



# Addressing Ethics & Compliance Challenges for Multinational Organizations

► 2021 ECI WHITE PAPER



July 2021

**ECI** ethics & compliance  
initiative™

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Ethics & Compliance Initiative®

ISBN: 978-1-7923-7313-8

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**ABOUT ECI**

The Ethics & Compliance Initiative (ECI) is a best practice community of organizations that are committed to creating and sustaining high-quality ethics and compliance programs. With a history dating back to 1922, ECI brings together ethics and compliance professionals and academics from all over the world to share techniques, research, and, most of all, exciting new ideas.



Acknowledgements:

ECI is grateful to the following members of our Working Group for their many hours of effort in compiling this report:

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ADDRESSING ETHICS & COMPLIANCE  
CHALLENGES FOR MULTINATIONAL  
ORGANIZATIONS

Table of Contents

I. EXECUTIVE SUMMARY ..... 2

II. SCOPE OF WORKING GROUP’S TASK..... 2

III. ETHICS & COMPLIANCE CHALLENGES FOR MULTINATIONAL  
ORGANIZATIONS..... 3

IV. CONSIDERATIONS FOR MULTINATIONAL ORGANIZATIONS..... 4

1. Establishing, Integrating, and Maintaining an  
Effective Compliance Program ..... 4

2. Cultural Considerations..... 7

3. Leadership, Communications, and Training Practices..... 13

4. Risk Assessment and Internal Control Evaluation..... 17

5. Program Integration and Alignment with Other  
Corporate Functions..... 18

6. Program Metrics, Reporting, and Supporting Technologies..... 19

V. CONCLUSION..... 22

VI. RECOMMENDATIONS ..... 22

VII. ENDNOTES AND REFERENCES ..... 26





**“In this age of exponential change, compliance leaders face expanded opportunities and obstacles, including accountability and oversight over business practices, as well as an increasing focus on environmental, social, and governance (ESG) matters.”**

## Executive Summary

Multinational companies face the unique challenge of cultivating and maintaining an organizational culture that translates across geographies. It is the role of Ethics & Compliance to foster a consistent and demonstrable culture of ethical conduct in all countries of operation. It is important for multinational companies to establish company-wide core values, standards of behavior, and relevant policies in tune with the rest of the world's ethics and compliance environment.

Simultaneously, Ethics & Compliance is charged with developing strategies designed to engage a global workforce in understanding and adopting its corporate values and to keep pace with varying laws and regulations that may exist in all its locations. In this age of exponential change, compliance leaders face expanded opportunities and obstacles, including accountability and oversight over business practices, as well as an increasing focus on environmental, social, and governance (ESG) matters.

This paper focuses on the varying aspects of culture, leadership, training and communication, risk assessment, and mitigation on the development and implementation of an

effective ethics and compliance program within multinational companies.

Multinational companies that demonstrate program effectiveness and deep integration stand out as those that maintain a strong reputation in all their markets, experience increased employee commitment and loyalty, garner advantages in attracting and retaining customers, and generate superior levels of performance and success while maintaining the highest ethical standards.

## Scope of Working Group's Task

Our Working Group considered the unique risks and challenges faced by Ethics and Compliance programs (E&C programs) that serve multinational organizations. Building and implementing an E&C program is a challenging endeavor in organizations of any size. These challenges are compounded in multinational organizations, because E&C program elements must be implemented and sustained across multiple lines of business and/or legal entities that span the globe. To tackle this difficult task, organizations must contend with multiple governments and regulatory agencies. They must find practical methodologies to communicate with, regulate, and monitor the behavior of a

large number of employees, agents and third parties who speak multiple languages and who live and work in diverse cultures. Our Working Group sought to explore these challenges and to recommend best practices related to the development and implementation of an effective global E&C program in multinational organizations.

## Ethics & Compliance Challenges for Multinational Organizations

To achieve the core objective of preventing and detecting misconduct or violations of policy or law by employees and agents, E&C programs must contend with several organizational characteristics that present significant challenges. These may include large, diverse, and geographically dispersed workforces, thousands of agents and third-party intermediaries, multiple lines of business, legal entities, regulatory environments, and geographic locations. Multinational organizations often operate in jurisdictions that rank poorly on Transparency International's Corruption Perception Index, resulting in greater perceived levels of corruption.

Such organizational characteristics significantly complicate every aspect of E&C program implementation. Performing enterprise-wide and regional risk assessments, establishing effective internal controls, executing training programs, monitoring compliance, operating multilingual 24/7 helplines, conducting investigations, and gathering compliance and ethics performance metrics are all herculean tasks for organizations that operate in many different countries. Perhaps the most significant challenge multinational E&C programs must face relates to building and sustaining a strong ethical culture.

As observed in the Ethics and Compliance Initiative (ECI) 2018 Global Business Ethics Survey, culture is “[t]he single biggest influence

**“Perhaps the most significant challenge multinational E&C programs must address relates to building and sustaining a strong ethical culture.”**

on employee conduct” and therefore is a critical factor in “mitigating wrongdoing.”<sup>1</sup> ECI defines culture as “the shared understanding of what really matters in an organization and the way things really get done.”<sup>2</sup> Achieving such a “shared understanding” in multinational organizations is a difficult undertaking. Awareness campaigns and printing, translating, and distributing enterprise-wide codes of business conduct and ethics assist in this endeavor, but by themselves they do not drive culture. People follow leaders, not codes. If leaders in one or more segments of an organization encourage a corrupt culture, no code of conduct has a chance of stopping the misconduct that is sure to follow.

In this paper, we provide an assessment of E&C program challenges with respect to the following key E&C program elements:

1. Establishing, integrating, and maintaining an effective compliance program;
2. Cultural considerations;
3. Leadership, communications, and training practices;
4. Risk assessment and internal control evaluation;
5. Program integration and alignment with other corporate functions;
6. Program metrics and supporting technologies.

The paper concludes with some recommendations for best practices, as well as quick review checklists.

# Considerations for Multinational Organizations

## 1. Establishing, Integrating, and Maintaining an Effective Ethics & Compliance Program

There is no single formula to establish, integrate, maintain, or assess the effectiveness of a corporate E&C program. Each company's risk profile is different, not only in the risks themselves, but also in the controls most appropriate to mitigate them. For multinational organizations the challenges can be greater because multinationals tend to be legally and organizationally complex entities. Further, they are uniquely affected by various factors, including number of employees, industry standards, geographic footprint, regulatory landscape, and other internal and external factors. Following is a set of general considerations multinationals should address, whatever the size, scale, and goals of their programs.

ECL's Blue Ribbon Panel 2016 report, *Principles and Practices of High-Quality Ethics & Compliance Programs*, is the benchmark for constructing an effective E&C program. The report focuses on five critical principles of a high-quality program (HQP) and best practice guidance beyond a "check box" minimum approach. The five principles highlighted in the report are:

1. **Strategy:** Ethics & Compliance is central to business strategy.
2. **Risk Management:** Ethics & Compliance risks are identified, owned, managed, and mitigated.
3. **Culture:** Leaders at all levels across the organization build and sustain a culture of integrity.



