



# Compliance as a Leadership Task

## A compendium of tools, methods and innovative approaches

Authors: Working Group Compliance as a Leadership task

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## Disclaimer I 2

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### Disclaimer

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# Why is Compliance relevant for Corporate Leaders?

According to the German Corporate Governance Code, the honorable businessman is to be considered the role model for corporate leaders: not only does the “ehrbarer Kaufmann/ehrbare Kauffrau” act in accordance with rules and the law, s/he also ensures sustainable corporate development and value creation in accordance with the principles of the social market economy through ethically sound and responsible behavior (Preamble DCGK 2017).

### The advantages of active compliance

Respectable commercial behavior and active compliance set clear rules of the game to avoid conflicts of interest/conscience and offer protection against criminal prosecution, damages and possible professional bans. Combined with a corporate compliance culture, employees gain confidence to address critical questions without having to fear for personal disadvantages. Such a culture of "backbone" culture helps to effectively deal with compliance issues and fosters corporate safety, process improvements, innovation, environmental protection and other topics. It also contributes to a positive "employer brand" employees can be proud of and will communicate accordingly.

For corporate leaders, integrity and adherence to internal rules and regulations as well as legal requirements in combination with a compliance organization offer a number of advantages: release from liability, good reputation, trust from share- and stakeholders, protection from professional bans and investigations by supervisory bodies and law enforcement agencies, thus avoiding the waste of corporate crisis management resources. Active compliance also prevents unpleasant results or even blacklisting in 3rd party due diligence frequently carried out by contractual partners before agreements are concluded.

From an ownership and/or shareholders perspective, integrity further strengthens the trust in the acting executive management and increases the protection against reputational damage. It is therefore an important confidence-building factor.

Furthermore, also the company's supervisory bodies are protected from liability risks as well as from professional bans or image loss.

Business partners, in particular customers, attentively observe whether and which compliance regulations the company has adopted, whether it can be measured against them and whether those responsible act with honesty and integrity. Both business partner audits and compliance due diligence processes have become common corporate practice today.

### Added value: employer/corporate branding

Good corporate governance and active compliance play a role for candidates when they choose an employer. Jobs will continue to be created as economic growth will pick up again, but demographic developments might counteract this trend. Corporate reputation will thus play an even greater role in the competition for suitable talent in the future. Companies undertake serious efforts to obtain the "best place to work" status. Candidates today can easily obtain a good picture of the respective corporate culture on social media and several online evaluation portals.

Conversely, companies whose image has been tarnished by scandals or which are facing economic problems as a result of serious compliance infringements must undertake an extra effort to compete for candidates. Research on evaluation portals concludes that corporate culture and values are indeed key factors in employer selection.

A modern and sustainable corporate culture puts an emphasis on transparency, authenticity, openness and accountability. One objective is to resolve existing power imbalances so that questions can be addressed, issues raised and decisions made in the best interest of the company. Only if executive management possesses the personal strength to allow and appreciate being challenged employees will feel empowered and an attractive culture of active compliance is created. This in turn is beneficial to employee satisfaction all wellbeing and will increase the company's success on the job market.

### Added value: compliance as a minimizer of liability and criminal prosecution risks

Compliance Management Systems (CMS) document that executive management is taking the necessary steps to avoid breaches of duty. Whether a CMS can have an indicative effect and enable a so-called defense of intent if a breach of duty has nevertheless occurred, remains open for debate. The starting point is intent or recklessness in the criminal law sense or in the sense of the Administrative Offences Act. A person acts recklessly if s/he disregards the care which s/he is obliged and capable to observe according to the circumstances of the case and his/her personal abilities and knowledge. According to case law, recklessness is defined as when the perpetrator would have been in a position, according to circumstances and personal abilities, to comply with the duties of care resulting from the relevant legal regulations in the specific case. The characteristic element in defining recklessness is thus the recognizability of risks. This is accompanied by the fulfilment of a certain duty of care. Recognizing and avoiding of risks is typically one of the core tasks of the CMS. Normally, the CMS can only be indicative of the existence of carelessness. The weight of the exonerating circumstantial effect depends on the specific design of the CMS. The higher the quality of the CMS, the more likely it is to refute the presumption that the compliance violation results from a breach of duty.

The CMS should have a similar indicative effect with regard to Section 130 (1) sentence 1 OWiG. According to this provision, it is an administrative offence for the owner of a company to intentionally or negligently fail to take the necessary supervisory measures to prevent infringements of owner-related obligations subject to criminal prosecution, if such an infringement could have been prevented or made considerably more difficult by proper supervision. As recent changes in regulations (e.g. the amendment to § 22 (4) of the Foreign Trade and Payments Act in 2013, the application decree for the German Fiscal Code revised in 2016, no. 2.6 to § 153 of the German Fiscal Code) show, appropriate and effective compliance systems can reduce liability and criminal law risks. The much-discussed decision in the Siemens ./ Neubürger case (LG Munich I, 10.12.2013 - 5 HK O 1387/10) conversely illustrates the risks for executive management associated with a deficient CMS. By setting up an appropriate and effective CMS, it can be demonstrated that those in charge did not turn a blind eye to the possible risk of a breach of duty but endeavored to avoid these risks and were thus not indifferent to the actual success of the occurrence of a breach of duty.

