz (2-seitig)	,009	,490	,805	,137	,791

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Instruction

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Check of Business Consultant_Instruction	Treatment	57	66,18	3772,50
	Control	69	61,28	4228,50
	Gesamt	126		
Video Beamer_Instruction	Treatment	57	72,03	4105,50
	Control	69	56,46	3895,50
	Gesamt	126		
Mergers and Aquisition_Instruction	Treatment	58	90,36	5241,00
	Control	70	43,07	3015,00
	Gesamt	128		
Facilitation payment_Instruction	Treatment	58	73,52	4264,00
	Control	70	57,03	3992,00
	Gesamt	128		

Statistik für Test(a)

	Check of Business Consultant_Inst ruction	Video Beamer_Instru ction	Mergers and Aquisition_Instr uction	Facilitation payment_Inst ruction
Mann-Whitney-U	1813,500	1480,500	530,000	1507,000
Wilcoxon-W	4228,500	3895,500	3015,000	3992,000
Z	-,821	-2,581	-7,388	-2,825
Asymptotische Signifikanz (2-seitig)	,411	,010	,000	,005

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Reporting

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Reading news_Reporting	Treatment	58	56,69	3288,00
	Control	69	70,14	4840,00
	Gesamt	127		
Documentation of invitations_Reporting	Treatment	58	72,16	4185,50
	Control	69	57,14	3942,50
	Gesamt	127		
Awareness of theft_Reporting	Treatment	57	65,85	3753,50
	Control	69	61,56	4247,50
	Gesamt	126		
Invitation of 3 customers_Reporting	Treatment	58	66,99	3885,50
	Control	70	62,44	4370,50
	Gesamt	128		

Statistik für Test(a)

	Reading news_Reporting	Documentation of invitations_Reporting	Awareness of theft_Reporting	Invitation of 3 customers_Reporting
Mann-Whitney-U	1577,000	1527,500	1832,500	1885,500
Wilcoxon-W	3288,000	3942,500	4247,500	4370,500
Z	-2,124	-2,390	-,703	-,739
Asymptotische Signifikanz (2-seitig)	,034	,017	,482	,460

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Sanction

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Reading Circulars_Sanction	Treatment	58	67,06	3889,50
	Control	70	62,38	4366,50
	Gesamt	128		
Theft of tools_Sanction	Treatment	58	62,07	3600,00
	Control	70	66,51	4656,00
	Gesamt	128		
Favor friend with rental contracts_Sanction	Treatment	57	65,39	3727,50
	Control	70	62,86	4400,50
	Gesamt	127		
Purchase manager taking a gift_Sanction	Treatment	58	69,42	4026,50
	Control	70	60,42	4229,50
	Gesamt	128		

Statistik für Test(a)

	Reading Circulars_Sanction	Theft of tools_Sanction	Favor friend with rental contracts_Sanction	Purchase manager taking a gift_Sanction
Mann-Whitney-U	1881,500	1889,000	1915,500	1744,500
Wilcoxon-W	4366,500	3600,000	4400,500	4229,500
Z	-,741	-,762	-,408	-1,417
Asymptotische Signifikanz (2-seitig)	,459	,446	,683	,156

a Gruppenvariable: Type of Group

2. Intermediate data 2

Intermediate data clustered for variables of the German population

Mann-Whitney test for variable Control

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Making a donation_Control	Treatment	29	34,74	1007,50
	Control	29	24,26	703,50
	Gesamt	58		
Payment to "black listed" external partner_Control	Treatment	29	38,16	1106,50
	Control	29	20,84	604,50
	Gesamt	58		
Payment to supplier_Control	Treatment	29	31,09	901,50
	Control	30	28,95	868,50
	Gesamt	59		
Announcement of Audit_Control	Treatment	29	31,86	924,00
	Control	30	28,20	846,00
	Gesamt	59		

Statistik für Test(a)

