

BUSINESS ETHICS IMPLEMENTATION IN THE ORGANIZATIONAL CULTURE OF COMPANIES

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Abstract: *In this paper we have analysed the perception and implementation of the principles of business ethics for companies.*

This paper is a theoretical approach to ethical principles and the corresponding legislation, as well as an analysis of the degree of alignment of national legislation with the latest stipulations following the entry into force of the UK Bribery Act. This Act is currently recognized as a new and more comprehensive approach on the subject of ethics in international affairs.

At the same time, this paper focuses on the study case regarding the comprisal of Business Ethics principles within the activity of Romanian companies. Therefore, a practical approach is achieved, with an applicability of the theoretical aspects, which are the subject of the first part of this paper.

We analysed the need to implement Codes of Ethics and their advantages. Companies that do business with an organization that has implemented a Code of Ethics should be aware of its provisions and act accordingly, because it is a mandatory issue for all employees, and also in its relationships with the external stakeholders.

A code of ethics is a tool, a means of transmitting the organizational culture to its members, conferring them a sense of common identity, like the membership of a team. The desire of any company is to improve ethical performance, and, in order to achieve this, they need to build up, day by day, protection and to introduce it into a daily routine activity.

Both managers and employees need guidance on how to act in certain situations that raise ethical questions. The best way to solve these situations is through the existence of a code of ethics that both managers and employees can turn to for guidance at any time and reach the right directions.

Completed in July 2010 and entering into force in 2011, the UK Bribery Act is the latest approach to corruption. This Act has been described as the toughest anti-corruption legislation in the world, blaming a behavior that is not acceptable in the global market. With the advent of this new law, many companies were forced to update their codes of ethics in order to meet the new challenges introduced by this law. In this context, our research is based on the study case of the way in which the best performing company in Romania, OMV Petrom, uses in its practice the ethical values that are compulsory at an international level.

Keywords: business ethics, UK Bribery Act, sanctions, code of ethics.

Jel classification: F23, K42

1. Theoretical Background

In recent decades, ethics has been the subject of many debates between academics and practitioners. The discussions are usually focused on the role of business in society and on the question whether if we could approach business from an ethical point of view. Starting from Friedman's approach (Friedman, M. (1970) *The Social Responsibility of Business Is to Increase Its Profits*, New York Times), during the last decades the concept has evolved; now, managers have understood that by embedding ethics into businesses, they can gain a competitive advantage and promote a sustainable development of the company. The new approach of ethics includes the development and implementation of Codes of Ethics.

1.1. Business Ethics

According to the Explanatory Dictionary of Romanian language, ethics is defined as "all rules of good conduct that correspond to an ideology of a particular society or organization."(www.DEX.ro).

Business ethics is a system of principles, values, norms and codes of perception and behaviour, based on a business philosophy that requires a moral obligation by inducing their expression.

"*Business ethics* (ethical economics), a particular form of applied ethics, is a set of rules and moral standards aimed at the agents' economic conduct and activity (business), both individually and collectively" (Iamandi, I.E., (2013) *Etică și responsabilitate socială corporativă în afacerile internaționale*, (www.ai.rei.ase.ro suport curs master), and pursues the activities and success in business.

Business ethics was first embraced by in developed countries, like the U.S. and Western European countries, but in the last decade, the countries of Central and Eastern Europe have become more and more interested in this concept. The reasons for which the countries of Central and Eastern Europe have shown interest in this topic can be both social, because there is a direct relationship between the degree of development of a country and the importance that is given in that state to business ethics, and of economic nature - the competitive pressure induced by the increasing number of multinational corporations that have extended their activity in this regions.

U.S. is the country in which Business Ethics has emerged. U.S. has the largest theoretical and practical experience in the promotion of ethical principles. In the twentieth century, numerous papers and institutions which addressed the importance of implementing ethics in companies have appeared. Currently, over 97% of U.S. companies have their own Code of Ethics.

Business Ethics has been implemented as a subject matter (teaching line) in all business universities, thanks to the fact that some teachers and businessmen considered it necessary to impose American values in their business practice, accepted by the wider community.

