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ANTHONY SMITH-MEYER

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info@baltzersciencepublishers.comwww.baltzersciencepublishers.com**Editor-in-Chief****Anthony Smith-Meyer,**

Professor of International Business and Management

Miami University, Ohio – European Campus, Luxembourg

anthony@smithmeyer.eu

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Design

Eric G.F. van den Berg

ericgfvandenberg@gmail.com

Tom van Staveren

graphicisland@upcmail.nl

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EDITORIAL

MARSHALLING CHANGE



■ **The drivers of culture within an organisation** are a significant influence on the size and complexity of the compliance challenge. Corporate culture itself is a function of the people engaged in the firm, how they are led, and the social framework that determines how those individuals interact and influence each other. This issue of the Journal of Business Compliance provides some fascinating insight and inspiration for Compliance, Human Resources and Managers alike; to ponder – preferably together.

In a world where markets in all manner of products are becoming increasingly global, tensions and differing expectations on what constitutes acceptable behaviour across borders generates miscomprehension, doubt and suspicion into the workplace. In our column, **Compliance Challenge**, this source of cultural tension is explored, and solutions for consolidating global and local interpretations of ethical standards discussed.

Whereas cultural differences across borders might be a readily recognised challenge, talk of the generation gap is usually a topic reserved for family contexts. However, the influence of the changing norms of society on behaviour between generations in the workplace has provided more than enough cause for action as described in our piece on Recruitment in **The Effective Practitioner**. As our final offering on the subject of managing ethical expectations within the organisation, we are privileged to be able to present the **Regulatory Outlook** views of the Business and Industry Advisory Committee to the OECD on the impact of its Anti-Bribery Convention, and the future areas of focus that we might expect going forward, impacting as it does all industries.

Dealing with diversity in cultures, requires an openness to listen to differing views and thoughts on values. In our **Governance** column we give prominence to the subject of gender diversity. The debate on the rights

* **Anthony Smith-Meyer** is Editor-in-Chief of the Journal of Business Compliance. His biography may be found in the final section of this issue.

EDITORIAL

or wrongs of quotas are now largely behind us. Irrespective of our views on that subject, it is now a challenge for many to encourage greater diversity, of which one example is gender, but how can this be achieved? In the article, the practical examples of initiatives undertaken in the European melting pot known as the Grand Duchy of Luxembourg, demonstrate a surprising number of effective and doable actions open to government and enterprise alike, which surely must be considered by any organisation seriously committed to the cause.

In Over The Horizon, the spectre of the Basel Committee of Banking Supervisors' paper on effective data aggregation and risk reporting is considered, raising direct issues for the financial industry, but a topic relevant for any major firm, irrespective of industry. Effective risk reporting in a rapidly changing environment is a cherished objective of risk managers and board directors alike, and one that is starting to exercise influence over the role and expectations placed on Compliance functions in all industries.

In Speakers Corner the views of a number of Divisional and Group Heads of Compliance are consolidated to ask questions as to how the function is changing in light of such prospects, and of the risks of regulatory and management priorities impacting what might be considered by many as the prime focus of compliance officers; namely the prevention of behavioural misconduct. This important question on the role of the compliance function, and its place in the internal control framework of organisations is further pursued by a new feature, **Round Table – where topics are debated amongst a diverse group of experts. In this column, the first of its kind in this Journal, the panel consists of a number of our own Editors candidly sharing their personal opinions, and sometimes surprising observations.**

Five years after the crisis of 2008/09, the influence of lessons learned continues to change the nature and dynamics of our governance, compliance and ethical framework. We hope that this issue will provide you, our readers, with ideas and inspiration to marshal the implications and possibilities for your institutions. ■

THE IMPACT OF THE OECD ANTI-BRIBERY CONVENTION 15 YEARS ON – BIAC KEY MESSAGES



*By Dr Klaus Moosmayer and Hanni Rosenbaum**

■ The Business and Industry Advisory Committee (BIAC)¹ to the Organization for Economic Co-operation and Development (OECD) is an independent international business association devoted to advising policy makers at OECD and related fora on the many diversified issues that relate to global markets and to the world economy. Officially recognized since its founding in 1962 as being representative of the OECD business community, BIAC promotes the interests of business by engaging and advising policy makers on a broad range of policy issues. The anti-corruption agenda, including implications for business, is high on OECD's and BIAC's agenda. This high-level activity carries significant impact and is therefore of material interest to all actors in the field. BIAC has had a task force on anti-bribery and corruption since 1997, and played an instrumental role in the creation and implementation of the landmark OECD Anti-Bribery Convention. The BIAC Task Force, which is chaired by Dr. Klaus Moosmayer, supports the OECD efforts to fight bribery and corruption and provides regular input to the implementation of the Convention as well as to other OECD activities dealing with anti-corruption, compliance and integrity. The following paper outlining the Committee's strategic focus going forward, was submitted on behalf of BIAC to the OECD "Roundtable on the Impact of the OECD Anti-Bribery Convention 15 Years On", which took place in Paris on 11 December 2013. This review of current thinking and focus of the Roundtable, offer practitioners a rare "fly on the wall" experience as governments, the private sector, and civil society discuss the impact the Anti-Bribery Convention has had since its entry into force in 1999, as well as what should be done to ensure the Convention's continued relevance going forward.