However, it remains questionable whether appropriateness and effectiveness tests and compliance certificates such as IDW PS 980 or the Hamburg Compliance Certificate of the Hamburg Chamber of Commerce offer additional protection, as the specific circumstances of the individual cases are always assessed in criminal proceedings.

**Conclusion:** A company's commitment to compliance and a CMS that is seriously operated can be an asset in the defense against claims and help to minimize criminal liability.

# **Tools for Corporate Leaders to raise Awareness and empower their Team Members**

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Corporate leaders play a key role in implementing compliance in the company culture. Employees see their managers as role models for corporate behavior. They look up to their leadership, observe what attitudes they represent and how they embody and communicate company values. This is why corporate leaders are well-advised to pay particular attention to compliance.

It's corporate leaders who need to embody company values and communicate compliance requirements and expectations to the employees. They are the link between top management, the compliance organization and business operations. With corporate leaders as propagators, a holistic approach to compliance can be implemented into corporate reality in a better and more effective way.

This paper aims at providing ideas and options for action to corporate leaders, enabling them to better implement compliance in everyday business life and succeed in their role as compliance propagators.

### **Propagating compliance**

Raising employees' awareness of compliance, i.e. the adherence to the law as well as to internal rules and guidelines, must start "at the top". Leadership must make a clear commitment to compliance ("Tone from the Top") and walk the talk ("Tone at the Top"). Without this commitment at the top, the efforts to implement compliance in the company DNA will be thwarted.

Corporate leaders play a key role in raising awareness for compliance among their team members. Whether they like it or not, they act as role models. They are also well-positioned to conduct effective compliance communication, e.g. focusing on what is really important for their respective departments. Moreover, s/he can best determine whether the team got the message and implements accordingly.

Apart from acting as role models, corporate leaders must be aware of the fact that propagating compliance is not facultative, but rather a primary task, similar to the implementation of corporate strategy, cost management or meeting sales targets. They must be guided by the thought that breaking the law cannot be justified and that such breaches must be prevented, out of loyalty to the company but also because compliance is the most sustainable and successful approach to avoiding risks.

### **Promotion of compliance-compliant behavior**

The attitude of corporate leaders towards compliance has a direct effect on their team members. This is why their function as role model and propagators of compliance are a strong instrument of compliance mediation and communication. Two elements are of essential importance here:



### 1. General responsibility:

Communicating corporate values/the code of conduct as well as management's basic expectation with regard to compliance is a top priority; this emphasizes and promotes the importance of compliance.

### 2. Specific responsibility:

Corporate leaders are able to translate compliance program elements, processes and requirements into the specific realities of their departments. Thus, they can link the compliance program to the specific day-to-day business reality in their area of responsibility. They can communicate with their teams in a pragmatic and tailored manner, with an emphasis on language, authenticity, relevance and conviction.

Living up to their general and specific responsibilities, corporate leaders can contribute to strengthening the compliance organization and corporate compliance culture.

It is important to corporate leaders to “keep compliance real” and get the message across that compliance concerns their team members personally. Compliance is not an option for employees to choose in accordance with their personal moral and ethical beliefs. Rather, they need to understand that compliance is part of the corporate agenda. Top management needs to adhere to compliance and their instructions to the organization must be observed.

### Relevance

Compliance requirements are often formulated in abstract terms, e.g. "Compliance must always be observed". However, employees will only pay attention once the relevance for their activities is made transparent, e.g. association work/antitrust law or sales/anti-corruption. If employees consider topics irrelevant, they will switch off, hence increasing the risk of non-compliance.

Corporate leaders are familiar with business activities sales opportunities, association activities, trade fairs, etc. They are therefore well positioned to point out relevant risks. Compliance communication can thus often be framed as helpful advice, focused on really relevant aspects. It is all about balance. Too much compliance leads to general rejection. At this point, corporate leaders need to provide clarity – in a simple and clear, non-legalistic way.

### Keep it personal

In their role as compliance propagators, it is important for corporate leaders to keep it personal. They need to be perceived as advisors and go-to people. Even when things are "up-and-running", compliance remains a leadership priority. Corporate leaders must be aware of the fact that compliance is not a "run-of-the-mill" matter, but an established and ongoing, key agenda item.

### Task of the compliance department

In this context, the compliance department has the task of informing corporate leaders of their special role. Due to their proximity to employees and team members, only corporate leaders are in a position to approach their team members individually and to sensitize them to specific situations.

Furthermore, the compliance department should support corporate leaders by providing them with concise, "non-legalistic" training material. Of course, the compliance department is a competent sparring partner for corporate leaders in all compliance matters. In addition, tailor-made workshops can be conducted to address specific needs of the respective business area and jointly define resulting compliance requirements. Thanks to its many years of experience, the compliance department educates corporate leaders to develop the necessary training skills.

In order to make this more tangible, the following highlights a few concrete examples from corporate practice which have proven to be useful and successful in everyday business life.