Business Ethics appeared in Europe in the mid-80s, both as an academic discipline and as a practical field of interest. In the early 90s, it reached an academic maturity thanks to the emergence of numerous courses, publications and periodicals (*Business Ethics Quarterly* in 1991; *Journal of Business Ethics* - in 1992; *Business Ethics: An European Review* - published quarterly since 1992; *Teaching Business Ethics* - in 1997); associations, centres and professional or educational institutions (examples: Institute of Business ethics - United Kingdom; Ética, Economía y

Dirección, Sucursal Española de European Business Ethics Network – Spain; European Institute of Business Ethics – Holland; Institute for Business Ethics – Switzerland). The first European research centre of Business Ethics appeared at the current St. Gallen University in Switzerland, in 1983.

In November 1987, in Brussels, a milestone was reached in the field of European Business Ethics: the First European conference on Business Ethics took place. The countries that participated in the conference were: Holland, Switzerland, England, Norway, France, West Germany and Belgium. At the end of this conference, the foundation of the European network EBEN (European Business Ethical Network) was proposed, with the purpose of stimulating and promoting discussions on various topics related to business ethics in Europe and, also, for promoting the exchange of information and experiences on European Business Ethics. In only two years, the number of EBEN members has increased impressively, so that at the second European conference - held in Barcelona in September 1989 - EBEN members consisted of representatives of seventeen different countries. (Iamandi, I.E., (2013) *Etică și responsabilitate socială corporativă în afacerile internaționale*, (www.ai.rei.ase.ro suport curs master).

In the year 2000 there were over twenty five European headquarters devoted to studying business ethics and many scientists were dealing with this topic. In 2001, EBEN launched the Forum for Ethics Practitioners Program, the European equivalent of the American Association of Ethics Officers. All over Europe, including the UK, conferences are organized, along with seminars and symposiums, both by academic institutions and by professional organizations or corporations. The objective of this Network (between 44 countries) is to promote the principles of corporate Ethics, of corporate governance and Social Responsibility in the academic community, the EU, the public and private sectors, non-profit organizations and civil societies. (www.eben.com).

1.2. Codes of Ethics

A Code of Ethics is a set of norms and values, which aims to guide the behaviour of members inside the organization, in the relationship between themselves and also in their interaction with society in general. A code of ethics is a tool, a means of transmitting the culture of the organization to its members, giving them a sense of common identity, of being part of a unity. Ethical codes are functional to the extent that they are aligned with the business objectives, however, it should be taken into consideration that the economic performance should not be achieved at any cost. The purpose does not justify the means, thus, the code represents a regulatory instrument, and at the same time a tool for mitigation of reputational risk, associated with the company behaviour (as a “cumulous of individuals” personal behaviours). We consider it is important for an organization to have a code to guide the employees' behaviour; be it written or not, but it should not be confused with legitimate behaviour.

A Code of Ethics is implemented in order to: define acceptable or unacceptable behaviour, promote high standards of good practice, provide members a benchmark for their own evaluation, and establish the framework of professional and responsible behaviour.

According to Samuel Mercier, the Codes of Ethics have the following objectives (Mercier, S. (1999) *L'éthique dans les entreprises*, Editions La Decouverte et Syros, Paris):

- Establishing a moral contract between the organization and its beneficiaries, and also between those who belong to the same organization;
- Protecting the organization from dishonest or opportunistic behaviours;
- Promoting a positive image of the organization;
- Providing a means of regulating the adhesion and the commitment of collaborators;
- Creating a sense of belonging to the group; showing the managers' commitment to principles;
- Obtaining a contractual relationship based on trust and accountability;
- Guiding the behaviours in case ethical dilemmas are encountered.

The effective implementation of any code of ethics depends on the company's human resources, both managers and employees.

2. UK Bribery Act as a reference point in Business Ethics

Corruption undermines democracy, as well as laws and is a serious threat to economic progress for developed countries and especially for emerging economies, and it generally prevents free market access.

