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Compliance Risk Management in Polish and German Companies

ABSTRACT

Objective: This article focuses on the analysis of cultural similarities and differences important in terms of the compliance risk management in Polish and German enterprises, with the deliberate omission of Hofstede's four cultural dimensions, in favour of the modified E. Schein's model. This article explains the basic concept of risk management culture, the compliance risk and the

essence of the compliance management system in Poland and Germany as well as the impact of cultural factors of each of the analysed countries on the development of compliance. The research objective of this paper is to present a comparative analysis of the examined countries, through the analysis of compliance management systems, as an indispensable element of risk management in an organisation, both in practical and formal terms.

Methodology: This research is based on a critical review of the source literature and inference with assigned classical and fuzzy logic values as part of the culture description and risk management.

Findings: The initial hypothesis is that the compliance risk management in companies in Poland and Germany has common and standardised features of the Community legal standards, which can be differently displayed from the declarative and actual point of view in Germany, due to an increase in internationalisation and intercultural relations.

Value Added: This article presents the theoretical significance and functions of compliance risk management based on an analysis of applicable compliance systems and cultural systems in Poland and in Germany.

Recommendations: The compliance risk management system is an essential risk management mechanism in organisations, both in formal and practical terms. It should take into account both the cultural diversity of the regions in Germany and the high cultural and ethnic homogeneity of enterprises in Poland – open, however, to cultural diversity.

Key words: risk, compliance risk, management, compliance, compliance management system, interculturality.

JEL codes: K40 Legal Procedure, the Legal System, and Illegal Behavior: General; G32 Financing Policy, Financial Risk and Risk Management

Introduction

Every business entity operating on a competitive market should be able to efficiently adapt to changes emerging in the environment, i.e. frequent changes of legal regulations, market competition, shortage of qualified staff or improper owner supervision. In connection with the above facts, identifying and managing risk is becoming a real challenge related to conducting business activity. The description and creation of risk definition has also been repeatedly dealt with in the literature on the subject. One of

the interpretations is presented in the *Leksykon Finansów*. According to its contents, risk is "an undertaking whose effect is unknown or uncertain, or it is a possibility that a given thing will succeed or fail" (Głuchowski (ed.), 2001, p. 266). The literature also points to the fact that in the past risk was perceived as a phenomenon independent of human activity. It was only from the nineteenth century onwards that risk started to be perceived as an issue where man has a considerable possibility of interfering (Spira & Page, 2003, pp. 34). In financial and particularly in economic sciences, risk constitutes one of the main issues. Each enterprise sets goals and strives to attain them as part of its business activity. In the course of actions undertaken, there are circumstances that may prevent the desired objectives from being achieved. Therefore, risk is a permanent element of the functioning of enterprises as well as of any human activity (Raczkowski, Noga, & Klepacki, 2015, p. 14).

Risk management

The concept of risk management also appears in the literature on the subject alongside the concept of risk. It can be defined as "formulating an action plan aimed at minimizing or eliminating the negative effects of risk appearing in various areas of the operation of an enterprise and searching for development opportunities through undertaking business activities in the sphere of increased risk" (Romanowska & Trocki, 2004, p. 347). M. Wilczek proposes still a different definition and indicates that risk management is "an art and science of identifying, determining and preventing risk throughout the life of a project in the interest of the successful achievement of its goals" (Wilczek, 2002, p. 72).

A different approach to this issue is presented in the International Standards for the Practice of Internal Auditing IIA. According to them, risk is the possibility of an event arising that will affect the achievement of previously set goals. In such an approach risk is measured through the influence (i.e. impact power)

as well as the probability of its occurrence (Definicja audytu..., 2012, p. 47). These guidelines also provide the answer that should be taken in consideration in the process of coping with risk, i.e. in risk management. According to this approach, risk management is a structured, permanent and continuous process undertaken in an entire organizational unit with the purpose of identifying, assessing, responding and reporting on opportunities/chances or threats related to achieving specific goals (Role of Internal..., 2009, p. 2).

In other words, risk management includes in its scope understanding, analysis and taking appropriate measures related to risk to ensure a situation in which organization will achieve its goal. Therefore, this management has to be proportional to the complexity and type of the organization involved. Enterprise Risk Management (ERM) is thus an integrated approach to risk management in an organization and in its extensive networks. Considering that risk is an integral part of everything that man does, the types of roles, tasks and functions undertaken by risk specialists are highly varied. These include activities in the areas including but not limited to insurance, business continuity, corporate governance, safety and hygiene, engineering, planning and financial services (What is Enterprise..., 2019). This is also what P. Hopkin points to. He clearly suggests that assessing the extent of available responses to risk and choosing the most appropriate one in each case is the essence of risk management. Responding to risk should bring benefits both to the employee (manager) and the organization in which they work (Hopkin, 2010, p. 2).

Based on this document, it should be clearly stated that one of the basic tasks within organizational units tasked with compliance is to control and manage risks occurring in a given entity. The concept of risk may be discussed on the basis of many different typological criteria. Depending on which one is adopted, the final definition of this issue may take a different form.

Paying attention to the comments made above regarding ERM, it should be noted that the approach to risk management has changed. There are major differences between traditional risk management and ERM. These are listed in the table.

Table 1. Differences between traditional risk management and Enterprise Risk Management

Traditional risk management	Enterprise Risk Management
Risk is a single threat	Risk is analysed in the context of the business strategy
Risk estimation and identification	Elaboration of the so-called risk portfolio
Measures focusing on specific, isolated types of risk	Focus on the so-called critical risks
Risk limits	Risk strategy
Risk mitigation	Risk optimization
Risk does not have a clearly assigned owner	There exist employees' obligations being strictly connected with risk
Risk quantification based on randomness	Monitoring and measuring risk
The prevailing principle: "risk is not my responsibility"	The prevailing principle: "everyone is responsible for risk"

Source: own study based on: Olson & Wu Dash, 2007, p. 5.

