

Can we organize Dissent in Organizations?

The Case of web-based Whistleblowing Systems

1. Introduction

In September 2015, the United States Environmental Protection Agency (EPA) issued a notice of violation of the Clean Air Act to German automaker Volkswagen Group what later became known as the ‘dieselgate’ or Volkswagen emission scandal. The consequences for the Volkswagen Group were severe. The stock price immediately fell by a third, and among other fines in the United States, the Volkswagen Group had to pay a \$2.8 billion criminal fine for their wrongdoing (rigging diesel-powered vehicles to cheat on government emissions tests). The CEO resigned and was charged with fraud and conspiracy in the United States. Moreover, Volkswagen’s *brand development* head, Audi’s *research and development* head, and Porsche’s *research and development* head were suspended. Yet there was more damage.

The reputation of the organization in society hit the rock-bottom and at the time of writing it is continuing to do so, leaving customers with a feeling of betrayal and mistrust. Responding to this public sentiment, Volkswagen not only pleaded guilty to criminal charges but also to society for their wrongdoing. Accordingly, the Volkswagen Group announced plans to spend €16.2 billion on rectifications and additionally planned to recall and refit the 11 million affected vehicles. Yet it is not clear how long it will take to rebuild trust among the millions of customers around the world. (Jack Ewing, 2015; Rodhes 2016)

Surprisingly, before the scandal went public an engineer who worked for Bosch GmbH (which designed the test-rigging software for the Volkswagen Group) variously criticized the dubious emission practices within the organization. However, this way of voicing dissent internally did not provoke a rectification of wrongdoing (see Claas Tatje, 2019). Likely, the engineer was not the only one among the 900.000 employ-

ees who worked for the Volkswagen Group and Bosch GmbH and dissented the use of dubious emission practices. While it is not clear, whether other employees voiced dissent internally, nor if managers or leaders opposed this dissent, Volkswagen Group and Bosch GmbH were organizations committed to the highest standards of social responsibility and ethical conduct (see Bosch, 2014; VW, 2014, Rhodes 2016). Both worked with sophisticated ethics and compliance programmes, employing internal channels to voice dissent. Yet, these ethics and compliance programmes could not prevent the VW emission scandal from happening.

Therefore, I will direct my attention to web-based internal whistleblowing systems (WBS) as a channel for voicing dissent in organizations. There is a widespread agreement among compliance experts, anti-corruption advocates, business experts, and management scholars that WBSs are sufficient mechanisms to detect and prevent wrongdoing in organizations (Callahan, Dworkin, Fort, & Schipani, 2002; Moberly, 2006; Near & Miceli, 2016; Pittroff, 2014). Drawing on ideas surrounding the triple bottom line of organizations (e.g. Elkington 1994), management, compliance and anti-corruption discourses assert that whistleblowing which is facilitated via WBSs is (or should be) without dissent because sender (employees, co-workers etc.) and receiver (compliance personnel, managers, leaders) agree upon the same values (e.g. the corruption-free and compliant organization) and therefore share the same understanding of what constitutes wrongdoing.

Yet, it is not clear how compliance personnel facilitates (encourage or discourage) dissent voiced via WBS. Against this background, I aim to explore the role of dissent within the use of digital WBSs in organizations. First, I contextualize, by the example of Compliance Management Systems (CMS), the adoption of WBSs within corporate ethics and compliance programmes. Second, I explore how compliance personnel specify a) their role and b) the use of WBSs in corporations.

2. Method

To answer this research question I conducted and audiotaped 10 semi-structured interviews with compliance officers German and Austrian corporations using the same standardized web-based WBS. The interviews took place between December 2018 and April 2019, were held in German, lasted between 45-75 minutes and were geared towards 3 major aims. First, I wanted to learn as much as possible about the use and application of WBSs in and by organizations. Second, I aimed to gain insights on the role and relevance of compliance for organizations. Third, I tried to develop a deep understanding of the conditions or problems for which the studied organizations adopted WBSs. To identify regularity or variations among the organizations, I created a documentary archive with material describing the organization's ethics and compliance activities and its use of the WBS. This archive includes best practice guides, standards, codes of conduct, policy documents, and handbooks, as well as models, graphs, videos, and website screenshots. The archive informed not only my analysis but also guided my interview questions. Data analysis was performed both during and after the data collection, moving back and forth between data, literature, and emerging theory.

3. Contextualization

Resisting against Corporate Power: Whistleblowing as Dissent

An act of a man or woman who, believing that the public interest overrides the interest of the organization he [sic] serves, blows the whistle that the organization is involved in corrupt, illegal, fraudulent or harmful activity. (Nader et al. 1972, p. vii)

It was the historical context of the 1960s and 1970s that whistleblowing emerged as a novel form of *resistance against corporate power* (see Olesen 2017, Gabriel 2008). In 1972, Ralph Nader points towards the growing power of corporations (Nader 1972,

7 quoted in Olsen 2018, 5) and conceives whistleblowing as a 'new kind of resistance and democratic intervention, driven by rising social complexity and in response to organizations with expanding reach and capacity' (Nader in Olesen 2018, 5). Nader not only recognized whistleblowing as a form of dissent in organizations that informs the public about wrongdoing but also initiated the discussion on whistleblowing in academia (Vandekerckhove 2006).

