

A BLINK OF HARVARD BUSINESS SCHOOL'S PROGRAM "CERTIFICATE OF MANAGEMENT EXCELLENCE"

- and takeaways for the work of a Chief Compliance Officer in an international environment

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ABSTRACT

The following blink reflects the personal experiences and takeaways made by the author during a selected program at Harvard Business School during March 2022 to August 2022. It is neither intended to pretend, assert, or even assume that similar experiences are not possible in applicable universities or learning institutions at any other place nor is the author financially bonded of either receiving gratuities or benefits of some kind to/from Harvard Business and/or Law School. Therefore, the blink is an aftermath of the specific experience in an extraordinary divers and professional learning environment that has been.

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I. THE BLINK

A. Why this blink?

Hendrik Schneider, Founder and Content Curator of CEJ, recently approached me after reading my latest post about my completion of my Senior Executive Program "Certificate of Management Excellence (CME)"¹ at Harvard Business School on LinkedIn. While we talked about the qualifying programs, their topics and how they are structured and executed, we got accidentally stuck at one specific topic related to "negotiation". Harvard and Negotiation pairs and usually triggers something for someone who practices law; and it is rather not "Harvey Specter" of the American legal drama *Suits* than the well-known Harvard Law Program on Negotiation (PON)². PON, the consortium program of Harvard University, Massachusetts Institute of Technology, and Tufts University that serves as an interdisciplinary research center dedicated to developing the theory and practice of negotiation and dispute resolution in a range of public and private settings.

And as a matter of fact, one of my qualifying programs has been an abstract of one of PON's programs. It is called "Strategic Negotiations: Dealmaking for the Long Term" and has been led by James K. Sebenius³ who holds the Gordon Donaldson Professorship of Business Administration at Harvard Business School and took the lead in the HBS's decision--unique among major business schools--to make negotiation a required course in the MBA Program and to create a Negotiation Unit (department) which he headed for several years after establishing it in 1993. He also currently serves as Vice Chair and as a member of the Executive Committee of the Program on Negotiation (PON) at Harvard Law School. At PON, he chairs the University's annual Great Negotiator Award program.⁴

Having found a link between Management and Law, we shared thoughts on further aspects of the program and moreover the adjacent qualifying program "Managing Turbulence". It appeared to us that this combination has several topics beyond the primary goals of each of the programs but to compliance.

B. Strategic negotiations, Long-term business relationships and Compliance

To find a starting point for this headline and the following, I would like to begin with some basics to the program and some highlights of the "Strategic Negotiations" - since this was the basis of looking over the fence. The program is as mentioned above part of the CME, a senior executive program, and therefore booked with diverse and mostly international attendees that are usually with approximately 15-20 years of professional business experience, situated in c-suite or at least in SVP-level. My program carried 42 participants with a set-up of self-called shes 1/3 and hes 2/3 from about 22 nations worldwide. Main goal of that course has been: "[...] in business negotiation strategies, someone has

¹ The Harvard Business School Certificate of Management Excellence (CME) provides advanced learning that can help you expand your business management and leadership skills—and your career potential. The CME is awarded to those who complete three qualifying programs in the areas of strategy, negotiation and innovation, and leadership. <https://www.exed.hbs.edu/certificate-management-excellence>.

² <https://www.pon.harvard.edu>.

³ <https://www.exed.hbs.edu/strategic-negotiations/>.

⁴ <https://www.hbs.edu/faculty/Pages/profile.aspx?facId=6550>.

to know how to bring together the right players, identify and address key issues, and develop the best process for each deal—all before the negotiations even start.”⁵

Hence, barriers and hurdles of the creation of efficiencies by developing a systematic approach to managing negotiations, synchronizing internal and external negotiations, addressing the complexities associated with multiple parties and agendas as well as evolving timeframes, negotiating effectively across borders and cultures, and fostering understanding and promote resolution among parties whose interests and perceptions conflict became subject of the determinizing 3D-negotiation approach⁶.