With regard to the contents presented, it should be noted that the identification of risk factors is the starting point for a holistic approach to risk management. The literature on the subject emphasizes that the risk identification process is associated with the assessment of the likelihood of threats and possible opportunities. Determining the probability level of the occurrence of a specific event as well as the size of such risk is very important in risk identification. T. Kaczmarek adopts a stance whereby risk identification is a process of researching and identifying threats that may occur in a particular organization. The author clearly indicates that the purpose of risk identification is to recognise the threats occurring in the context of further action of a specific organizational unit early enough (Kaczmarek, 2006, p. 99).

In the process of risk identification, attention should be paid to all causes, both direct and indirect, which may in the future cause damage to the assets of an organizational unit (understood not only as its material goods, but also as a whole range of other components and element involving but not limited

to employees, brand, clients, contractors or know-how). It seems extremely difficult to view the identification of individual risk factors not only through the prism of threats but also through the prism of unattained or lost benefits. This form of risk analysis refers directly to selected risk concepts, namely (Jaguga, 2009, p. 13):

- negative risk concept,
- neutral risk concept.

It should be noted, however, that while the first of the above concepts intuitively indicates risk understood as a certain threat (corresponding to the concept of pure risk), the second concept refers to the fact that while risk may be seen as a threat there is a specific opportunity to avoid it. The neutral risk concept treats risk as the possibility of obtaining an effect that will vary from the expected one. Therefore, this model is closely related to conducting business activity (Jaguga, 2009, p. 13).

Compliance and compliance risk management - history of compliance

Even though the term "Compliance" has been around over the course of history, in its most recent understanding, it is mainly referred to as a systematic concept to ensure compliant behavior in a business environment (Spindler, Stilz & Fleischer, 2019).

Compliance first became important in the wake of the Watergate affair, when the Foreign Corrupt Practices Act (FCPA) of 1977 was introduced to combat, the then popular practices of bribes and corruption, especially towards public officials. It was mainly intended to criminalize payments to foreign government officials and introduced the regulatory needs for accounting transparency (Stiftung, 2013).

The FCPA turned out to be an effective measure to raise awareness for the importance of Compliance. Especially due to the large impact it had on US companies, which used practices of bribery and corruption anywhere in

the world, through the strong enforcement and high fines. With the amendment of 1998, the FCPA was also applicable to non-US companies (Foreign Corrupt..., 1997). This led to a higher recognition of the FCPA globally. Around the same time, the US Securities and Exchange Commission ("SEC") started enforcing the FCPA accounting provisions together with charges involving commercial bribery, which strengthened the need for companies to consider the proper application of their internal controls and accounting policies to commercial and government dealings (Menzies, 2006).

Already ten years prior, in 1989 a working group was founded to develop the so-called "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" among the members of the Organisation for Economic Co-operation and Development ("OECD"), to prohibit bribery in international business transactions [Resource Guide..., 2008]. This convention was signed in 1997 and came into place in 1999 [OECD Convention on Combating Bribery..., 1997]. Other international treaties developed between the mid-1990s to the mid-2000s, culminating with the adoption of the United Nations Convention Against Corruption ("UNCAC").

These acts to increase compliance were mainly focused on the field of anti-corruption. The Sarbanes Oxley Act ("SOX") in 2002, issued again by the US as a reaction to big accounting fraud cases at WorldCom and Enron, extended the scope by requiring SEC registrants to establish and maintain an adequate internal control structure and procedures for financial reporting to assist in detecting a material misstatement. Recordkeeping requirements were also included in the OECD Recommendation for Further Combating Foreign Bribery of Foreign Public Officials in International Business Transactions and its Annex II, in particular, entitled "Good practice guidance on internal controls, ethics and compliance", which was adopted in 2010 (Strach, 2003). Afterwards, Compliance started to spread to a more diverse set of risk areas besides bribery and corruption.

Historically the development of compliance issues is also based on guidelines of international organizations. These are primarily:

- COSO Guidelines (Committee of Sponsoring Organizations of the Treadway Commission) (Internal..., 1992);
- Guidelines contained in the recommendation of the Basel Committee on Banking Supervision (Framework..., 1998);
- EBA Guidelines (European Banking Authority) (Guidelines on Internal..., 2011);
- ESMA Guidelines (European Securities and Markets Authority) (Guidelines on certain..., 2012).

The definition and essence of compliance were included in the contents of ISO 19600:2014. The interpretation has a multidimensional nature and in general can be formulated as follows: “compliance is a conscious, systemic and integrated with the organization care for the complementary application of the letter and spirit of the law so that the organization can effectively achieve business goals” (ISO 19600, 2014).

Nowadays Compliance is not limited to specific areas but is understood as an overall term for the concept of ensuring compliant behavior by companies and their employees with laws, regulations, policies and social norms (Framework for Compliance..., 2019).

Large companies often introduce a department specifically responsible for Compliance. The size and objectives of the departments differ, depending on the business environment and the scale of the risks handled by them. As such, larger companies often bundle the responsibility for different risk areas within the compliance department to facilitate a centralized oversight. For smaller companies, the compliance function is often found within other departments, such as the Legal department. The responsibilities of the departments differ, depending on the size of the company, the legal environment and the setup in each individual company (Becker, 2011, pp. 7–22). Often, multiple departments are involved in ensuring compliance within an organization and it is the Compliance department that must ensure the responsibilities are clear, despite the various interfaces within a company (Steßl, 2012, pp. 20–54).

