CERTIFICATION OF COMPLIANCE MANAGEMENT SYSTEMS AND COMPLIANCE PERSONNEL

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Abstract

Compliance Management Systems vary widely in content, approach and aims. Legal requirements such as the Foreign Corrupt Practices Act, national legislation etc. exist, but there is no norm such as an industry or quality norm to which companies have to obey yet. Moral norms are necessary as precondition for Compliance Management Systems [1]. Nevertheless certifications are developed. Considering the development of certifications for public organizations such as hospitals, schools, but also private companies in the area of for example environmental, health and security standards or ISO norms a standardized profile could be helpful to reach a minimum level of Compliance Management requirements for organizations.

Business organizations and especially audit companies set standards [2]. These need independent evaluation to judge on their pertinence. Similarly the evaluation of Compliance officers or managers who work with and in Compliance Management Systems and who stem from a variety of functions needs a framework. A legal background is not mandatory for the function of a Compliance officer or manager, but often found as legal personnel knows about laws and the legal consequences of wrong business conduct. Furthermore a business understanding is indispensable to guarantee successful Compliance Management.

This work elaborates which kinds of certifications are available and evaluates their quality. It discusses the content of Compliance Management Systems certifications and the aims which are addressed.

Introduction

In the following the terms "certification" and "certificate" are used synonymously. Certificates normally give assurance to the person or organization who/which requests the certificate, but also to the public who is interested to know whether certain standards are met. This assurance might refer to the question if regulatory requirements are met. If technical products are bought for example, a certificate guarantees performance, endurance, security etc.

The end customer as well as businesses are used to a variety of certificates. Not all of them are mandatory and several are used as competitive advantage by the companies.

In the context of business science researching corporate business conduct, Compliance standards could be defined as minimum profile of a certification. In the context of a Compliance certification relevant stakeholders would have to agree on such a certification to enable a unified approach.

Scope and Definition

There are a number of certificates available which have as aim the confirmation of compliance with specific legal directives as for example concerning dangerous raw materials, technical specifications, health and safety requirements.

In the context of this paper a Compliance certificate refers to the topic anti-corruption or anti-fraud, not to be confused with other definitions of the term Compliance. The certification of Compliance Management Systems is a certification which evaluates a Compliance Management System that is already operating. Therefore an operating Compliance Management System is a precondition for a certification.

Certifying Organizations

A compliance certificate must be issued by an authority which has the competence to judge whether installed systems, projects, programs etc. meet the requirements.

The following list gives a list of authorities which operate as service providers:

- Audit companies, as for example PWC (Price Waterhouse Coopers) or Deloitte;
- TÜV, Club for technical supervision (Technischer Überwachungsdienst);
- OCEG, Club dealing with Compliance and Ethics (Open Compliance and Ethics Group);
- IDW, German Institute of Auditors (Institut der Wirtschaftsprüfer);
- NGOs, as for example Transparency International;
- ISO, International Organization for Standardization;
- Risk Compliance Association;
- Sheshunoff Information Services.

Accreditation organizations guarantee the independence of the certifying organizations. The IDW as accreditation organization regulates that all audit companies which are members of the IDW follow the same standard. Independent authorities such as the International Organization for Standardization (ISO) can be seen as optimal choice in terms of independence and also worldwide recognition. It publishes standards which are equal on a global level and which are tested by approved partners. "An ISO International Standard represents a global consensus on the state of the art in the subject of that standard." [3] This self applied mission also shows the challenge of establishing a world-wide valid standard. Different perspectives as well as cultural influences may make it difficult do reach a global standard. For the time being an ISO standard has not been defined.

Not all of the mentioned authorities issue certificates. Several of them offer tools for assessing Compliance activities in organizations, but in the context of this work only those which provide certifications are considered.