### Do good and talk about it

One of the most effective means of sensitizing employees to the topic of compliance and doing things right is to (actively) shape their identity as role models. Corporate leaders should ensure that their active compliance-compliant behavior is recognized by their team members. Was a supplier's invitation to a luxury dinner or a golf weekend openly rejected? Was a high-priced Christmas gift returned, perhaps with a comment that "well-meant" can be the opposite of "well-done"? Was a meeting or informal discussion with employees of competing companies aborted because topics such as "pricing" or "territorial protection" had been raised unexpectedly? Why not make this the subject of your next departmental meeting - these are simple, yet effective examples of active compliance that will resonate with your people.

### Answer questions before they arise

Together with the compliance department, corporate leaders can proactively sensitize employees to the correct behavior in dealing with recurring events, e.g. raise awareness in the run-up to the Oktoberfest in Munich by giving guidance on how to issue and receive invitations in a compliant manner or on how to give presents. in the weeks before Christmas.

The right way to deal with gifts and entertainment is to provide a "one pager" which is easy to understand, incl. for non-lawyers. Such a document will be particularly effective if corporate leaders go through it together with their team members. This ensures that people are empowered to handle invitations and gifts correctly. It comes as a major advantage that specific and relevant rules on a particular topic are addressed directly to the people concerned— arguably the most tangible and effective approach.

### Connecting corporate leaders

Corporate leaders can be involved in the revision of the compliance program or corporate values as it is important to include the business and other specialist departments in the compliance mission.

Together with top management, corporate leaders can develop risk scenarios and draw up ways how turn mission statements and ethical values into action during joint workshops. This way, leadership will give an active example of the relevance of compliance for the company and their respective departments. These workshops set the right tone from the top, with compliance providing basic guidance on content. Corporate leaders are thus enabled to define responses to business risks tailor-made to their departments' specific needs with jointly agreed "declarations of commitment" laying down the implementation in the divisions.

### Personal address by corporate leaders

Another effective tool to promulgate compliance is to provide corporate leaders with an easy-to-understand basic presentation for a personal address on compliance that could include the following elements:

- What is Compliance/Integrity all about?
- Why is it important (for me, for the company)?
- Where can I find guidance on rules and regulations?
- An explanation of the most important rules (that should not replace training).
- Examples of compliant/non-compliant action.
- Go-to people for questions
- Go-to person for complaints and indications of irregularities

Corporate leaders will be able to hold the presentation themselves and give explanations accordingly. It can be supplemented by target-group-oriented interactive examples and group discussions. To put further emphasis on the focus on compliance, employees may be asked to sign the presentation after a department meeting.

This "personalized" approach is effective, as employees hear the message directly from their superior and interiorize leadership's compliance expectations.

# **Compliance as a natural part of corporate DNA**

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## 1. The interplay between compliance and corporate leaders

Good corporate governance has become a fundamental factor of management performance for a large number of companies. Effective values and compliance management is a top priority in this regard, especially in the economic, regulatory, social and ethical environment and given the high expectations of stakeholders. Companies are recognizing the importance of introducing and embedding effective values and compliance management into the DNA and processes of day-to-day operations - for reducing potential compliance risks and avoiding potential damage to companies, reputation and positive perception in the marketplace. But compliance also requires the integration of sustainable approaches and solutions into the corporate culture and processes that ultimately ensure the company's success.

This raises the question of who is responsible for compliance in a company. This is because modern companies have recognized that this role cannot be performed by the compliance organization or top management alone. Rather, all managers of a company must actively work on the "Mission Compliance" in order to establish and keep alive a sustainable compliance system.

Corporate leaders are role models for their employees - they evaluate attitude, expressions and behavior and reflect this on the understanding of standards in daily business. In other words: Only what the direct superior says and exemplifies is relevant for the employee. And for this reason, the support of the compliance organization by managers is essential.

### 1.1 The compliance dilemma of managers

Every manager in a company has an exposed position: he or she is largely responsible for performance and plays an essential role in the operational and strategic goals of the company, the further development and advancement of personnel, and also in the achievement of compliance goals. And therein lies the dilemma: the manager can be caught in a dichotomy between strictly enforcing compliance within the company and meeting corporate goals.

In ethical corporate management, this dichotomy is avoided, because compliance is the basic building block for achieving goals. Both top management and all executives have the support of compliance and the compliance organization as an original goal in their task definition.

