DICO Practical guide

Practical guide CiP („Compliance in Politics“): Recognizing critical activities as a mandate holder (and in the political environment) and making the „right“ decision

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Practical guide CiP („Compliance in Politics“): Recognizing critical activities as a mandate holder (and in the political environment) and making the "right" decision.

The following practical guide is intended for office holders with the aim/intention to help recognize critical decision-making situations and activities and taking the "right" decisions in terms of compliance. The practical guide was developed within the "Compliance in Politics" working group ("WG")[1] and combines the thoughts and ideas exchanged there. But with this paper, work is not concluded. The working group invites all interested to contribute their ideas in order to further complete this practical guide.

Elected representatives hold functions that are of central importance in a representative democracy. They are therefore in the public eye and bear political and legal responsibility. One of their main obligations is to exercise their office free from personal interests. At the same time, every mandate holder has a private life, personal goals and a legitimate interest in leading an economically secure life beyond this temporary mandate. This can lead to situations in which private and public interests can come into conflict. At the very least, the suspicion may arise that individual interests played a role in the execution of the mandate. Cases in which the mandate is alleged to have been monetized or used to promote personal or other interests are particularly well known. However, the relevant legislation also prohibits so-called third-party benefits, for example for relatives, parties, associations or legal entities associated with the mandate holder. In addition, office holders may not participate in unlawful conduct or conduct in breach of duty, irrespective of the prospect of an advantage.[2] A criminal conviction may be the consequence in all of the aforementioned cases. However, even without the involvement of criminal prosecution authorities, the political damage and personal loss of reputation can be immense. The loss of a mandate and the end of a political career are possible consequences. Beyond the personal consequences, compliance violations damage the institutions for which the office holders are active and promote disenchantment with politics as well as mistrust in our democracy. In short: it is important to exert good compliance also in the political sphere.

Compliance first requires an awareness of risks. In addition, guidelines for action are required that transfer legal obligations to typical situations and clarify the required conduct.

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[1] Members of the working group: Johannes Barsch (Jusos in the SPD), Marc Bauer (Junge Liberale), Florian Daxenberger (Junge Union), Ann-Christin Huber (former member of Die Linke and linksjugend ['solid]), Florian Siekmann (Grüne Jugend); Georg Gößwein, Michael Kubiciel, Rainer Markfort (all three DICO)

[2] Compliance also covers the constellation in which there is no corruption due to lack of advantage on the part of the MP(s), but the desired conduct is simply unlawful in terms of content, e.g. the disclosure of documents classified as secret or the influencing of an investigation.

This practical guide is intended to help mandate holders ask the right questions and give the necessary thought in situations in which the impression of a conflict of interest could arise:

Preliminary consideration

The work of a mandate holder includes exchanging ideas with people and institutions that have political concerns and often also pursue economic goals.

It is the vested task of members of parliament to induct the (organized) interests of voters into the political parliamentary process. In the political process, what serves the common good is first worked out and then determined by legislature. Whether the concerns of an interest group are worthy of support is a political decision that must be made by the elected representative. This cannot be delegated.

It is therefore of vital importance whether the decision-making process was influenced by private interests or whether there is at least the appearance of malicious influence.

The appearance of influence may arise if the **external circumstances** of the contact appear unusual, if the **contact person** raises doubts or if the **personal situation** of the mandate holder is particularly affected, especially if personal advantages or advantages for third parties with which the mandate holder is particularly connected are in question.

The following explanations refer both to the attendance of appointments and other activities, e.g. participation in events or a dinner, as well as to specific decisions (e.g. the contract mandatation or political decisions).

Questions/thoughts on the external circumstances of the activity

- What are the circumstances?
    - Is the interview taking place in an unusual setting or location? An expensive restaurant or hotel should be a warning signal – just as meeting locations abroad.
    - Are travel expenses or other benefits covered? ○ Generally speaking, you should always exercise caution regarding unusual places. A neutral location or the MP's office is better.
- Is my behavior transparent or is "secrecy" required? A request for confidentiality regarding the *content of* the communication is not unusual (and often desired by both parties), but the secrecy of the meeting or the activity itself can give rise to doubts. If, for example, I have the feeling that I have to keep the meeting secret so that third parties do not ask any questions, caution is advised.
- Do I myself have the impression that I wish to conceal things connected with the meeting because they could raise doubts in the public or for others? Example: As a member of a decision-making body, personal relationships with candidates/applicants etc. are not disclosed by communicating with the other person in an emphatically distanced and formal manner.