Organizational Compliance Certificates

Organizational Compliance refers to how Compliance is embedded in the organization and how the Compliance organization is doing their job. Scientific research shows that in business a need for Compliance frameworks exists. A study on Compliance and competition comes to the conclusion that these frameworks were neglected: "Respondents were concerned about their lack of systems to proactively manage compliance in such a strategic way that compliance activities could be leveraged to deepen or sustain competitive positioning (whether cost or values based)." [4]

A Compliance certification manifests how a Compliance Management System is implemented. Whenever issuing certificates the maturity level of Compliance within an organization has to be taken into account. A newly introduced Compliance Organization should not be certified before operations start as only with the daily business activities a judgment of the Compliance scope is possible.

But even with existing functions the timing of the certification is crucial. Often a Compliance function is started with a central team which has worldwide responsibility. Over a longer period of time and with the maturity of the function an expansion with shared responsibility in decentralized functions takes place. The exception is the occurrence of Compliance cases such as corruption or fraud which lead to a development which is accelerated [5].

Deriving from the organizational life-cycle of a Compliance organization, applying a time line, it can be approximated when certificates are useful.

Straight after a serious corruption crisis when a Compliance Program is introduced, a certification seems to be premature. The organization must be stable with installed processes if a certification is meant to be successful.
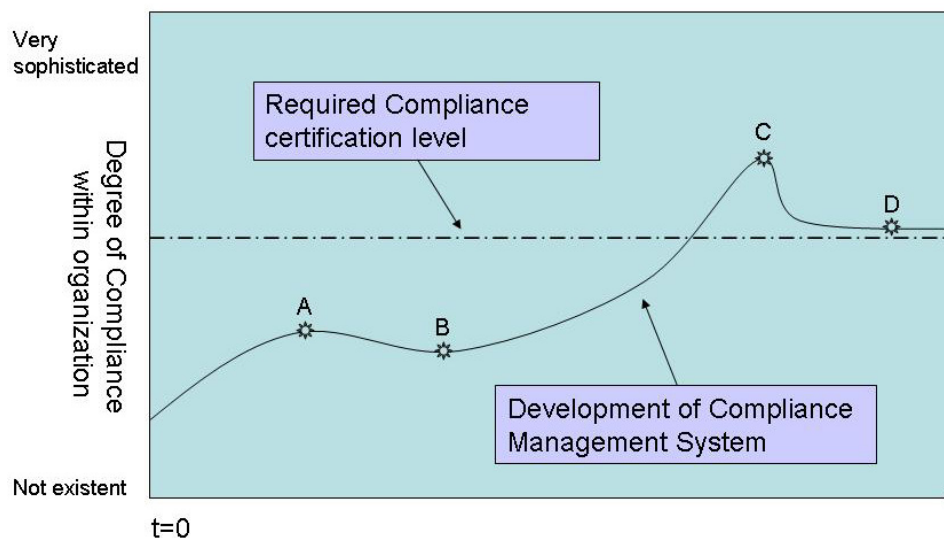

Figure 1. Time aspects concerning certifications of Compliance Management Systems

Source: Own depiction

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The timing for certifications of processes in an organization should be planned well ahead as normally a lot of preparation work is necessary. Even if all preparation work has been done, the success of a certification process is not guaranteed. In the following the development of a Compliance Management System with time aspects is depicted. As the time duration is not firm, but scalable, only the beginning point has be marked (t=0).

The graph shows a typical development of a Compliance Management System and the expansion of its scope over a period of time.

At a given point of time (t=0) the degree of Compliance within the organization is evaluated. In the depicted exemplary scenario the degree is existent, but it is rather low. The theoretical development shows that the implementation of Compliance takes place, although the development varies. (A) shows a slight decrease caused by internal focus on other topics in the organization, (B) depicts the refocus on Compliance activities which might be the decision to participate in a certification program.

The graph shows that the Compliance function should be adequately implemented in the business and sufficiently stabilized before a certification can be reached. An application in (A) or (B) would lead to failure. Excessive Compliance activities depicted in (C) which bring little value-add should be avoided. They do not harm the certification process, but if the certification is seen as the optimum reachable, an alignment should take place which postulates a cost-benefit-maximization almost reached in (D).