Practically, next to scrutinizing HBS Business Cases there has been several training sessions wherein participants have to represent and defend a predefined role in a multi-role play by keeping its interest as high as possible; even with the risk of ending up with a no-deal. It became obvious that rarely the “cold-blooded”, well experienced deal maker made the best outcome – actually only, if the goal was the maximum short-term profit -, but in an international, multi-cultural environment the most empathic and “prepared” negotiator with a win-win attitude regularly brought the price home. This outcome is very reasonable in the aftermath because a hard call “all-or-nothing” closes instantly the door for “in between” - if not a bluff. Such aggressive approaches have been proven to be much too narrow- and short minded and ended up in a no-deal much more often than in a collaborative approach. This outcome is not meant to be stipulated for all kind of negotiations, but it seemed to me that this approach happened to be the most promising strategy – especially if someone is targeting for a long-term business relationship with strong roots and solid commitments from both sides in an international environment. This outcome has been a real highlight to me since I was experiencing very challenging negotiations and situations in my professional (and even private) life myself of which some ended up surprisingly poorly or at least less satisfying than expected starting the negotiations.

This insight made me wonder how to integrate this intel into compliance procedures/techniques? On the assumption that top-notch negotiations on (long-term) business contracts/relationships are often done by the top management and probably some contract law lawyers/experts, contractual bi-lateral compliance procedures on the long run are most of the time “secondary” or even “odd items”, meaning nice to have clauses and therefore easy to trade-off. I think this is a capital mistake and misinterpretation of the negotiation chips on the table. From my point of view these secondary items should be an integral part of a solid and stable “communication platform” for the well-being of that contractual bondage; and therefore, being treated as a priority negotiation goal.

This opinion results from the fact, that we are currently experiencing so-called turbulent times wherein not only economic and ecological challenges bundle but also from a HR-perspective a new generation is challenging business models and developments. In June of this year, PricewaterhouseCoopers held its “2022 Global Risk Survey Webcast”⁷ wherein the top risks with significant effect to the surveyed organizations have been again Market, Business Operation, Cyber, External Changes, Geopolitical; but surprisingly no HR issue has been openly mentioned while mitigating key personal risk becomes

⁵ See “Summary” of the program on <https://www.exed.hbs.edu/strategic-negotiations/>.

⁶ Lax, David, and James K. Sebenius. *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals*. Boston: Harvard Business School Press (2006).

⁷ To be recasted via <https://pwccportal.xyvid.com/GRS2022> based on the published survey which can be downloaded under <https://www.pwc.de/de/managementberatung/risk/global-risk-survey.html>.

a more and more important issue – or should be, considering cyber risks in conjunction with insider risks. The missing link might be owed to the PricewaterhouseCoopers' "Global Workforce Hopes and Fears Survey 2022" published in May 2022⁸ wherein these mentioned new HR-challenges become evident: clear preference of a mix of in-person and remote (blended) working environment plus a majority that expects fulfillment in someone's job.

By reading both professional and international surveys it turns out to be evident that there is a need to set cornerstones and more important rights and privileges in terms of compliance procedures – especially in respect of compliance investigation. From my experiences problems within a compliance investigation arise if data is not available due to missing links, "lost" data, etc. Since it takes two to tango, almost each data has an image. But these images are most of the times located outside the scope/grip of the Compliance Officers since information are on servers of a contracting counterpart; due to ongoing globalization even in very different legal environments. An adjoining thread in terms of compliance to this, is the global development of ESG embracement⁹ which is creating a new (business) impact / purpose component with constantly growing pace to more and more businesses.

This component is more a Damocles sword than most business leaders currently think. The creation of a taxonomy and reporting requirements in the EU or US¹⁰ are proofing that these subjects will penetrate not only publicly traded companies but also SMEs¹¹. The reason is, ESG is more than good intentions. It's about embedding values into principles - and more across business cases - from investment to sustainable innovation. Therefore, shouldering these principles becomes an economic factor and moreover a key element if or if not, there is new personnel going to be hired¹². Ignoring this development is meanwhile no business weakness any more than an existential business risk.

⁸ To be downloaded under <https://www.pwc.com/gx/en/hopes-and-fears/downloads/global-workforce-hopes-and-fears-survey-2022-v2.pdf>

⁹ Environmental, Social and Governance (ESG). An organizations total efforts to be socially and environmentally responsible. The importance of this new business "requirement" becomes not only an intrinsic necessity but also a must have to shareholders and other stakeholders (<https://corpgov.law.harvard.edu/2020/06/10/the-ripple-effect-of-eu-taxonomy-for-sustainable-investments-in-u-s-financial-sector/>). An analysis based on Preqin's list of the 10 largest North America-based fund managers by total capital raised for private equity funds in the past 10 years has been already giving such indication (see <https://docs.preqin.com/reports/2019-Preqin-Global-Private-Equity-and-Venture-Capital-League-Tables.pdf>).