Compliance and compliance risk management

To ensure Compliance in a complex business environment, Compliance Management Systems (CMS) play an important role. They mainly consist of three pillars: prevention, detection and response/improvement. The individual design of different CMS differs, based on the risks they are intended to mitigate, but some components can be found in every CMS, no matter the risk area. Based on the Governance, Risk and Compliance Capability Model by the Open Compliance and Ethics Group (often referred to as the OCEG Red Book), these components can be clustered in the following groups (GRC Standards, 2019):

- context – understand the culture and business environment,
- organize – understand the organizational capabilities,
- assess – understand the risks, opportunities, threats and requirements,
- proact – take actions to prevent undesired events,
- detect – take actions to detect undesired events,
- respond – take actions to respond to undesired events,
- measure – measure the appropriateness and effectiveness of the actions,
- interact – capture and communicate measures taken.

Some components can be linked to other main governance systems within a company. Primarily the “Assess” component can be connected to Risk Management Systems (RMS) and the “Proact” as well as the “Detect” component to the Internal Control System (ICS). However, the purpose of these systems differs slightly from a CMS. On the one hand, RMS often focus on protecting corporations from major downtimes or risks that could affect the existence of the corporation, while a CMS aims at preventing every kind of misconduct by the employees or business partners of the corporation – therefore the risks covered by a CMS could be reported as part of the RMS. An ICS on the other hand, covers controls to ensure a reliable financial reporting, high operational performance and compliance with laws and regulations – hence some of the controls included in an ICS can be relevant controls for a CMS as well (Evans, 2014).

Compliance management has now become the basis for efficient management and success, which is to be achieved by the company. In a nutshell, the concept of compliance can be defined as: functioning in accordance with the provisions of law. However, the broader interpretation assumes that compliance is the management of the risk of non-compliance. It is thereby understood that compliance fulfils a control function in all financial organizations. These controls may be defined as a process whose goal is to ensure an increase in the efficiency and effectiveness of financial operations, credibility of financial reporting and compliance with the law (Namiri & Stojanovic, 2008).

It should also be noted that in the contemporary world, which is developing rapidly in all respects, it is very important to ensure efficient compliance risk management and cooperation between senior management and all business units in an organisation. Such activity alongside with the current complexity of business issues will allow for an effective mitigation or elimination of risk (White Paper..., 2013).

Compliance in Poland- organizational culture and its impact on compliance

Modern managers pay increasing attention to the factors that determine the functioning of individual business entities. One of them, to which special attention was paid already back in the 1980s is the culture and its importance for the management process. Particular credit goes to Hofstede. The author was one of the first to make an attempt at describing the problem of the diversity of national cultures in relation to international economic relations, business entity management and conducting business. Organizational culture was defined by him then as a collective programming of the human mind that distinguishes members of one organization from the members of another (Hofstede, 2000, p. 375). E. Schein was of great importance for defining culture in organizations. In the commonly known model of the indicated author, organizational culture is defined as symbols

(various types of artefacts, created and used consciously), norms or values (fully identifiable, but partly unconscious), as well as cultural assumptions (axioms and certainties subconsciously or indisputably accepted) (Schein, 1985; Wronka-Pośpiech, 2017, p. 94).

Paying attention to management culture is especially important nowadays, when various transnational corporations wield so much importance. The management process, which takes place in them must take into account the cultures typical for individual countries, where they have their branches or from which their employees come. In their case, the significance of the relationships which exist between culture and management is particularly well visible (Demangeot, Adkins, & Mueller et al., 2013, pp. 156–159). At the same time, it cannot be recognized whether a given culture is better or worse for management processes. There are many factors which a culture consists of, and at the same time they can affect the functioning of an organization to a lesser or greater extent. These can be, for example, strategic competences, specialist knowledge, or various situational factors. Appropriate management of these factors, and therefore culture management in an organization may be crucial for success or failure in business (Rathje, 2007, pp. 261–264).

In order to make the most of the potential of culture in the context of compliance in modern corporations there are certain sets of norms in place. Cultural differences may have a significant impact on how each of these norms will be implemented. Therefore, there may also exist completely different ways to solve difficulties in building compliance. Cultural conditions in force in a given corporation directly affect how compliance norms and rules will be implemented. Individual corporations operate in various legal regimes, which in practice often determine the way economic entities operate. Companies that decide to do business in a given country must comply with a given legal culture straight from the beginning. Compliance management must incorporate specific legal regulations and guidelines that may not apply in other countries (Braun, 2019, pp. 225–226).

This may also result in the fact that in individual countries there are different understandings of various concepts important from the point of view of compliance analysis. Therefore, the concept of corporate governance or corporate social responsibility, popular in recent years, can be interpreted in various ways (Rudolph, 2014).

For the development of compliance in Poland, as well as in any other country, the organizational culture, which prevails therein is of key importance. Individual authors and management practitioners in contemporary organizational units have only been intensively implementing and studying this phenomenon for several decades. In order to accurately characterize the impact of organizational culture on a company's success, one needs first to outline what it is. M. Sidor-Rządkowska writes that „organizational culture is a kind of pattern of basic assumptions which are designed or developed by a group of people in order to properly cop with various problems of external adaptation and internal integration” (Sidor-Rządkowska, 2009, p. 125).

However, in Poland organizational culture is determined by the entire economic aspect. This applies to both the approach of management staff and employees themselves, who are crucial to the proper perception of risk in their organizations. In Poland, rising wages, shortening working hours, as well as the growing overall wealth of the country (calculated GDP) bring the country closer to the western cultures of such countries like Germany, France or the United Kingdom. The considerably high dynamics of economic development in Poland in recent years have also resulted from the participation of international corporations in it. It is worth adding here that the proper and efficient functioning of international corporations, or their branches in a given country is also determined by the proper understanding of the impact of various legal cultures on the functioning of organizations. In the context of compliance, this is of crucial importance when resolving the contradictions between the laws being in force in various countries and local guidelines. This is necessary from the point of view of both the efficient and proper functioning of organizations and because of the demands expressed by local supervisory authorities (Bierbrauer, 1994, pp. 243–264).

