

THE ROLE OF COMPLIANCE IN AN ORGANIZATION. WAYS OF IMPLEMENTATION

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Abstract: *In this paper we analyzed the importance of ethical and conduct codes in implementing the compliance programs in an organization. We presented the assumptions that were the basis for the forming of ethic and compliance programs, as well as their evolution in the last decades.*

In the first part of this paper we highlighted the legislation that outlined principles required for organizations to implement their compliance programs and business ethics. This legislation came as a response to corporate scandals relating to bribery, fraud and corruption in the 70s, and governments of the affected countries were forced to react in order to prevent, detect inappropriate behaviour, as well as improve corporate behaviour. After coming into force of the Federal Law "The Foreign Corrupt Practices Act of 1977" (FCPA, 1977), there was an increase in the number of codes of conduct and corporate involvement in adopting a conduct supported by consumers and stakeholders and to redefine the standards and values, to create a new image corresponding to the new market requirements. In the Guidelines 2002 basic principles are set out in order to efficiently implement a compliance and ethics program in business.

The case study was materialized in the analysis of ethics and compliance codes, and the method used for implementing them in three Romanian companies. Analyzing the three ethics and conduct codes, we can conclude that the most important factor to successfully implement ethics and compliance within an organization is "tone from the top". CEO conduct is one that has a direct effect on members of the organization. Furthermore, we followed capturing developments in the rules governing the international business ethics and evaluated the legal framework regulating these issues. The primary aim was to assess how rules are implemented throughout business ethics compliance programs developed at company level and to identify ways to promote - at an organizational level – the culture of ethical business and compliance.

Keywords: business ethics; compliance; rules; codes of ethics; codes of conduct.

JEL classification: F23; K33.

1. Introduction

In recent years due to the media, which presented serious cases of corruption, the law was amended to meet the new demands of the market. What was acceptable 10-20 years ago in a company's conduct, is now severely condemned by public opinion and the laws on corruption have undergone many changes. These changes were implemented in organizations by developing and implementing corporate codes of ethics.

The companies are motivated to implement programs of business ethics and compliance, and through these programs they can control their behaviour and are able to predict and prevent behaviour drifts before they will occur. But the implementation of an ethical behaviour is not straightforward. In the case of multinational companies, behaviour must be adapted to each country in which it operates, because what is accepted in some parts of the world, in others it is forbidden; but a company must always respect international regulations. Both the companies and employees need guidance in business ethics.

2. The Ethics and Compliance programs

2.1. The premises for ethics and compliance programs development

Due to the corporate scandals relating to bribery, fraud and corruption in the 70s, the governments of the affected countries were challenged to react, prevent, detect inappropriate conduct and improve corporate conduct.

In response to these challenges, the Federal Law "The Foreign Corrupt Practices Act of 1977" (FCPA) appears in the United States, which marked the beginning of compliance programs in the U.S. (Wulf, Katharina 2011:11). The law has two important provisions relating to anti-bribery regulations. The first one prohibits bribery by a U.S. company of a foreign official in order to obtain benefits, and the second important provision refers to the regulation saying that companies which are registered U.S. must keep books and records that accurately reflect all transactions made and maintain a transparent system of internal audit accounting.

(<http://www.justice.gov/criminal/fraud/fcpa/>)

The provision relating to the bribery of foreign officials is resumed in 1998 by the Organization for Economic Co-operation and Development (OECD) and enlarged to refer to foreign companies or individuals operating in the U.S. that also have business relations in other countries.

After the entry into force of the FCPA, there has been an increase in the number of codes of conduct and corporate involvement in adopting a stance supported by consumers and interest groups (Wulf, Katharina 2011:12) and to redefine their standards and values, to create a new image that would correspond to the new market requirements.

In 1991 the U.S. Sentencing Commission published the Federal Sentencing Guidelines of 1991.

Chapter eight includes all aspects that a company must follow to have an effective ethics and compliance program. By adopting the principles of the 1991 Guidelines, the Commission requires organizations to establish standards applicable to guide employees to take a proactive approach in preventing and detecting violations of the law.

The 1991 Guidelines are applied to all companies operating in the United States and reflect government regulations and industry standards. Adoption of the 1991 Guidelines aimed to encourage ethical behaviour and compliance in organizations and for them to behave as a "good corporate citizen" (Wulf, Katharina 2011:14) and allow companies to avoid fines by implementing ethical conduct.

After the Enron and WorldCom scandals that occurred in the U.S. and other lawsuits based on inappropriate conduct of companies, in 2002, the U.S. Sentencing Commission forms a group to review the 1991 Guidelines, a group made up by practitioners from the public and private sectors, to adopt a new set of guidelines to guide the conduct of companies.