4. **Speaking Up:** The organization encourages, protects, and values the reporting of concerns and suspected wrongdoing.
5. **Accountability:** The organization acts and holds itself accountable when wrongdoing occurs.

Using these principles as an E&C program framework, it is important to recognize that E&C programs are more than business processes; they are integral to a vital business program. The most powerful endorsement of this understanding came in 2020 with the U.S. Department of Justice (DOJ) update to its guidelines for federal prosecutors on the evaluation of the effectiveness of corporate compliance programs.

The DOJ's updated guidance, *Evaluation of Corporate Compliance Programs*, ("DOJ 2020 Guidance")<sup>3</sup> is material not only for companies operating within the United States—which will include a good number of multinational organizations—but as a benchmark for E&C programs around the world.

Thomas Fox, who noted the much-needed alignment between compliance professionals and lawmakers wrote, "The 2020 Update is most welcome news for every Chief Compliance Officer (CCO), compliance professional, and corporate compliance program in the US and beyond. The reason is simple: it ends, once and for all, the clarion call for paper compliance programs written by lawyers for lawyers. The DOJ has now

articulated what both the business and compliance communities have been learning—that compliance is a business process, and as a process, it can be measured, managed, and, most importantly improved.”<sup>4</sup>

Ultimately, the DOJ measures the effectiveness of corporate compliance programs by asking three key questions.

- Is the corporation’s compliance program well-designed?
- Is the program being applied earnestly and in good faith? In other words, is the program adequately resourced and empowered to function effectively?
- Does the corporation’s compliance program work in practice?

A well-designed program not only sets out a clear message that misconduct is not tolerated. It also employs policies and procedures, including assignments of responsibility, training, and incentives, to ensure that the E&C program is well-integrated into the company’s operations and observed by leadership and employees alike.

When a company’s leadership philosophy is to “do as I say, not as I do,” this encourages a culture of tolerance for rule breaking. This disincentivizes employees from speaking up about any form of misconduct, because they do not think they will be taken seriously. This, in turn, creates more misconduct, because of a lack of repercussions for perpetrators and an acceptance that “this is how things are done here.”

The design of an effective E&C program is based on relevant metrics identified through a risk assessment. Due to the diverse nature of such an E&C program, its structure is best formulated by asking a series of questions related to specific components of the E&C program:

## Risk

- How do you identify and measure risks?
- Do you allocate time and resources appropriately to those specific risks (i.e., more resources for addressing greater risks)?
- Do you continually review and revise this risk assessment? (Is it a living process rather than a periodic snapshot?)

## Policies and procedures

- Are your policies and procedures easily accessible by all employees (appropriate signposting and offline materials if required)?
- Are they written in an understandable way, tailored to their audience (including multi-language if necessary)?
- Can you track which policies are accessed most often by employees? (This can help develop your program.)
- Who has responsibility and accountability for policies and procedures, including keeping them current? (The gatekeepers should not be compliance professionals but subject-matter specialists, e.g., HR, payroll, internal audit.)

## Incident reporting and resolution

An effective and accessible incident reporting and resolution mechanism is the cornerstone of any E&C program. Paradoxically, however, whistleblowing is often cast in a negative light—as the act of a disgruntled employee with a grudge against their employer. Dr. Margaret Heffernan aptly describes a “whistleblower” when she explains:

While the popular image of the whistleblower is typically an eccentric loner, the truth is more prosaic: whistleblowers are likely to be loyal employees, passionate about high standards, who go outside their organization as a last resort when nobody takes them seriously. They aren’t defiant troublemakers; they’re disappointed believers.<sup>5</sup>

**“The design of an E&C program must be based on relevant metrics (again, likely unique to the organization) identified through a risk assessment, which must be continually evaluated and improved.”**

The point is that employees are an organization's best early warning system when something is not right.

According to the DOJ, the "hallmark of a well-designed compliance program is the existence of an efficient and trusted mechanism by which employees can anonymously or confidentially report allegations of a breach of the company's code of conduct, company policies, or suspected or actual misconduct."<sup>6</sup>

The two main reasons employees do not report misconduct are lack of confidence that action will be taken and fear of retaliation. A common challenge for businesses experiencing a disconnect between actual conduct and aspired culture is that there is no infrastructure to enable a positive culture of openness and trust. Drawing more attention to the Code of Conduct will not have the desired effect if the tools in place to expose and resolve misconduct are ineffective. To ascertain where the problems lie, companies should be asking the following questions:

- Is the reporting channel designed, established, and operated in a secure manner that ensures the confidentiality of the reporter's identity and that of any party mentioned?
- Is there a more accessible reporting alternative to traditional hotlines?
- Is a confirmation of receipt of the report given to the reporting person within an appropriate time frame (including anonymous reporters)?
- Does a competent person or department follow up on the reports? Can this person or department maintain communication with the reporting person and provide feedback (including anonymous reporters)?
- Is a follow-up investigation carried out on the report by the designated person or department?

- Is a reasonable standard in place for giving feedback or closing the loop on the report from the acknowledgment of receipt?
- Does your case management and resolution system give you real-time data on the status of ongoing investigations and specific categories of incidents?

### **Third-party and partner ecosystems**

- Do all, or a specific subset of, the above questions also apply to third parties, partners, suppliers, customers, or the public?
- How do third parties or partners report misconduct to you, and how do you follow up? Is this process clearly communicated and accessible?

### **Mergers and Acquisitions (M&A) and Joint Ventures (JVs)**

- Is an effective risk assessment process carried out during the due diligence process?
- How were any risks handled?
- How will the multiple compliance programs be integrated or established, as appropriate?

### **Is the E&C program functioning effectively?**

- Is the program adopted top down and bottom up (by leadership and rank-and-file employees)?
- Who has oversight? The Board of Directors? What experience or training do they have to ensure adequate capability of oversight?







### **Continuous improvement, periodic testing, and review**

According to the DOJ, one hallmark of an effective compliance program is its capacity to improve and evolve:

“The actual implementation of controls in practice will necessarily reveal areas of risk and potential adjustment. A company’s business changes over time, as do the environments in which it operates, the nature of its customers, the laws that govern its actions, and the applicable industry standards. Accordingly, prosecutors should consider whether the company has engaged in meaningful efforts to review its compliance program and ensure that it is not stale.”<sup>7</sup>

If you do not have access to continuous and real-time transactional data within the organization, even across multiple silos, such as HR, ESG/CSR, and E&C, you most likely do not have a best practices E&C program.

Getting there is a continual process and does not happen overnight. Organizations are less likely to be penalized if they can demonstrate they are moving in the right direction. The key is to document everything.

## **2. Cultural Considerations**

The role of E&C programs in promoting a speak-up culture is reflected in global trends within the E&C field, as well as in the attitudes of government and law enforcement. In the former, it is increasingly clear that the function plays a key role in helping organizations navigate the waters of bias, diversity, and equity; the latter is clearly evidenced in government-issued documents like the *DOJ 2020 Guidance*.

What this adds up to is the Holy Grail of a “culture of compliance.” One of the many things 2020 will be noted for is an increased focus on the intersection between the functions of Compliance, Legal, and HR—more specifically regarding the direction of a company’s culture and whether a company and its employees act with integrity.