	Making a donation_Control	Payment to "black listed" external partner_Control	Payment to supplier_Control	Announcement of Audit_Control
Mann-Whitney-U	268,500	169,500	403,500	381,000
Wilcoxon-W	703,500	604,500	868,500	846,000
Z	-2,448	-4,091	-,496	-,845
Asymptotische Signifikanz (2-seitig)	,014	,000	,620	,398

a Gruppenvariable: Type of Group

Mann-Whitney test for variable information

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Invitation to go skiing with competitor_Information	Treatment	29	36,93	1071,00
	Control	30	23,30	699,00
	Gesamt	59		
Adapting Pricing strategy_Information	Treatment	29	30,50	884,50
	Control	30	29,52	885,50
	Gesamt	59		
Logistic partner East Europe_Information	Treatment	29	31,81	922,50
	Control	30	28,25	847,50
	Gesamt	59		
Accepting lying_Information	Treatment	29	30,76	892,00
	Control	29	28,24	819,00
	Gesamt	58		
Invitation Top customer to ski event_Information	Treatment	29	32,02	928,50
	Control	30	28,05	841,50
	Gesamt	59		

Statistik für Test(a)

	Invitation to go skiing with competitor_Information	Adapting Pricing strategy_Information	Logistic partner East Europe_Information	Accepting lying_Information	Invitation Top customer to ski event_Information
Mann-Whitney-U	234,000	420,500	382,500	384,000	376,500
Wilcoxon-W	699,000	885,500	847,500	819,000	841,500
Z	-3,124	-,235	-,829	-,662	-,921
Asymptotische Signifikanz (2-seitig)	,002	,815	,407	,508	,357

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Instruction

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Check of Business Consultant_Instruction	Treatment	29	33,05	958,50
	Control	29	25,95	752,50
	Gesamt	58		
Video Beamer_Instruction	Treatment	29	30,86	895,00
	Control	29	28,14	816,00
	Gesamt	58		
Mergers and Aquisition_Instruction	Treatment	29	40,50	1174,50
	Control	30	19,85	595,50
	Gesamt	59		
Facilitation payment_Instruction	Treatment	29	34,43	998,50
	Control	30	25,72	771,50
	Gesamt	59		

Statistik für Test(a)

	Check of Business Consultant_Inst ruction	Video Beamer_Instru ction	Mergers and Aquisition_Instr uction	Facilitation payment_Inst ruction
Mann-Whitney-U	317,500	381,000	130,500	306,500
Wilcoxon-W	752,500	816,000	595,500	771,500
Z	-1,682	-,781	-4,720	-2,260
Asymptotische Signifikanz (2-seitig)	,093	,435	,000	,024

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Reporting

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Reading news_Reporting	Treatment	29	26,07	756,00
	Control	30	33,80	1014,00
	Gesamt	59		
Documentation of invitations_Reporting	Treatment	29	32,76	950,00
	Control	29	26,24	761,00
	Gesamt	58		
Awareness of theft_Reporting	Treatment	29	31,81	922,50
	Control	29	27,19	788,50
	Gesamt	58		
Invitation of 3 customers_Reporting	Treatment	29	32,76	950,00
	Control	30	27,33	820,00
	Gesamt	59		

Statistik für Test(a)

	Reading news_Reporting	Documentation of invitations_Reporting	Awareness of theft_Reporting	Invitation of 3 customers_Reporting
Mann-Whitney-U	321,000	326,000	353,500	355,000
Wilcoxon-W	756,000	761,000	788,500	820,000
Z	-1,778	-1,517	-1,092	-1,313
Asymptotische Signifikanz (2-seitig)	,075	,129	,275	,189

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Sanction

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Reading Circulars_Sanction	Treatment	29	34,09	988,50
	Control	30	26,05	781,50
	Gesamt	59		
Theft of tools_Sanction	Treatment	29	30,60	887,50
	Control	30	29,42	882,50
	Gesamt	59		
Favor friend with rental contracts_Sanction	Treatment	29	28,79	835,00
	Control	30	31,17	935,00
	Gesamt	59		
Purchase manager taking a gift_Sanction	Treatment	29	34,05	987,50
	Control	30	26,08	782,50
	Gesamt	59		