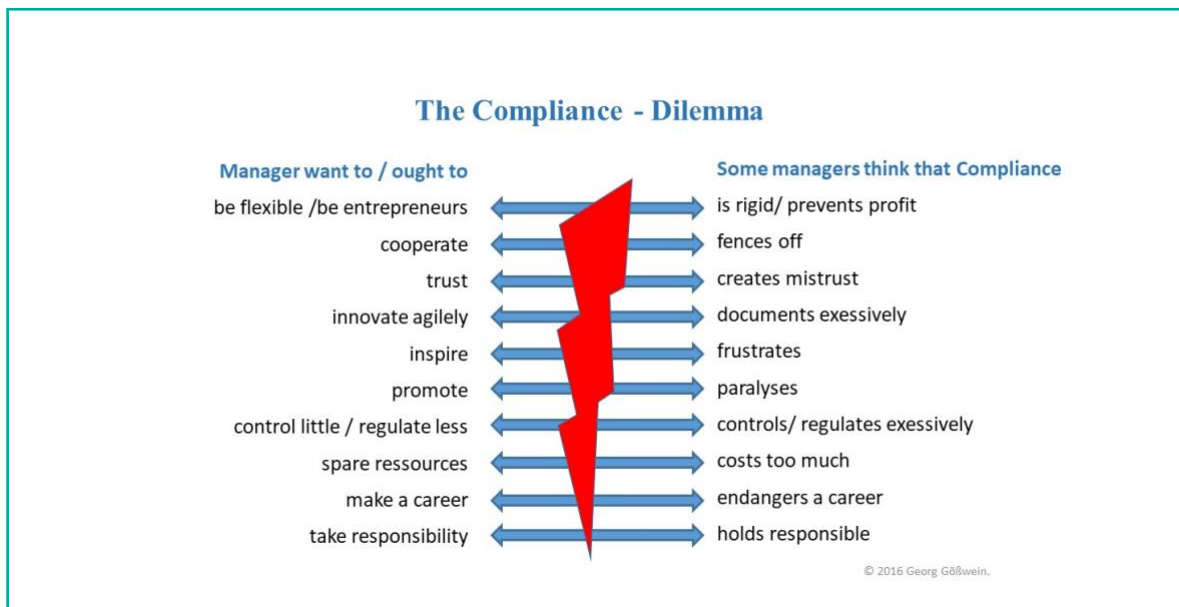


Figure: The compliance dilemma of some managers

### 1.2 Tone from/at the top

The Tone from and Tone at the Top are the most powerful tools for implementing a positive compliance culture. However, this does not stop with the management/board, but cascades within a company to the responsibility of every leader. In order to support the executives accordingly, a continuous and stringent "Tone from/at the Top" is imperative. Top management must exemplify the compliance mission and prove that the topic is a top priority for the entire company. With the "tone at/ from the top", top management proves that values, standards and rules also apply and are adhered to in the top management circle.

What top management exemplifies must be mirrored accordingly by all managers for their own functional area and passed on with the same seriousness. By directly transferring the compliance strategy to the functional areas, managers become effective compliance ambassadors. As a rule, employees look to their direct manager and see him or her as a role model. By communicating the topic in an appropriate language, with tailored examples, and by taking the discussion and enforcement of the topic seriously, compliance becomes alive and sustainably effective in the organization.

### 2. Leadership TAR (task/authority/responsibility) as a central intervention within the framework of an integrated change process: Compliance as a natural component of the company DNA

An effective and sustainable compliance system pursues various objectives. Ultimately, all compliance efforts are also based on the central concern of discharging company's executive bodies from liability - but also on the social and corporate responsibility of good corporate governance. Whether this actually succeeds with regard to compliance violations also depends on whether the executive bodies have effectively delegated and communicated their compliance responsibility. Traditionally, attempts are made to assign compliance responsibility exclusively to the compliance department.

However, studies show and repeated compliance cases suggest that the attitude of executives towards compliance often leaves much to be desired or lacks in the seriousness of implementation. It is doubtful whether the compliance officer can have any successful effect at all in such an environment. It is also questionable whether management has to accept the accusation that it has relied on organized misunderstandings or irresponsibility to increase business when it should have known that its managers do not really support compliance. In this respect, the question arises as to how they can be more involved in compliance matters. Compliance cannot succeed without the executives.

It is of central importance that leaders are also made aware that compliance is a genuine part of their management duties. But how is this new approach communicated to executives against the backdrop of the compliance dilemma (see above)? This is attempted in various ways. Executives receive intensive training in some organizations. Does this make compliance a leadership task in the perception of managers?

This can be achieved in particular by openly discussing the concept of "compliance as a leadership task" with executives and by an intensive exchange among them about their specific management tasks, authorities and responsibilities (Leadership TAR) with regard to compliance. Simply talking to managers and seriously addressing the issue can lead to a change in their attitude. The leadership TAR can serve as a suggestion and food for thought that executives can constructively "rub up against" in workshops. Managers will object, for example, that they lack the qualifications to perceive compliance as a genuine management task. Pointing out that being a role model (see below) is a classic leadership task will trigger an intensive thought process and a lively discussion. Pointing out that they have the competence to demand compliance advice or compliance training will refute the objection that they are not up to the task for professional reasons, etc.

As a result of these discussions, managers find their own common basis for how "compliance as a leadership task" can and should be reflected in their daily work. If necessary, they agree on the content of the following TAR or make it suitable for themselves. In any case, this process achieves maximum acceptance for the new approach of "compliance as a leadership task". Certainly, appropriate framing and professional execution of the workshops is crucial for success. Unconventional framings, methods and tools should also be considered in order to actually reach the executives.