2.2. The regulations contained in the 2002 Guidelines

In the Guidelines of 2002 are set out basic principles to implement an effective compliance and ethical program. (<http://www.ucdmc.ucdavis.edu/compliance/pdf/ussg.pdf>)

According to the principles established in the 2002 Guidelines, the company must exercise due diligence to prevent and detect misconduct and promote an organizational culture that encourages ethical conduct and compliance with the law.

For this program to be effective, it needs to be adapted and implemented for each company, to prevent and detect violations. The compliance program must meet some minimum requirements:

- The organization shall establish standards and procedures to prevent misconduct.

- The organization's management must ensure that the organization has an effective compliance program.
- The persons designated by the management to handle this program should report regularly to a higher level, and the company must provide them with adequate resources. Only people with high authority and also a recognition of their moral responsibility can hold management positions in the company's compliance program.
- The organization must take the appropriate steps to implement a compliance and ethics program through regular communication in a practical manner of the standards and procedures and other matters relating to the program, to all its members by conducting trainings to disseminate information. (<http://www.ucdmc.ucdavis.edu/compliance/pdf/ussg.pdf>).
- The next step in implementing the Ethics and Compliance program is to follow if the program is implemented by the members of the organization and the need to monitor it.
- The program should be reviewed periodically, and the company must have a system where employees can find guidance and report any misconduct through confidential reporting channels or by help-line, and this system should offer them confidentiality.
- Where misconduct is discovered, the company shall take necessary measures against those who are responsible and strive for this type of conduct not to be repeated, and, if necessary, to make changes in the ethics and compliance program. (<http://www.ucdmc.ucdavis.edu/compliance/pdf/ussg.pdf>).

These provisions were designed to prevent and detect misconduct of members of an organization. Because of these provisions, the company has a direct interest in preventing misconducts of its employees because it is accountable to the law for its members. Many companies, after the adoption of these new provisions, have created guides in the form of codes of conduct and organized training for their employees in order to prevent misconduct.

Although the amendments from 2002 were originally applicable only to listed companies in the U.S.A and multinational companies that have equity or debt securities with the SEC, many foreign companies operating in the U.S. have aligned their business practices to the new regulations, adopting codes of conduct and the Ethics and Compliance programs.

3. Codes of ethics and the codes of conduct

The codes of conduct are tools, recommendations aimed at influencing the conduct of companies in society. (Kolk et al., 1999:151)

A code of conduct is a public commitment of the company; through this, an organization is committed to provide a framework of values, beliefs and ethical rules under which they operate. (Wulf, Katharina 2011:18). A code of ethics should promote an ethical culture and to open channels of communication for preventing and protecting the organization against misconduct.

The purpose of a conduct code is to clearly delineate the conduct of its employees; the code is a set of principles that, if implemented, members of the organization know what is allowed and what is considered misconduct.

We consider it necessary to make some remarks on the use of the two terms: code of ethics and code of conduct.

In the specialized literature, the two terms, code of ethics and code of conduct are used without any major difference. "Code of conduct" is a broader term. It mainly refers to the

conduct of the organization's members, the attitude that they have to have relating to the company and third parties. It is a set of principles which, if they are violated, attract disciplinary measures.

The Code of Ethics, in our opinion, has a more restricted meaning. Beginning with ethics, which is defined in the Explanatory Dictionary of the Romanian Language as "a philosophical discipline, the study of theoretical and practical aspects of morality; a philosophical theory of morale" and "an assembly of rules of good conduct and ideology of a certain class or society". (www.dex.ro), we believe that a code of ethics is based on company values.

3.1 Case Study: OMV Petrom

For this example, we have chosen the ethics and conduit codes of the OMV Petrom company, because of the fact that this company has implemented an efficient conformity and ethics program.

The Code of Business Ethics of OMV Petrom defines clear rules regarding:

- Conflicts of interest;
- Corruption and facilitating payments;
- Intermediaries and lobbyists;
- Gifts and hospitality;
- Gratuities;
- Competition and antitrust legislation;
- Trade controls and embargoes. (www.petrom.com).

Top management of the company declares zero tolerance for all forms of corruption. Company employees are trained to recognize, prevent and report any corruption problem. In order to make an efficient report and to benefit from confidentiality; through the conformity program, the employees have various methods of communicating and taking the correct decision at their disposal.

Through **The Code of Conduct**, OMV recognizes social and environmental responsibility. By signing the initiative of the United Nations Global Compact (UNGC), Petrom is committed to implementing ten principles on human rights, labour, environment and fight against corruption. OMV's Code of Conduct sets clear rules of conduct according to the UNGC.