Questions/thoughts about the person and agenda of the "counterpart"

- Before a meeting, the counterpart should be clearly identified and 'known'. Relevant questions are: Who is the person? Who do they represent or for whom do they act? Is the person or their institution registered in the lobby register? (Warren Buffet: "You can't do good business with bad people.")
- What is the agenda of the conversation? Why am I talking to this person? What are possibly other "hidden" agenda items based on the (presumed) interests of the person I am talking to?
- Is the other party pursuing objectives that in themselves raise legal problems (e.g. influencing ongoing investigations, contract placing)?
- Does the other party seek confidential information?
- Take particular care when dealing with representatives of foreign states (especially if there is suspicion of governmental influence). Many states systematically exert influence (keyword: strategic corruption, see EU Parliament - Qatar).
- Caution is also required if the other party has other foreign connections: Could they be acting (possibly undercover) on behalf of or under the influence of a foreign government and want to skim off information or exert undue influence? The risk of intelligence activities varies from country to country.

Questions/thoughts about your personal situation

- If the representation of interests could lead to the suspicion from the outside that personal advantages of the mandate holder are involved, caution is advised. ○ Do I have a personal economic benefit from the process? Personal benefits also exist if they formally accrue to a company or legal entity belonging to me.
    - Will I be spared costs (due to the location/framework) which would normally occur?
    - Should other third parties associated with me (e.g. relatives, friends, associations, parties) receive a benefit?
    - Is the acceptance of such benefits permissible under the law on members of parliament or the relevant federal states regulations and respective corporations? ○ Are donations promised to your own party or affiliated organizations or have they already been made? Does the donation violate the Political Parties Act?
- Am I in a family or close relationship with someone who will receive an economic advantage as a result of my decision as an elected mandate holder, representative?
- How will my decision affect my future career opportunities?
- Do I have the feeling that I am putting myself in a position of future dependency and that I may not be able to say "no" to the other person later?
- Do I have the feeling that I am indebted to the other person as a result of the activity or do I have the expectation that something will be demanded in return later?
- Would I consider a decision made by someone else with the same personal situation to be fair and unbiased?
- Have I made promises in the exercise of my mandate with a view to obtaining an election vote that are contrary to my actual and later legally permissible possibilities within the scope of the mandate?

Options for action

If a risk has been identified, this does not automatically have to lead to an "all-or-nothing decision". Other options are:

- Before a decision/action is taken, other people can be consulted, e.g. other MPs can be asked for advice, the parliamentary group leadership can be informed. Legal advice can also be obtained (e.g. from the legal advisor).
- Before a decision/action is taken, (further) inquiries are made, e.g. in the event of doubts about the identity of the other party and people behind it.
- The activity is only carried out to a limited extent or under certain conditions (e.g. waiving a fee or participation in an expensive program point, calling in on another person on the topic, asking the other party for additional information in advance).
- The activity is carried out, but specially documented (e.g. note, reproduction from memory) so that it can be referred to later.

The PLLOB formula: Mnemonic for recognizing critical activities and making the "right" decisions.

PLLOB[3] could serve as a mnemonic for recognizing dilemma situations and making the "right" decisions. The acronym PLLOB is intended to put compliance in a nutshell and make it simple to follow.

PLLOB stands for the terms **P**ress, **L**eadership, **L**egal, **O**thers and **B**elly (for gut feeling). Each of the terms stands for a question.

Press: Do I want to be in the newspaper with *this*? Can I withstand any public criticism?

Leadership: Does this work with my values and my role model function?

Legal: Does this comply with rules and the law?

Others: Does my personal environment accept that?

Belly: Does this decision leave me feeling good? Do I have a doubts?

If you apply PLLOB as a formula for good compliance or the "right" decision and go through the questions in the order of the letters of the acronym, the decision-making process ends with the gut feeling. The gut decision at the end of the formula is then an "informed" gut decision because it is based on the previous questions and the corresponding answers. In this way, the last question of the formula acts as a "safety net". If one of the five questions cannot be answered with "yes", the matter should be discussed with an appropriate person or persons in order to reach the "right" decision together.

[3] More about PLLOB at www.pllob.com

About DICO:

DICO - Deutsches Institut für Compliance e.V. was founded in Berlin in November 2012 at the instigation of leading compliance practitioners and experts and, as a non-profit association, has members from all sectors in Germany, including well-known DAX companies, auditing and consulting firms and academia. DICO sees itself as an independent interdisciplinary network for the exchange between business, science, politics and administration and sees itself as 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, promotes training and further education and develops quality and procedural standards.

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