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CoViD-19: Quo Vadis, Compliance?

What does the corona pandemic mean for a company's compliance program? Does it result in more duties for compliance officers and how important are communication and compliance training in these times of the corona crisis?

'Compliance concerns everyone'. This is more or less the motto of companies to make clear that a Compliance Management System (CMS) needs to be more than something that is just implied within an organisation. However, can the 'life' of a company's compliance program remain the same as before the outbreak of SARS-CoV-2? Now that companies find themselves compelled to overcome new challenges in a short space of time, have the requirements and priorities shifted? Probably not. And yet the running of companies' compliance programs and adherence to compliance rules must be guaranteed if only to avoid compliance breaches and keep liability risks to a minimum.

Starting point

The first German case of coronavirus was reported to the Bavarian Health Ministry on 27 January 2020. It was an employee of a car supplier who had had contact with a colleague from China. From this moment onward, the coronavirus was officially present. Over the following weeks, the number of corona cases in Germany increased and public life as we knew it gradually shut down. The first companies closed their doors to visitors in the beginning of March and, as far as possible, sent their employees to work from home.

Since then, there are several regulations that must be observed in Germany, now more than ever, including the Law for Protection and Control of Infectious Diseases Transmitted by Humans, the so-called Infection Protection Act¹. This legislation aims (§1) to prevent the spread of infectious diseases by humans, to rapidly identify infections and to minimise their spread. Among other measures, the duty of the Robert Koch Institute (§4) is to publish, in collaboration with the official authorities, guidelines, recommendations, leaflets and other information that must be recognised and observed by companies. Breaches of the Infection Protection Act can result in financial penalties (§73) or prison sentences of up to five years.

Furthermore, the Working Conditions Act² needs to be strictly complied with. To ensure company continuity, protecting employees in the workplace should be in the employer's best interest. This principle applies to employees in the workplace as well as to those employees working from home. It consists of keeping the employees informed and aware of the topic of coronavirus on a regular basis. If necessary, the employer must put in place exceptional measures to ensure the protection of their employees. These measures will need to be observed and complied with by all.

In addition to the Infection Protection Act and the Working Conditions Act, both of which must be rigorously complied with by companies in times of corona, the German government recommends strict compliance with the Working Safety Protection Standards published by the Federal Ministry of Labour and Social Affairs, and which concerns recommendations such as maintaining a safety distance of at least 1.5 metres and to limit social contact at work.

The main goal for every company is the maintenance and continuity of business operations, as this is the only way to survive the corona crisis. This can only be done by protecting employees and by following the regulations to the letter.

¹ <https://www.gesetze-im-internet.de/ifsg/ifsg.pdf>

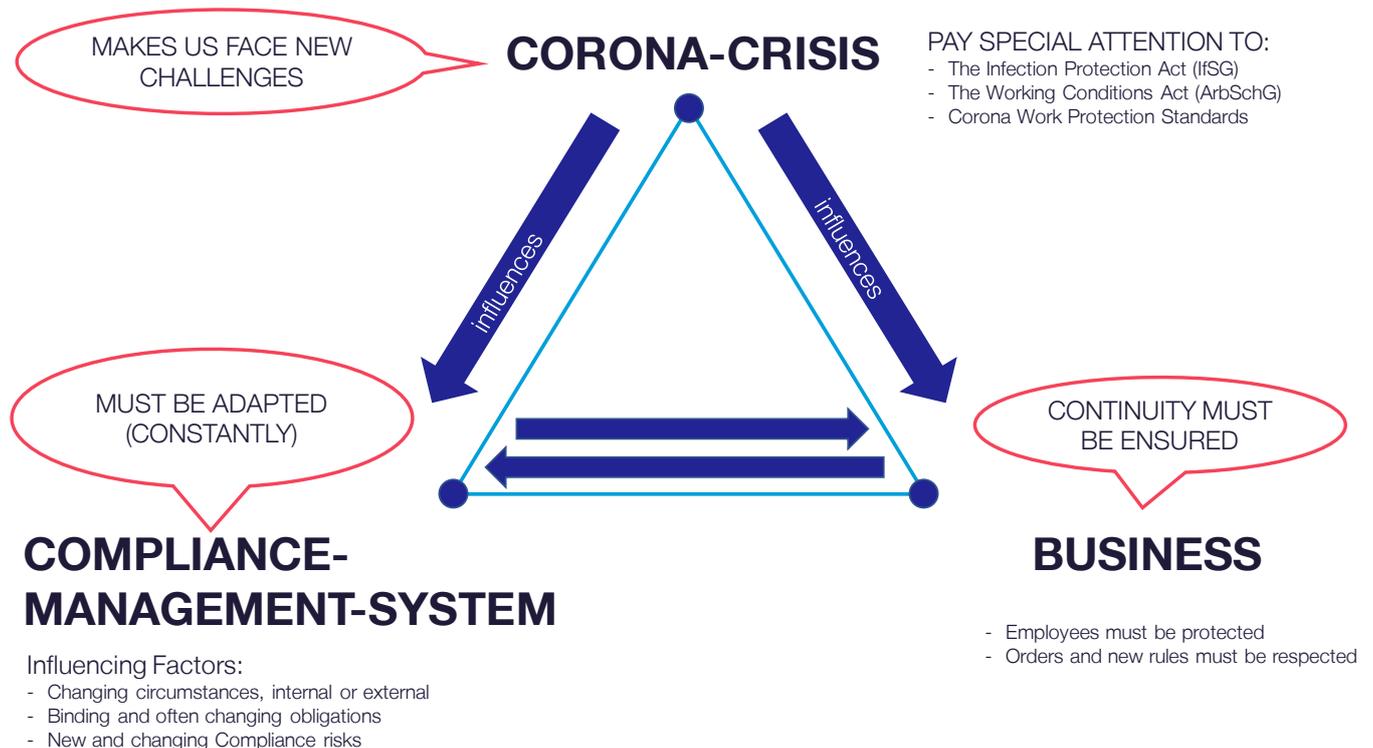
² <https://www.gesetze-im-internet.de/arbschg/ArbSchG.pdf>

