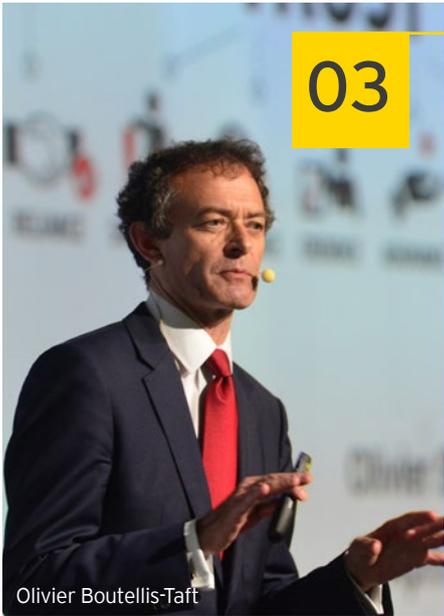


# 03

## Regaining trust: Anti-fraud and compliance in governance



Olivier Boutellis-Taft

This panel focused on whether it is enough for companies to comply with existing rules to combat fraud and corruption or whether they need to work harder at cascading ethical values down through the organisation.

**Olivier Boutellis, Taft, CEO, Accountancy Europe**

**Sorana Baciu, Managing Partner, ACGENIO and President, the Independent Directors Association, Romania**

**Michel de Fabiani, Vice President, British Chamber of Commerce in France and Chairman of the Policy Committee, ecoDa**

**Rainer Riess, Director General of the Federation of European Stock Exchanges (FESE)**

**Jo Iwasaki, Head of Corporate Governance, ACCA**

**Svetlin Adrianov, Partner, Penkov, Markov & Partners**

**Nikolay Garnev, EY, Country Managing Partner, Bulgaria, FYR Macedonia, Albania, Kosovo (moderator)**

We need to change the way we look at corporate governance, said Olivier Boutellis-Taft, CEO of Accountancy Europe, the European federation of accountancy bodies, in his keynote address. "The context that corporate governance is operating in has changed and if we don't respond to this change, not only will corporate governance become irrelevant, it will be extremely difficult to regain trust."

Corporates continue to be the "engines of developed societies," he continued, because they produce goods and services and provide income for pensioners and other investors. Nevertheless expectations of corporates, and public scrutiny of them, are greater than ever before. So corporate governance is an important tool for helping corporates to meet societal expectations and withstand scrutiny.

Today's shareholders are not just shareholders, said Olivier Boutellis-Taft. They are also parents and consumers, as well as machines that may only hold shares for a millisecond. So the challenge is to develop a model of shareholder value that reflects this reality. "Let's look at corporate governance as an ecosystem," he suggested, "and there is a role for all the elements of the ecosystem."

While much effort has been made to empower shareholders, corporates are more powerful than ever. Boutellis-Taft highlighted that 69 out of the 100 largest economies in the world are corporations, not countries. Power brings with it responsibility, he noted, which is why corporates should commit to supporting the United Nations' Sustainable Development Goals.

"The board should not just sit in a boardroom. It should go outside the boardroom, meet people and ask difficult questions."

**Sorana Baciu**

Managing Partner, ACGENIO and President, the Independent Directors Association, Romania

"We need to look more broadly at ethics and how we cultivate a culture that drives the proper behavior by everybody in the organisation."

**Nikolay Garnev**

EY, Country Managing Partner, Bulgaria, FYR Macedonia, Albania, Kosovo



Nikolay Garnev

Rules and procedures already exist but true change in corporate behaviors will only happen if those rules and procedures are enforced and if incentives that encourage short-termism are removed. It is essential, Boutellis-Taft added, that the right people, with the right competencies, are sitting around the boardroom table. "With corporate governance, you can have a very nice model, but if you don't have the right people, it doesn't work."

## Rethinking compliance

Moderator Nikolay Garnev, EY's Country Managing Partner for Bulgaria, the former Yugoslav Republic of Macedonia, Albania, and Kosovo, said that legal compliance should be the minimum standard expected of companies. Nevertheless, this alone is not sufficient to address corruption and fraud. "We need to look more broadly at ethics and how we cultivate a culture that drives the proper behavior by everybody in the organisation," he explained.

EY's *Europe, Middle East, India and Africa Fraud Survey 2017* found that unethical behavior and high levels of mistrust among colleagues are key characteristics of today's workforce, with one in three board directors and senior managers – and one in four millennials – saying that they could justify offering cash payments to win or retain business. Furthermore, almost half (52%) of survey respondents who had had information or concerns about misconduct in their company had faced pressure to withhold information.