**“One of the many things 2020 will be noted for is an increased focus on the intersection between the functions of Compliance, Legal, and HR...”**

In an article for *Harvard Business Review*, Rob Chesnut, most recently Chief Ethics Officer at Airbnb, warns that the time is past for “canned codes of ethics” and companies that treat their code as just another legal box to check. Doing the bare minimum required to comply with the law is no longer enough, as companies are pushed by employees, governments, and customers to step up and adopt a multi-stakeholder approach that serves social purposes as well as investor demands.<sup>8</sup>

How a company tracks and monitors its E&C program, and how it iterates and improves that program based on past experiences, is the lens through which integrity is cultivated. This enables a better culture of transparency where compliance failures are not only resolved, but also less likely to re-occur or happen at all.

For our purpose, we define culture as the growth of a group identity fostered by social patterns unique to the group. In defining the cultural implications of E&C in multinationals, the following

six “sub-cultures” have been identified and will be discussed.

- Supranational
- National
- Regional
- Corporate
- Generational
- Professional

### **SUPRANATIONAL**

Supranational cultures are those of a group of cultures that occur in geographic regions, such as Western cultures, Eastern cultures, Mid-Eastern cultures. This approach is problematic, because it generalizes and stereotypes, which can generate serious strategic mistakes.

Since the 20th century, supranational cultures have developed in multinational corporations of such great wealth and power that they can rival national laws. The set of beliefs, values, and behaviors in supranational cultures can transcend national cultures and must be considered when working to achieve E&C in multinational corporations.



Depending on where the multinational corporation is operating, the supranational culture must be acknowledged when the observance of national laws is at stake.

Decisions made to ensure that the multinational corporation respects the national or supranational laws (e.g., the European Union, ASEAN) are critical to long-term relationships, the promotion of trust, and the overall reputation of multinationals. For example, the antitrust case the European Union brought against Google is an indicator of the damage to the brand that can occur when multinationals do not respect supranational laws.

The creation of an international body whose objective would be to ensure respect for national E&C by multinationals has been discussed. So far, this has resulted only in “soft law” with no legally binding force, such as the voluntary UN Global Compact and the UN Sustainable Development Goals.

Increasingly however, greater transparency and disclosure are being required by various ESG and global reporting standards. Such disclosure makes it easier to compare the organizational approach to E&C matters. This will likely result in greater harmonization of approaches to environmental, social, and workplace topics.

Thus, organizations must ensure respect for supra-national laws in addition to national laws and the increasing role played by international organizations and standards bodies.



## NATIONAL

National cultures are those of a nation. They are individual and specific to that nation and must be viewed as such. National laws generally reflect the nation's history and culture. Having an in-depth understanding of these cultures and a healthy respect for national laws allows multinationals to avoid making major mistakes in the deployment of their E&C programs.

Self-awareness and knowledge of one's own multinational culture are not sufficient in a successful rollout of an E&C program in different national cultures. Thorough knowledge provided by national experts, as well as updated information on the shifts in national culture, are also a prerequisite to successfully navigating the pitfalls of adapting an E&C program to constantly changing national cultures.

Local leadership or ethics representatives or “cultural ambassadors” have a crucial role in determining the best way to communicate, organize, and deliver E&C values. Employee engagement is also a valuable source of information, validation, and recognition of the relevant national culture. Training programs should focus on common values, be adaptive to employee culture, and integrate local examples. A core E&C program common to the multinational corporation should be accompanied by specific adaptations to specific national cultures whenever possible.

Language is a paramount factor in the full understanding of a corporation's approach to ethics. Ensuring that all participants share the same level of proficiency in the language used in training programs is essential. E&C programs must include training on diversity and inclusion, as well as implicit bias, tailored to the specific national circumstances.



A risk analysis is another prerequisite in determining an appropriate E&C program: which areas of business present the most urgent E&C risk? Why? How can these be changed and solutions found? Where do the major gaps between the interpretation of values lie, and how can these be addressed positively? The input from external experts (organizational/behavioral scientists, for example) can be of great use.

National culture and the understanding thereof are of utmost importance if E&C is to be properly understood and accepted. “One size fits all” is the wrong approach. Overarching values can be found and used to highlight similarities between cultures. Respect for the national culture and for its laws is the only way an E&C program can be successful.

## REGIONAL

Regional cultures are a facet that must be integrated into the successful transmission of corporate values and ethical procedures to all employees. Too often, regional cultures are assimilated into national cultures for reasons of simplification. Not recognizing the impact of regional cultures can be detrimental to a multinational's E&C program.

Regional cultures are defined as the cultures of the regions, specific geographic areas, urban or rural, of one nation. The everyday operations of a multinational are impacted by regional culture in different ways: acceptance of rules, respect for those rules, correct interpretation of codes of conduct, to name just a few issues. It is therefore important to research and understand regional laws and cultures to ensure proper and effective compliance.

From one region to another, language, working behavior, and societal culture can differ; even laws can differ. Understanding these regional identities and structures enable a much stronger regional embedding of multinational E&C. In-depth regional legal expertise is crucial, as is in-depth knowledge of how regions interact and see each other. Is there a hierarchical approach that should be considered when structuring teams? Is this approach in line with corporate values?

E&C officers with regional responsibilities should visit different sites as often as possible to ensure employee and stakeholder acceptance and respect for Code of Conduct/Code of Business Conduct. Reporting from regional offices should be regular and transparent. Regional teams will not necessarily have the same views or understanding



of corporate E&C, necessitating regular contacts and updates from the regional offices, via trusted channels.

## **CORPORATE**

Corporate cultures are cultural identities forged over years in organizations of any size. Corporate cultures differ from national cultures in that their existence is often due to the conscious efforts of their leaders to create a common set of rules, behaviors, values, and operating standards. This common set of rules is generally transferred automatically to any recruit, any new merger or acquisition target, and any new national or regional venture.

Corporate cultures exist to maintain order and value-sharing, no matter where in the world employees work. These cultures are easier to understand than national or regional cultures, as they are newer and simpler and give structure to an organization.

Corporate cultures are communicated in different ways and by different methods when deploying E&C to different nationalities or branches in different locations. The same corporate culture can be presented and explained in ways that can be understood in different contexts.

Before implementing an E&C program, a study should be carried out on the acceptance of a multinational's corporate culture in a specific national or regional culture, the alignment of the corporate culture, and the political framework of the nation/region in which the organization is operating. Finally, the reputation and level of trust the corporation has in specific nations and regions must be determined.

There can be more similarities between different national corporate cultures of multinationals

working in the same domain (e.g., oil and gas industry) than there are between some national corporate cultures working in different domains (e.g., agriculture and luxury consumer goods).

One final element to be considered in a successful E&C program is communication and speaking up. If a corporate culture is one of openness and transparency (e.g., with whistle blower anonymity and protection), this must be transmitted clearly to employees wherever they may be. If this corporate culture does not correspond with the targeted national or regional culture, adaptations must be made to ensure that corporate values of reporting unethical behavior are respected.