Thus, in 2010 in the United Kingdom, after decades of reports and draft laws, appears that which would become the most comprehensive and current legislation in the field of bribery, The Bribery Act. *The* notice was received in April 2010 and came into force on the 1st of July 2011. The new law repeals all previous articles regarding corruption and replaces them with articles concerning bribery: offering and receiving bribes to and from foreign officials and the failure of a company to avoid acts of corruption.

The UK Bribery Act attempts to respond to these threats by increasing penalties for bribes, from 7 up to 10 years, but it should also be noted that the objective of the law is not to bring a legal threat to companies. This law seeks to bring a balance, because the legislator is aware of the fact that no corruption prevention system can totally stop bribery.

The law's purpose is to encourage commercial organizations to develop internal procedures and regulations that help to prevent bribery.

It can be considered that this law offers a universal jurisdiction, because it allows the prosecution of companies or natural persons that commit acts that are considered offenses to the United Kingdom, no matter where the offenses occur.

This Act has been described as the toughest anti-corruption legislation in the world, blaming a behaviour that is not acceptable in the global market.

2.1. Principles that govern the UK Bribery Act

- The risk evaluation principle: according to this principle, the risk assessment should be a continuous and dynamic process, not a singular action;
- The top engagement: there must be a 0 tolerance policy for bribery and corruption in the organization's culture, this including business partners too;
- Due diligence assumes an accurate evaluation and a proper risk management before getting involved in a business;
- Policies and procedures should be clear, practical and accessible, and specific guides should be compiled for employees and business partners;
- Effective implementation: anti-bribery measures are to be incorporated in the internal control and recruitment processes; the communication of anticorruption policies should be available in many ways;

- Monitoring and reviewing: requires a dynamic and transparent audit and financial controls, as well as internal controls for monitoring ethics and compliance procedures; they must be approved and supported by the Administrative Board and subject to periodic external checks. (www.worldcompliance.com.Libraries/whitepaper/ukbriberyact).

2.2. Penalties provided in the UK Bribery Act

If a subsidiary of an UK parent company commits an act of corruption in the context of performing services for the company in the UK, it falls under the provisions of the Bribery Act. Foreign companies operating in the UK can be prosecuted for a corruption offense, even if the offense occurs outside the company and the benefit or advantage is intended to accumulate outside the UK. An organization may be guilty of corruption when the act is committed by an employee, agent, subsidiary or a third party (www.transparency.org.uk, The 2010 Bribery Act, Section 8), the location being irrelevant.

In Section 11 there is a legislated penalty for an offense under the law: a maximum of 10 years of imprisonment, with an unlimited fine, as well as the potential confiscation of assets involved within the offense (this provision was included in the Act of 2002) and the disqualification of managers under the Company Directors Disqualification Act. (1986). The law has an almost universal jurisdiction to allow prosecution of an individual or company with ties by the United Kingdom, no matter where the offense has occurred.

The first penalty imposed under the new legislation took place in 2012. The company Abbot Group Limited has paid a fine of £ 5.6 million, after the company admitted that it had benefited from corrupt practices in 2007. One of the foreign subsidiaries paid bribes in connection with a contract with a foreign company for oil and gas. The contract ended in 2006, and the offense occurred in 2007. The amount of the fine was equal to the profit made by the company thanks to the transaction, £5.6 million. (<http://www.crownoffice.gov.uk>).

3. Monitoring Ethics aspects at an international level

The fact that large companies promote the principles of sustainable development more and more, as a vector of their business success, is nothing new. Such an approach assumes an increase of responsibilities for the promotion of Business Ethics principles and values. Nevertheless, besides these responsibilities that belong to the companies, the instruments that can be used by authorities for monitoring the implementation of Business Ethics principles and for punishing any deviations, are strengthened.

On this basis, any deviation from the principles and ethical values in business are severely punished by the national authorities in order to provide a healthy environment for doing business.

For exemplification, we will show the largest cases of punished acts of corruption, in the last five years, at an international level.

