



## ADVISORY BOARD

Marcus Traut

### BIOGRAPHY

**Marcus Traut** is an attorney and an accredited specialist in criminal law. His law firm is located in Wiesbaden, Hessen, Germany, with a district office in Würzburg, Bavaria, Germany.

After finishing his legal studies at the Johannes-Gutenberg-University of Mainz, he completed his practical legal training within the district of the Regional Court Wiesbaden.

Since his admission as a lawyer, Traut has exclusively practiced in the field of criminal law and is a very experienced defense lawyer. In 1999, the Board of the Chamber of Lawyers Frankfurt am Main granted him the right to use the title “Accredited Specialist for Criminal Law” based on his particular theoretic and practical qualifications.

The law firm Marcus Traut exclusively specialises in the field of criminal law, especially in the areas of white-collar crime, criminal tax law, criminal corruption law, criminal medical law, and criminal appellate law.

In addition to defending individuals in criminal proceedings and representing them in occupational law proceedings, the law firm also offers legal counseling and representation to business enterprises.

The law firm Traut offers preventive counseling on criminal law (compliance) and internal investigations.

Offering preventive counseling to companies on criminal law issues is becoming increasingly important in the firm’s regular consulting practice.

## MARCUS TRAUT'S FIVE SUPPORTING PILLARS OF COMPLIANCE

Compliance is crucial for all economic players worldwide.

Thus, enterprises and authorities are requested to comply with the multitude of applicable regulations. Further regulations enter into force. Again and again, attempts are made to define so-called Codes of Conduct or Codes of Ethics and to oblige parties to comply with them. At the same time, new penal provisions are passed for violations of compliance regulations.

In this context it becomes apparent how difficult it is to define the term "compliance", simply because no general rules apply to private enterprises or authorities, and in particular to different countries on different continents.

In the author's opinion, however, there are fundamental principles which should always apply worldwide, despite different jurisdictions and legal regulations. In spite of different values, cultures and legal views it should be possible to define generally applicable common denominators. These cornerstones can - though subject to certain amendments - always be transferred to other users. The following shall illustrate, which major five common denominators should apply internationally - wherever - i.e. be indispensable in compliance structures. These cornerstones are:

- Attitude
- Rules
- Control
- Consequences of violations
- Improvement

In detail:

### I. ATTITUDE

The fundamental basis is the awareness that compliance is necessary and the willingness to act accordingly. Functioning compliance systems can be implemented only with a positive attitude. Such attitude, however, also requires the willingness to discipline oneself and others, but to generally recognise the necessity of compliance as a natural requirement.

Thus, a positive, demanding and supportive environment always needs to be created for all parties, where performance and compliance with fundamental values are recognised and rewarded, with equal chances and development options for each individual.

After all, the concept of compliance is to reinforce the legal and ethical principles in the action and awareness, i.e. the attitude of employees and responsible persons. This, however, is possible only if all parties accept that their actions depend on practicability and admissibility. Crossing borders must be taboo. All of parties involved have to be convinced of the attitude. It is of utmost importance that the management acts as a role

model for good conduct and attitude, setting the so-called "tone at the top". Only then can a compliance philosophy evolve.

## II. RULES

The digital and very complex world of the 21st century requires rules to govern interaction. It is necessary that legal regulations exist which determine and document behaviour. It goes without saying that everybody is bound by law and order. However, legal frameworks that guarantee open, transparent and fair cooperation have to be created for all parties in the development of compliance structures.

These rules extend to national and international regulations such as those which govern the cooperation between parties and which sanction the non-compliance with agreements, but they also include the drafting of a so-called Code of Conduct or Code of Ethics.

Penal law always lays down regulations which in the event of violations provide for penalties for persons but also for fines to be paid by enterprises and corporate bodies. Therefore, organisational obligations according to penal law must also always be complied with.

## III. CONTROL

The creation of rules requires control of compliance with the same. Only if effective control mechanisms are installed for ensuring that the rules are complied with will it be possible to actually guarantee compliance. There are numerous options for self-control or for third-party control.

Compliance with existing regulations must always be checked - however, changes and new or increasing risks must also always be pointed out. This requires regular reviews of business transactions and processes, for example by informal checks or random sampling, but also by checks for potential weaknesses in a system.

Formal controls on whether compliance systems work need to be additionally performed.

It is of course necessary that persons identifying the violations also disclose them. Creating the function of an ombudsman can be just as useful as motivating whistleblowers.

Besides, it is necessary to document any compliance incidents, but also their controls.

## IV. CONSEQUENCES OF VIOLATION

The implementation of compliance structures and their controls make sense only if violations have consequences.

It already applies that violations of compliance regulations have noticeable consequences.

Thus, enterprises are regularly threatened with high fines in case of violations, and decision makers regularly face criminal proceedings. Additionally, claims for damages are frequently asserted against them.

Violations of compliance structures regularly cause considerable costs.

## V. IMPROVEMENT

Any crisis also includes a chance.

It is not always detrimental when violations of existing rules are identified during controls and entail consequences. This also gives rise to the opportunity to learn from a crisis and to improve. Naturally, it then needs to be regularly checked whether the existing compliance structures have to be adjusted. At least, it has to be analyzed why the violations occurred and how they can be prevented in the future.

If such analysis is successful and leads to changes in the compliance structures, then a crisis can also fulfil the purpose of learning from it.