## **GENERATIONAL**

Generational culture is not often regarded as crucial in E&C programs, but it should be. Different generations have had different experiences. They may have different expectations and approaches to working, transparency, reporting, and hierarchy, to name a few. Talent retention, especially of younger generations, is one of the biggest issues in international human resource management today.

Sustainability, environmental consciousness, saving the planet—these are much more than buzzwords to the newer generations. Corporate greenwashing no longer works in the long-term, as social media is the first whistleblower to uncover corporate misdeeds.

Generational cultures can differ according to nations, but they may also find resonance beyond borders. The global nomads, the professional expatriates, are instrumental in shaping our future and our professions. Aligning their values to those of the organizations to which they apply is a crucial factor in accepting employment.

**“Corporate cultures must be communicated in different ways and by different methods when deploying E&C to different nationalities or branches in different locations.”**

Thus, it is essential that multinationals understand and respond to the demands of younger professionals by having a coherent and transparent E&C program. The importance and choice of values in a multinational, the respect for these values, and the commitment to upholding these values throughout the world are of the essence in finding and retaining younger talent. Recent international youth movements in favor of protecting the planet have shown that this is one of the pivotal values for many. Ignoring this value in a multinational E&C program could lead to failure.

Different learning styles and capabilities, use of Apps and gamification, reverse mentoring, forums and platforms providing space for safe dialogue, use of online tools for E&C training, use of social media in communicating values, are approaches that have proven useful in having an E&C program that takes into account generational cultures.

## PROFESSIONAL

Professional cultures are often a barrier to E&C success for multinationals. Depending on whether one has a legal, engineering, human resource, financial, or other background, one's culture can differ. Generally, it is acknowledged that experts of different national cultures working in the same domain can "speak the same language" and share the same approaches and procedures in working (e.g., in pharmaceutical research).

Different professional cultures must be considered when deploying E&C programs in multinationals. Addressing these differences is essential to ensure acceptance of diversity, to foster inclusion, to avoid the hierarchization, and thus pre-judgments, of people in certain functions and jobs. Uniformity and allegiances do not lead to creativity or productivity and even less to common shared values in a multinational setting. The use of field-specific acronyms, for example, can be a deterrent in communicating values to all the professionals involved.

Transversal matrixes are conducive to breaking down professional culture silos. Mixing professionals from different sectors and from different positions enhances the E&C initiative and can generate new approaches and ideas.

Professional cultures can be compared, in some cases, to ethnocentricity. If too many people of the same background work together for too long, creativity can dwindle. Allowing people to stay within their comfort zone should be discouraged when implementing successful E&C programs.

## SUMMARY

Culture is a complex concept with multiple complementary and competing considerations. Any broadly effective E&C program must take an organization's cultural factors and forces into account. The organizational culture will significantly influence how the other elements we identify in this paper are manifested and how they contribute to the overall success of the E&C programs in multinational organizations.



### 3. Leadership, Communications, and Training

As the *DOJ 2020 Guidance* suggests, it is important for organizations to create and foster a culture of compliance with policy, expected behaviors, and the law, and for leaders to create an environment where employees can report incidents without fear of retaliation. This requires commitment by leadership at all levels in the organization to implement and create a culture of compliance. Typically, the organization's top leaders, including the Board of Directors and Executives, set the tone for the rest of the company.

There are several challenges and considerations relating to leadership, communications, and training in multi-national organizations.

As a starting point, it is worth determining whether:

- Leadership is truly aligned throughout the organization, from the Board and Executives to middle and lower levels;

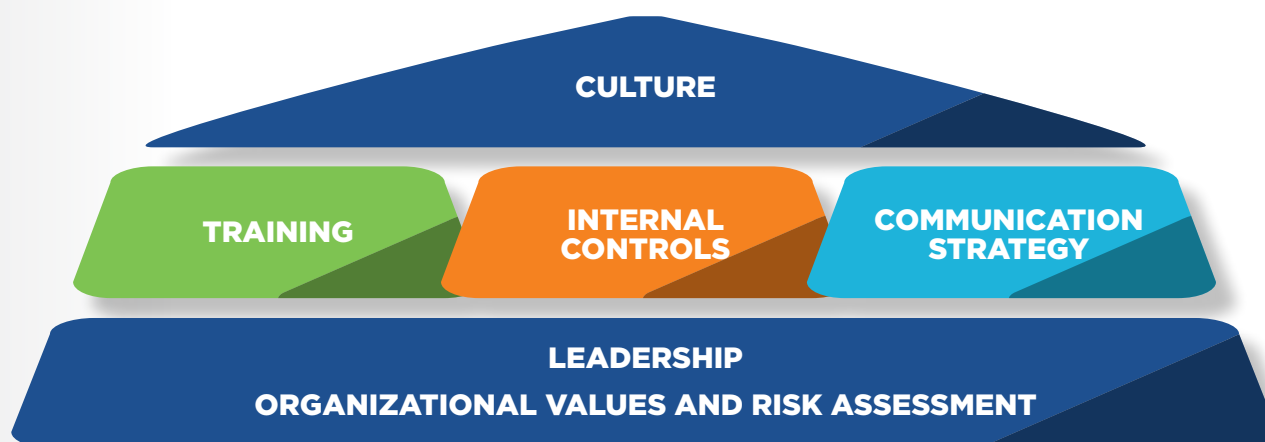
- Key messages are being communicated via a coordinated communication strategy; and
- Leadership behaviors are consistent with organizational values and risks.

The culture of an organization, visible internally and externally, depends on the balance between leadership tone and communication style, employee training, and effectiveness of internal controls per the diagram below.

For employees, the test is whether they believe leadership messaging, whether they receive E&C training specific to their role and location, and whether there are effective internal controls in place to reduce the risk of misconduct.

#### LEADERSHIP TONE AND BEHAVIOR AT THE TOP, MIDDLE, AND LOWER LEVELS

The Board and Senior Executives of an organization set the tone by their ethics and compliance messaging, which should include zero tolerance for misconduct. This will only be effective throughout the organization, however, if it is matched by their observed and reported





behaviors, and whether it is shared by middle and lower levels of leadership so employees clearly know what type of behavior is expected and what is unacceptable.

As the ECI stated in its 2019 *Global Business Ethics Survey* report, “In many organizations, supervisors are the only people in leadership positions who employees interact with on a daily basis. As a result, their behavior serves as a proxy for the values and priorities of senior leadership and the organization as a whole.” It is therefore key that supervisors receive and communicate the messages from the top. Employees who believe their supervisors to be ethical are more likely to report observed misconduct without fear of reprisal.

Challenges in multi-national organizations include ensuring that this messaging reaches all employees wherever they are located, and that key points are not lost in translation.

If the tone and behavior at the top is more “Do as I say” than “Do as I do,” this lack of accountability is likely to create low morale and a tolerance for bad behavior at the middle and bottom.

Leadership behavior, including personal actions or decision-making, that is not in line with organizational values is the most likely factor to influence unacceptable employee behaviors and create an organization with “hollow” values.

Anonymized scenario-based story telling by leaders, rather than quoting policies and regulation, may help operationalize the required culture, create trust, and encourage speaking up when wrongdoing is observed.