Statistik für Test(a)

	Reading Circulars_Sanction	Theft of tools_Sanction	Favor friend with rental contracts_Sanction	Purchase manager taking a gift_Sanction
Mann-Whitney-U	316,500	417,500	400,000	317,500
Wilcoxon-W	781,500	882,500	835,000	782,500
Z	-1,862	-,303	-,559	-1,846
Asymptotische Signifikanz (2-seitig)	,063	,762	,576	,065

a Gruppenvariable: Type of Group

3. Intermediate data 3

Intermediate data clustered for variables of the Latvian population

Mann-Whitney test for variable Control

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Making a donation_Control	Treatment	29	39,52	1146,00
	Control	40	31,73	1269,00
	Gesamt	69		
Payment to "black listed" external partner_Control	Treatment	28	43,11	1207,00
	Control	40	28,48	1139,00
	Gesamt	68		
Payment to supplier_Control	Treatment	29	43,24	1254,00
	Control	39	28,00	1092,00
	Gesamt	68		
Announcement of Audit_Control	Treatment	29	34,74	1007,50
	Control	40	35,19	1407,50
	Gesamt	69		

Statistik für Test(a)

	Making a donation_Control	Payment to "black listed" external partner_Control	Payment to supplier_Control	Announcement of Audit_Control
Mann-Whitney-U	449,000	319,000	312,000	572,500
Wilcoxon-W	1269,000	1139,000	1092,000	1007,500
Z	-1,668	-3,098	-3,284	-,097
Asymptotische Signifikanz (2-seitig)	,095	,002	,001	,923

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Information

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Invitation to go skiing with competitor_Information	Treatment	29	35,02	1015,50
	Control	40	34,99	1399,50
	Gesamt	69		
Adapting Pricing strategy_Information	Treatment	29	35,76	1037,00
	Control	40	34,45	1378,00
	Gesamt	69		
Logistic partner East Europe_Information	Treatment	29	33,34	967,00
	Control	40	36,20	1448,00
	Gesamt	69		
Accepting lying_Information	Treatment	29	38,47	1115,50
	Control	40	32,49	1299,50
	Gesamt	69		
Invitation Top customer to ski event_Information	Treatment	29	33,21	963,00
	Control	40	36,30	1452,00
	Gesamt	69		

Statistik für Test(a)

	Invitation to go skiing with competitor_Information	Adapting Pricing strategy_Information	Logistic partner East Europe_Information	Accepting lying_Information	Invitation Top customer to ski event_Information
Mann-Whitney-U	579,500	558,000	532,000	479,500	528,000
Wilcoxon-W	1399,500	1378,000	967,000	1299,500	963,000
Z	-,006	-,288	-,612	-1,280	-,665
Asymptotische Signifikanz (2-seitig)	,995	,773	,541	,200	,506

a Gruppenvariable: Type of Group

Mann-Whitney test for variable instruction

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Check of Business Consultant_Instruction	Treatment	28	32,48	909,50
	Control	40	35,91	1436,50
	Gesamt	68		
Video Beamer_Instruction	Treatment	28	40,41	1131,50
	Control	40	30,36	1214,50
	Gesamt	68		
Mergers and Aquisition_Instruction	Treatment	29	50,36	1460,50
	Control	40	23,86	954,50
	Gesamt	69		
Facilitation payment_Instruction	Treatment	29	39,38	1142,00
	Control	40	31,83	1273,00
	Gesamt	69		

Statistik für Test(a)

	Check of Business Consultant_Inst ruction	Video Beamer_Instru ction	Mergers and Aquisition_Instr uction	Facilitation payment_Inst ruction
Mann-Whitney-U	503,500	394,500	134,500	453,000
Wilcoxon-W	909,500	1214,500	954,500	1273,000
Z	-,827	-2,137	-5,703	-1,717
Asymptotische Signifikanz (2-seitig)	,408	,033	,000	,086

