

3. “PEOPLE SHOULD NOT BE PUNISHED FOR BEING HONEST!”

*Interview with Steffen Salvenmoser,
Forensic Services of PricewaterhouseCoopers,¹ Frankfurt am Main*

Q: Would you describe briefly your portfolio and the typical profile of your clients?

The portfolio of our services ranges from fraud investigation to all kinds of anticorruption policies. These include preventive compliance services, compliance reviews, the setting up of codes of conduct, guidelines for employees, whistleblowing hotlines, and the implementation of rules. Rules will only be followed if people know there is a risk that non-compliance will be detected and sanctioned.

Q: When was the PWC “forensic services” division established – including compliance services, fraud risk-management, and the above-mentioned services?

In Germany the current labeling of services using this name was adopted in 1999. In the Anglo-Saxon countries like the United States and the United Kingdom, these services have been in effect for at least 20 years. But if you go back, PWC always offered such services: In Germany the first Statement of the Institute of Chartered Accountants (IDW – Institut der Wirtschaftsprüfer) covering the issue was published in 1934 under the title *Ordnungsgemäße Durchführung von Unterschlagungsprüfungen* (How to properly lead a fraud investigation). So, it is not totally new that auditors deal with those issues – but naming them “compliance services” dates back 10 to 20 years. Austria, for example, only introduced them five years ago.

Q: What is the typical profile of your clients? And are they more interested in dealing with difficulties inside their companies affecting their company culture, or, for instance, dealing with foreign businesses in countries that are not very transparent?

We advise all kinds of companies and even the public sector is requesting such services. This is mainly due to the initiative of the respective boards or supervisory boards – depending on the relevant jurisdiction under which the company operates. Obviously, it is more the case for larger entities, although lately it is becoming more relevant for smaller companies. For the markets that I am working in –

1 | See <http://www/pwc.de>

mainly Germany and Austria, but it is probably the same in Western Europe – the emphasis is on external affairs. In respect of prevention of corruption, the worries are focused on risks abroad. In terms of internal misconduct like embezzlement, the focus is more on the home turf, the home country, the head office, and company structures abroad. This is a bit surprising if you consider the corruption perception index (CPI) of Transparency International (TI): Most companies should observe the risk of corruption in their own country, but they want to see the risks as existing abroad rather than accepting that the risk is probably almost equally present in their home country.

It's a kind of "blind spot" effect, with people assuming that the risks are high in foreign countries, where bribery and fraud are thought to be common. But if we look at the information from TI showing how high the risk of corruption is in Western Europe, we have to recognize that the risk is not always by the "others" – and that we must look to ourselves, too. A lot of companies worry a great deal about the damage originating from outside, from third parties, suppliers, etc. But we know from research – and the figures have been steady for a long time – that 50 percent of economic crimes originate internally, within the company. That's a fact that is often ignored, for understandable reasons, but it is one that we must face up to.

Q: You participated in various studies on economic crime in Germany. Which are the most common and which are the most destructive features of organized crime in Germany? How about the interconnections of transnational crime networks?

I think that's one of those questions I can't really answer because the studies don't really cover the issue of organized crime. It depends on how you define it. If you're talking about the classical definition of organized crime, then the usual kind of economic crime is *well-organized crime*, but not organized crime in the police sense.

Q: And if we take the definition given by Cartier-Bresson (1997) of crime networks – that is, the seamless transition from legal to illegal systems of social exchange?

Of course, there is a lot I could say about it according to that definition. Some of the cases where we helped larger clients would fit into that definition. It is not possible to identify such structures in the studies, which are mainly quantitative. So it is still difficult to judge how representative our operative experiences are.

A debate we could have every day is the one about how far economic resourcefulness goes before it becomes criminal – and when does crime become organized, in the sense of companies consciously choosing it as a business model.

The study we published at the end of 2011 includes some figures on this. We asked companies that were victims of economic crime what the causative factors were. There were two responses that were shocking: More than 50 percent said that the practices in question were part of the other company's business model and that they were supported by management. That's a pretty clear indication that

efforts to get the compliance message across have not been successful everywhere. Cases where employees act on their own initiative due to a misunderstanding of what is good for the company are less frequent than is generally assumed. Rather, these illegal practices are actually part of company policy. Corporate culture is a very important aspect here.