### **LEADERSHIP IN A CRISIS**

The true test of leadership is during a crisis, such as the COVID-19 pandemic, when employees’ routines are upset, such as having to work from home for extended periods of time with other family members and potential home schooling,



or wearing specialized protective clothing in a production environment. The challenge is managing such crisis situations across a multinational organization, where impacts to specific lines of business and geographies may differ.

Leaders show their true colors in a crisis by showing compassion or increasing surveillance monitoring. Both may be required, including allowing flexible working hours to avoid fatigue and burn-out while using risk-based, rather than blanket, surveillance monitoring to ensure that compliance and integrity are maintained.<sup>9</sup>

In such times, it is vital that leaders at all levels and locations are visible and transparent in their decision-making, communications, and messaging to keep employees informed and to ensure they retain accountability and understand any actions required.

## LEADERSHIP STYLE AND COMMUNICATION

Communication may be either top down, for centralized E&C programs, or disaggregated in more decentralized programs.

### Top-Down (Centralized) Leadership Communications

Typically, with a top-down approach, corporate ethics and compliance messaging and communications are cascaded down to multiple lines of business, legal entities, and geographies.

A benefit of this approach is consistency of messaging, both in content and timeliness. This approach, however, can create the risk that top-line messages do not reach all levels of the business, that the content does not remain consistent, and that they are not tailored to be culturally relevant for each geography. Corporate leadership should be aware of international employment, privacy, bribery, corruption, and other laws that might need to be factored into communications for applicability internationally.

### Disaggregated (Decentralized Program)

Messaging and communications are created and communicated locally.

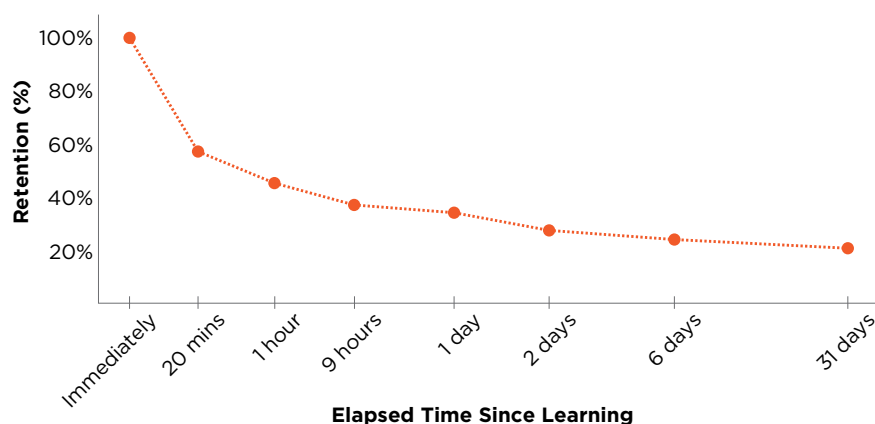
Localized and culturally relevant messaging and communications about national laws or regulations are better received than corporate flow-down messaging and communications.

Potential risks include inconsistency or contradictory messaging and communications across an organization.

## TRAINING

A key consideration in developing a training program is the rate at which learned information is forgotten if attempts are not made to retain it. This is illustrated by the “Forgetting Curve” below, based on a mathematical formula developed by Hermann Ebbinghaus. It shows that 50 percent of learned information may be forgotten within an hour of taking the training and 70 percent within one to two days.

**Ebbinghaus Forgetting Curve**



The challenge for E&C training in a multi-national organization is to make it relevant and memorable for each workforce. This applies to production workers with little IT access, to homeworkers or office workers, and to those working at a remote or customer site, as well as appealing to multiple generations, cultures, nationalities, and third parties. A range of training methods and solutions may be required, including short nudging, e-learning, use of Apps, AI solutions such as chatbots and Avatars, gamification, and leader-led in person/virtual case study/story-based training.

Training should be designed with the user in mind (Design Thinking) and be aimed at optimizing or changing behaviors aligned to company culture and policies, as well as to laws and regulations.<sup>10</sup>

Formal training is only one approach. On-the-job learning or learning from others can be equally or more effective by including learning objectives in employee performance goals and development plans or by providing access to a coach or mentor.

### **APPROACH TO TRAINING**

E&C training may be developed at the corporate level and pushed down through the organization.

Best practice would ensure that such training considers all relevant cultures and job roles. For example, annual scenario-based ethics training could include international settings/characters and languages/subtitles. Compliance-based training could be risk-based and targeted by job role, with more training given to those most at risk of compliance issues, such as procurement and new business employees.

Involving employees from different lines of business and geographies in the training design and translations will ensure greater relevance and cultural accuracy.

Corporate training development teams must consider international employment laws, privacy laws, anti-bribery and anti-corruption laws, etc., when pushing the training out to international teams. These issues may require some additional training for certain locations.

Leaders could deliver annual scenario-based ethics training developed by the ethics team with the support of a local guide or trainer. This will ensure that leaders localize the training and select the most appropriate case studies for their team or business area.

Companies should consider creating ethics scenario-based training on a framework that focuses on values conflicts.<sup>11</sup> If training is developed locally by each line of business, the benefit is greater cultural alignment, but the risk is a lack of consistency across the organization.

Additional considerations regarding training and communications include:

- Are the E&C professionals trained appropriately?
- Does training need to be extended beyond E&C, e.g., managers or specific functions?
- Do some personnel need specialized training?
- Is training accessible? In different languages? In different formats to accommodate different employment types and settings?
- How do you handle transparency and follow-up during and after a misconduct incident? Do you inform employees when a member of staff is terminated for misconduct? Do you follow up during investigations (even anonymous reports)? Do employees understand the process of reporting and investigation?

### **SUMMARY**

Leadership, communication, and training are key components in any successful E&C program. The challenges facing multinational organizations are significant, and, while not all elements need to be universally consistent, alignment with corporate purpose and values is vital.

## 4. Risk Assessments and Internal Control Evaluation

The starting point for a prosecutor's evaluation of whether a company has a well-designed E&C program is understanding how the company has identified, assessed, and defined its risk profile. The degree to which the E&C program devotes appropriate scrutiny and resources to the spectrum of risks should be assessed. In short, auditors, regulators, and prosecutors will endeavor to understand why the company has chosen to set up the E&C program the way that it has and how the company's E&C program mitigates relevant risks.

Organizations must be able to demonstrate that their E&C program is appropriately designed to detect the particular types of misconduct most likely to occur in a particular corporation's line of business and complex regulatory environment.

Both globally and at the local level, companies must analyze and address the varying risks presented by, among other factors, the location of its operations, the industry sector, the competitiveness of the market, the regulatory landscape, potential clients and business partners, transactions with foreign governments, payments to foreign officials, use of third parties, gifts, travel and entertainment expenses, and charitable and political donations. Multinational organizations must be clear on how these risks aggregate or whether some are uniquely isolated to a specific location or line of business.

Firms must be able to demonstrate how the company's E&C program has been tailored based on the risk assessment and whether its criteria are periodically updated. In designing this tailoring, consider the following topics:

### RISK MANAGEMENT PROCESS

- What methodology does the company use to identify, analyze, and address the risks it faces?
- What information or metrics does the company collect and use to help detect the type of misconduct in question?
- How does the information or metric affect the company's E&C compliance program?