The applicable legal system is of particular importance for compliance and non-compliance risk management in Poland. This became particularly important after the country's accession to the European Union in 2004. The growing number of provisions, as well as frequent changes in regulations at the national and EU level, concluding increasingly more complex financial transactions or the observed intensification of activities of supervisory authorities results in the need for considerably greater prudence in the implementation and maintenance of efficient compliance management systems (Eleryk, Piskorz-Szpytko, & Szpytko, 2019, p. 25).

Considering the above, the idea of implementing a compliance management system, not only due to its various advantages, but also external factors, has also taken root in Poland over the past decades. On the international stage, global corporations have been of key importance, which by implementing compliance principles included in their scope full corporate structures, and therefore subsidiaries in all countries. In this way, also their daughter companies with headquarters located in Poland have had to implement relevant components of the compliance management system, applicable in a particular corporation. There has also appeared pressure from trading partners who, by choosing their own contractors, have begun to inspect their structures more closely in the context of compliance to ensure that they co-operate with secure entities. The scandals involving large entities with branches in Poland have also proved to be an important aspect of strengthening awareness in the context of compliance. In organizations of this kind, following the imposition of various onerous sanctions and experiencing image injuries, a change or strengthening of the compliance risk management system took place (Compliance..., 2018, pp. 8–9).

The significance of compliance in Polish entities is visible on many levels, however, the main role in this respect belongs to management boards and supervisory boards. It should be noted that their activities are significantly determined by the regulations and guidelines of various public institutions. Members of management boards and supervisory boards bear legal respon-

sibility for their actions in this matter. When making business (management) decisions they must take into account the applicable guidelines, for example, the ones of the Polish Financial Supervision Authority (Jagura, 2017, p. 283).

Equally significant is the fact that Warsaw Stock Exchange listed companies comply with the so-called Best Practices envisaged for such companies (Jagura, 2017, p. 285). When describing these Practices in more detail, it should be noted that in accordance with Chapter III of this document, a "stock exchange listed company is responsible for the maintenance of efficient internal control, risk management and compliance systems, as well as an effective internal audit function, appropriate to the size of the company and the type and the scale of the business conducted" (Dobre..., 2016, p. 14). Moreover, in 2018, the Warsaw Stock Exchange issued clear guidelines on counteracting corruption and supporting so-called whistle-blowers in companies listed on this stock exchange. According to the assumptions of these standards, "it is recommended that the compliance management system in the Company shall be directed at identifying and managing the risk of non-compliance with the law, internal regulations of the Company and generally binding customs and ethical rules" (Standardy..., 2018, p. 1). The implementation of these recommendations in Polish business transactions has significantly increased investors' confidence in the stock exchange, as well as in individual companies.

The regulator has a special role in setting the norms and principles related to compliance in Poland. For the domestic financial system, this position is occupied by the Polish Financial Supervision Authority (KNF – Komisja Nadzoru Finansowego). This authority issues a number of recommendations, which affect not only the functioning of individual business entities but also the everyday life of citizens. KNF recommendations regarding loans, operation of banks and corporate governance principles in financial institutions may be given as examples. One of them is the Recommendation H of 2017, which refers to the internal control system in banks (Rekomendacja H, 2017).

Another document issued by the regulator is the Principles of corporate governance of 2014. Pursuant to section 47 a "supervised institution should

develop and implement an effective, efficient and independent function of assuring the compliance of the operations of the supervised institution with legal regulations and internal regulations, also taking into account supervisory recommendations" (Zasady..., 2014). This regulation should be directly referred to the compliance system, which should be implemented in every organization subject to the supervision of the Polish Financial Supervision Authority. The regulator's position regarding compliance rules in the insurance sector is also interesting. Accordingly, the Polish Financial Supervision Authority states that the proper and prudent management of the insurance/reinsurance undertaking shall be implemented and ensured through proper organization of the management system. When creating such a system, the scale of a particular insurance/reinsurance company should be taken into account. Moreover, the type of insurance/reinsurance business and the exposure of the above-mentioned entity to various risks need to be considered. "It is particularly important for the Polish Financial Supervision Authority that the statutory bodies of insurance/reinsurance undertakings be aware of the requirements regarding the compliance function and take into account the normative position and tasks of this function. The intention here is primarily to ensure the proper organization of the insurance/reinsurance companies which guarantees the efficient, full performance of the function" (Komunikat..., 2018).

It should be clearly emphasized that the examples of Polish compliance indicated above are only a narrow sample of the rules and guidelines, which apply in this matter. However, they are so important that they had to be emphasized here, even to limited extent.

To sum up, compliance in Poland is very rarely treated as a certain system and only slightly deviates from global standards. Moreover, various types of research in this area clearly show that compliance management systems are relatively widespread among economic entities operating in Poland. It is worth noting that it does not refer to companies in which foreign capital is dominant. Companies of this kind, which have already implemented the compliance

management system, have chosen generally accepted elements, such as risk analysis, raising the awareness of their employees through training, and other activities that promote awareness and the culture of compliance (Compliance..., 2018, p. 50).

Characteristics of the compliance and compliance risk management in Germany

Compliance in Germany has been regulated extensively by different laws for quite some time (Prigge, 1998, pp. 943–1044; Monks & Minow, 2001, pp. 275–290; Cadbury, 2002, pp. 70–75]. One of the most important laws towards a stronger Corporate Governance was the “Gesetz zur Kontrolle und Transparenz im Unternehmensbereich” (Law on Control and Transparency in Business, KonTraG) from 1998. The law specified and extended regulations from other laws, mainly the Handelsgesetz (Commercial Code, HGB) and the Aktiengesetz (Stock Cooperation Act, AktG). It applied to stock listed companies as well as (indirectly) to non-listed companies (Müller & Seulen, 2019). Section 91(2) of the KonTraG specifies, that legal representatives of a company need to “take appropriate measures, in particular to set up a monitoring system so that developments that jeopardize the continued existence of the company are quickly recognized”. This requirement can be considered as the starting point of Compliance in Germany.