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Reporting

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Reading news_Reporting	Treatment	29	30,97	898,00
	Control	39	37,13	1448,00
	Gesamt	68		
Documentation of invitations_Reporting	Treatment	29	39,67	1150,50
	Control	40	31,61	1264,50
	Gesamt	69		
Awareness of theft_Reporting	Treatment	28	34,34	961,50
	Control	40	34,61	1384,50
	Gesamt	68		
Invitation of 3 customers_Reporting	Treatment	29	35,21	1021,00
	Control	40	34,85	1394,00
	Gesamt	69		

Statistik für Test(a)

	Reading news_Reporting	Documentation of invitations_Reporting	Awareness of theft_Reporting	Invitation of 3 customers_Reporting
Mann-Whitney-U	463,000	444,500	555,500	574,000
Wilcoxon-W	898,000	1264,500	961,500	1394,000
Z	-1,326	-1,742	-,063	-,078
Asymptotische Signifikanz (2-seitig)	,185	,082	,950	,938

a Gruppenvariable: Type of Group

Mann-Whitney test for variable Sanction

Ränge

	Type of Group	N	Mittlerer Rang	Rangsumme
Reading Circulars_Sanction	Treatment	29	32,72	949,00
	Control	40	36,65	1466,00
	Gesamt	69		
Theft of tools_Sanction	Treatment	29	31,45	912,00
	Control	40	37,58	1503,00
	Gesamt	69		
Favor friend with rental contracts_Sanction	Treatment	28	37,48	1049,50
	Control	40	32,41	1296,50
	Gesamt	68		
Purchase manager taking a gift_Sanction	Treatment	29	35,02	1015,50
	Control	40	34,99	1399,50
	Gesamt	69		

Statistik für Test(a)

	Reading Circulars_Sanction	Theft of tools_Sanction	Favor friend with rental contracts_Sanction	Purchase manager taking a gift_Sanction
Mann-Whitney-U	514,000	477,000	476,500	579,500
Wilcoxon-W	949,000	912,000	1296,500	1399,500
Z	-,854	-1,408	-1,159	-,006
Asymptotische Signifikanz (2-seitig)	,393	,159	,246	,995

a Gruppenvariable: Type of Group

4. Example of questionnaire treatment group

“A day at the office” – 1st round

You have successfully finished your studies and are in your first job position as Business Development Manager. Once that you are settled in your job, you have interesting days with lots of decisions to take.

But before you start, please read the additional information which is handed out separately.

It is Tuesday morning and you start your work day in the office. Please carefully read the different scenarios and afterwards come to a decision by marking the box.

9.00: You find an invitation for lunch from your colleague. Carol proposes that you go for a business lunch to discuss the latest product developments of the competition which entered the market. Do you go for lunch with your colleague?

Certainly Almost certainly Maybe Rather not Certainly not

9.15 – 11.15: You meet with your team to discuss market segments and develop new ideas for segmentation. The proposed ideas seem rather complicated to you and will make it more difficult to address the target groups from your point of view. Do you express your concerns?

Certainly Almost certainly Maybe Rather not Certainly not

11.15: You are invited from one of your competitors to go on a weekend-trip skiing. The trip is paid for by the competitor so that your department does not have any costs to bear. Goal of the trip is to get to know each other and get a common understanding of the market and the customers. Do you accept the invitation?



Certainly Almost certainly Maybe Rather not Certainly not

12.00-13.30: Lunch – you decide for a healthy meal!

13.30: Time to catch up on new information. The quarterly report shows that the company is slightly behind its goals. A report on violations of company rules shows that the number of people breaking the rules (e.g. travel guideline) is constant. The news about the competitors show that other companies struggle with the same conditions.

Do you consider circumventing internal rules (e.g. getting a time-consuming approval by the R&D department for a product) to reach the sales targets?