* Dr **Klaus Moosmayer** is Chief Compliance Officer of Siemens AG, Chair of the BIAC Task Force on Anti-Bribery/Corruption and an Editor of this Journal. **Hanni Rosenbaum** is Senior Policy Manager at BIAC, Paris.

1 www.biac.org

THE IMPACT OF THE OECD ANTI-BRIBERY CONVENTION 15 YEARS ON – BIAC KEY MESSAGES

Informal exchange of views (between the OECD and) business and other stakeholders ... helps to better determine the impact ... on actual behaviour.

■ 15 years after the entry into force of the OECD Anti-Bribery Convention, BIAC would like to congratulate the OECD for its contributions to combat bribery and reiterate its support for an effective implementation of the Convention. These legally binding standards have clearly positioned the OECD as a leading institution in the international fight against corruption.

Key achievements

In BIAC's view the following features of the Convention have particularly contributed to its success:

- **Focus:** The Convention addresses one specific aspect of corruption – the bribing of public foreign officials. It has become a recognized international standard against which the performance of governments can be benchmarked.
- **Reach:** All OECD countries and six non-member economies have ratified and implemented the Convention. The 40 parties to the Convention represent a significant proportion of global trade and global outward Foreign Direct

Investment. High coverage of global trade and investment is critical for the instrument's high relevance and needs to be further pursued. We therefore welcome the G20 leaders' declaration to encourage engagement of all G20 countries with the OECD Working Group on Bribery with a view to explore possible adherence to the OECD Anti-Bribery Convention as appropriate.

- **Monitoring:** The monitoring process in the form of peer reviews has been of paramount importance and is a true success story. Several countries have amended their legislation following OECD recommendations. Special attention should be given to ensure effective follow-up to monitoring reports.
- **Private sector involvement:** The OECD has established an informal exchange of views with business and other stakeholders as an integral part of the review process. BIAC regards this dialogue as very relevant to the implementation of the Convention, as it helps to better determine the impact

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THE OECD ANTI-BRIBERY CONVENTION EXPLAINED

The OECD Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. The signing of the Convention in 1997² was a major breakthrough in the fight against corruption. It is the first and only international anti-corruption instrument focused on the ‘supply side’ of the bribery transaction. All Convention countries must make the bribery of foreign public officials a criminal offence. The 34 OECD member countries and six non-member countries – Argentina, Brazil,

Bulgaria, Colombia, Russia, and South Africa – have adopted the OECD Convention.

Established in 1994, the OECD Working Group on Bribery is responsible for monitoring the implementation and enforcement of the Convention and related instruments. The Convention’s monitoring mechanism by way of peer reviews has established it as a pre-eminent international anti-corruption instrument. The mutual evaluation process creates peer pressure and motivates countries to ensure the highest level of compliance with the Convention, and take concrete action to fight corruption.

that the laws and enforcement have on actual behaviour.

Next steps

Despite the major achievements of the Convention over the past 15 years, BIAC would like to highlight the following key considerations to effectively curb corruption and provide a real level playing field for international business across OECD countries and outside the OECD.

■ **Further enhancing global cooperation** will be essential in order to implement internationally accepted frameworks such as the OECD Anti-Bribery Convention and work towards the objective of a truly global level playing field objective. Several G20 countries, including China and India, are not Party to the Convention which

has the potential to undermine the efforts to create a level playing field for international business. We urge the OECD to use its well-established cooperation with key partners to bring them closer to OECD policy standards, and ultimately to work towards their adherence to the Convention.

■ **Closing the implementation gap:** Capacity building in emerging and developing countries should be given continued attention. This includes promoting anti-corruption awareness in the business community and within governments and providing training in the area of compliance techniques. Effective enforcement of the Convention should be ensured by continuing the review process and encouraging follow-up to the

2 <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

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Companies should be encouraged to invest in well-functioning anti-corruption systems

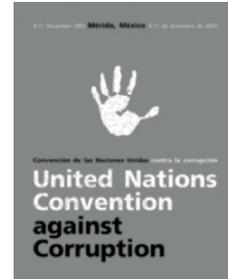
specific recommendations and areas for action that have been identified. Continued attention should be given to consistent and effective enforcement measures that can discourage bribe payers, offer incentives and remove disincentives for the corporate sector to take an active role in the fight against corruption.