¹⁰ E.g. the EU Sustainable Finance Action Plan has defined 10 packages of measures that have been translated into corresponding regulations (EU Taxonomy, Disclosure Regulation and MiFID II; more in detail see https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en) or the discussions in context of the SEC Climate Disclosure (<https://www.sec.gov/sec-response-climate-and-esg-risks-and-opportunities>) - almost as if there is developing a green deal disclosure championship via the best taxonomy (see Sustainable Taxonomy development worldwide: a standard-setting race between competing jurisdictions <https://gsh.cib.natixis.com/our-center-of-expertise/articles/sustainable-taxonomy-development-worldwide-a-standard-setting-race-between-competing-jurisdictions>)

¹¹ Small and Medium-sized Entities.

¹² In detail to value propositions of the Generation Z read recent publication "Understanding the Impact of Generation Z on Risk Management—A Preliminary Views on Values, Competencies, and Ethics of the Generation Z in Public Administration"; 19 International Journal of Environmental Research and Public Health 1 (2022); also download via https://www.researchgate.net/publication/359438853_Understanding_the_Impact_of_Generation_Z_on_Risk_Management-A_Preliminary_Views_on_Values_Competencies_and_Ethics_of_the_Generation_Z_in_Public_Administration. The effect of falling short in terms of Generation Z expectation on compliance to ESG and the effects on the willingness to sell one's workforce see Felix Oberholzer-Gee, Better, *Simpler Strategy: A Value-Based Guide to Exceptional Performance*. Boston, MA: Harvard Business Review Press, 135 (2021).

II. COMPLIANCE TAKEAWAY

Having this said, I want to emphasize two isolated things that need to be carried home from this experience of multi-dimensional negotiation tactics with respect to compliance developments.

Firstly, the more international a business relation becomes the more compliance topics become relevant; thus, it is highly recommended to integrate relevant parts of one's own Compliance Management System into a long-term agreement in order to stipulate access to contracting partner's compliance relevant data. This might sound odd but if both parties are willing to comply with obligatory ESG – and the definition of ESG is the same to both sides –, deficiencies in terms of "G" harms both parties by at least damaging the reputation. For this reason, one might say, it should be in both mutual interests to cooperate; but "better save, than sorry". In cases related e.g., international taxes, customs, etc. it is even necessary to have quick access to details such as order and booking entries just to be able to move fast and prevent potential penalties. Certainly, an agreement to exchange data that focusses on fraud, bribery and corruption in a long-term business relationship building negotiation is no easy task, but at the long end it is the most prudent and convincing partnering offer – because this agreement works both ways and underlines trust in well behavior in all terms of the agreement. Plus, it might even create value since procedures should be aligned, standardized and reduces potential risks on both sides.¹³

Secondly, it cannot be said often enough that the upcoming generation is increasingly concerned with promoting new concepts such as corporate social responsibility and sustainable development¹⁴. A failure of management in this area will scare off potential employees and causes constraints to the business operations and development instantly. In addition to that this generation is eager to use the tools of compliance such as whistleblowing in order to eliminate the misfits and therefore demand an appropriate process to reestablish the balance of ESG – if not, due to their principle-based approach they are much likely to quit than more mature generations such as baby-boomer. And if they are not quitting, they are consequently becoming a valid thread of insider compliance issues sooner than later.

Last but not least: This blink intended to show by example that there is a tremendous movement going on. Since this movement is about people with individual goals and dreams in very diverse initial positions and points of view, it becomes more and more important to accept the circumstances and face the fact that the playing field for compliance management becomes as volatile as the business environment. Volatility causes exceptions and unexpected outcomes which call for a higher flexibility within the systems – even the compliance systems. Therefore, there will be negotiations about compliance which have to be holistically thought through and for long-term.

Compliance has never been more agile and demanding than today...

¹³ I assume this will be a matter to industries and German Companies that are subject to the new Supply Chain Act (Lieferkettengesetz) that aims to protect the rights of people who produce goods for the German market, because they must set up grievance mechanisms and report on their activities. They have to vis à vis their direct suppliers; even indirect suppliers are involved as soon as the company receives substantiated reports of human rights violations at that level.

¹⁴ Zbyslaw Dobrowolski, Grzegorz Drozdowski, Panait Mirela, *Understanding the Impact of Generation Z on Risk Management—A Preliminary Views on Values, Competencies, and Ethics of the Generation Z in Public Administration*, 19 International Journal of Environmental Research and Public Health 2 (2022).