Certainly Almost certainly Maybe Rather not Certainly not

14.30: You have a request for a donation to the local community center. The request was given to you by a friend who studied together with you. The donation is only 200 € and the purpose is to collect money from private organizations to enhance the facilities of the community center. You still have budget left for this fiscal year so that the amount would really not be a problem for your department. Furthermore the friend indicates that he is interested in business with your company. The internal audit function regularly checks spendings for external purposes such as sponsorings and donations. Do you make the donation?



Certainly Almost certainly Maybe Rather not Certainly not

15.30-17.00: You need to prepare a presentation for the Management Board. While you are working on the presentation, emails are coming in and disturb you from your presentation. Do you close your email program so that you do not receive emails for the next 1 ½ hours?



Certainly Almost certainly Maybe Rather not Certainly not

17.00-18.15: You read the new circulars which give a lot of restrictions and regulations concerning safety, working hours etc. Another one deals with environmental requirements and conduct with external partners.

Anyone who violates these guidelines will be sanctioned with an informal warning at least.

Do you believe many employees will break these guidelines and will not act according to them?



Certainly Almost certainly Maybe Rather not Certainly not

18.15: Your boss comes in and asks you to write down all your expenses which you had for the company. She explains to you that all expenses have to be shown to the new Head of the department regularly from now on. For you this means mostly invitations for lunch with external guests like customers for example. You were just thinking about inviting good customers for the 3rd time this month.

Do you still invite them?



Certainly Almost certainly Maybe Rather not Certainly not

You finish at 18.30 and leave the office.

“A day at the office” – 2nd round

It is Wednesday morning and you start your work day in the office. On the way to your desk you see a CEO statement on one of the screens in the entrance hall: “Play to win, but be fair – let’s gain market share.”

Please carefully read the different scenarios and afterwards come to a decision by marking the box.

8.30: The company for which you work fabricates special medical equipment. Your company and one other company are the only ones which are capable of producing the special equipment. A friend who works for a company which is in competition with your company calls you in regard to pricing strategies. According to him, the prices for the end customer should be increased by about 5%. He proposes that you increase the prices, too.

Therefore there would be no disadvantage for the customer as the level stays equal, but both of you would have a higher profit – a “win-win situation” as he states it. Will you increase the prices?



Certainly Almost certainly Maybe Rather not Certainly not

9.00 - 9.15: You get a call from a colleague who works in one of the factories where the medical equipment is produced. He tells you that two of the workers were fired because they stole tools. If you were in responsibility would you have kept them?



Certainly Almost certainly Maybe Rather not Certainly not

9.15 – 11.30: Your colleague who was supposed to analyze the market data for the segmentation is apparently ill. As the segmentation discussion was only yesterday, the topic needs some work and you decide to get into the analysis yourself. When you analyze the data you find that the concerns you had yesterday about addressing the target group are confirmed. Are you worried?



Certainly Almost certainly Maybe Rather not Certainly not

11.30: You are hungry as you didn't have breakfast! You notice that your team is gone for lunch already as you were so busy with the analysis. You decide to go to the coffee shop and get a quick lunch there. While you are there you think about how to improve the deliverance performance in East Europe, especially in Russia where your company has business. You can use the services of a new logistic company to deliver goods to East Europe. The price is cheaper than with the normal logistic companies, but you are not sure why and how the costs are covered. Maybe this company saves on personnel, maybe on security. There might be a chance that parts of your payments are used to "facilitate" the custom formalities at the Eastern borders, meaning money is used to bribe custom agents. Will you use the services?



Certainly Almost certainly Maybe Rather not Certainly not

12.00-12.30: You return a few calls which you couldn't answer in the morning. Your mother called and reminded you of your aunt's birthday. You might call your aunt later tonight or now. Do you call her now?



Certainly Almost certainly Maybe Rather not Certainly not

12.30-13.30: In your bi-monthly Business development meeting with your superior you discuss your budget and plans until the end of the year.

