UNDERSTANDING COMPLIANCE MANAGEMENT: OPENING THE BLACK BOX OF SELF-REGULATION

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SUMMARY

Regulators are facing several challenges. The expectations from society regarding public regulators have increased substantially in recent years. On one hand the duties and responsibilities of regulators are expanded, on the other hand they are expected to work effectively and with fewer failures. At the same time, resources available for regulators are limited. Regulators are therefore increasingly looking for innovative forms of regulation. Scholarly thinking about regulation has traditionally been dominated by legal and economic paradigms. But if a regulator approaches regulated companies with policies and instruments stemming from legal and economic paradigms, is it strange that the regulated community responds consistently, i.e. with calculating and formal behaviour? The problem with this behaviour is that it requires intensive external stimuli and control because it does not enhance intrinsic motivation to act responsibly.

More recent scholarship points at the possibilities to innovate regulation with the use of insights from other fields like the social and behavioural sciences. One of the promising approaches is to find out under what conditions the self-regulative potential of regulated parties can be used to assure environmental protection. This implies that regulators should be able to (a) identify and assess effective self-regulation and (b) learn to influence the effectiveness of self-regulation.

1   SELF-REGULATION AND COMPLIANCE MANAGEMENT

There is a vast amount of governance codes, policy statements, codes of conduct, etc. that regulated businesses and institutions (hereinafter referred to as "companies") use as vehicles for commitments regarding compliance management and risk control. Unfortunately, these statements do not always reflect what actually happens in the real world. Within the population of companies having adopted such policies formally, we see significant differences in the level of implementation of those policies. Even external assessment through certification does not seem to be a very effective approach to identify such differences.[1]

The basic question with regard to self-regulation is whether companies can be trusted to walk their talk. Regulators seem not to agree on this question and tend to take an extreme stand. They seem to be either in favour or against self-regulation. Both groups throw arguments to each other to prove they are right. What is striking in both lines of argument is that they are based on generalization. Of course it is not true that no single company can be trusted. Nor is it true that all companies can be trusted. Likewise, the claim that self-regulation (or command-and-control) is the solution to all problems is just as legitimate as the claim that a bicycle is the ultimate means of transport in all situations.

As mentioned, there are companies with well implemented compliance management systems, but also there is a lot of window dressing. "Window dressing," in the academic world referred to as "decoupling," is undesirable even more so because it is not easily identified by external supervisors; not only by certifying bodies but also by regulators.

2   DECOUPLING AND RECOUPLING

The good news is that there are serious indications that the reverse process of decoupling – recoupling – also occurs. Different phenomena may explain this process of recoupling. Stucke[2] argues that intrinsic motivation is essential for effective compliance and ethics programs. Intrinsic motivation is a prerequisite for tight coupling. When decoupling takes place, internal tensions and frustration grow because the workforce cannot accept this hypocritical behaviour. Also, as a consequence of the adoption of formal policy, sooner or later demographic changes occur within the organization. New employees are hired who get more influence and thus may fuel the process of recoupling.[3] Recoupling however, is not an automatic consequence which can be waited for. MacClean[4] warns that organization members may exploit the gap between form and substance instead of lessening this gap.

3   OPPORTUNITIES FOR REGULATION

An interesting question with regard to the phenomena of de- and recoupling is to what degree and how the external regulator can influence these processes. Scholars argue that the intrinsic motivation for self-regulation is supported by surveillance, but is impeded by explicit coercion or sanctions.[5] Also, inspectors notice counterproductive effects on intrinsic motivation of sanctions if these are perceived as not fair.[6]

If regulators can come to comprehend the black box of self-regulation, they might not only be able to distinguish window dressing from tightly coupled systems. They might also be able to develop tools enabling them to influence the effectiveness of such systems, thus improving self-regulation. Research is going on with regard to all kinds of different aspects of this notion such as the assessment of compliance management systems, the use of moral messages, the influence of penalties on self-regulation, the communication between internal supervisors and external inspectors, and much more. Although the concept of self-regulation is not new at all, more research has to be done to understand how self-regulation works and how regulators may interpret and influence it. The promise this research holds is in the leverage to make regulation more effective to recognize and stimulate self-regulation.

4   REFERENCES

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