Q: What is quite intriguing is the connection between society's tolerance of criminal practices and the leeway criminal networks enjoy. Talking about Germany, do you think economic crime has become more acceptable over the past 10 years? If so, why?

I don't believe the situation has deteriorated seriously over that time period. There are various reasons for that. The legal framework has changed. Things that were legal 10–15 years ago – such as paying bribes abroad, for example, which were even tax-deductible until 1999 – are now punishable under the law. Things that were common practice and legal for more than 100 years have been changed with the stroke of a pen. It takes a while for people to understand the fact that something that used to be legal and was seen as a legitimate practice is now against the law. Social attitudes have also changed rapidly. Things that no one would have treated as a problem or as corrupt or questionable 15 years ago are now suspected of being a crime – no matter whether a regulation has actually been broken or not.

To judge by the newspapers, there would appear to have been an increase in these kinds of crimes. We see reports every day about people lining their own pockets or about the crazy bonuses that executives are being paid. But not everything that civil society sees as scandalous falls into the category of economic crime. At least, as long as we concentrate on the question whether a law was broken or not.

Taking into account the increased level of awareness in society and the increased reporting on things that, only recently, were not considered newsworthy, we see that we are at about the same level as 10–15 years ago.

Q: Globalization resulted in legal loopholes regarding international trade, which is being mediated, in the better cases, by international arbitration firms and, in the worse cases, by transnational crime networks. Two questions: Do you think those gaps are inherent to the system? And, as a consulting company, which instruments do you utilize to prevent criminal involvement to help your clients?

Let me answer the second question first: A consulting company is dependent on what its client actually wants. Is this someone who does not want to exploit every option because of moral concerns, or is it someone who sees anything that is not expressly forbidden in writing as allowable and therefore open to exploitation? A consultant can also choose to espouse one or the other of these schools of thought. I, or rather we, always raise a finger and say that although something is not expressly forbidden, from a business point of view it would be better to leave well enough alone because of its potentially damaging effect on the client's reputation. If I think about our daily work as consultants, there are things that are not ille-

gal and so not forbidden under anti-corruption law, but we advise clients to avoid them because they are difficult to explain to the public and can cause outrage.

One example is the case of the “pleasure trips” at the ERGO insurance company. I am in a position to talk about them even though I have been an adviser to ERGO – in this case, as ERGO itself published our findings. The fact that sales personnel were invited to a spa in Budapest where, it is beyond doubt, prostitutes were provided, does not constitute a crime in any way. The trips were properly described in the tax documentation – the necessary tax was paid on the non-cash benefits for the participants. And so you could say, everything was fine from a legal point of view. The CEO of ERGO said in a news conference that there was nothing wrong with the trips in the eyes of the law, but they did break the company’s code of conduct and were simply unacceptable.

A consultant can work toward such a statement, but he can also support the exploitation of such legal loopholes. When it comes down to it, all employees are judged according to whether they meet their sales targets or the business targets of the company they work for. If an employee were to say “We didn’t reach our business targets but our morals are impeccable,” then you have to ask yourself whether that is something that the company’s investors, which could include any one of us, want to hear.

This raises the important question of how we can incentivize moral behavior. This is a debate that is only just getting underway in Germany. We are gradually realizing that it is not enough simply to have a code of conduct that says something like “We don’t support corruption,” and then to tell employees to go and keep selling, because the salespeople will go to countries that are low on the CPI list and where there is absolutely no way of doing business without paying bribes. So, if some of these salespeople come home at the end of the year and say they did not reach their sales target because they complied with the guideline that forbids paying bribes, they should not be disadvantaged. However, companies where that is implemented are few and far between. People should not be punished for being honest!