A basic differentiation has to be made between internal and external certifications. Companies applying Compliance Systems successfully normally strive for certification processes. Whether this certification process is internally or externally is open for discussion. As long as an independent assessment of a Compliance program is possible this can also be done internally as for example by the risk management or the audit function. The trustworthiness of external certifications may be higher, but an internal well documented certification procedure which gives the actors sufficient security can also be considered to be adequate.

Either internal or/and external auditors have to ensure that the installed Compliance Management System is appropriate and sustainable.

On an organizational level, different external Compliance certificates have been created. Their advantages and disadvantages will be discussed in the following paragraph.

Discussion of Available Certificates

Compliance Management Systems differ in quantity of their elements which are deployed, but also in the quality of their chosen elements. Typical elements like whistle-blower hotlines, training activities and financial controls are only a few of the possible elements which can be deployed.

The available standards which are analyzed take this variety into account. Analyzed are the following certifications:

1. Audit standard 980
2. OCEG Capability Certification / GRC Capability Certification
3. TÜV Compliance care standard
4. Sheshunoff Information Services Regulatory Compliance Certification Program

1. Audit standard 980

The Audit standard 980 was issued by the Institute of Auditors in Germany. It was communicated as an answer to the articulated concerns from industry and their representatives concerning the Compliance in their organizations.

The Audit standard 980 was created as draft in 2010 and approved in its final version on the 11th of March 2011 by the Institute of Auditors. Its final version takes into account many remarks from scientists and practitioners alike. Its aim is to give a standard for the audit of a Compliance Management System in different stages. The audit standard does not have as an aim the detection of corruptive behavior of single persons, but the assurance that overall in the company a well working Compliance System has been implemented. Three stages are auditable: The conception of the Compliance Management System, the appropriateness of the Compliance Management System and the effectiveness of the Compliance Management System.

The standard is kept rather general, allowing for every organization to identify with it. In principal this is encouraging as individual requirements can be met. Every company or organization can decide for itself which risks and controls it wants to be embedded in its Compliance Management System. But it can lead to the fact that the postulated requirements are too far away from the daily operating procedures. It is necessary to define concrete requirements for the audit, otherwise it will be difficult to evaluate the Compliance Management System. This requirement for proximity to the business is not new: "In developing 'best practices' for the organisation, a useful start would be to convert these macro policies to the micro level. Thus for prevention, 'sound legal and regulatory frameworks' can mean clear rules and published policies, while 'sound budgeting and financial management systems' translates into transparent procurement rules. For disclosure, 'putting effective watchdog institutions into place' can mean having an ombudsperson or a hot-line facility to encourage intra-organisation reporting of suspected corrupt behaviour by colleagues. For sanctions, to 'prosecute fraud and corruption when it occurs' can mean a range of punishments from suspension and dismissal to the filing of criminal complaints." [6]

Positive remarks: For the first time an independent standard has been created which in principle enables a comparison of different Compliance Management Systems. The standard leaves freedom for individual design of the Compliance Management System.

Negative remarks: The audit standard can be criticized as work of lobbyists pushing another business model for audit companies as the Institute of Auditors is also an interest group for the branch of auditors. It could be argued that comparison of audits applying the standard is hardly given as the auditors from different companies use diverging criteria in their assessment. This could be accepted as long as their evaluation is transparent and documented so that it can be understood by another party being not directly involved in the process.

2. OCEG Capability Certification / GRC Capability Certification

The Open Compliance and Ethics Group (OCEG) is a non-profit organization which supports organizations in so called "Principled Performance". The mission of OCEG is to help "organizations align their governance, compliance and risk management activities to drive Principled Performance." [7]

The organization offers a governance, risk management and compliance assessment (GRC) which can be used to determine the effectiveness of the installed system. The so called "GRC Capability Certification" is the result of this assessment. According to their own

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description "[t]he OCEG GRC Capability Assessment and Certification program is designed to be scalable to a review of individual risk-specific programs (i.e., anti-fraud program, privacy program, etc.), discrete business units, sub-capabilities (i.e., hotline, risk management, values management, training, etc.) or at an enterprise level." [8]

OCEG offers two certifications, a design and a full certification. Similarly to audit companies approaches they offer a test of the implemented design of the Compliance function or with the full scope also the operating effectiveness of the designed system.

