

Corporate Europe must improve compliance

Leigh Dance and Bruno Cova

European companies are adapting too slowly to the regulatory environment, potentially giving an advantage to US corporations. The tough enforcement climate that European companies now face is nothing new in the US. It has been 30 years since its Foreign Corrupt Practices Act made the payment of foreign bribes illegal (compared with less than nine for Europe). The so-called "long arm" of US law and years of coping with hostile legal and political environments has driven US corporations to build compliance programmes that are stronger and more far-reaching than their European counterparts.

The problems facing Siemens, the German industrial group, exemplify the cost and distraction that bog down a company suspected of wrongdoing. More than \$2bn (£1.3bn, £1bn) of suspicious transactions in more than 60 countries have been identified. On the legal front alone, more than €240m has

been paid in fines and penalties, with a further €474m spent on advisers. Siemens has been barred from being a supplier to the Italian, Nigerian and Norwegian governments. Top executives have resigned or been fired and several Siemens managers and consultants have been arrested or put under criminal investigation. The Siemens-Nokia joint venture was put on hold. Siemens' share price has suffered. We can expect other negative consequences long after investigations end.

European corporations operate in more complex environments than ever before, where the odds of facing a damaging compliance crisis are high. Markets and the media tend to view the accused as guilty as soon as a regulatory inquiry begins. Aggressive consumer groups, activist international investors and busy plaintiff lawyers relentlessly shadow corporations undergoing a compliance investigation.

Because of new laws and enforcement actions and co-operation among prosecutors and regulatory authorities, European companies also face far higher legal risks. New capital market laws and reformed codes of corporate governance mean more stringent inter-

national controls and disclosure requirements. International bribery was made illegal by the 1997 Organisation for Economic Co-operation and Development convention, and in some countries corporations have criminal liability. Competition laws are stronger and more rigorously enforced, with violations treated as criminal offences in countries such as the UK. Consumers

The problems facing Siemens exemplify the cost and distraction that bog down a company suspected of wrongdoing

and retail investors have greater protection and new legal remedies, such as class actions in France and Italy.

The risks multiply with so many European companies operating beyond their country of incorporation. Managers operating locally may be more tempted to accept requests for bribes or enter into anti-competitive agreements. Global operations require working with

agents, suppliers, distributors and other third parties, and proper due diligence on these parties is often missing. To be sure, more than a few global companies headquartered in Europe maintain sophisticated processes to support compliance, often as a result of past regulatory disputes. Akzo-Nobel and Shell are two examples. Most European companies, however, are ill-equipped. Many corporate heads of legal affairs and compliance recognise the regulatory threats and the potentially disastrous consequences of alleged wrongdoing. Unfortunately, too many boards and chief executives practise avoidance, and let their companies operate at a competitive disadvantage.

We prescribe prompt action. Companies must commit sufficient resources to build the culture and infrastructure to address these challenges, including "mapping" of legal risks, internal controls, monitoring, and action in response to compliance issues. Tone at the top is essential; closing one or both eyes and letting mid-level managers engage in illegal practices is no longer a viable commercial strategy. A big component of US corporate compliance strength is the prominence

of the legal and compliance functions. The chief legal officer is often among the company's best paid executives, and has full access to the board and the resources he needs. It is no surprise that when Siemens elevated the global legal and compliance position to react better to the crisis, it hired a legal executive from General Electric. In-house lawyers need both status and access to corporate leadership in order to fulfil the duties expected of them.

European companies must also learn how to interact effectively with regulators during investigations, as well as to maintain relationships with officials as the company (and the law that regulates it) changes and grows. Addressing the issue of compliance is important to be able to compete effectively and preserve the company's reputation and value. Call your chief legal or compliance officer and get his views. Today.

Leigh Dance is president of ELD International, a consultancy to global corporate legal departments and law firms. Bruno Cova is a partner of Paul Hastings, former general counsel at Eni and Fiat and chief legal adviser in the Parmalat investigation.