You have budget of 5.000 € left to be used by the end of the year. Your superior has the idea to invite your Top 5 customers who are the CEO of a mid-sized hospital, 2 senior account managers

from a big cooperation, the mayor of the town and the president of the university who constantly buys your products for a special event which is organized by your secretary: 2 days skiing with a one night stay in 5* hotel at approx. 1.000 € each.

It is the first time you can afford such an event and your superior is sure that it helps to improve your business relationships even more and will result in a growth of the business. Do you agree?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

13.30-15.30: You are invited to co-host an interview for a job-position on short notice. Together with HR you have an applicant for a job. HR thinks the person has a great personality, but you are not convinced as knowledge is missing. Do you raise your concerns?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

15.30-16.00: You have doubts about the integrity of a business consultant who wants to work for the company. The instructions demand an independent check. The person seems to have knowledge which is of high importance to you. Will you employ the business consultant without a check from an independent assessor?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

16.00-17.30: Wherever people live and work together things go missing. You have heard about the theft of a brand new iPad and you witnessed once that a wallet from a colleague got lost. Maybe it was theft or it was simply lost. In your team you have to do a monthly reporting on theft of company assets.

Do you think theft is a problem which can not be controlled?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

17.30-18.30: You are requested to make a payment to an external partner. The request appears legitimate to you. Through the IT controls in the accounting systems an alert is triggered which shows that the external partner is on a “black list” meaning he is classified as “suspicious”. Do you make the payment?



Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

18.30: You remember that you have friends coming over for dinner and you just realized that a great movie is on tonight. You remember that in your department a video beamer is available. You know that company assets are not meant to be borrowed from the company for private reasons – it was somewhere written. The video beamer would make the night a real event for you and your friends and the chance that the video beamer breaks is very little as you are always cautious with borrowed things. Furthermore you have thought through that no one will need the beamer tonight as it is the end of business and you will return the beamer in the morning. Do you take the video beamer?



Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

You hurry home to be on time.

“A day at the office” – 3rd round

It is the next morning and you find the internal newspaper on your work desk when you arrive at work.

While you boot your computer you scan through the articles. Nothing of special interest appeals to you.

One of the articles deals with a difficult project win in Africa. Although competitors tried to bribe the customer, the customer chose your company and relied on you as “trusted partner in difficult times”. Another one deals with a new innovation the R&D function has come up with.

Please carefully read the different scenarios and afterwards come to a decision by marking the box.

8.30: You have existing plans for new cooperations and partnerships in South America. Business prospects are great and a few concrete proposals for M&A projects need your evaluation. In your work instructions you have detailed measures how to evaluate such proposals. After studying these it is obvious that many risks are not covered. Do you accept the proposals?



Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

11.00 – 11.30: You are asked by a colleague from another department to take his daughter as student in your department for 2 months. Do you take the student?



Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

11.30: You get an urgent call. One of your team members is at the airport in Nigeria. The security will only let him pass if he pays them 150 US\$ in cash. Your team member tells you that the company is running late already on the contract and if he does not pay at once you run the risk of contractual fines. These could be fines up to 2 Mio. US\$. The company instructions forbid such kinds of payments. Will you pay the requested 150 US\$?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

12.30-13.30: You have a business meeting over lunch time with two external guests in a restaurant. You talk about general developments in business and a possible future common project. The lunch costs are about 150 € for the 3 of you. You know that you will have to list the costs in a sheet which you have to sign off and hand in to your superior to get the costs reimbursed.

Do you take the bill?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

13.30-14.00: After lunch you meet with new colleagues who started their job together with you for a “meet and greet” session. You talk about your first experiences and the working climate. The Company values “Teamwork, Honesty, Success and Fun” are lived as you all agree. When you come back to the office you are told that in one of the teams which report to you a colleague is lying about other peoples’ performances. Do you accept this?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

14.00-14.30: As your company does not have enough storage it is necessary to rent storage externally. While you checked the rental contracts for storage a while ago you became aware that

apparently one of the employees favored a friend who has a storage business. It seemed that he did not ask for offers to compare prices, but gave business to his friend.