Table 1: Fines for the biggest acts of corruption

Nr. Crt.	Company	Country	Fee Amount(mil. dollars)	Year
1.	Siemens	Germany	1600	2008
2.	KBR/Halliburton	USA	579	2009
3.	BAE Systems	USA	448	2010
4.	Snamprogetti	Holland	240	2010
5.	Technip SA	France	240	2010
6.	JGC Corporation	Japan	219	2011
7.	Daimler AG	Germany	195	2010
8.	Alcatel-Lucent	France	137	2011
9.	Panalpina	Switzerland	76	2010
10.	Johnson & Johnson	USA	70	2011
Total			3804	

Source: data gathered from www.thefiscaltimes.com

The main aspects that emerge from the situation presented above are:

- The volume of fines given to international large companies has risen very much, reaching figures of billions of Dollars;
- All of these fines were given by American authorities
- The biggest fine was given to the German company Siemens, fact that initiated/ triggered an ample process of defining the Compliance Program at the company's level.

4. Business ethics principles in Romanian companies

4.1 Romanian legal framework

In Romania, the bribery legislation is set out in The Penal Code, Article 254, paragraph 1: "taking bribes" in the legislator's opinion, is: "The official's act of demanding or receiving money or other benefits, directly or indirectly, the claiming or receiving money or of benefits that are not his to claim, in order to perform, not to perform or delay performance of an act concerning of his office duties or in order to do an act contrary to these duties, shall be punished with imprisonment from 3 to 12 years and interdiction of certain rights". "Anyone who commits the act presented in paragraph 1, an official with control duties, shall be punished with imprisonment from 3 to 15 years and interdiction of certain rights. The money, valuables or any other goods that have been gained by taking bribery are to be confiscated and, if they are not found, the offender is obliged to pay their equivalent in money". (<http://legeaz.net/cod-penal-actualizat-2011/art-254-cpen>).

In Article 255 the offense of bribing is defined as "promising, offering or giving money or other benefits", in the ways and for purposes described in Article 254, shall be punished with imprisonment from 6 months to 5 years. The act is provided in the preceding paragraph which is not an offense when the briber was forced by any means by the one who took bribes. (<http://legeaz.net/cod-penal-actualizat-2011/art-255-cpen>).

The Romanian legislator approaches in The Penal Code also the offense of work or related to work, that is "acceptance of undue advantages" (Article 256) and "trading

in influence" (of Article 257). The first offense is punishable by imprisonment, from 6 months up to 5 years, and in the case presented in Article 257, the punishment is imprisonment from 2 to 10 years, and in both cases the money, valuables or other property or benefits gained, shall be confiscated.

When comparing the two laws, the UK Bribery Act and Articles of Romanian Penal Code, we can conclude that both legislations refer to the offense of giving and taking bribes, as well as the maximum penalty for these offenses being, in both cases, 10 years. Analysing both laws in terms of territoriality; we find that the UK law takes effect throughout its territory and also beyond its state borders. Both the Romanian and the British law refer to bribery in private and public activity. The extraterritoriality principle assumes that companies must align their programs and anti-bribery policies to the ones of the companies with which they have business relationships.

4.2 Case studies on companies' practices in Romania

Knowing the Romanian legislation in force and also the international law, in the first phase of the research, we intended to evaluate the way in which the ten most important Romanian companies implemented or not the Code of Business Ethics. We analysed the companies with foreign capital, domestic capital as well as the top ten in terms of turnover in 2012.

The results of this evaluation are given in the table below:

Table 2: List of the biggest companies operating in Romania, having or not a Code of Ethics

Crt. no.	Companies with foreign capital	Code of ethics	Companies with Romanian capital	Code of ethics
1.	OMV Petrom	Yes	Romgaz	No
2.	Orange Romania	Yes	Nuclearelectrica	No
3.	Vodafone	Yes	Hidroelectrica	No
4.	BRD	Yes	RCS&RDS	No
5.	BCR	Yes	Aeroporturi București	No
6.	Automobile Dacia	Yes	Interagro	No
7.	Romtelecom	Yes	Electrocentrale București	No
8.	Enel Distribuție Muntenia	Yes	Transilvania Bank	Yes
9.	Kaufland	No	Dedeman	No
10.	E.On Gaz Distribuție	No	Mediplus Exim	No

Source: made by authors based on data from INS and companies' websites.

