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Maria Lancri
(mlancri@squairlaw.com) is a
Partner at Squair in Paris, France.



Gerry Zack
(gerry.zack@corporatecompliance.org)
is the Chief Executive Officer at SCCE
& HCCA, based in Eden Prairie,
Minnesota, USA.

Meet Maria Lancri: To succeed with compliance implementation, understand the context

By Maria Lancri and Gerry Zack

GZ: At what point in your life did you decide to study law? Were other career paths given much consideration, or did you know law was for you from an early age?

ML: In France, we study law right after high school. I went into law because I didn't want to have to continue to study mathematics, which would have been necessary if I had gone with a major in business or economics.

I studied law without thinking I would become a lawyer—much less a “pleading” lawyer, which I was at the beginning of my career. I believed I would be able to escape law to go into journalism or work for an international organization.

French law studies are still very theoretical. It was only after my years in the U.S. studying for an LLM at Southern Methodist University that I realized I should finalize my curriculum by taking the bar exam.

GZ: You've held internal compliance positions as well as served as an outside counsel and adviser to clients, which is what you do in your current role. How would you describe how the challenges differ between internal roles and those of an external adviser?

ML: I went into compliance step by step 15 years ago as part of my in-house position. What was most challenging internally at the time—and I believe this is still the case in less mature organizations—was convincing corporate officers not only to focus more time on compliance matters and have an appropriate budget but also ensuring that peers from the legal department understood that compliance had legitimate needs that required action from them. Compliance needs to be somewhat centralized to be efficient, and employees need to be trained in order to understand and implement the policies and procedures you come up with. Legal has a function to assist but not control. These are two separate functions. At the time, I was lucky to be trained in change management techniques to help me understand and communicate the necessary changes.

As an external adviser, one of the challenges is obviously to find and retain clients. Using my in-house background, I learned how to propose progressive and realistic missions that can be accepted by organizations and adapted to their maturity.

A second challenge when you work as an external adviser is getting full disclosure and background on the way the business is organized and thus, the ability to provide an adequate service. This is not always possible when you have one sole point of contact in the organization—even more so now, with how difficult it can be to

organize on-site meetings. This is why having full board participation is critical.

GZ: As an outside adviser, you deal with organizations in a wide variety of industries, each with its own set of compliance challenges. Where do you most commonly see differences, and where do you see the common challenges faced by compliance professionals regardless of sector?

ML: Common challenges arise at the time of drafting and implementing policies and procedures, because employees generally do not grasp or want to see that compliance is necessary to protect them and the organization. They often see it only as a burden. With policies and procedures, they will have to perform more checks and controls before doing what they consider to be their “real work.” For that reason, compliance professionals (internal and external) need to help them understand and accept that compliance is part of their day-to-day work. We need to have strong skills in persuasion and psychology in order to do so.

Differences happen when modeling, deploying, and implementing policies and procedures. You must consider not only the history of an organization (e.g., the way departments are organized, whether the company/group was created out of its own expansion or by different mergers and acquisitions) but also the specifics of the industry they are part of. A prime example could be knowing where a company is situated in the supply chain (whether the risk is more at the level of the suppliers and subcontractors or the level of the clients).

Talking about industry specifics, we know now how much things have evolved these last two years with the implementation of stronger policies to comply with international sanctions and export controls. It requires a thorough knowledge of the activity of a company to identify where the company is at risk and how to protect it. Measures are going to differ from one industry to another to cover these risky zones and activities.

GZ: The expectations for compliance and ethics programs increase all the time, and many programs are stretched for resources. How are you advising clients as stakeholder expectations grow disproportionately to resources?

ML: Resources are always an issue, no matter the company’s size. They are an issue because of the economic and political situation since the pandemic. They are also an issue because of the diversity of new subject matters compliance is now leading or involved in. We just talked about international sanctions; we should also talk about environmental, social, and governance (ESG) concerns—particularly the new regulations being released in different parts of the world.

Organizations should cover all these matters in the way that best suits their organization. First, by implementing their programs step by step, without waiting for it to be perfect and thoroughly detailed to deploy it. Second, by making sure they cover all relevant subject matters and not concentrate on only one, such as focusing on international sanctions and sidelining other risks like antitrust, human rights, anticorruption, etc. By the way, the compliance officer must ensure that all matters are covered. It does not mean that they should be the owner of all subject matters. For instance, ESG issues tend to be owned by different people depending on the activity of the company.