### RISK-TAILORED RESOURCE ALLOCATION

- Does the company devote a disproportionate amount of time and resources to policing low-risk areas rather than high-risk areas such as questionable payments to third-party consultants, suspicious trading activity, or excessive discounts to resellers and distributors?
- Does the company give greater scrutiny, as warranted, to high-risk transactions (for instance, a large-dollar contract with a government agency in a high-risk country) than more modest and routine hospitality and entertainment risks?

### UPDATES AND REVISIONS

- Is the risk assessment current and subject to periodic review?
- Is the periodic review limited to a "snapshot" in time or based on continuous access to operational data and information across functions?
- Has the periodic review led to updates in policies, procedures, and controls?

### SUMMARY

Companies of all sizes must undertake periodic risk assessments and internal control evaluations. Some risk and associated controls will be managed at a global level, while others are unique to lines of business or geographies. It is important to develop a robust non-financial risk taxonomy and control inventory. Routine monitoring and testing of controls along with appropriate effectiveness reporting are vital to demonstrate on-going regulatory compliance.

## 5. Program Integration and Alignment with Related Oversight and Control Functions

E&C programs in multinational organizations rarely operate independently of other key governance, oversight, and control functions. Firms may have operationally or organizationally aligned E&C programs within legal functions or risk groups. Ethics programs might also be aligned with Human Resources operations, while Compliance may be an entirely separate function or aligned under Risk Management. Regardless, depending on the size and complexity of the organization, a number of supporting functions may operate in full alignment with the E&C team, under the same ultimate senior management team, or elsewhere within the company, in either the first or the second line of defense. Examples of these specialized functions may include:

- Anti-Bribery/Anti-Corruption
- Competition/Antitrust
- Cyber/Information Security
- Fraud
- Investigations
- Ombudsman/Customer Complaints
- Operational Risk
- Privacy
- Sales Practices
- Diversity and Inclusion

**“The challenges involved in developing effective points of integration among governance functions are significant. For an E&C program to be truly effective, however, these different perspectives and insights warrant integration.”**

Regulators expect management and the board to have access to holistic reporting and insights on compliance, customer concerns, and employee misconduct (and consequences). Where E&C groups do not organizationally report to the same management as these and potentially other similar functions, there can be challenges in collecting relevant data, analyzing it, and reporting on it. Issues around data collection can range from privacy considerations to system access, granularity/specificity of the data and differing temporal collecting practices. If they are part of a manual offline business practice, data collection may be all but impossible.

Aside from basic concerns about data access, collection, analysis, and reporting, additional considerations are:

- Issue identification, escalation, and resolution;
- Consistency of message when reporting to different committees (e.g., HR, risk, compliance, etc.);
- Aggregation of information when integrating data from different legal entities, lines of business, operating groups, geographies, and oversight roles.

The challenges involved in developing effective points of integration among governance functions are significant. For an E&C program to be truly effective, however, these different perspectives and insights warrant integration. That said, a range of reporting along operational, legal, geographic, and other factors may add additional levels of complexity to this topic.

### SUMMARY

An effective E&C program requires input and insights from a diverse range of stakeholders, not all of whom may operate within the E&C management structure. E&C professionals need to develop points of integration with related governance and oversight programs to facilitate formal and informal data sharing and issue management. This topic is explored further in the Metrics and Reporting section.



## 6. Program Metrics, Reporting and Supporting Technologies

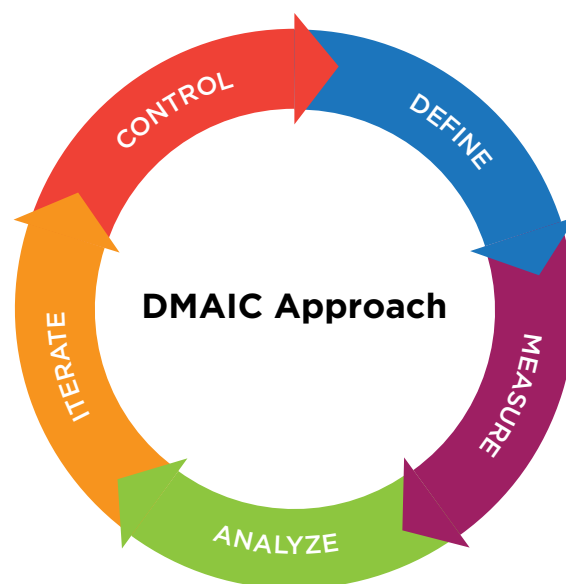
This section explores the need for E&C program metrics and how to develop relevant metrics and measures. In addition, it discusses who should receive and review those metrics, as well as the tools that can be used for collecting the data and converting the data into meaningful visuals that will demonstrate what our data tells us. The model presented here can enable an evaluation of these items as parallel processes from the beginning.

**Why do we need metrics?** Metrics are required to help manage risk and report on the status of programs, regardless of their size or complexity. To understand an E&C program's effectiveness, as well as its year-over-year progress, it is necessary to establish a set of metrics and data collection applications and processes.

The metrics selected will be unique to the specifics of a program (complexity, scope, relationship with other oversight functions, reporting lines, etc.) and may be influenced by region-specific regulatory reporting requirements or cultural nuances. If these circumstances exist, it may be acceptable to have metrics to meet those specific requirements. In the core, however, it is essential that a set of standard metrics be adopted at a minimum for the decentralized organizations, so that when the results are consolidated, they provide meaningful insights for the entire organization.

### **Methodology: Systems-thinking as an approach**

When embarking on a metrics development initiative, consider adopting a common scientific approach, the DMAIC (Define-Measure-Analyze-Iterate-Control) model. The application of a structured approach to metric collection and analysis will improve the likelihood of success in identifying and implementing a set of meaningful metrics.



Adopting this methodology helps create a reliable and consistent data collection structure. To define what you should measure requires logic and discipline; applying systems-thinking enables a big picture starting point allowing for metrics to evolve and mature over time.

The **SIPOC** (Suppliers-Inputs-Process-Outputs-Customers) diagram on page 20 is another tool that may be useful, whether you are just starting, or you already have some metrics and would like to revisit them, to ensure that your metrics are still relevant to your business model, your industry, and your geopolitical regulatory environment in relation to what you would like to measure.

