



SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

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A view of the state of ethics and compliance programs in France and around the world

**A conversation with Dennis Muse,
CEO of Global Compliance Services**

As more and more international organizations implement ethics and compliance programs across their global employee populations, it has become increasingly clear that the United States and other countries sometimes have very different visions of how such programs should operate. Following are some questions addressed to Dennis Muse to discuss how recent guidelines adopted by France will impact United States companies doing business abroad. Here is what he had to say.

Q: Please give us some background on the data privacy issues that have developed in the European Union (EU) and particularly France over the past year.

A: The issues arose from the question of how the EU's Data Protection Law should be interpreted. While it is a single law, each member nation of the EU

has the latitude to interpret the law in its own way. France's data protection agency, the Commission nationale de l'informatique et des libertés (CNIL), has driven the interpretation of the law with regard to the use of whistle-blowing mechanisms, such as ethics and compliance hotlines or web-sites. Two companies who do business in France—McDonald's and Exide—sought to have their whistle-blower schemes approved by the CNIL. The CNIL disallowed the programs because of their concerns that all such whistleblower schemes are potentially unfair, lacking in transparency, and in violation of professional ethics. These rulings created an obvious impasse for companies seeking to implement whistleblower mechanisms in France. The CNIL subsequently released preliminary and, after a period of discussion and review, final recommendations



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outlining the conditions under which such programs would be allowed to operate in France. Recently, the CNIL published a web submission form through which companies may self-certify whistle-blower schemes pertaining strictly to financial matters such as auditing, accounting, banking, anti-bribery and money laundering.

Q: What challenges do the CNIL's Whistleblower Guidelines pose for organizations doing business in France that want to maintain robust ethics and compliance programs? Will corporations publicly traded in the United States be able to adhere to the requirements of both the CNIL and the Sarbanes-Oxley Act of 2002?

A: Companies now face the challenges of restricting their whistle-blower schemes in France to financial matters

only and self-certifying their programs through the CNIL's web site. Companies wishing to use their programs to capture issues beyond the scope of financial irregularities and malfeasance will have to seek approval from the CNIL on a case-by-case basis. Since the CNIL's guidelines do allow for the reporting of financial issues, as mandated by Sarbanes-Oxley, publicly listed companies will be able to meet both requirements. It should be noted that many countries, including France and Japan, are developing legislation similar to SOX.

Q: Do you see the CNIL's rulings as a trend other EU countries may follow?

A: Yes, in fact the Director of Data Privacy for the EU has asked the CNIL to make recommendations to the Article 29 Working Group regarding whistleblower mechanisms as they relate to data privacy. From there, the Working Group will propose an overall process which will subsequently be modified and adopted by the Plenary Session. At that point, each member nation will still retain the ability to modify the process within its own borders.

Q: How do you expect the global ethics and compliance environment to develop over the next decade both in the United States and abroad?

A: In the coming years, I anticipate an ever increasing awareness around the world that a culture of ethics and compliance will provide return on investment. Organizations that operate with a robust code of conduct and tone from the top will prove themselves to be more respected, better run, and more profitable. As a result, ethics and compliance

officers will become C-level positions, and dynamic, effective ethics and compliance programs will become the rule rather than the exception.

Q: What do you now see as best practices for organizations implementing international ethics and compliance programs given the current data privacy issues and the involvement of works councils and other regulatory bodies?

A: Organizations need to ensure that all employees, no matter their locale, have access to the same ethics and compliance tools enjoyed by employees at the organization's primary location. Employees should have easy access to their code of conduct and the ability to report workplace concerns both telephonically and via the web, using their local languages. Organizations should ensure that their ethics and compliance programs are celebrated, communicated, and comprehended at every location and at every level. In particular, it is vital that this message comes from the top and is not only voiced but demonstrated by executive levels.

Because of legislative activity and differing requirements from country to country, maintaining an effective ethics and compliance program is becoming exponentially more complex.

Organizations need to understand the culture and laws of every country in which they do business. Whistleblower mechanisms must be flexible enough to capture a wide range of allegations in one nation and very limited allegations in another. As such, organizations must be prepared to devote significant internal resources to developing and maintaining

such programs or seek the counseling and services of a trusted outsourced provider. Dealing with such complexity is the cost of doing business on the world stage, but the rewards for doing so, I believe, will more than make up for any bumps along the way. ■

Dennis Muse and Global Compliance Services have been actively involved with the CNIL and the EU Article 29 Working Group. When the CNIL forwarded its whistleblower scheme recommendations to the SEC and solicited comments, Global Compliance wrote to the EU, and its comments and analysis were subsequently shared with all 25 member nations. When the CNIL issued additional findings, Global Compliance Services created a coalition of leading corporations, and together they submitted comments directly to the CNIL helping to influence the CNIL's final recommendations. Global Compliance Services also met face-to-face in Paris with CNIL representatives Christophe Pallez, Secretary General, and Clarisse Giroton, Senior Legal Advisor, on November 14, 2005 and hosted Ms. Giroton and Georges de la Loyere, a voting member of the CNIL, at their Global Compliance's U.S. headquarters on December 6, 2005.

Global Compliance Services has 25 years of experience in the ethics and compliance industry providing whistleblower schemes, having introduced the original compliance reporting hotline.