<b>Leadership TAR</b>		
<b><u>T</u>ask: e.g.</b>	<b><u>A</u>uthority: e.g.</b>	<b><u>R</u>esponsibility: e.g.</b>
<ul style="list-style-type: none"> <li>• Apply the "PLLOB*" test</li> <li>• Be a role model</li> <li>• Act as coach and delegate</li> <li>• "Promote and demand "backbone culture/ speak up culture</li> <li>• Live the letter and spirit of the COC</li> <li>• Walk the talk</li> <li>• Look beyond horizons</li> </ul>	<p>(powers, rights, decisions)</p> <ul style="list-style-type: none"> <li>• Receive advice</li> <li>• Promote, demand and appreciate integrity</li> <li>• Demand enforcement of rules</li> <li>• Test company policies "No policy for the sake of the policy"</li> <li>• Demand reduction of complexity of policies</li> <li>• Demand compliance training</li> </ul>	<p>(accountability)</p> <ul style="list-style-type: none"> <li>• Clarification of doubts</li> <li>• Qualification, trust and control</li> <li>• Regular and ad hoc reporting on compliance issues</li> <li>• Implementing a healthy error culture</li> <li>• Impose appropriate consequences for incompilance</li> </ul>
<p>*PLLOB® = press, legal, leadership, others, belly (for gut instinct)</p>		<p>© 2016 Georg Gößwein</p>

Figure: The leadership TAR

All these efforts are based on the assumption that one of the strategic goals of every company should be that compliance becomes a natural part of the company's DNA. This goal cannot be achieved "overnight" and is a continuous learning and improvement process. In order to achieve this strategic goal, one must take a holistic view of the influences on the components of the overall organization, divisions/teams and finally the individuals. In each case, the factual level and the cultural/emotional level must be examined. Many companies will find that they are further along than they think, while others still have a long way to go.

The joint development of the Leadership TAR together with the executives serves as the "starting signal" for an integrated change process aimed at achieving the strategic goal of "compliance being a natural part of the corporate DNA". Its design and acceptance by the executives can have a strong positive catalytic effect within the change process. The discussion of the TAR thus serves as a central intervention within the integrated change process of the company organization.

Ultimately, the aim is to further develop the organization with the help of the executives. In addition to achieving the strategic goal, the change process has the potential to have a massive positive impact on the climate of cooperation within the company and to release unimagined creative energies.

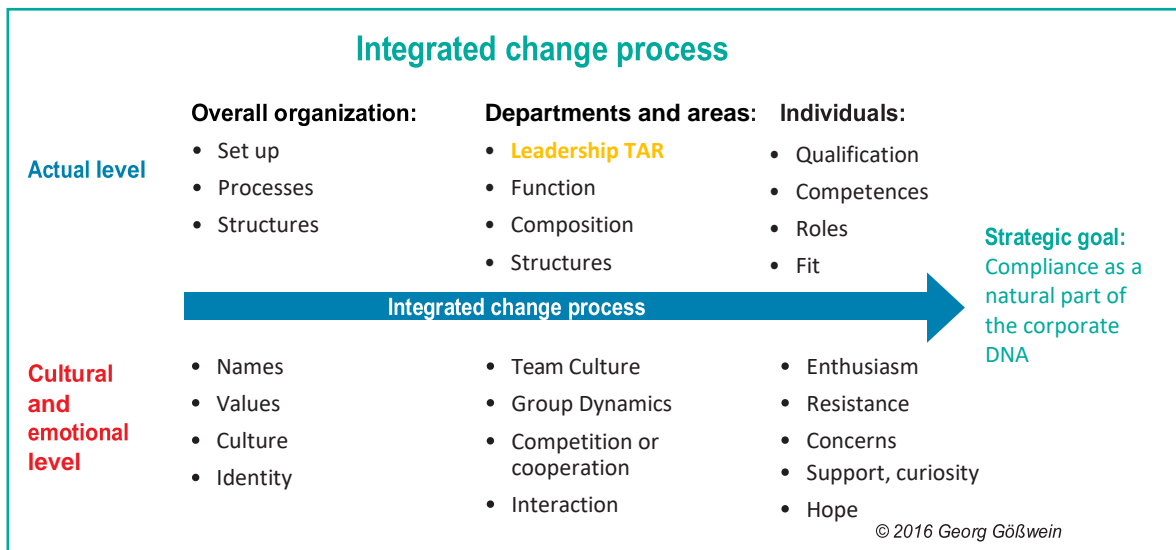


Figure: The integrated change process in the company - "Compliance as a natural part of the company's DNA" as a strategic goal

Finally, as part of the integrated change process, it will probably be determined that management development programs should be set up in such a way that they also promote and demand the desired attitude with regard to "compliance as leadership task". Existing target agreement systems may have to be changed because they set undesirable incentives, etc.

It makes sense to listen in on the organization at regular intervals to see to what extent compliance is actually already a natural part of the corporate DNA - or not yet. Employee surveys are an important instrument for this purpose (e.g., integrity barometers or peer group analyses). Surveys on corporate values, ethics and integrity help to better assess the exemplary behavior of a manager or the dynamics of a company's understanding of compliance. Compliance assessments can be linked to specific objectives and the seriousness of the executive's task can be evaluated accordingly.

The list of possible instruments is not exhaustive. Depending on the corporate culture, organization, etc., other tools or a combination of the above can also support the sustainable success of compliance.

# **Leadership Competencies to be promoted in Employee Development Programs (EDPs)**

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### **Preliminary remark**

Please note that the above-mentioned EDPs, the main messages, media and the promoted competencies of a (future) corporate leader have to be considered as exemplary and a) are intended to stimulate reflection, and b) provide impulses that would need to be tailored to the respective corporate context. It might be that some of the exemplary ideas might not match specific corporate realities, e.g. for lack of a code of conduct.