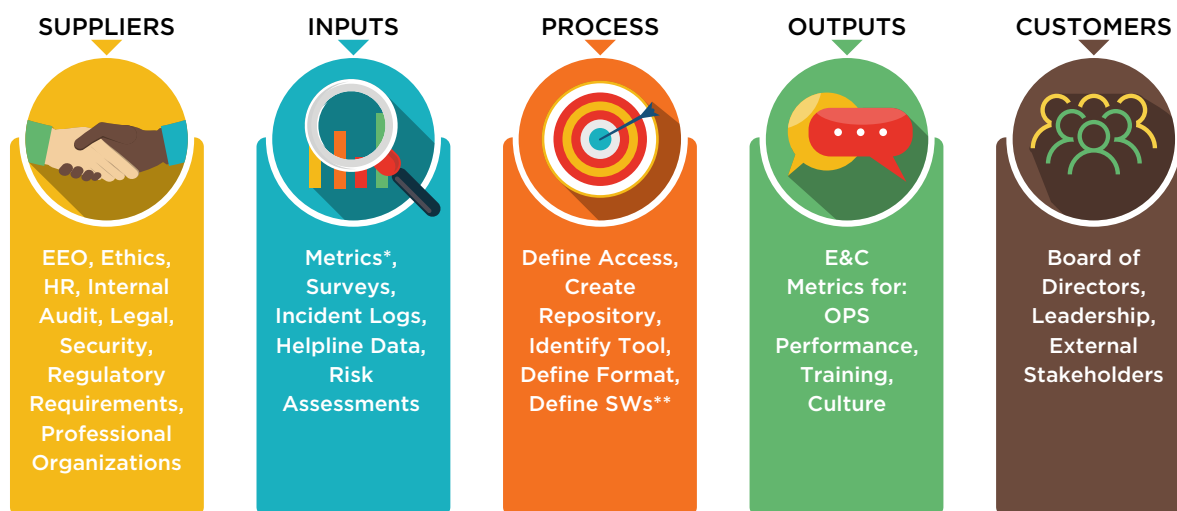
The diagram below shows how to brainstorm over sources of data, given that “suppliers of data inputs” may vary widely. Some of the data relevant to your metrics would be generated within the E&C function. There are several adjacent functions, such as HR, Equal Employment Opportunity (EEO)/Diversity and Inclusion, Internal Audit, Security, and Legal, that also generate data for activities in various ways, from employee surveys to operational metrics. To capture the holistic big picture, the data required may come from a variety of sources, some of which would be internal and some external.

Once you identify and define your suppliers of data inputs, you will need to think about where all these inputs will reside, in what format, and who can have access to the tool. Depending on the size of your operation, your tool could be a simple template that runs in a basic office suite of software (e.g., MS Office) that can be manually updated by a Subject Matter Expert. The tool could a more advanced dashboard using SharePoint or data visualization software. It could also be a dedicated Governance, Risk &

Compliance (GRC) tool that keeps all your data in one place and produces a range of dashboards for your choice of watch items.

Whether you process (SIPOC—Process) the inputs manually or in an automated way, you will produce the desired metrics (SIPOC—Outputs) that will be tailored based on to whom (SIPOC—Customers) they will be presented periodically. While your senior leadership would be receiving updates monthly or quarterly, the frequency for your Board of Directors or other external stakeholders may vary depending on your business needs.

Another consideration for your metrics is to distinguish those that are for tracking your E&C operation’s efficiency from those that are for measuring the effectiveness of your program. An example of the former would be the average “Days to Close” for case closure times. For the latter, it might be the year-over-year change in the percentage of anonymous reporting, where a drop in anonymous reporting can be associated with the growing trust in the E&C function.



\*Your suppliers' metrics

\*\*What-Why-When-Where-Who



Earlier we stated that we need metrics to measure our progress over time and to understand how we are making an impact on the organization on a continuous basis. It follows that for every metric we choose to follow, we must be able to state clearly why we have chosen that metric, what we expect to learn from monitoring and testing it, and what we would like to see this metric ultimately report to declare success. If we pick a metric without well-defined answers to those three questions, it may be worthwhile to ask whether it is the right metric to pursue for our business.

Another area where metrics are critical is “benchmarking.” Professional organizations conduct and publish reports with valuable metrics information. Monitoring those external sources for gathering data and comparing it to internal results are essential for informing leadership on the relative state of the E&C program.

One of the key elements of an effective E&C program is a set of well-chosen metrics that are consistently collected, reviewed, and used to make strategic decisions in a variety of areas ranging from risk management to operational excellence. A learning organization will invest the time and resources for the adoption and implementation of the appropriate methodologies to set these goals and embark on a path to achieve them.

Lastly, a decision should be made as to the information, dashboards, and reports. What is the frequency of reporting to oversight functions, management committees, and the board of directors? What information does each group require and in what format? Augmenting the metrics with context, additional analytical insights, and qualitative narrative will make the reporting significantly more impactful and actionable.

**“Another area where metrics are critical is “benchmarking.” Professional organizations conduct and publish reports with valuable metrics information. Monitoring those external sources for gathering data and comparing it to internal results are essential for informing leadership on the relative state of the E&C program.”**

## Conclusion

This paper has detailed many of the challenges faced by multinational organizations when developing ethics and compliance programs. By reviewing the considerations noted, multinational organizations can develop robust and integrated programs spanning their range of businesses and geographies.

Continuous improvement demonstrating program effectiveness is required to address ever increasing expectations from Boards of Directors, auditors, regulators, and stakeholders of all types. While the challenges are vast, so is the range of resources available to assist organizations in addressing the factors raised in this paper. Look to ECI for support.



## Recommendations

### Program Checklist

#### **Does your Ethics & Compliance Program meet the Five Principles and Practices of High-Quality Ethics & Compliance Programs set out by the ECI Blue Ribbon Panel Report?**

1. Strategy: Are Ethics & Compliance acknowledged as being central to business strategy?
2. Risk Management: Are Ethics & Compliance risks identified, owned, and managed?
3. Culture: Do leaders at all levels across the organization agree and understand how to build and sustain a culture of integrity?
4. Speaking Up: Does the organization encourage, protect, and value the reporting of concerns and suspected wrongdoing?
5. Accountability: Does the organization act and hold itself accountable when wrongdoing occurs?

#### **Does the program go beyond a “box-ticking” exercise?**

1. Is the Ethics & Compliance program well designed?
2. Is the program adequately resourced and empowered to function effectively?
3. Does the compliance program work in practice? Is this measurable?

#### **Risk mitigation**

1. How do you identify risks?
2. Do you allocate time and resources appropriately to those specific risks (i.e., more resources for addressing greater risks)?
3. Do you constantly review and revise this risk assessment? (Is it a “living process” rather than a periodic snapshot?)



**“Continuous improvement demonstrating program effectiveness is required to address ever-increasing expectations from Boards of Directors, auditors, regulators, and stakeholders of all types.”**

### **Policies and procedures**

1. Are your policies and procedures easily accessible by all employees (appropriate signposting and offline materials if required)?
2. Are they written in an understandable way (including multi-language if necessary)?
3. Can you track which policies are most accessed by employees? (This can help develop your program.)
4. Who has responsibility and accountability for policies and processes? (The gatekeepers should not be compliance professionals but subject-matter specialists, e.g., HR, payroll, internal audit.)

### **Training and communications**

1. Are Ethics & Compliance professionals trained appropriately?
2. Does training need to be extended beyond E&C, e.g., managers or specific functions?
3. Do some personnel need specialized training?
4. Is training accessible? (In different languages, for example, or in an offline format for employees not online, e.g., oil rigs or mining.)
5. How do you handle transparency and follow-up during and after a misconduct incident? Do you inform employees when a member of staff is terminated for misconduct? Do you close the loop and follow up during investigations (even anonymous reports)? Do employees understand the process of reporting and investigation?

### **Incident reporting and resolution**

1. Is the reporting channel designed, established, and operated in a secure manner that ensures the confidentiality of the reporter's identity and that of any party mentioned?
2. Have you considered alternatives or technology

to traditional hotlines that might be more accessible?

