International Recognition for Compliance and Ethics Programs: The 2010 OECD Good Practice Guidance on Internal Controls, Ethics and Compliance

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Any compliance and ethics professional who has spoken in front of a multinational audience during the last two decades knows the challenge of promoting compliance and ethics principles with only a U.S.-centric sounding U.S. Sentencing Guidelines for Organizations (USSG) as a standard. The USSG have served organizations well, establishing a compelling model for proactively managing their legal compliance and ethics issues, together with strong incentives to do so. Results so far have been impressive: the USSG have been influential throughout the world, not only with both U.S. and non-U.S. based multinationals implementing global programs, but also as a beacon of best practice to other key jurisdictions.

But now an international standard for compliance and ethics programs does exist by express agreement of 44 nations—36 of the leading democratic economies that are members of the Organization for Economic Cooperation and Development (OECD), plus eight non-member signatories to its anticorruption mission. The resulting document, the February 2010 publication of the OECD’s “Good Practice Guidance on Internal Controls, Ethics and Compliance” (“Good Practice Guidance” or “the Guidance”), now joins the body of the USSG and similar policy guidelines and laws either in place or being
enacted in other jurisdictions around the world, and articulates the first multi-
nationally recognized, common principles for effective corporate compliance
and ethics. As this article will discuss, this is a quiet, yet significant step
forward for organizational compliance and ethics—a striking declaration that
belongs on the desks of multinationals’ boards, senior management and
compliance and ethics officers.

Why is the publication of the Good Practice Guidance such a milestone? Doesn’t
the Guidance apply specifically to anticorruption programs only? On its face,
the Good Practice Guidance sets out in helpful detail the elements of a good
anti-bribery compliance approach as an appendix to the OECD’s anticorruption
recommendations.\[6\] In particular, in establishing 12 enumerated criteria for
companies to consider in combating foreign bribery, the Guidance expressly
refers to “ethics and compliance programmes” over a dozen times, expanding
well beyond the more limited concept of audit, accounting and internal controls
as the sole focus for compliance, an approach commonly seen outside the
U.S.\[7\] From the standpoint of ethics and compliance practitioners, the Good
Practice Guidance provides additional support to existing best practice in the
field and validates a proactive, practical, risk-oriented approach to detecting
and preventing misconduct in organizations. However, while the Good Practice
Guidance speaks primarily to foreign bribery, most of the provisions could
readily be applied to ethics and compliance programs on a much broader basis
as well, and as such, represents a dramatic step forward. It is quite significant
that the Guidance has the express endorsement of a highly prestigious
international body which has the potential to move the development of
programs forward on a global basis in the same way the USSG standards did in
the U.S. in 1991. Also, as was true for the USSG, these standards may well have
an influence on all aspects of programs relating to compliance far beyond the
specific area of bribery. Notably, in 2010 Mark Mendelsohn, then chief FCPA
prosecutor for the U.S. Department of Justice, indicated in public remarks that
the Guidance is endorsed by the U.S. government.\[8\] He has since further
commented: “It actually represents the first multi-governmentally endorsed
set of standards for anticorruption compliance programs for companies to use.
Now for the first time you actually have all OECD governments endorsing a
common set of principles and talking very directly to the private sector about
the important role that they play in fighting corruption.”\[9\]