The principles guide OMV's conduct in relation to its internal and external stakeholders and serves as the basis for many of the policies and guidelines of the company.

UNGC's principles are:

Principle 1: supporting and compliance with the protection of the international human rights in the company's influence area;

Principle 2: Ensuring that OMV is not engaged in activities that violate human rights;

Principle 3: The freedom of assembly and association and the effective recognition of the right to collective bargaining;

Principle 4: The abolition of forced labour;

Principle 5: The effective elimination of child labour;

Principle 6: Fighting discrimination in hiring and in employment policies;

Principle 7: Support a precautionary approach to environmental management;

Principle 8: Adopting measures to promote higher responsibilities in relation to the environment;

Principle 9: Encouraging the development and promotion of "environmentally friendly" technologies and products;

Principle 10: Acting against all forms of corruption, including extortion and bribery. (www.petrom.com).

3.2. Case Study: Raiffeisen Bank

The Code of Conduct of the RZB Group is supporting the employees of RZB in formulating answers to possible questions about the company's core values, policy compliance of their actions of RZB's Group.

According to the Code of Conduct of the RZB Group, it applies to all employees on a global level, those from foreign branches of subsidiaries controlled directly and indirectly, and any third party acting on behalf of the company. The code is completed by a Compliance Manual, in which the basic principles contained in the Code of Conduct are embodied.

Every employee has the obligation to respect the Code of Conduct and to immediately report any violation of it to the immediate supervisor, the Compliance Department or local Compliance Officer. (www.raiffeisenbank.ro).

The second chapter of the code contains provisions relating to employees on personal responsibility, mutual respect, conflict of interest and data protection.

The third chapter refers to bribery and corruption, the Code of Conduct having clear provisions on bribery, facilitating payments (money offered to public officials in order to obtain or expedite obtaining benefits in connection with the services provided by these individuals (www.raiffeisenbank.ro, cap.3/3.2), direct and indirect bribery through third parties, gifts and invitations.

In the chapter on relationships with customers and business partners, there are several stipulations included regarding client confidentiality, money laundering, and abuse of payment, direct competitive, accounting and finance.

The Code of Conduct includes provisions on human rights, declaring that the company will not be involved in relationships with other companies that violate human rights and damage the surrounding environment. (www.raiffeisenbank.ro)

3.3. Case Study: Orange

Through this code of ethics, Orange adopts a set of guiding principles designed to strengthen the trust of employees, customers, suppliers, shareholders and partners as well as to the whole society. (www.orange.ro)

The company's principles are declared to the:

- Customers;
- Employees;
- Shareholders;
- Suppliers;
- Competition;
- Stakeholders in the countries where the Group operates.

The code includes how the company's principles are put into practice by every employee in dealing with customers, for the protection of corporate assets, how to report an act of fraud or conflict of interest and stock market deontology.

In the company there is a Group Ethics Committee that is responsible for managing issues related to ethical standards of the Group.

In the duties of the Committee falls the periodical check of the extent of which the code is known and applied, and group practices in business ethics. The Committee also ensures homogeneity of these practices within the group.

The Ethics Committee follows all legal and regulatory changes in this field. On its own initiative or on referral, the Group provides recommendations regarding compliance with the Group values and the implementation of the principles established in the Code, (www.orange.ro), and on request, on training local ethics committee to subsidiaries.

The Committee reports annually on its activities to the Orange Group President and Chairman of the Governance Committee of the Board of the Group. To facilitate this process at Group level, ethics counsellors and ethics coordinators were established in

each country or subsidiary. They offer counselling to employees, show local requests and concerns to the Committee of Ethics and ensure that all appropriate local specific practical applications and lines of business are communicated. (www.orange.ro).

4. Conclusions

In our paper we analysed the cases of three companies in Romania that have implemented ethics and compliance programs.

We have chosen a company that has both a code of conduct and code of ethics, (OMV Petrom), a company that has code of conduct (Raiffeissen Bank) and a company that has code of ethics (Orange).

In the case of OMV Petrom, the two codes are different, each with clear provisions.

Analysing the three codes of ethics and conduct, we conclude that the most important factor to successfully implement ethics and compliance in an organization is the "tone from the top".

CEO behaviour has a direct impact on the members of the organization.

We believe it is useful for the effective implementation of ethics and compliance programs, for company managements to periodically organize training and information programs involving all employees, so that everybody properly understands the provisions of the Code, thereby promoting an appropriate culture at an organizational level. The globalization of aspects of business ethics determines a growing dependency on rules and regulations on the matter, and that is why we consider that it is a necessity to update these ethics codes, taking into consideration the evolutions recorded worldwide.

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