Now you get the confirmation that this employee favored a friend by giving business to him without getting other offers to compare and accepting prices which are over the normal market range.

Would you keep this employee in the workforce?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

14.30-15.15: You remember information about internal and external audits. They are part of the overall improvement program of the company and analyze the structure of the departments.

You look in your calendar and you see that a special review by an external audit company has been scheduled at the end of the month. The target of the audits is to get an assessment of the working routines in your department, to spot process inefficiencies and to come up with suggestions for improvement.

You have been thinking about simplifying documentation meaning to stop the documentation of several decisions. Will you put that into practice?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

15.15-15.30: You make a list of necessary works to be done which you want to give to the team assistant. When you have just finished the list and are going to hand it over, the team assistant tells you that she is really not feeling good and would like to go home? Do you accept the wish?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

15.30-16.30: A supplier has not been paid on time. He is waiting for his money for months and now he calls you. You are asked to make the payment as the responsible person is ill. The payment has to be checked by a colleague according to the 4 eye principle. Apparently nobody else is there to help the supplier at the moment.

Will you transfer the money?

Certainly Almost certainly Maybe Rather not Certainly not

16.30 – 17.15: You meet with the Communication department responsible to tell him your ideas about the business development and ask for a new concept from the communication side to bring across the message to more colleagues.

Do you believe you can convince him to support you with communication campaign?

Certainly Almost certainly Maybe Rather not Certainly not

17.15-18.15: In the purchase department one manager was influenced in his decision because he got a luxury present from the supplier. It happened only once and the purchase manager has been working for the company for 20 years. Would treating it as exception be the right thing to do?

Certainly Almost certainly Maybe Rather not Certainly not

You pack up and leave the office at 18.45.

5. Additional information treatment group

Message from the CEO

„Health & Youth“ is proud to be one of the leaders in manufacturing and selling medical equipment world wide.

With sales totaling three billion € in the last fiscal year and over 30.000 employees world wide who contributed to that we had a successful year.

This year our strategy remains in place, we call it “Efficient growth”. The strategy will be explained to you by your local management in the next weeks, but for the time being let me assure you that our number one business goal is growth. We want to triple our market share with all fair means! Sales success is the driver of our company! We need to develop new markets and serve our existing customers who guarantee us regular sales volume. With our lean organizational structure we are ready to address new challenges.

I count on you and your engagement!

David Garcia, CEO of Health & Youth

Our core principles

Our company and its vision: Our vision is a better world where diseases can be cured and human beings help each other. It is our task to provide medical equipment wherever needed thereby making the world a better place for mankind.

Our company and the customers: The customers are most important to us. When the customer is happy and buys our product we can be happy, too.

We are especially careful when interacting with customers from the public sector. Quite often they are not allowed to take any advantages such as invitations for entertainment for example. A present might be perceived as a bribe.

Our company and the competition: It is good to know about the competition, but we are careful when interacting with the competition. There must be good reasons to get together with competitors as for example common R&D activity. Otherwise allegations concerning antitrust might be made against the company.

Our company and its employees: We respect each other, are honest and we honor the law. If we do have another work or side business in addition to our main job, HR needs to be informed. No decision must be made on personal interest but only for the best of the company.

No employee is allowed to abuse his function to demand/accept personal advantages from internals and/or externals.

6. Example of questionnaire control group

“A day at the office” – 1st round

You have successfully finished your studies and are in your first job position as Business Development Manager. Once that you are settled in your job, you have interesting days with lots of decisions to take.

But before you start, please read the additional information which is handed out separately.

It is Tuesday morning and you start your work day in the office. Please carefully read the different scenarios and afterwards come to a decision by marking the box.

9.00: You find an invitation for lunch from your colleague. Carol proposes that you go for a business lunch to discuss the latest product developments of the competition which entered the market. Do you go for lunch with your colleague?



Certainly Almost certainly Maybe Rather not Certainly not

9.15 – 11.15: You meet with your team to discuss market segments and develop new ideas for segmentation. The proposed ideas seem rather complicated to you and will make it more difficult to address the target groups from your point of view. Do you express your concerns?