In France, companies have developed very detailed risk assessment processes to identify corruption risks due to the Sapin II Law and the guidelines issued by the French Anticorruption Agency. We advise companies not to disregard other risks and also conduct general risk assessment exercises across the company landscape.

Finally, for companies operating internationally, we need to understand the necessity of making sure that their programs are applicable in each country where they operate; however, if resources are an issue, I would advise modeling their programs on the international general principles of the United Nations or the Organisation for Economic Co-operation and Development (OECD) to avoid any local pitfalls.

GZ: You have set up compliance programs, and there are standard steps one must take, such as defining a charter for the program, conducting a risk assessment, and setting policies and procedures. But what do you find is the likeliest predictor of program success? Is it one of those elements or something else altogether?

ML: As I said earlier, I do believe that risk assessment is a key to the success of a program. It allows compliance professionals to model their programs according to the actually identified risks and helps convince employees that the new obligations they have to follow have been carefully weighted. And in case of an audit or control by an authority, it will allow the organization to demonstrate that its compliance program is not just another paper exercise.

But it is sometimes difficult to convince organizations that once risks have been identified through risk mapping, then they actually need to implement mitigating measures. Any authority auditing the company would see it as unconscionable not to have taken those steps.

GZ: If we looked back 10 or 15 years ago, we would see that the U.S. and compliance with the Foreign Corrupt Practices Act drove the growth of compliance programs. There were many cases with ever-larger settlements, and the U.S. Department of Justice was the great fear. Historically, though, anticartel was an exception. European enforcement authorities have often been much more aggressive than those in the U.S. What do you think accounts for the difference?

ML: I would say that historically, U.S. authorities have been better at using their laws as a tool to support their political agenda. They also provide the necessary resources to their authorities and agencies.

Europe seems to be slower at enforcing its laws at an equivalent scale for several reasons, I would say. Most responsibilities to enforce criminal law remain at the member-state level, except when it affects European institutions themselves. Member states do not have the same capabilities as the European Commission to investigate those big international cases. Also, in most European countries, prosecutors could not offer to settle criminal cases until recently. It started with Italy, with the operation “Mani pulite” in 1992, and further the adoption of a law in 2012.^[1] Then the U.K. adopted the Bribery Act,^[2] and then France adopted the Sapin II Law in 2016.^[3]

The enactment of these laws shows that these countries took into consideration the terms of the OECD convention and that they have started to use criminal law as a political tool.

Antitrust, as you mentioned, is an exception. I would say it’s mainly because antitrust regulation is a mission delegated to the EU because it affects the European market. The member states’ antitrust authorities have also now created a powerful network in charge of smaller cases. This network allows them to coordinate their actions and create a unified body of case law. Antitrust, as in the U.S., is the first European long-arm statute and, therefore, has jurisdiction over several U.S. companies active on the European market.

GZ: Over the last few years, there seems to have been a change in corporate enforcement. European lawmakers and enforcement authorities have gotten more aggressive than their U.S. counterparts when it comes to issues other than corruption. I’m thinking of privacy, the General Data Protection Regulation (GDPR) and, more recently, the human rights issue and the German Supply Chain Act. Does this reflect a trend? Different values in Europe than in the U.S. or something else?

ML: The change is there. It started with antitrust, as we just saw, and then GDPR, which also has an extraterritorial application.

Europe is stepping up on ESG matters, with member state laws providing for an extraterritorial application such

as the French duty of vigilance or the German Supply Chain Act.

At the EU level, things started softly several years ago with the adoption of the Green Deal and the regulations that follow it. The Corporate Sustainability Reporting Directive will enhance the non-financial reporting obligations, and the Corporate Sustainability Due Diligence Directive will grant centralized powers to a new European authority and delegate the local issues to member state authorities, similar to what has been implemented with the GDPR data protection authorities. The compliance trend with extraterritorial application is on the move. I would add that this is done with strong support or even push from the European Parliament.

GZ: Do you see a distinctly European approach emerging in compliance as a result of these new areas of enforcement, or can the existing compliance models be applied directly to them?