Further requirements for stock listed companies were clarified and consolidated with the launch of the Deutscher Corporate Governance Kodex (German corporate governance code) in 2002 (Deutsche..., 2019). Listed companies have, according to § 161 AktG, to declare their conformity with this code on a yearly basis. Non-listed companies are encouraged to follow the recommendations of the codex as well, to manage compliance risks. The code is a consolidation of different legal requirements, regarding the management and supervision of companies (Werder, 2011, pp. 48–62). It provides rules and values for good and responsible corporate governance

and it adapts to changes in the market or legal environment on a yearly basis (Werder, Talaulicar, & Kolat, 2005, pp. 178–187).

In the beginning, the impact of the legal requirements and recommendations by the code were limited. Only the aftermath of the investigations of the Siemens corruption scandal from 2006 onwards, led to a boost regarding corporate governance in Germany (Collective Action..., 2006). This was mainly because Siemens served as a warning example due to the high penalties and disgorgements – it was the fourth largest FCPA enforcement action of all time. Afterwards, many companies started to fund specific compliance departments, solely dedicated to corporate governance (Nowak, Roland, & Till, 2005, pp. 252–279). Quickly these departments started to focus on anti-corruption and anti-trust topics, as these were often not organized in a centralized way within the companies but posed a threat due to the high fines. For many departments, other topics like data-protection or anti-money-laundering followed as the level of legal complexity in these areas increased (Kreß, 2018, pp. 23–61; Bannenberg & Poppe, 2013, pp. 1–34).

This complexity of potential topics, covered by a Compliance department, is also addressed in the audit standard 980 “Principles for the Proper Performance of Reasonable Assurance Engagements Relating to Compliance Management Systems” by the Institut der Wirtschaftsprüfer in Deutschland e.V. (IDW PS 980) (Principles..., 2011). The IDW PS 980 serves as a guideline for auditors to audit a CMS. It clusters a CMS in seven elements and can be applied to all kinds of risk areas:

- compliance culture,
- compliance objectives,
- compliance risks,
- compliance program,
- compliance organization,
- compliance communication,
- compliance monitoring/Improvement.

The flexibility of the IDW PS 980 made it popular within German Compliance departments and the standard was used during the past decade to design CMS around the requirements of the IDW PS 980. Nowadays, audits of different depth – design, appropriateness and implementation, effectiveness – serve as an additional measure in ensuring Compliance Risk Management of companies in Germany.

Compliance Risk Management existed, in the early stages, mainly in listed companies – starting from companies listed in the DAX or MDAX – or companies in highly regulated markets like finance or pharma. Nowadays it can be found in many mid or small sized companies in Germany (Behringer, 2012, pp. 19–28). In the beginning, Compliance in Germany started out as defining rules for desired behavior and implementing trainings, processes and controls to ensure the conformance with these rules. Nowadays a shift from Compliance towards Integrity can be observed (Sundrum, 2004, pp. 192–209; Verhezen, 2010, pp. 187–206]. While Compliance aims at doing the right tasks to prevent non-compliance, Integrity aims at the purpose (Thielemann, 2005, pp. 31–45). It focuses on a value based or ethical leadership and a strong tone from the top to build an overall organizational structure, that enables and encourages compliant behavior along with good corporate governance (Stark, 2018, pp. 1–3; Bussmann & Niemeczek, 2019, pp 797-811; Wieland, 2014, pp. 15–40). Due to this, non-compliance is not only seen as individual misconduct or failure to monitor or implement specific controls, but instead – at least in parts – as an overall organizational failure.

Another important trend is the discussion about the implementation of corporate criminal liability in Germany (König, 2019, pp. 149—169; Baker McKenzie, 2019). So far, a corporation in Germany can only be fined by administrative offence law, the criminal law only affects individuals, which often are the legal representatives that did not take all appropriate measure to ensure compliance with applicable laws and regulations (Das Ordnung..., 2015). This discussion started based on the findings from an on-site-visit of the OECD regarding the implementation of the requirements of the OECD

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Germany's..., 2018).

Summary

If we compare the organisational culture of enterprises in Poland and in Germany and deliberately omit Hofstede's four cultural dimensions and adopt the dispersed and modified model of E. Schein (1985), consisting of artefacts, norms, values and assumptions, then, taking into account the above considerations and assumptions presented in the text, we can present seven features that are the most significant to this process (Table 2).

Table 2. Cultural similarities and differences important in terms of the compliance risk management in Polish and German enterprises

Features	Poland	Germany
Specific language	Governed by the provisions of law and greater vulnerability to compliance risk; verbalisation of the state as a state homeland.	Governed by the provisions of law and only seemingly lower vulnerability to compliance risk; verbalisation of the state - as a small homeland, i.e. a private homeland
Customs, values	Quite uniform, with a lower categorisation of the work itself as a value (work-life-balance)	Highly regionalised and characterised by high heterogeneity; Large discrepancies between the central policy of the state and the values shared in particular regions