A four phase module was created for the certification process. It starts with the initial assessment, followed by the implementation of improvement projects. This leads to the phase of evaluation and finally the certification. It is important to note that OCEG is only involved in the last step, the certification. All activities which take place beforehand have to be dealt within the organization applying for certification itself and on an optional level by an external advisor.

Positive remarks: OCEG emphasizes its independency which is most important for a credible certification. The process of certification can be tailored to the needs of the organization. It is also remarkable that external advisors can be employed to enhance the process, but their employment is not mandatory. Therefore, this freedom is given to the management.

Negative remarks: A focus is put on "dressing up" to management and shareholders which should not be the motivation driving the certification process.

3. TÜV Compliance Care Standard

In its major function the Technischer Überwachungsverein (TÜV), a club for technical monitoring, oversees technical equipment. It is best known for certifications on cars which are mandatory every two years. In its independent function it tests for example household applications, but also car seats for children for example.

Positive remarks: The TÜV is an independent and well known organization in the public. The topic Compliance which is not known to the public in general could be communicated via a TÜV certification broadly.

Negative remarks: The knowledge and skills for a Compliance Management can be doubted as Compliance Management is no core competence of the organization. Therefore a certification might not meet best practice standards.

4. Sheshunoff Information Services Regulatory Compliance Certification Program

The Regulatory Compliance Certification Program offered by Sheshunoff and A.S. Pratt combines a company approach with an individual certification. An individual person being responsible for Compliance enrolls in the certification program, but the benefits are given to the organization which typically is a bank. The focus of the certification program is on the financial industry covering specific financial industry topics.

Five modules have to be completed before a certification is rendered, ranging from Lending Requirements over Deposit Disclosure and Interest Rate Requirements to Other laws and regulations [9].

Positive remarks: The approach to address a specific branch is innovative and most likely provides tailored information. The concept of coursework for individuals who pass an exam for each module and the idea that the course is done in the organization provides greatest flexibility to the participants of the certification process.

Negative remarks: For a certification of a general Compliance program the Regulatory Compliance Certification Program is too specific.

Compliance Certifications for Individuals

Universities offer Master or MBA studies specializing in Compliance Management which have as an aim the formation of theoretical Compliance managers. If the skills taught pass the reality test is not yet decided. An experience in high-risk countries is not mandatory, although it would confront the individuals with moral dilemma which test the gained knowledge.

Whenever researching or talking to practitioners what the skills are which are needed from Compliance managers, it becomes obvious that the spectrum is far reaching and the requirements are very diverse: They reach from strict rule keeping, to enabling the business to conduct clean business, to train persons etc.

An employee Compliance certification does not mean a certification of an employee obeying to different rules laid out in the company, but it is a special certification for employees working as Compliance officers, managers etc.

In their daily work Compliance officers fulfill a wide range of tasks, as for example judging the quality of proposed third parties which might be involved as additional sales channel, evaluating the appropriateness of gifts and invitations which are made to externals or taken from externals, investigating allegations which were made from external sources or advising the management team and the employees on specific topics.

That is the reason why a general certification is difficult, as the scope of work differs a lot. Compliance certifications for individuals on the market tend to provide a general certification with the most common topics, as for example:

- Legal requirements;
- The Compliance Organization;
- Data protection;
- Antitrust;
- Communication;
- IT-Compliance.

Until now, there are several single certifications available, but no unified international standard. A certification similar to ISO Quality norms has not been developed yet, but also a legal requirement to certify is not given.