What does it mean for a company's compliance program?

One of the main duties of a CMS is to prevent compliance breaches, or to identify them early on, in order to keep such breaches to a minimum. If we look at current standards such as ISO 19600, Chapter 4 of the Norm (Organisation's context) already requires the following:

1. external factors that have an influence on the organisation must be included.
2. binding and changing obligations of the organisation must be included.
3. an organisation's compliance risks must be reviewed on a regular basis.

It cannot be denied that the corona pandemic is an external influence factor for any organisation, whereby some processes in the company are inevitably changed. An example of this would be the fact that many companies have sent their employees to work from home. Working from home is not a bad thing per se, but it does present new dangers and risks, especially in the digital field. Another external influence factor would be, for instance, business partners, who can only deliver few or no raw materials at all. This may have a lasting influence on a manufacturing company.



Nor can binding and constantly changing obligations or official orders be overlooked in these times of corona. Companies must ensure strict compliance with nominal regulations such as the Infection Protection Act, the Working Conditions Act and the Corona Work Protection Standards, which in turn has an influence on parts of the CMS. Furthermore, the updates communicated on a daily basis by the Robert Koch Institute must be carefully followed by the management of every company.

The corona pandemic has automatically resulted in new organisational compliance risks. Therefore, in the current situation, identifying, reviewing and prioritising these risks is more important than ever. Moreover, existing compliance risks must be reviewed again in order to determine whether they are now as significant for the company as they were before the corona crisis. One of these new risks are sanctions, possibly leading to significant fines when current legislation is not complied with. Another risk for companies is infection among colleagues if hygiene rules and working conditions are not sufficiently followed. This could result in a worst-case scenario like the closure of the business.

In times of corona, what are the duties of a compliance officer?

Currently, many compliance officers have joined up to the so-called corporate 'Corona Task Force', which involves the role of the compliance officer. They know all the areas of their company particularly well. Ideally, they are considered trustworthy by all employees and have direct contact with the members of top management team, as they would have reported to them directly before the corona crisis or at least led quarterly compliance committee meetings. As a member of the Corona Task Force, a compliance officer can bring any relevant compliance topic to top management, so that it will be addressed accordingly in the crisis communication.

Basically, it's business as usual. One of the compliance officer's main tasks is to keep the CMS running, but what does this mean exactly?

Starting with the binding obligations and compliance risks, these are things the compliance officer must always have on their radar to review them when required and accordingly adapt the CMS to the circumstances. For instance, for the company it might mean that a couple of processes or regulations need to be adapted or renewed. We have now already moved on to another task assigned to the compliance officer, i.e. the implementation and adaptation of procedural instructions and regulations and their subsequent allocation for distribution to employees.

Should companies not have a tool in place for the management and allocation of guidelines, it would make sense to use the corona crisis as an opportunity to implement one. Thanks to this tool, employees can be reached without problem and those responsible for compliance also receive a confirmation if an employee requests the directives. A central filing location for the company's directives is always a great advantage for the company itself as well as for its employees. Furthermore, the compliance officer still holds its consulting role, both towards management and employees. As a rule, compliance officers and their teams need to be available to employees, either by phone or online.

The communication between the compliance department and employees not only focuses on advice and assistance in everyday life in the workplace, but also on accepting and giving gifts and donations – this process can equally be supported by an automatic solution, a so-called 'donations register'. Via such a tool, clearance for donations, both received and given, can be automated. The compliance officer only then needs to intervene in exceptional cases.

If the employee contacts the compliance department to report a breach, this can in times of corona be done in an automated way via a whistle-blower system or tool, should this not already be available in the company.

How important is communication and Compliance trainings in times of corona?

The answer is actually quite obvious. Information and communication are more relevant than ever in times of crisis. The lack of direct contact with the employees or stakeholders, such as clients or business partners, makes clear and transparent communication essential – both internally and externally. Additionally, within a crisis, clear rules must be established for employees when it comes to new or changing binding obligations. This will allow them to act in accordance with these rules and therefore stay 'compliant'. As such, compliance training on all topics is also crucial.