It can be stated that the companies operating in Romania are becoming more and more responsible when it comes to promote a sustainable development, based on Business Ethics principles and values. We are referring mostly to the companies which have a foreign capital that use a Code of Business Ethics at a rate of 80%.

It feels, however, that such ethical values should be promoted by Romanian companies as well (only 10% of such considered companies have this type of an instrument).

In the second phase of the research, we have focused on evaluating the way in which the biggest company in Romania, OMV Petrom, approaches Business Ethics.

For this purpose, we started from the company's undertaken responsibility regarding sustainable development and the promotion of the three main pillars of this concept, that is: economic development, care for the environment and the responsibility for the community in which the company conducts its activity. The study made has shown that this company assumed the responsibility of promoting the Business Ethics values and principles in its relation with its employees, as well as with its stakeholders.

Therefore, implementing a Code of Business Ethics, which is conceived as an instrument of assuring a durable basis for development, is to be noted.

In OMV Petrom's case, the company's management has assumed the principle of zero tolerance for bribery, fraud, theft and other means of corruption in which employees are fostered to admit, prevent and report any abnormality which is related to these acts of corruption. OMV Petrom's Code of Ethics regulates issues like: conflicts of interest, bribery and facilitation payments, offered / received gifts and gratuities regime, competition and anti-trust issues.

It is important to mention that at company's level, it was set-up by a series of instruments, capable of sustaining the efficient implementation of Business Ethics principles, for example: the approval methodology and competencies of gifts, their registries, the provisions' application guideline related to gifts, conflicts of interests, competition practices, etc.

Furthermore, in order to be efficient in implementing the Business Ethics aspect a compliance structure was created for the company, in order to assure, on one hand, the promotion of business ethics culture within the organization and, on the other hand, the relationships with the company's employees and its stakeholders. In order to achieve this, there have been implemented new ways of communication, dedicated to this purpose. In order to increase efficiency against any form of corruption, the company has developed a compliance programme, which intends to identify and mitigate the risks, as well as to avoid fines like the ones mentioned before, for the other companies. It can be concluded, thus, that if there is responsibility, the legal framework and mentality of Romania are in no way a major obstacle for implementing the principles of Business Ethics within companies' activity.

Conclusions

Based on the theoretical and practical aspects included in this paper, a lot of relevant conclusions can be drawn, regarding the implementation of the principles and values of Codes of Business Ethics. At the same time, the growth of companies' responsibilities for sustainable development imposes without doubt the need to combine imminent objectives with those of environmental protection and of developing the relationships with the communities in which they carry out their actions. For this, it is necessary to adopt Codes of Business Ethics which lead to sustainable solutions for business situations the companies are confronted with.

The research has highlighted a few important conclusions, as follows:

- The states' efforts must be enhanced in order to provide a more and more efficient legislation against companies' acts of corruption. Hence, the laws applicable are becoming more strict;
- The increasingly active involvement of authorities in monitoring the existence and implementation of Business Ethics principles in companies;

- The continuous growth of companies' interest and responsibilities for the promotion of clean business practices, which eliminate any doubt regarding ethics;
- The increase of authorities' actions and the elimination of any deviations from Business Ethics norms. The fines given by them in this purpose affect the most important international companies and their amount has reached the level of billions of dollars;
- The discrepancy which is still maintained on the Romanian market, between the Business Ethics practices of companies that have a foreign capital and the companies that have a domestic capital. The first category implements the Codes of Business Ethics at a rate of 80%, while the second one applies such practices only at a rate of 10%;
- The case study based on the practice of OMV Petrom regarding Business Ethics highlights the fact that a responsible company can successfully operate on the Romanian market, given the conditions in which it adopts and implements a Code of Business Ethics, which guarantees the support of sustainable development.

The Romanian legal framework, as well as our mentalities cannot be used as an excuse by responsible companies to lack the promotion of the principles and values of Business Ethics. The study case we completed for OMV Petrom's situation fully demonstrates this conclusion

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