Furthermore it can be discussed whether companies influence the legislation beforehand as they set standards which might be adopted by legislation at a later stage.

In the following, two certifications available on the market are described and evaluated. The analysis of the certifications is conducted in the context of the broad scope the topic Compliance has.

1. Management Circle the Certified Compliance Officer

The organization Management Circle offers a certification program for individuals. It consists of a mandatory seminar which deals with the setup of a Compliance Organization.

Additionally three out of six seminars must be chosen. The focus areas for the seminars are law, business crime and IT. The six seminars which can be chosen are:

1. Capital market Compliance
2. Antitrust Compliance
3. Anti-Corruption
4. Compliance with value management
5. Compliance & IT
6. Compliance Management with SAP

Positive remarks: The program gives an overview in a very short time frame. Participants interviewed like the overview and the combination of different aspects of the topic Compliance.

Negative remarks: A certification which can be acquired in five working days may not be sufficient to address all Compliance related challenges in a business environment. Therefore the quality of the certification can be doubted.

2. OECG Individual Certification / GRC Professional Certification

The Open Ethic and Compliance Group does not only offer organizational certifications, but also certifications for individuals. The certification focuses on the areas governance, performance, risk, internal control and Compliance management.

Until now the Professional Certification is the cornerstone of the program. Other certifications are in the planning with a special focus on technology or audit.

Based on a competence profile and the analysis of skills, the organization offers a certification which does not focus on content topic as it is usually done with the other certifications, but which focuses on competencies groups, such as "Organize & Oversee", "Assess & Align", "Prevent & Promote".

Positive remarks: The approach which is chosen by OCEG is remarkable, because skills are put in the focus. This paradigm differs from the usual approach, but it should also be useful for other functions.

Negative remarks: From a scientific point of view it is not clear whether the skills are theoretically founded and will be valid in a future period. To guarantee a future validity, a renewal concept has been developed [10]. The certification is valid for one year and hast to be renewed after that period.

Conclusion

The challenge of the certification will be to make sure that the Compliance Management System will not become too bureaucratic as a certification process may lead to centralization. If an organization sets up a team which is responsible for the certification this will probably be done centrally. Furthermore the time frame should be considered relating to experiences which have already been gained:

"As with ISO certification, companies and government departments will generally require substantial preparation in order to qualify for certification. (…) Indeed, organizational efforts to transform lofty pronouncements of anti-corruption into practical systems of prevention, detection and sanction could revitalise staff member spirit as well as mission statements." [11]

Therefore certifications could also have a positive impact on the responsible persons for Compliance Management Systems.

The certifications of CMS or individuals should not be interpreted as risk avoidance or delegation of Compliance work from the management to the next hierarchy level. It can rather be seen as unified understanding of a base level of qualifications which have to be implemented. The tasks of a Compliance manager are too wide-spread to group them under the umbrella of one certification. Similarly to other functions as for example a CEO, a certification can not cover all tasks foreseen.

The desire for certificates stems from the insecurity due to the lack of knowledge, requirements which can not be met etc. Certifications are meant to build trust, but can also be used as strategic advantage for the organization. It might become the preferred supplier for business partners as they can rely on this certificate. The organization demonstrates that it obeys to external standards which it may also demand from its suppliers or other business partners. In this way, the start of an upward-spiral can occur.

A certification is a symbol that ethical behavior is valued as an important good knowing that the practical implementation is difficult to achieve: "What is clear is that the task of designing organizations to foster ethical behavior is not always a straightforward and simple one." [12]

But it is worth completing the task. Especially in times where prosecutors fortify their efforts to find corruption cases a Compliance certification can be an advantage. In the USA for example "(…) the government has adopted a policy of being less likely to prosecute corporations that can demonstrate that, even though an employee paid a bribe, it had a meaningful compliance program in place, as benchmarked against industry best practice." [13] If certifications reduce these prosecutions, one interesting area of future research would therefore be the impact of certifications on business management. In this regard the certification could bring a positive monetary effect for the organization.

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