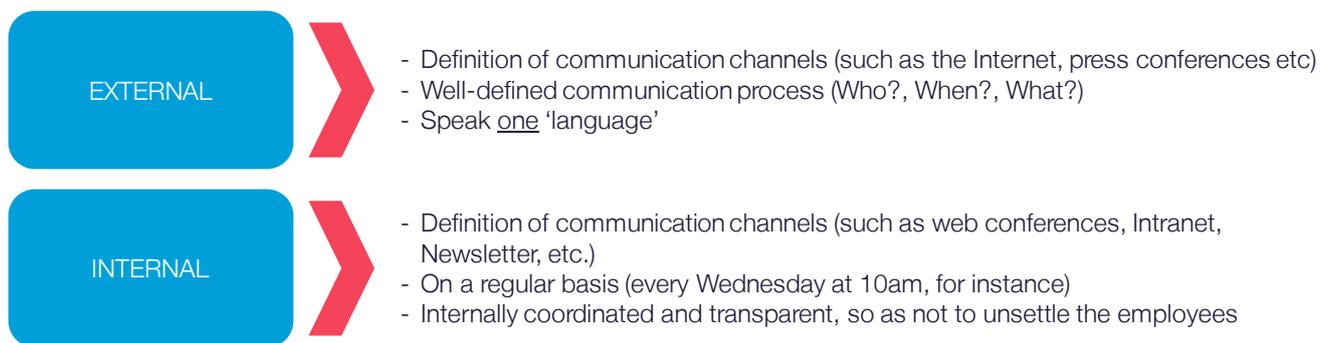
Communicating in a crisis.

Effective communication in the context of a crisis must be well prepared. Fundamentally, a difference will be made between internal and external communication.

External communication must take place through established communication channels (such as the Internet, press conferences) but also through a well-defined communication process. To do so, it should be determined who decides on the shared content and who decides on publishing this content. Furthermore, it is important for a company to 'speak its own language'. Different information coming from different sources that are not aligned and can be contradictory must be strictly avoided.

When it comes to internal communication with employees, channels, such as web conferences, Intranet and newsletters) must also be firmly established. Such communication must be transparent and take place on a regular basis – as often as possible whilst staying relevant. Content must also be internally approved so as not to make the employees feel even more insecure in this crisis. Important note: some topics (furlough, for instance) must be first run by the works council before they can be shared with the staff.

CRISIS COMMUNICATION



Compliance-Training



Compliance training

Just as with the new regulations that must be set in motion in accordance with the new binding obligations and recently identified risks, existing compliance rules and stipulations must be taught and nurtured at sensible intervals during the crisis. A decisive difference compared to a non-crisis situation is the physical distance between employees, making e-learning the preferred method of choice when it comes to compliance training. However, this is not the first step in providing new compliance content, but rather just one (albeit important) component that is based on a range of previous measures.

But what do the previous steps look like? The starting situation implies new compliance content or rules for the employees of a company. For this purpose, awareness must be raised amongst the employees. This means that as part of a communication measure, such as web conferences, all employees must be told how and why there are new compliance regulations. For instance, new regulations in the form of a guideline or a procedural instruction can then be published and shared with the employees.

As a next step, a sensible way of providing information to the employees must be in place. The meaning and aim of this transfer of information is a short, concise and compact communication of the most important content with the help of a web-based information course. The information course lasts no more than 15 minutes. The employees will benefit from a follow-up on the elementary information for coping in everyday life. After this intermediate step, the employee can be trained on the topic with a full and extensive e-learning course.

Conclusion

The corona crisis presents big challenges for many companies, especially since a lot of changes took place in a short period of time, for companies and employees alike. From a compliance point of view, there are several binding obligations that must be more carefully followed than usual. Additionally, there are official orders to be implemented in the weekly routine or in an even shorter space of time. At the same time, companies are facing new compliance risks that need to be considered. In addition, a significant number of employees are now working from home. All these changes have an impact on the CMS whose processes must be partially adapted in order to keep it operational. To keep the risk of compliance breaches low, a transparent communication and the transfer of compliance content and regulations in the form of knowledge transfer, online information courses and compliance e-learnings are paramount.

About the author

Jürgen Krisor is a compliance partner for Idox Germany GmbH as well as a TÜV-certified Compliance and Data Protection Officer. He advises companies on building, operating and evaluating Compliance Management Systems. The focus points are Risk Analysis, Code of Conduct (Re)Writing and Compliance Perceptions. He is also a certificate auditor for ISO 37001 and 19600.

About Idox Compliance

As one of Europe's leading providers of compliance solutions, Idox Compliance helps organisations to comply with laws, regulations and guidelines. We are committed to helping organisations protect their values, reputation and competitive advantage, and serve a customer base of international blue-chip companies, public and private organisations, corporations and businesses of all sizes and across all industry sectors. Our portfolio is focused on compliance training via e-learning, ranging from off-the-shelf, customised or specifically tailored online courses. Additional consulting services for risk analysis, code of conduct, communication and compliance perception are also available to support you in embedding a culture of integrity within your organisation. Idox Compliance is part of the Idox Group – a trusted supplier of specialist software and services for more than 30 years to both the UK and international markets, with more than 650 employees and 18 offices in 11 countries worldwide.