<p>Social and cultural conditions</p>	<p>High ethnic uniformity and strong religious uniformity – will safeguard homogeneity and potential lack of cultural conflicts</p>	<p>Systematic decrease in the indigenous German population due to the increase in the number of immigrants and multiculturalism - adopted differently, depending on the region</p>
	<p>Among the younger group of employees and potential employees, both in Poland and in Germany, a postmaterialist attitude is likely to prevail, with orientation towards individualism, rational values, personal happiness and self-fulfilment*, thus hindering teamwork, which may lead to a more intense conflict between the company's interest and the personal interest of the employee</p>	
<p>Developed code of conduct/ pattern of behaviour</p>	<p>Evolving since 1989 from the socialist logics of central planning, towards market logics, private property and entrepreneurship. In enterprises, a combination of patterns of organisational culture is visible, more based on the Anglo-Saxon and German influence (excluding state-owned companies)</p>	<p>Germany as the largest economy in the EU, the largest logistics centre in Europe, with stable labour costs, high productivity and work standardisation, and at the same time with the highest expenditures on an innovative economy in the world** - should in theory present lower vulnerability to compliance risks, but through innovation it may as well create compliance risks until they are eliminated during the competitive race of companies and countries</p>
<p>Relationships between cultural conditions and FDI</p>	<p>Internationally weak - but rapidly growing with the development of enterprises; FDI inflows leader among the new EU member states</p>	<p>Strong - due to the size of the economy, but highly vulnerable to increased volatility of global FDI flows, an increase in the importance of institutional investors and a larger number of SPVs / SPEs transactions</p>
<p>Institutional (including political and legal stability)</p>	<p>Moderate - depending on the ruling political party. Supporting particular business activities</p>	<p>Systemic support of business activities</p>
<p>Cultural Diversity</p>	<p>It is becoming more and more popular in Polish companies (especially during low unemployment and lack of employees on the labour market)</p>	<p>More typical due to a greater internationalisation of enterprises; focused on cultural coexistence and cultural cooperation (at least declaratively)</p>

*Cf. Rodziewicz, 2016;

** Economic Overview..., 2019.

Source: authors' own research.

Contemporary business activities and new legal regulations impose increased requirements with regard to compliance testing. Effective management of the compliance system helps to identify potential problems, prevent bad practices and reduce possible penalties in the case of detecting events, which are deemed inappropriate. Regulatory authorities in individual countries expect organizations to create departments managing their compliance system, in which an increasingly important role is assigned to proactive identification of non-compliance risk and responding to potential compliance failures. The examples of this are the actions of companies in which the units responsible for compliance have intensified their activities due to growing legal requirements and increased control by the regulator (Compliance & Legal..., 2005, p. 14). It should also be noted that the common feature of Polish and German approach to compliance is that they both aim to reduce cultural differences by implementing similar so-called soft regulations, as well as all types of ethical guidelines or best practices. Such documents gain the "international" status and can be used as a component of the organizational culture of a given international corporation in each of its local branches (Braun, 2017, pp. 333–334).

References

Baker McKenzie (2019). *Hot Topics*. Bundesjustizministerium veröffentlicht Entwurf für ein Verbandssanktionengesetz – was auf Unternehmen jetzt zukommt: zunehmender Verfolgungsdruck durch Legalitätsprinzip, höhere Sanktionen sowie Anreize für Compliance Programme und interne Untersuchungen. 28 August.

Becker, W., et al. (2011). *Compliance-Management im Mittelstand*. Bamberg, 7–22.

Bannenberg, B., & Poppe, S. (2013). *Compliance: Aufbau-Management-Risikobereiche*. CF Müller GmbH, 1–34.

Behringer, S. (2012). *Compliance für KMU. Praxisleit-faden für den Mittelstand*. Erich Schmidt Verlag, 19–28.

Bierbrauer, G. (1994). Toward an understanding of legal culture: Variations in individualism and collectivism between Kurds, Lebanese, and Germans. *Law and Society Review*, 28(2), 243–264.

Braun, T. (2019). *Impact of differences in legal risk assessment on compliance norms in multinational corporations*. *Ius Novum*, 2, 225–226.

https://iusnovum.lazarski.pl/fileadmin/user_upload/oficyna/Ius_Novum/ius-novum-2019-2/Ius_Novum_2-19_11-T.Braun.pdf, access 8.10.2019.

Braun, T. (2017). *Unormowania compliance w korporacjach*. Warsaw: Wolters Kluwer, 333–334.

Bussmann, K.D., & Niemeczek, A. (2019). Compliance through company culture and values: An international study based on the example of corruption prevention. *Journal of Business Ethics*, 157(3), 797–811.

Cadbury, A. (2002). *Corporate Governance and Chairmanship: A Personal View*. Oxford: Oxford University Press, 70–75.

Collective Action – Gemeinsam gegen Korruption und unfairen Wettbewerb (2006). Siemens.

<https://new.siemens.com/global/de/unternehmen/nachhaltigkeit/compliance/collective-action.html>. Access: 10.10.2019.

Compliance w Polsce. Raport z badania stanu compliance i systemów zarządzania zgodnością w działających w Polsce przedsiębiorstwach (2018). Instytut Compliance, Warsaw, 8–9, 50.

Das Ordnung-swidrigkeitenrecht (2015). Bundesministerium der Justiz und für Verbraucherschutz. November.

Definicja audytu wewnętrznego, Kodeks Etyki oraz Międzynarodowe standardy praktyki zawodowej audytora wewnętrznego (2012). The Institute of Internal Auditors, p. 47, <https://na.theiia.org/standards-guidance/Public Documents/IPPF 2013 Polish.pdf>. Access: 21.09.2019.

Demangeot, C., Adkins, N. R., Mueller R. D. et al., (2013). Toward Intercultural Competency in Multicultural Marketplaces. *Journal of Public Policy & Marketing*, 32, 156–159.

Deutscher Corporate Governance Kodex (2019). Frankfurt am Main. <https://www.dcgk.de>. Access: 12.09.2019.

Dobre Praktyki Spółek Notowanych na GPW (2016). Warsaw, p. 14.

https://www.gpw.pl/pub/GPW/files/PDF/GPW_1015_17_DOBRE_PRAKTYKI_v2.pdf. Access: 10.09.2019.

Economic Overview Germany. Market, Productivity, Innovation (2019). Germany Trade&Investments. Berlin-Bonn.

Eleryk, P., Piskorz-Szpytko, A., & Szpytko P. (2019). *Compliance w podmiotach nadzorowanych rynku finansowego. Aspekty praktyczne.* Warsaw: Wydawnictwo Wolters Kluwer, 25.