Sorana Baciu, Managing Partner of corporate governance association ACGENIO and President of Romania's Independent Directors Association, said that it's relatively easy for a company to adopt a code of ethics, but much harder to embed that code within the culture of the organisation. She suggested a few ways in which the board could achieve this. "First of all, the board should not just sit in a boardroom," she said. "It should go outside the boardroom, meet people and ask difficult questions. It should also make sure that there is the right structure in place for compliance – for example, a chief compliance officer."



Nikolay Garnev, Sorana Baciu, Sveltin Adrianov, Jo Iwasaki, Rainer Riess.

The board also needs to be clear about what an act of corruption looks like by giving examples and making sure that employees have dedicated training. "People do not understand that receiving a gift, in certain circumstances, is an act of corruption," said Baciu. Finally, the board needs to regularly review the ethics of the organisation on a 360-degree basis, by speaking to customers, suppliers and other stakeholders.

## Fraud is a universal problem

No country, business sector, organisation or individual is immune from susceptibility to corruption or fraud, noted Michel de Fabiani, Vice President of the British Chamber of Commerce in France and Chairman of the Policy Committee of ecoDa, the European Confederation of Directors Associations.

De Fabiani also emphasized that rules on their own are not enough to prevent corruption or fraud from taking place. For example, the most corrupt countries often have a significant amount of anti-corruption legislation. Yet corporate governance can play an important role in combatting unethical activities. For example, non-executive directors can challenge management, check that business is being conducted in an ethical way, make sure that the right processes are in place to detect unethical practices, and be prepared to oppose investments proposed by management if they are ethically unsound.

The board should also have a risk committee that looks at a broad range of ethics-related topics, such as corruption, fraud, the environment, and health and safety, and compares how the organisation is performing with its customers and competitors. Furthermore, it must be informed of whistleblowing activity on a regular basis, including the number of incidents of unethical behavior that were reported and what the outcomes were.

Rainer Riess, Director General of the Federation of European Stock Exchanges (FESE), agreed with de Fabiani that while rules are important, having the right culture and values are also key to combatting unethical behavior within organisations. The board can help to create an ethical culture by setting the right tone at the top and examining the company's strategy and the ethics that are associated with that strategy, he said. Riess also warned that for smaller companies, rule making may have gone too far and resulted in them having a heavy compliance burden with too many box-ticking exercises.

## Whistleblowers

It is often observed that most whistleblowing incidents take place shortly after Christmas. There is a good reason for this, according to Jo Iwasaki, ACCA's Head of Corporate Governance: "When you spend time with your family members, and talk about good times and bad times, that's the time when you think: 'I can't live with this

secret inside my mind.' So that's the time when many corporate fraud investigation teams get very busy."

The decision to expose malpractice tends to have major implications for whistleblowers, Iwasaki continued. "It destroys their lives." Whistleblowers need protection, so Iwasaki recommended that companies introduce internal and external processes to allow people to make disclosures without compromising their anonymity. Often people are more willing to use internal channels if they have had a positive experience of using an external channel first. Companies should also make sure that they thoroughly analyze incidents that are disclosed and take appropriate action afterwards. Some companies report on whistleblowing, using aggregated data.

Referring to EY's Fraud Survey, Garnev said that if potential whistleblowers don't feel comfortable about speaking up internally, they are likely to go to external parties, such as journalists, regulators and even the competition, inflicting much greater damage on the organisation than if the incident had been kept in-house. He explained that when people don't blow the whistle, even though they know they should, it tends to be out of concern for their future career, fears over their personal safety and loyalty to colleagues or the company.

## Peer pressure

Svetlin Adrianov, Partner at Bulgarian law firm Penkov, Markov & Partners, said that only a limited number of Bulgarian companies are large enough to be subject to corporate governance rules. So the general business environment in the country is critical when it comes to encouraging ethical behavior.

"All the participants in the market interact," he said. "Even if a small company does not have a compliance policy itself, it is affected by its business partners that do. There can be a big business where a decision-maker is tempted by a small supplier. Or there can be a small business that is forced to tolerate fraudulent behavior by a more powerful customer." A good environment can be created through educating people, management and companies, and through using business associations and chambers of commerce.

## Audience poll

Do you think that compliance with European corporate governance requirements ensures fraud prevention within organisations?\*

Yes, it ensures high degree of fraud prevention



Yes, partially – enhancements are needed



No – compliance alone is not sufficient



To what extent do you agree with this statement? "To harmonize internal governance in cross-border companies and groups under different legislation, we need a European group law with regulation about governance structures, functions etc."\*



\*0 to 5 where 5 is very important