Certainly Almost certainly Maybe Rather not Certainly not

11.15: You are invited from one of your competitors to go on a weekend-trip skiing. The trip is paid for by the competitor so that your department does not have any costs to bear. Goal of the trip is to get to know each other and get a common understanding of the market and the customers. Do you accept the invitation?

Certainly Almost certainly Maybe Rather not Certainly not

12.00-13.30: Lunch – you decide for a healthy meal!

13.30: Time to catch up on new information. The quarterly report shows that the company is slightly behind its goals. The news about the competitors show that other companies struggle with the same conditions.

Do you consider circumventing internal rules (e.g. getting a time-consuming approval by the R&D department for a product) to reach the sales targets?

Certainly Almost certainly Maybe Rather not Certainly not

14.30: You have a request for a donation to the local community center. The request was given to you by a friend who studied together with you. The donation is only 200 € and the purpose is to collect money from private organizations to enhance the facilities of the community center. You still have budget left for this fiscal year so that the amount would really not be a problem for your department. Furthermore the friend indicates that he is interested in business with your company. Do you make the donation?

Certainly Almost certainly Maybe Rather not Certainly not

15.30-17.00: You need to prepare a presentation for the Management Board. While you are working on the presentation, emails are coming in and disturb you from your presentation. Do you close your email program so that you do not receive emails for the next 1 ½ hours?



Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

17.00-18.15: You read the new circulars which give a lot of restrictions and regulations concerning safety, working hours etc. Another one deals with environmental requirements and conduct with external partners.

Do you believe many employees will break these guidelines and will not act according to them?



Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

18.15: Your boss comes in and asks you to write down all your expenses which you had for the company. For you this means mostly invitations for lunch with external guests like customers for example. You were just thinking about inviting good customers for the 3rd time this month.

Do you still invite them?



Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

You finish at 18.30 and leave the office.

^

“A day at the office” – 2nd round

It is Wednesday morning and you start your work day in the office.

Please carefully read the different scenarios and afterwards come to a decision by marking the box.

8.30: The company for which you work fabricates special medical equipment. Your company and one other company are the only ones which are capable of producing the special equipment. A friend who works for a company which is in competition with your company calls you in regard to pricing strategies. According to him, the prices for the end customer should be increased by about 5%. He proposes that you increase the prices, too.

Therefore there would be no disadvantage for the customer as the level stays equal, but both of you would have a higher profit – a “win-win situation” as he states it. Will you increase the prices?

Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

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Certainly **Almost certainly** **Maybe** **Rather not** **Certainly not**

9.15 – 11.30: Your colleague who was supposed to analyze the market data for the segmentation is apparently ill. As the segmentation discussion was only yesterday, the topic needs some work

and you decide to get into the analysis yourself. When you analyze the data you find that the concerns you had yesterday about addressing the target group are confirmed. Are you worried?



Certainly Almost certainly Maybe Rather not Certainly not

11.30: You are hungry as you didn't have breakfast! You notice that your team is gone for lunch already as you were so busy with the analysis. You decide to go to the coffee shop and get a quick lunch there. While you are there you think about how to improve the deliverance performance in East Europe, especially in Russia where your company has business. You can use the services of a new logistic company to deliver goods to East Europe. The price is cheaper than with the normal logistic companies, but you are not sure why and how the costs are covered. Maybe this company saves on personnel, maybe on security. There might be a chance that parts of your payments are used to "facilitate" the custom formalities at the Eastern borders, meaning money is used to bribe custom agents. Will you use the services?



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buys your products for a special event which is organized by your secretary: 2 days skiing with a one night stay in 5* hotel at approx. 1.000 € each.

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Would you keep this employee in the workforce?



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You have been thinking about simplifying documentation meaning to stop the documentation of several decisions. Will you put that into practice?



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7. Additional information control group

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I count on you and your engagement!

David Garcia, CEO of Health & Youth