Evans, G. P. (2014.) Managing Risk with an End-to-End Process View: Adopting a Process-based Approach to Risk Management. *BPTrends Article.*

<https://www.bptrends.com/managing-risks-with-an-end-to-end-process-view/>.
Access: 10.09.2019.

Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. („FCPA“). <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act.>
Access: 11.09.2019.

Framework for Compliance Commitments (2019). OFAC.

<https://home.treasury.gov/news/press-releases/sm680>. Access: 9.10.2019.

Framework for Internal Control Systems in Banking Organizations (1998). Basel Committee on Banking Supervision.

<https://www.bis.org/press/p980922a.htm>. Access: 9.10.2019.

Germany's Phase 4 report (2018). OECD.

<https://www.oecd.org/corruption/germany-s-strong-anti-bribery-enforcement-against-individuals-needs-to-be-matched-by-comparably-strong-enforcement-against-companies.htm>. Access: 9.10.2019.

Guidelines on certain aspects of the MIFID compliance function requirements

(2012). European Securities and Markets Authority.

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-388_en.pdf.

Access: 9.10.2019.

Guidelines on Internal Governance (2011). European Banking Authority, London.

<https://eba.europa.eu/regulation-and-policy/internal-governance/guidelines-on-internal-governance>.

Access: 10.09.2019.

Głuchowski, J. (ed.) (2001). *Leksykon finansów*. Warsaw: Wydawnictwo PWE, 266.

GRC Standards (2019). OCEG. <https://www.oceg.org/standards/>. Access: 8.10.2019.

Hofstede, G. (2000). *Kultury i organizacje*. Warsaw: Wydawnictwo PWE, 375.

Hopkin, P. (2010). *Fundamentals of Risk Management*. London, New Delhi, Philadelphia:

The Institute of Risk Management, 2.

Internal Control - Integrated Framework (1992). COSO.

<https://www.coso.org/Pages/ic.aspx>. Access: 10.10.2019.

ISO 19600: 2014 – Norma ISO Systemy zarządzania zgodnością.

<https://www.iso.org/standard/62342.html>. Access: 8.10.2019.

Jajuga, K., (2009), Teoretyczne podstawy zarządzania ryzykiem. In K. Jajuga (ed.), *Zarządzanie ryzykiem*, Warsaw: Wydawnictwo PWN, 13.

Jagura, B. (2017). *Rola organów spółki kapitałowej w realizacji funkcji compliance*. Warsaw: Wolters Kluwer, 283 et al.

Jagura, B. (2014), Zarządzanie ryzykiem w handlu globalnym częścią polskiej kultury compliance – refleksje po IV. Polsko-Niemieckim Forum Prawa i Gospodarki. *Monitor Prawa Celnego i Podatkowego*, 1, 33–36.

Kaczmarek, T. T. (2006). *Ryzyko i zarządzanie ryzykiem*. Warsaw: Wydawnictwo Difin, 99.

Komunikat w sprawie roli i znaczenia realizacji przez zakłady ubezpieczeń i zakłady reasekuracji funkcji zgodności z przepisami (2018). Komisja Nadzoru Finansowego (KNF),

https://www.knf.gov.pl/o_nas/komunikaty?articleId=62617&p_id=18. Access: 8.10.2019.

König, C. (2019). *Liability for Antitrust Law Infringements & Protection of IP Rights in Distribution*. Cham: Springer, 149–169.

Kreß, S. (2018). *Criminal compliance und Datenschutz im Konzern*. Vol. 12. Nomos Verlag, 23–61.

McBarnet, D. (2019). *When compliance is not the solution but the problem: From changes in law to changes in attitude*. Centre for Tax System Integrity (CTSI), Research School of Social Sciences, The Australian National University.

Menzies, Ch. (ed.) (2006). *Sarbanes-Oxley und Corporate Compliance*. Schäffer-Poeschel Verlag.

Monks, R. A. G., & Minow, N. (2001). *Corporate Governance*. 2nd edn. Oxford: Blackwell, 275–290.

Müller, S., & Seulen G. (2019). *Deutsche Tochter im internationalen Konzern*. 1. Auflage, Buch. XXII, 398 S. Hardcover (In Leinen). München: C.H.BECK.

Namiri, K., & Stojanovic, N. (2008). *Towards A Formal Framework for Business Process Compliance*. Multikonferenz Wirtschaftsinformatik, p. 1185.

Nowak, E., Roland, R., & Mahr, T. G. (2005). Wer den Kodex Nicht Einhält, den Bestraft der Kapitalmarkt?: Eine Empirische Analyse der Selbstregulierung und Kapitalmarktrelevanz des Deutschen Corporate Governance Ko-dex. *Zeitschrift für Unternehmens- und Gesellschaftsrecht*, 34(2), 252–279.

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).

<http://www.oecd.org/corruption/oecdantibriberyconvention.htm>. Access: 10.09.2019.

Olson, D., & Wu Dash, D. (2007). *Enterprise Risk Management, in Financial Engineering and Risk Management*. Singapore: World Scientific Pub Co Inc., p. 5.

Prigge, S. (1998). A Survey of German Corporate Governance. In K. J. Hopt, H. Kanda, M. J. Roe, E. Wymeersch, & S. Prigge (ed.), *Comparative Corporate Governance: The State of the Art and Emerging Research* (pp. 943–1044). Oxford: Clarendon Press.

Principles for the Proper Performance of Reasonable Assurance Engagements Relating to Compliance Management Systems (2011). IDW WPg Supplement 2/2011, S. 78 ff., FN-IDW 4/2011, S. 203 ff.

Raczkowski, K., Noga, M., & Klepacki, J. (2015). *Zarządzanie ryzykiem w polskim systemie finansowym*. Warsaw: Difin, 14.

Rathje, S. (2007). Intercultural Competence: The Status and Future of a Controversial Concept. *Language and Intercultural Communication*, 7(4), 261–264.