- **Address the demand side:** The OECD Convention focuses only on the supply side of a bribery transaction and does not address the demand side, i.e. bribe solicitation and extortion by public officials. Including the demand side of bribery effectively in OECD work going forward would represent a significant step towards a more corruption-free business environment. We call upon the OECD to show commitment to combat bribe solicitation and explore options in this area to help establish the necessary confidence of the business community for a comprehensive fight against corruption.
- **Foster compliance:** Compliance should be understood not just as

adherence to the law and internal company rules, but as a key component of business integrity. Companies should be encouraged to invest in well-functioning anti-corruption and compliance systems and support projects that work towards the creation of incentives for good performers. Such efforts should be duly recognized. Compliance Incentive Systems should be implemented in national legislations, rewarding voluntary self-disclosure of companies and investment in compliance systems. True compliance efforts should be recognized in any sanction decisions against companies. If companies have done what they are supposed to do, it is the respective individual who has to be held responsible if corruption occurs.

- In this respect, particular vigilance should be given to the ongoing ISO work on currently two separate proposals from Australia and the UK for anti-bribery/compliance management systems. While the proposed standards could be used for demonstration of compliance if

THE IMPACT OF THE OECD ANTI-BRIBERY CONVENTION
15 YEARS ON – BIAC KEY MESSAGES



properly developed, it could undermine the key achievements to which the OECD Convention has contributed. Moreover, the development of parallel standards could allow companies or countries that are not signatories to the Convention to use them as sufficient proof of compliance, regardless of whether they effectively comply with the Convention.

■ **Recognition of “Self Cleaning Measures”** in national public procurement regimes: Companies should have the possibility to mitigate blacklisting/debarment decisions by implementing effective compliance measures after a corrupt activity was detected and remediated.

■ **Efficiency of the legal framework:** What is needed is a well functioning judicial system to effectively address some of the challenges of the complexity of the fight against corruption. There are currently significant discrepancies in the efficiency of legal systems worldwide. We call upon government to create an efficient legal and institutional framework,

including for the demand side of corruption. Mutual legal assistance in particular with regard to non-Parties to the Convention would help further increase the effectiveness of the OECD Convention. Governments should consider implementing high-level reporting systems as for example Ombudspersons, which could be used by companies to address corruption concerns already in early stages of public biddings.

■ **Promoting dialogue between the public and the private sector:** Public-private dialogue is important to identify ways of further strengthening national legal systems, identifying current or upcoming corruption risks and the need for reforms and capacity building. Governments and business should promote coordinated partnerships to leverage resources for advancing technical assistance efforts and engage in discussions on how companies can join forces with public institutions of the countries where they do business (“Collective action”) in order to reduce corruption risks.

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■ **Education, training and capacity building** should remain a key priority to foster a culture of integrity and promote knowledge sharing between institutions and stakeholders. This would include education and training of current and future managers, engineers, government officials and civil society leaders, but also students from emerging and developing countries. Education is also important when it comes to SMEs, where larger companies can play an important role by engaging SMEs through their supply chains, providing them with support and sharing best practice.

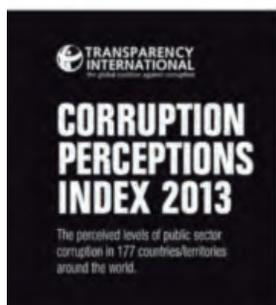
■ **Draw upon OECD's expertise in related areas:** The OECD has considerable expertise in a wide range of areas which should be given due consideration. For example, the quality of public governance and public procurement frameworks and practices are factors which have a significant influence on the occurrence of corruption. BIAC therefore welcomes OECD initiatives to improve integrity in public procurement systems. Addressing

corruption and bribery is also key for promoting a sound investment environment worldwide and should therefore be given due attention in the OECD outreach activities in this area.

Dr **Klaus Moosmayer** is a member of the Editorial Board of this Journal. A complete biography may be found at the end of this issue.

Ms. **Hanni Rosenbaum** is Senior Policy Manager at the Business and Industry Advisory Committee to the OECD (BIAC). She currently manages BIAC's activities in the areas of investment, corporate responsibility, anti-bribery, corporate governance and environmental policy. Prior to joining BIAC, Ms. Rosenbaum worked at the Nürburgring GmbH and Circuits International (AICP), the European Parliament, as well as BIR, the global recycling industry association. Ms. Rosenbaum holds advanced degrees in French and English, in applied economic sciences from the Brussels Management School (ICHEC) and in international relations from the Centre for Diplomatic and Strategic Studies in Paris.

THE IMPACT OF THE OECD ANTI-BRIBERY CONVENTION 15 YEARS ON – BIAC KEY MESSAGES



BIAC Agenda Points

- Seeking the continued expansion of signatories to the Convention, including more emerging economies, such as China and India.
- Working towards the effective implementation of commitments under the Convention by signatory countries.
- Expand the application of Convention objectives to include the solicitation of bribes.
- Encouraging the recognition of genuine anti-bribery implementation efforts in the determination of sanctions against parties found in breach of anti-corruption rules.
- Continued promotion of uniformity of process, frameworks and application of laws and regulations as applied to the control and prevention of bribery in public procurement.
- Continued encouragement of Collective Action for the prevention of corruption at national level between the private and public sector.
- Promote business integrity and awareness of anti-bribery initiatives through education: in academia, but also through the supply chain of major companies.

³ The Corruption Perception Index measures the perceived level of public sector corruption in countries and territories around the world.

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