ML: The European approach tends to be more detailed, more directive. The U.S. often says, “Show me that what you did is efficient and adequate,” while the EU tends to say, “Show me that what you did is what I asked for.” A subtle but telling difference.

I regret that laws or their applicative guidelines never contemplate the different situations organizations go through and are often intransigent. Sometimes, we need to be able to “color outside of the lines” a little to enable the right outcomes.

GZ: Just recently, we have seen European lawmakers outpace the U.S. when it comes to artificial intelligence (AI). It will be some time before it is enforced, but how should compliance teams prepare their organizations for the final rules once they are announced and enforced?

ML: Some people are saying that Europeans are regulating AI because they do not have the technology; they think it is economic protectionism. But to me, it is more than that. Legislators see the potential of this technology but feel that they were never able to regulate social networks enough to protect the public from untruthful content. The aim here is to make sure that individuals and companies are protected while AI develops.

I think AI can be used to prepare internal documentation or help identify data more rapidly (in particular, with third-party due diligence or to put in place books and records controls), but employees should be trained on the risks of using AI and how to verify the reliability of the information collected or created. A supervising body should also be put in place to review the uses of AI and ensure that protected internal information (intellectual property or business secrets) is not disseminated to the public.

GZ: What else should we expect from Europe? Are there other areas where will likely see new laws and greater enforcement?

ML: I think that the subject of AI and its regulation is going to be a sensitive one for the coming years. All data—not just personal data—has become essential for organizations, and we should find a way to protect business and business secrets while ensuring reasonable transparency.

It is important that the use of AI by companies is made public and that certain safeguards are implemented to guarantee there are no drifts in the use of this technology. Any system should be transparent, ensure accountability of the persons and/or company in charge, and prioritize safety and security. We are all fascinated by the power of technology that can identify information or draft a memo in a minute, but I think that—at least for the time being—we need to remember that the accuracy of information needs to be verified.

I have challenged these tools with tricky legal questions, and they did not come up with the answers I expected because of the limits to the current technology and because these tools protect—as they should—intellectual property rights and do not have access to all the information.

ESG will also grow in the EU now that the general corpus has been adopted, which proposes to regulate specific sectors, such as the regulation of deforestation-free products.

GZ: Let me switch topics now. You have been a frequent speaker at our conferences and elsewhere through the years. A two-part question: What has driven you to share your experience and expertise? And what advice would you give others who feel hesitant to speak at conferences?

ML: I started by pleading in court, but that was a long time ago. Then, I did a lot of training by being an in-house speaker, and I have continued learning. I like to share what I have learned and know, and I also came to realize that you learn more by listening to the questions of the audience. I think that being a speaker has allowed me to grow my expertise and meet a network of professionals, and now friends, on which I can rely whenever I have a question.

I would advise people to go for it. The more you speak, the less you are hesitant. That is the lesson I learned from being a member of Toastmasters, an association that helps speakers grow and be confident. As a speaker on compliance matters, especially at SCCE's conferences, you are going to be part of a community, and this is going to help your work, whether you are in-house or an external adviser.

GZ: Finally, let me end with a personal question. Looking back at your career, what advice would you give yourself when you started in compliance many years ago?

ML: That it was the right move to go into compliance. It allows you to understand deeply how an organization works. You also see how you can help organizations have better business practices, thereby helping your communities.

But as I often say, a good compliance job needs prior experience. Compliance is not only implementation; it is understanding the context.

GZ: Thank you, Maria, for sharing your insights with our readers!

¹ Wikipedia, s.v. "Mani pulite," last edited February 25, 2024, https://en.wikipedia.org/wiki/Mani_pulite.
Andrea Puccio, "Overview on anti-corruption rules and regulations in ITALY," Anti-corruption in Europe, accessed April 22, 2024, https://www.ecba.org/extdocserv/projects/ace/20190430_ACE_CountryreportItaly-update.pdf.

² Dow Jones, "What is the United Kingdom Bribery Act?" Risk & Compliance Glossary, accessed March 11, 2024, <https://www.dowjones.com/professional/risk/glossary/anti-bribery-corruption/uk-bribery-act/>.

³ Dow Jones, "What is the French Sapin II Law?" accessed March 17, 2024, <https://www.dowjones.com/professional/risk/glossary/anti-bribery-corruption/french-sapin-ii-law>.

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