A) **Becoming a corporate leader<sup>1</sup>**

Employee Development Program/target group	Main purpose from compliance perspective	Format	Promoted competencies for (future) corporate leaders
<p><b>Assessment center</b></p> <p>Applicants for corporate leadership roles typically undergo an AC</p>	<ul style="list-style-type: none"> <li>Assessment of the candidate with regard to the respective role, incl. of attitude to compliance</li> </ul>	Assessment center	<ul style="list-style-type: none"> <li>Fit with corporate values</li> <li>Adherence to Code of Conduct</li> <li>Integrity check, i.e. taking into consideration key areas of corporate responsibility (e.g. moral-ethical, legal-principle-oriented, strategic-economic)</li> </ul>
<p><b>Development center</b></p> <p>Incumbent corporate leaders and high potentials may be nominated for a DC</p>	<ul style="list-style-type: none"> <li>Assessment of incumbent corporate leader focusing on existing development areas (interdisciplinary, leadership, diversity...), incl. attitude to compliance</li> </ul>	Development center	<ul style="list-style-type: none"> <li>Fit with corporate values</li> <li>Adherence to Code of Conduct</li> <li>Integrity check, i.e. taking into consideration key areas of corporate responsibility (moral-ethical, legal-principle-oriented, strategic-economic)</li> </ul>
<p><b>Welcome Event</b></p> <p>Newly recruited employees and managers receive information on corporate development, strategy, brand, innovative strength, company values, ...</p>	<ul style="list-style-type: none"> <li>Benefits of compliance for the company</li> <li>Benefits of compliance for corporate leaders</li> <li>Importance of compliance culture</li> <li>Value strategy of the company</li> </ul>	<p>Compliance is an integral part of the event, e.g. by</p> <ul style="list-style-type: none"> <li>Lecture</li> <li>Q&amp;A (interactive)</li> <li>"Exchange over coffee"</li> </ul>	<ul style="list-style-type: none"> <li>Compliance understanding</li> <li>Sense of compliance responsibility</li> <li>Integrity (management)</li> <li>Knowing how/when to ask the right questions</li> </ul>
<p><b>Onboarding of new employees</b></p> <p>Newly recruited employees are encouraged to undergo specific training and/or eLearning.</p>	<ul style="list-style-type: none"> <li>Benefits of compliance for the company</li> <li>Benefits of compliance for corporate leaders</li> <li>Importance of compliance culture</li> <li>Value strategy of the company</li> </ul>	Face-to-face training, eLearning, virtual meetings, ...	<ul style="list-style-type: none"> <li>Compliance understanding</li> <li>Sense of compliance responsibility</li> <li>Integrity (management)</li> <li>Knowing how/when to ask the right questions</li> </ul>

<sup>1</sup> The table is based on an executive career path and designed to provide orientation with regard to when/where an EDP can be fruitfully deployed

Employee Development Program/target group	Main purpose from compliance perspective	Format	Promoted competencies for (future) corporate leaders
<p><b>Management Development Programs</b></p> <p>Potential or incumbent corporate leaders who could take on more complex tasks in the near future</p>	<ul style="list-style-type: none"> <li>• Benefits of compliance for the company</li> <li>• Benefits of compliance for corporate leaders</li> <li>• Importance of compliance culture</li> <li>• Role and responsibility of a corporate leader</li> <li>• Dealing with power and influence</li> </ul>	<p>Compliance is an integral part of the program, e.g.</p> <ul style="list-style-type: none"> <li>• Kickoff lecture</li> <li>• Q&amp;A</li> <li>• "Exchange over coffee"</li> <li>• Tailored compliance module</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance understanding and sense of compliance responsibility</li> <li>• Understanding of employees' perspective</li> <li>• Integrity (management)</li> <li>• Leading by example</li> <li>•</li> </ul>

## B) At leadership level - single corporate leaders

Employee Development Program/target groups	Main purpose from compliance perspective	Format	Promoted competencies for (future) corporate leaders
<p><b>Compliance training campaigns</b></p> <p>Defined selection of corporate leaders is trained on a regular basis in face-to-face sessions on compliance-relevant expectations</p>	<ul style="list-style-type: none"> <li>• Benefits of compliance for the company</li> <li>• Benefits of compliance for the corporate leader</li> <li>• Importance of compliance culture</li> <li>• Leadership responsibility</li> <li>• Dealing with power and influence</li> </ul>	<p>30-60 minutes face-to-face training/workshop</p>	<ul style="list-style-type: none"> <li>• Compliance understanding and sense of compliance responsibility</li> <li>• Integrity (management)</li> <li>• Leading by example</li> <li>• Aligning compliance goals to own field of activity/department</li> </ul>
<p><b>Intercultural training</b></p> <p>Managers who take on an expat assignment receive a country- or region-specific training on culture, incl. compliance understanding and risks</p>	<ul style="list-style-type: none"> <li>• Country-/region-specific compliance particularities</li> <li>• Raising awareness of potential compliance risks on site</li> <li>• Cultural peculiarities with regard to compliance</li> </ul>	<p>Face-to-face training</p>	<ul style="list-style-type: none"> <li>• Sense of responsibility with regard to compliance</li> <li>• Integrity (management)</li> <li>• Intercultural awareness, incl. with regard to compliance implications</li> </ul>

