
COMPLIANCE VIOLATION IN GERMAN FAMILY BUSINESSES: FREQUENCY, DETECTION, COUNTER MEASURE RELEVANCE

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Abstract

Corporate governance incorporates institutional and organisational mechanisms along with decision-making, intervention and control rights to resolve conflicts of interest between the various stakeholders. Besides the distribution of ownership rights and the interests of stakeholders, corporate governance also includes legal frameworks, such as bankruptcy law, disclosure rules and laws on insider trading (Schmidt & Tyrell, 1997, p. 342). Ensuring that companies stick to applicable law is a key element of compliance (Bussmann, 2015, p. 435). Consequently, compliance is seen as an integrated part of corporate governance (Sheedy & Griffin, 2018). *Compliance* implies that “companies have to comply [...] with criminal laws and prevent their staff and managers from violating them” (Bussmann, 2015, p. 435). Kort (2008) defines compliance in a broader sense and explains that ethical and general standards of conduct must be observed (Kort, 2008, p. 86). Compliance is operationalised through *compliance management*, which is the internal function of the company to ensure compliance with regulations and guidelines. Thus, the prevention of occupational and corporate crime is the primary objective of compliance management (Bussmann, 2015, p. 435).

While corporate governance has been well established in the last years, compliance is still underrepresented (Behringer, Ulrich, & Unruh, 2019, p. 142). This is astonishing as the practical importance of compliance has increased significantly in recent years. Although initially, stock-exchange listed companies were dealing with compliance management, external pressure is also growing for small and medium-sized enterprises (SMEs). One reason for this is the constant tightening of commercial criminal law. Moreover, large companies pass on the “compliance pressure” to their business partners, the SMEs, to avoid being associated with criminal partners (Bussmann, 2015, pp. 436–437). In comparison to large stock-exchange listed companies, SMEs and family businesses have different entrepreneurial behaviour (Kellermanns, Eddleston, Barnett, & Pearson, 2008, p. 1). Hence, implementing corporate governance structures is viewed critically by them. However, good governance is important for both types of organisations because businesses that deny or ignore the importance of good corporate governance are exposed to higher risk (Bartholomeusz & Tanewski, 2006, pp. 250, 264). Thus, compliance is crucial for SMEs and family businesses (Behringer et al., 2019, p. 141).

Besides its practical relevance and currentness, only a few investigations have been made in this field of research (Behringer et al., 2019). Thus, further research regarding compliance management is needed. Here special emphasis shall be put on the different types of organisations, especially family businesses and SMEs because of their relevance for the German economy (European Commission, 2019). Since there are no legal requirements or frameworks for the implementation of compliance management in Germany (Nienaber, 2020, p. 226), German companies are responsible themselves for the design of compliance management and, in case of doubt, must prove that the measures taken were sufficient. Therefore, German family businesses and SMEs depend even more on recommendations as a result of empirical research. The project presented aims to close this research gap while addressing compliance management in family businesses and SMEs. Thus, it is the overall goal of this study to find out, which compliance instruments work best for family businesses and SMEs by analysing the reasons for compliance violations in these organisations.

Three steps are necessary to achieve the declared objective. Firstly, causes for rule violations and non-compliance in family businesses need to be analysed. Special emphasis shall be put on the operational characteristics of family businesses. As shown before, family businesses are different from non-family businesses, which leads to different entrepreneurial behaviour (Kellermanns et al., 2008, p. 1). Thus, it can be assumed that the operational characteristics of family businesses also have an impact on compliance management and affect rule violations and non-compliance. Secondly, it needs to be evaluated, how compliance offences can be prevented in the organisations considered. The third and

last step brings together the knowledge gained so far. This way, recommendations for family businesses and SMEs can be made in order to support them in the process of conception and implementation of compliance management.

To achieve the above-mentioned goal, a qualitative field study in form of expert interviews will be carried out (Döring & Bortz, 2016, p. 375). Over and above, little research has been conducted looking at the special characteristics and needs of SMEs and family businesses. Thus, the described research approach can be seen as an explorative one, which justifies the usage of qualitative research approaches, e.g., expert interviews (Döring & Bortz, 2016, pp. 184, 193).

The experts, which are going to be interviewed, represent the target group (Misoch, 2019, p. 127) and consist of 20 compliance managers of German family SMEs. Focusing on German compliance managers only is based on the fact that compliance is a very “national” topic. Because of their specific laws and regulations, organisations, which can be assigned to the financial, banking or insurance sector, are excluded from the study. In addition to the compliance managers, representatives of consulting companies, whose main focus is consulting SMEs, will be interviewed as well to analyse the requirements of compliance management from an external point of view. This data triangulation (Denzin, 2009, pp. 301–302) is carried out to be able to extend the insights gained from interviews with compliance managers (Flick, 2011, p. 12). The conducted interviews will be recorded, transcribed and analysed by using the qualitative content analysis of Mayring (2015). Also, a method triangulation (Denzin, 2009, pp. 307–308) will be carried out to supplement and validate the derived recommendations (Flick, 2011, pp. 47–50). To do so, the gained results are going to be discussed in a focus group (Döring & Bortz, 2016, pp. 380–381).

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