Rekomendacja H (2017). Komisja Nadzoru Finansowego (KNF).

https://www.knf.gov.pl/knf/pl/komponenty/img/Rekomendacja_H_2011_26995.pdf.
Access: 5.10.2019.

Resource Guide to the U.S. Foreign Corrupt Practices Act by the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, Updated 02. November 2015; Implementing the OECD Anti-Bribery Convention Phase 4 Report: Germany, 21.06.2018.

<https://www.oecd.org/corruption/germany-s-strong-anti-bribery-enforcement-against-individuals-needs-to-be-matched-by-comparably-strong-enforcement-against-companies.htm>. Access: 5.10.2019.

Role of Internal Auditing in Enterprise - wide Risk Management (2009). Institute of internal auditors, p. 2.

Rodziewicz, B. (2016), Polacy, Rosjanie i Niemcy wobec wartości. Hierarchia i sposoby rozumienia jednostek aksjologicznych. *Etnolingwistyka*, 28. Lublin DOI: 10.17951/et.2016.28.137.

Romanowska, M., & Trocki, M. (2004). *Podejście procesowe w zarządzaniu*. Warsaw: Wydawnictwo SGH, 347.

Rudolph, E. J. (2014). The Board Must Take the Lead in Establishing a Corporate Culture of Ethics and Compliance. <https://www.corporatecomplianceinsights.com/the-board-must-take-the-lead-in-establishing-a-corporate-culture-of-ethics-and-compliance/>. Access: 9.10.2019.

Schein, E. (1985). *Organizational Culture and Leadership. A Dynamic View.* San Francisco: Jossey-Bass.

Securities Industry Association, Compliance & Legal Division (2005). The role of compliance. *Journal of Investment Compliance*, 6(3), 14.

Sidor-Rządkowska, M. (2009). *Coaching. Teoria. Praktyka. Studia przypadku.* Cracow: Wydawnictw: Oficyna a Wolters Kluwer Business, 125.

Spira, L., & Page, M. (2003). Risk Management. The Reinvention of Internal Control and the Changing Role of Internal Audit. *Accounting, Auditing and Accountability Journal*, 16(4), 3–4.

Spindler, G, Stilz, E., & Fleischer, S. (2019). Kommentar 4. Aufl. 2019, AktG § 91 Rn. 51.

Standardy rekomendowane dla systemu zarządzania zgodnością w zakresie przeciwdziałania korupcji oraz systemu ochrony sygnalistów w spółkach notowanych na rynkach organizowanych przez Giełdę Papierów Wartościowych w Warszawie S.A. (2018). Warszawa, p. 1.

Strach, M. (2003). Der Sarbanes-Oxley Act und die Entwicklungen im US-Aufsichtsrecht. NZG, p. 952.

Stark, C. (2018). Organizational Integrity. Individual Misconduct and the Legal Structure of Society. *Politische Vierteljahresschrift.* Germany: Springer, 1–3.

Steßl, A. (2010). *Effektives compliance management in unternehmen.* Springer-Verlag, 20–54.

Stiftung Hans-Böckler (2013). *Ausländische Rechtsnormen und Compliance Magazin Mitbestimmung Ausgabe.*

https://www.boeckler.de/42944_42985.htm. Access: 11.09.2019.

Sundrum, E. (2004). Moving beyond compliance and control: Building a values-based corporate governance culture supportive of a culture of mutual accountability. *International Journal of Business Governance and Ethics*, 1, 192–209.

Thielemann, U. (2005). Compliance und Integrity–Zwei Seiten ethisch integrierter Unternehmenssteuerung. Lektionen aus dem Compliance–Management einer Grossbank. *Zeitschrift für Wirtschafts- und Unternehmensethik*, 6(1), 31–45.

Verhezen, P. (2010). Giving voice in a culture of silence. From a culture of compliance to a culture of integrity. *Journal of Business Ethics*, 96(2), 187–206.

Werder, A. V. (2011). Neue Entwicklungen der Corporate Governance in Deutschland. *Schmalenbachs Zeitschrift für betriebswirtschaftliche Forschung*, 63(1), 48–62.

Werder, A. V., Talaulicar, T., & Kolat, G. L. (2005). Compliance with the German Corporate Governance Code: an empirical analysis of the compliance statements by German listed companies. *Corporate Governance: An International Review*, 13, 178–187.

What is Enterprise Risk Management (2019). Institute of Risk Management. <https://www.theirm.org/what-we-do/what-is-enterprise-risk-management>. Access: 10.09.2019.

White Paper: The Evolving Role of Compliance (2013). Securities Industry and Financial Markets Association, p. 1, 2, 31.

<https://www.sifma.org/wp-content/uploads/2017/05/the-evolving-role-of-compliance.pdf>. Access: 4.10.2019.

Wieland, J. (2014). Compliance Management als Corporate Governance – konzeptionelle Grundlagen und Erfolgsfaktoren. In J. Wieland, R. Steinmeyer, S. Grüninger (Hrsg.), *Handbuch Compliance-Management: Konzeptionelle Grundlagen, praktische Erfolgsfaktoren, globale Herausforderungen* (pp. 15–40). Berlin: Erich Schmidt Verlag GmbH & Co. KG.

Wilczek, M. T. (2002). *Podstawy zarządzania projektem inwestycyjnym*. Katowice: Wydawnictwo Akademii Ekonomicznej w Katowicach, 72.

Wronka-Pośpiech, M. (2017). Kulturowe uwarunkowania zarządzania przedsiębiorstwem społecznym, *Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach*, 336, 94.

Zasady ładu korporacyjnego dla instytucji nadzorowanych (2014). Komisja Nadzoru Finansowego (KNF).

https://www.knf.gov.pl/knf/pl/komponenty/img/knf_140904_Zasady_ladu_korporacyjnego_22072014_38575.pdf. Access: 5.10.2019.