**C) At leadership level - all corporate leaders**

Employee Development Program/target group	Main purpose from compliance perspective	Format	Promoted competencies for (future) corporate leaders
<p><b>Speak-up campaign</b></p> <p>employees and leaders to why it is important to avoid misconduct etc.</p>	<ul style="list-style-type: none"> <li>• Benefits of compliance for the company</li> <li>• Benefits of compliance for corporate leaders and employees</li> <li>• Importance of compliance culture</li> <li>• Role and responsibility of employees</li> <li>• Role and responsibility of executive management</li> </ul>	<p>Publication in company intranet incl. quotes from top management</p>	<ul style="list-style-type: none"> <li>• Compliance understanding and sense of compliance responsibility</li> <li>• Integrity (management)</li> <li>• Knowing how/when to ask the right questions</li> <li>• Dealing with dilemmas, contradictions and ambiguity</li> </ul>
<p><b>Special purpose e.g. anti-corruption day</b></p> <p>Training for all employees to raise awareness of corruption risks for the company and the importance to tolerance approach</p>	<ul style="list-style-type: none"> <li>• Benefits of compliance and anti-corruption for the company</li> <li>• Benefits of compliance and anti-corruption for corporate leaders and employees</li> <li>• Importance of compliance culture</li> <li>• Role and responsibility of all employees</li> </ul>	<p>Publication in company intranet, if top management</p> <p>Poster campaigns</p>	<ul style="list-style-type: none"> <li>• Understanding of compliance and anti-corruption</li> <li>• Sense of responsibility with regard to compliance and anti-corruption</li> <li>• Integrity (management)</li> <li>• Knowing how/when to ask the right questions</li> </ul>

**Addendum**

It is recommended to evaluate the effectiveness of the proposed measures. Employee surveys can provide an "Echo from the Bottom/from the Middle". Potential gaps/white spots can be eliminated by additional, targeted efforts, e.g. the sensitization of specific leadership groups or individual coaching.



# **Key Performance Indicators (KPIs), Principles, Risks, Opportunities**

**Compliance as a leadership task**

**A compendium of tools, methods and innovative approaches**

## Key Performance Indicators (KPIs), Principles, Risks, Opportunities

Compliance management, in many companies, is viewed critically. Time and money must be invested to update systems, internal rules and policies and anchor them in the minds of all members of the company. This increases the need to measure the success of compliance efforts. Much has been written on the topic of measurability of compliance. We would like to point out the risks and possible solutions as well as some thoughts on the topic of leadership and compliance.<sup>1</sup>

### 1. Basic information

In this respect, key performance indicators (KPIs) should be an obvious part of target agreements. KPIs are simple and understandable performance indicators. The performance of corporate leaders, individual employees, teams, departments or the entire company are translated into measurable data. The KPI shows whether the respective manager, employee, team or department has fulfilled his/her/its tasks and to what extent the specified goals have been achieved. The number of KPIs should be limited. It is sufficient if they allow answers to the following questions:

- ▶ Are the defined goals being achieved?
- ▶ Where and how urgently do we need to take countermeasures?
- ▶ What are the strengths and where are the weaknesses of the corporate leader and/or his/her department?

With regard to compliance, two issues should be considered separately:

- ▶ Compliance risks through KPIs
- ▶ KPIs for Compliance

### 2. Compliance risks through KPIs

KPI setting, in general, can be risky. Once business objectives are set, it is also necessary to look at how these targets are achieved:

High turnover targets can trigger corrupt actions. Aiming to achieve a certain market share can trigger technical manipulation. One could think of many more examples.

Whenever a KPI is to be set, it should be carefully considered whether it can be legally reached at all and what detours might be unwanted or even illegal alternative options to reach the defined target. It is important to look at how goals are achieved. As a matter of principle, it should be carefully considered whether KPIs are helpful in each individual case.

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<sup>1</sup>This text has already been published in Compliance Berater (November 2017, page 416) and was kindly provided by Deutscher Fachverlag.

### 3. Compliance KPIs

In this context, it may also be asked whether KPIs for compliance make sense at all and, if so, how they should be structured.

#### 3.1 Measurability of compliance

The need to measure the effect of compliance work is present and clear. However, it is important to avoid mistakes when setting the factors.

There are a number of questions that arise around compliance KPIs:

- ▶ **What** should be measured with the KPI - specific compliance issues (such as compliance with anti-corruption/antitrust law or data protection) or general, comprehensive legal conformity of corporate actions?
- ▶ The behavior of **which** person/group of people should be measured - that of the corporate leader or the behavior in the divisions/he is responsible for, i.e. that of the respective team members?
- ▶ **How** should compliance be measured?

##### a) What should be measured?

There are many arguments in favor of using a compliance KPI to measure not only individual compliance, but compliance as a whole. For the success of a company, it is essential that no corrupt actions and antitrust violations take place. But it is equally important that employees do not commit any criminal offences, that social security laws are observed, that trademarks and utility models of others are not infringed, and that trade and business secrets of competitors are not illegally obtained, to name but a few examples.

##### b) Who should be measured?

Specific compliance KPIs can measure the achievement of previously defined individual or group compliance targets.