3. Is a confirmation of receipt of the report given to the reporting person within an appropriate time frame (even anonymous reporters)?
4. Does a competent person or department follow up on the reports? Can this person maintain communication with the reporting person and provide feedback (even anonymous reporters)?
5. Is a careful follow-up investigation carried out on the report by the designated person or department?
6. Is a reasonable time limit set for giving feedback or closing the loop on the report after acknowledgment of receipt?
7. Does your case management and resolution system give you real-time data on the status of ongoing investigations and specific categories of incidents?

### **Third-party and partner ecosystems**

1. Do all or a specific subset of the questions above also apply to partners, suppliers, customers, or the general public?
2. How do third parties or partners report misconduct to you, and how do you follow up? Is this process clearly communicated and accessible?

### **Mergers and acquisitions**

1. Is an effective risk assessment process carried out during the due diligence process of mergers and acquisitions?
2. How are risks handled?
3. How will the multiple compliance programs be integrated?

### Is the program functioning effectively?

1. Is the program adopted top down and bottom up (by leadership and rank-and-file employees)?
2. Who has oversight? The Board of Directors? What experience or training do they have to ensure adequate capability of oversight?

## Culture Checklist

1. Ensure you have a clear view of the different types of culture existing in your organization and the culture you want to create through shared values.
2. Ensure you have analyzed the cultural impact of your E&C program and have made suitable modifications depending on the geographic and/or structural area in which you will be deploying it.
3. Check with all stakeholders to see whether your E&C program corresponds to both their cultural setting and your organization's expectations.
4. Check that your E&C recommendations are aligned with national/regional laws and regulations.
5. Ensure that you call on local in-depth knowledge of cultural traits to hone your E&C program.

### Leadership, Communications and Training Check List

1. Do leaders **in all parts and levels** of the organization demonstrate their commitment to ethics and compliance every day through their words, when communicating with employees or other business partners, and their actions, by following the rules, adhering to company values, respecting others, and responding appropriately to concerns raised?
2. Whether cascaded top down or decentralized, **does every employee** in the organization receive E&C communications electronically, orally, or in writing, including those working from home, in very remote locations, or without access to company IT? Do communications retain their original meaning when translated?

3. **Compliance training** teaches employees about policies, laws and regulations that apply to their job roles. **Ethics training** prepares employees to handle misconduct and ethically "grey" situations. Are these relevant to employees across all cultures and parts of the organization?

4. **Risk-based communications and training** align communications and training to key E&C risks. These may be based on the most frequent E&C topics or trends observed from metrics, or be time-relevant, such as providing gifts training before major holidays.

5. **Best practice** is to keep E&C communications and training focused and use multiple methods and media to make them memorable and meaningful. Also, ensure they are translated into the languages spoken in your multinational organization.

## Risk Assessment Check List

### 1. Risk Management Process

- What methodology has the company used to identify, analyze, and address the risks it faces?
- What information or metrics has the company collected and used to help detect the type of misconduct in question?
- How have the information or metrics informed the company's compliance program?

**“Best practice is to keep E&C communications and training focused and use multiple methods and media to make them memorable and meaningful. Also, ensure they are translated into the languages spoken in your multi-national organization.”**



## 2. Risk-Tailored Resource Allocation

- Does the company devote a disproportionate amount of time and resources to policing low-risk areas rather than high-risk areas, such as questionable payments to third-party consultants, suspicious trading activity, or excessive discounts to resellers and distributors?
- Does the company give greater scrutiny, as warranted, to high-risk transactions (for instance, a large-dollar contract with a government agency in a high-risk country) than more modest and routine hospitality and entertainment issues?

## 3. Updates and Revisions

- Is the risk assessment current and subject to periodic review?
- Is the periodic review limited to a “snapshot” in time or based upon continuous access to operational data and information across functions?
- Has the periodic review led to updates in policies, procedures, and controls?

## Program Integration Check List

1. Identify programs that are aligned with the E&C functions.
2. Ensure there is no confusion regarding roles and accountabilities, including oversight and reporting.
3. Leverage technologies, risk assessments, communications, and training opportunities to maximize the effectiveness of programs, including awareness, and minimize overlap.

## Metrics and Reporting Check List

1. When developing metrics, start with the big picture and use the SIPOC diagram to ensure that everything is taken into consideration; then narrow your scope to what you cannot do without.
2. For your existing metrics or those you have identified, implement the DMAIC approach and ask the following questions:
  - a. Why do we have this metric?
  - b. What do we expect to learn from monitoring it?
  - c. Where would we like to see this metric to declare success?
3. Determine the scope, frequency, and format for reporting to the different audiences requiring this information.

## Endnotes & References

### **Blue Ribbon Panel: Principles and Practices of High-quality Ethics & Compliance Programs**

<https://www.ethics.org/document/blue-ribbon-panel-principles-and-practices-of-high-quality-ethics-compliance-programs/>

### **Ebbinghaus Forgetting Curve**

<https://hbr.org/2019/10/where-companies-go-wrong-with-learning-and-development>

### **ECI High-Quality Program (HQP) Assessment Tool**

<https://www.ethics.org/hqp/>

### **ECI High-Quality Program Measurement Framework**

<https://www.ethics.org/knowledge-center/hqp-measurement-framework/>

<sup>1</sup> Ethics and Compliance Initiative, *Global Business Ethics Survey: The State of Ethics & Compliance in the Workplace* (2018), p. 10.

<sup>2</sup> *Ibid.*

<sup>3</sup> U.S. Department of Justice, Criminal Division, Evaluation of Corporate Compliance Programs (Updated June 2020), available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

<sup>4</sup> Convercent by OneTrust, DOJ 2020 Update: Key Takeaways for Compliance (June 2020), available at <https://www.convercent.com/blog/doj-2020-compliance-update-key-takeaways>.

<sup>5</sup> Financial Times, *Silence isn't golden, whistleblowers are* (February 2021), available at <https://www.ft.com/content/4e3e968c-6375-4fd3-b7b4-a8752aa16905>.

<sup>6</sup> U.S. Department of Justice, Criminal Division, Evaluation of Corporate Compliance Programs (Updated June 2020), available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Robert Chesnut, How to Build a Company That (Actually) Values Integrity (Harvard Business Review, 2020), available at <https://hbr.org/2020/07/how-to-build-a-company-that-actually-values-integrity>.

<sup>9</sup> See MIT Sloan Management Review (November 2, 2020) (“more than 92% of employees being monitored trust their employers less, and 81% of managers trust their workers less”).

<sup>10</sup> Michie S., Atkins L., West R., *The Behaviour Change Wheel: A Guide to Designing Interventions* (Silverback Publishing, London, 2014), available at [www.behaviourchangewheel.com](http://www.behaviourchangewheel.com).

<sup>11</sup> See, e.g., Mary Gentile, *Giving Voice to Values: How to Speak Your Mind When You Know What's Right* (Yale University Press, New Haven, 2010).



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# Addressing Ethics & Compliance Challenges for Multinational Organizations

► **2021** ECI WHITE PAPER

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