It is easy to take the moral high ground when you are doing well financially. Yet, when a company is facing bankruptcy, it will be interested in exploiting all legal and all thinkable loopholes. I don’t know how far personal integrity will stretch in such a crisis situation. And how can I criticize a company that has identified business opportunities to do with a legal loophole when we live in a world that is based on market principles? What are the sources of development and change? Someone tries something, and that results in a legislative response according to the positive or negative reaction of society. This is the way legal loopholes that have developed in the past are closed. In an ever more interconnected and globalized economy, different regulatory systems are in competition – and lack the necessary corrective force. And that’s why it is so difficult to come to a global consensus.

Q: Which further governmental and non-governmental actors and instruments would be important to prevent economic crime?

That depends on the cultural context. In the case of central Europe or Germany, we have initiatives that come from civil society: Transparency International is a good example. Collective actions like the UN Global Compact also offer opportunities for companies and other social groups to get involved. TI has just published its national integrity report, for which I was on the advisory council. It is based on a survey of 27 European countries. One question, for example, was, "To what extent do companies strive to put in place measures to deal with corruption?" and "Which measures originate explicitly from companies?" In Germany there are no major company initiatives. There are some companies that are involved with TI and others are involved in collective actions, etc. However, Germany does have a legal framework for combating corruption, so there is less cause for criticism than in other countries in the study. But there remains a question about what is actually being compared here. Should Germany receive a negative evaluation because of the lack of civil society initiatives, even when other countries do not have a legal framework comparable to the one in Germany?

Of course, there are a couple of critical issues in this country, too. Germany has not yet ratified the UN Convention against Corruption, because the issue of bribes to members of parliament is not regulated. But no one can blame commercial companies for that.

It is very embarrassing for Germany, especially in view of the fact that the Deutsche Gesellschaft für Internationale Zusammenarbeit is involved in projects abroad aimed at promoting the implementation of the Convention against Corruption.

Q: Are there any moves in Germany to implement that Convention?

There are now two initiatives in the German parliament, the Bundestag, to introduce new regulation on the issue of bribes paid to members of parliament, which would fulfill the requirements for ratification of the Convention. The government's attitude to all matters concerning the regulation of members' rights is that such initiatives can only be raised by parliament itself. That has to do with the constitutional basis of democracy in our country and with the separation of executive and legislative powers.

In this respect it is interesting to note that Austria has ratified the Convention, although its regulations dealing with bribes paid to parliamentarians is almost identical, word-for-word, to ours in Germany. So Germany is exposing itself to criticism here, but that is because it is being open and honest and saying it cannot yet ratify the Convention because it has not yet implemented its provisions.

In a world organized according to the principles of the market, is it realistic to expect companies to miss business opportunities because of moral considerations? Probably not, since such qualms would obstruct the pursuit of profit. On this issue, individuals must decide for themselves how far they are prepared to go. On a few occasions clients approached us and wanted advice on how to pay bribes without being caught, or they wanted help in identifying legal gray areas. I don't accept such commissions. My advice is always to keep a safe distance from the limits of legality so you can always be assured of being on the right side of the law, even when the issue is a matter of legal interpretation. It is not a good idea to exhaust every last possibility because that can be very damaging to a company's reputation – you can easily go too far, and the cost of dealing with the resulting problems can be very high. But not everyone agrees with me. There are people who believe that any business opportunity that exists should be exploited.

You may consider that morally reprehensible – arms-dealing is an example: As long as no law is broken, arms-trading is permitted. As a moral individual, you can decide not to be involved in it, because arms can be abused, used to kill people, etc. So the consensus in society and the letter of the law may be at odds here. Sometimes a similar tension exists because the consensus in society is that a given law may be broken – for example regarding honesty in dealings with the tax authorities.

Conclusion

Tax evasion is accepted by social consensus. How often do tradesmen ask whether we require an invoice? Almost always! If such companies can only survive by evading taxes, the situation is not one that warrants protection and the legal framework must be revised. There is always a certain amount of understanding for the “little fish,” but the “fat cats” are often condemned even when they avoid paying taxes by ostensibly legal means. I have worked as a civil servant for so long that I find it difficult to judge these two identical cases by different standards.

*May 31, 2012
Regine Schönenberg*