To avoid measuring only the individual compliance behavior of a corporate leader, the compliance performance of the business unit s/he is responsible for should also be measured. On the one hand, this ensures that the corporate leader's individual compliance performance is measured. On the other hand, such a KPI makes it clear that compliance is a task for both corporate leaders and all employees. Also, a corresponding compliance KPI would be complementary to existing compliance declarations for corporate leaders.

##### c) What is measured?

A compliance KPI that measures, let's say the number of compliance incidents, would promote transparency and "reward" the higher number of detected incidents. At the same time, the ultimate actual goal, to prevent compliance incidents, might be compromised. Moreover, it cannot be ruled out that incidents are invented or exaggerated in order to achieve targets.

If you do it the other way round and “reward” a low number of incidents, you will promote prevention, but at the same time you might “incentivize” cover-ups. Thus, measuring the number of incidents is an example of a counterproductive compliance KPI, no matter how it is set.

A better approach would be to measure check familiarity with compliance rules or, for example, basic knowledge of antitrust law. However, at least in Germany, this examination would require employees to agree to co-determination. It would be yet easier to conduct a compliance survey among corporate leaders. There is of course always the risk that an employee will fill out the survey for the corporate leader. But the number of such cases would probably not be as high that one should refrain from this form of measuring compliance. It would certainly be an indicator of whether corporate compliance messages or rules are known. If such a compliance survey is carried out on a yearly basis, it can show developments which can be used to measure e.g. the performance of the compliance team. As an alternative, the individual corporate leader instead of the whole compliance team could be assessed. This might increase the motivation to pay attention during face-to-face trainings.

### 3.2 Compliance targets for corporate leaders

Compliance, ultimately, is a matter of leadership culture: surveys among employees show that the best intranet sites and training courses are of little help when the actual role models, corporate leadership, convey something different. This is also proven by several, at times spectacular compliance incidents. All companies concerned had a compliance system in place before the incidents occurred. The direct superior is the key factor for successful corporate compliance. Top management therefore plays a major role, especially for their direct reports at corporate leadership level. It simply has to be made clear that illegal detours to achieve objectives and meet targets will not be tolerated. This message should therefore not only be occasionally included in a speech or an intranet message, but also be part of target agreement and evaluation discussions. Just one sentence - pronounced at the right place - can make a big difference.

A possible compliance target for corporate leaders could be that their team members are trained to apply internal rules and attest their superior a correct attitude in dealing with compliance issues. However, in Germany this again can only be measured if these questions are included in an employee accepted by co-determination. The only thing that is easily measurable is the training quota itself, but it says little about whether the content has been understood. This in turn can be checked with test questions at the end of the training. Here, the recommendation is to measure the results by the trainers and not the trained people. This would make it easier to get the approval of co-determination and at the same time allow control of success.

#### 4. Possible KPIs for compliance

Characteristic size	KPI	Target value	Thresholds -value	Worst value	Actual value (assessment)
1	Percentage of employees who have attended face-to-face training				
2	Percentage of employees who participated in web-based training on the intranet				
3	Ratio of employees who have demonstrated compliance knowledge (results of follow-up checks on web-based training or from surveys)				
4	Quota of employees receiving compliance training in the first 2 months after recruitment				
5	Quota of employees who certify the corporate leader's correct attitude in dealing with compliance issues (annually)				

The actual values achieved for the individual parameters of the compliance KPIs or the average can be set in relation to the target or threshold value. It can be included in target or bonus agreements with the corporate leader or used as a criterion in the determination of the variable salary component. In practice, probably only one compliance KPI will be set.

In our view, a general clause in the target agreement would be even more effective: a basic KPI stating that in the event of a compliance violation for which the respective corporate leader is responsible or co-responsible, the target agreement as a whole is to be regarded as not fulfilled and no bonus will be paid. What type of compliance violation is to be defined as relevant needs to be determined separately for each company. For instance, it might make sense to put a particular focus on violations of foreign trade regulations or data protection, depending on the specific corporate setting. Corruption or fraud should always be covered, as should violations of competition law. We recommend that criminal offences committed by a corporate leader, in particular if intended, should be recorded in general and listed separately.

The Regulation on the Supervisory Requirements for Remuneration Systems of Institutions (Institutsvergütungsverordnung)<sup>2</sup> provide guidance in this respect. Statutory standards, which are prescribed by the legislator for more strictly regulated industries, often develop into guidelines for other, non-regulated industries. In the case of target agreements for German employees who are not senior executives, co-determination rights of the works council, general works council or group works council may have to be observed if rules are established which can be understood as remuneration principles and remuneration design.

<sup>2</sup> Of 16 December 2013, BGBl I p. 4270.

## About DICO:

DICO - Deutsches Institut für Compliance e.V. was founded in November 2012 in Berlin on the initiative of leading compliance practitioners and experts. As a non-profit association, DICO has members from all sectors in Germany, including well-known DAX companies, auditing and consulting firms, as well as academia. DICO sees itself as an independent interdisciplinary network for the exchange between business, science, politics and administration. DICO provides a central forum for the consistent and practice-oriented promotion and further development of compliance in Germany.

DICO promotes compliance in Germany, defines minimum standards in this area, accompanies legislative projects and at the same time supports practical compliance work in private and public companies. It further promotes training and education and develops quality and process standards.



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