For instance Jubb (1999, 78) defines whistleblowing as a 'deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing' (Jubb 1999, 78). By arguing for a restrictive definition, Jubb (1999) conceptualized whistleblowing as a 'dissenting act of public accusation against an organization which necessitates being disloyal to that organization'.

Johnson (2003, 3) conceptualizes whistleblowing as a form of dissent with four characteristics (see also Schultz & Harutyunyan 2015). First, whistleblowing is an act by which an individual makes information public. Second, the disclosure of this information takes place outside the organizations and gets on the public record (see also Jubb 1999). Third, the disclosed information reveals non-trivial wrongdoing within that organization. Fourth, the whistleblower is part of the organizations. In this context, Shahinpoor and Matt (2006) distinguish principled dissent from other forms of criticism or opposition and draw an analogy to the whistleblower. They argue that principled dissent can transform organization towards ethical and sustainable conduct.

In short, what can be contextualized within 'Nader's discourse', characterizes the whistleblower as a dissenting character, who resists against organizational power by disclosing information about (severe) wrongdoing to the public. Accordingly, it is up to the 'public' to judge and if necessary take action to rectify the wrongdoing. This raises the question why modern corporations increasingly adopt systems that facilitate and promote employee's dissent?

Complying with Regulations: Whistleblowing as Consensus

Almost half a century later to ‘Nader’s discourse’ and given the rash of the 2000s (accounting) scandals, corporations increasingly recognized the risks of wrongdoing and the costs of non-compliance with legal and regulatory norms. Recently, within a large-scale study Hauser (2019) documented that in 2018, 39% of the studied European companies¹ were involved in wrongdoing. 59% of them had internal whistleblowing channels for the disclosure of wrongdoing in place. This corresponds to an average of 52 whistleblowing reports per studied company from which every second report was classified as ‘compliance-relevant’ or substantial and 17% of the studied companies reported financial losses above 100.000 Euros because of such wrongdoing.

Therefore corporations established compliance departments and adopted compliance management systems (CMS) to oversee regulatory and legal compliance issues in the workplace. As CMS developed and improved, whistleblowing systems (WBS) started to form part of CMS in organizations. Typically, WBSs provide web-based internal channels by which employees (sender) can anonymously inform the compliance personnel (receiver) about ‘compliance-relevant’ wrongdoing. While the compliance department is an autonomous unit in corporations that ought to function independently from daily operations, the Chief Compliance Officer typically reports to the management (Chief Executive Officer or Chief Operations Officer).

Pittrof (2014) argues that along with the demand of organizations to communicate Corporate Social Responsibility and to implement Corporate Governance Codes, the ‘managerial view of whistle-blowing was intensified after corporate scandals’ (Pittrof 2014, 401 see also Greenwood 2015, Lowry et. al. 2014). Accordingly, in the management-literature, WBSs are described as tools for the detection and prevention of misconduct, wrongdoing and corruption before it goes public (Callahan, Dworkin,

¹ Whistleblowing Report 2019: 1392 small and medium-sized companies (SMEs) with headquarters in Germany, France, Great Britain and Switzerland. Including (a) companies with 20-249 employees, and (B) large companies with 250 or more employees. See also Whistleblowing Report 2018

Fort, & Schipani, 2002; Moberly, 2006; Near & Miceli, 2016; Pittroff, 2014). For instance, Near and Miceli (2016) observed that practicing external whistleblowing 'entails all sorts of costs for the organization' (105) and, by drawing on 30 years of research, recommend clear steps to make sure that 'information about organizational wrongdoing stays inside the organization, where it may be remedied, instead of being made public.' (ibid.)

Moreover, empirical research (ACFE 2016) shows that employees increasingly voice dissent via using internal channels of corporate WBS instead of what Jubb named 'public accusation against an organization' (Jubb 1999, 77). Rather than being disloyal to the organization, employees report (often anonymously) to the compliance department which then is in charge to take action and rectify the wrongdoing. In so doing, the management (and providers of WBS) not only guarantees the whistleblower a certain degree of protection against retaliation but also promotes voicing dissent via WBS as beneficial. For instance, a European provider of web-based whistleblowing system promotes its WBS as 'a secure channel for whistleblowers to submit insider information to the appropriate department at the affected organization itself. Companies and administrative departments benefit from uncovering grievances and risks early, as subsequent costs and damages to reputation can be avoided.' From this perspective, the whistleblower is not a dissenter who resists against organizational power, rather a provider of compliance relevant information.

In short, proponents of CMS promote WBS as a win-win solution for sender and receiver of information. This comes with the promise that WBSs not only facilitate the organization of dissent in such a way that it is beneficial for both (sender, receiver) but also feed into sustainability and economic success. Thus, corporations increasingly adopt web-based internal WBS. Yet, it is unclear how compliance personnel managing the WBS specify a) their role in corporations and b) the utilization of WBSs?

4. Analysis

'You think compliance is expensive? Try non-compliance!'(Int5)

One of the compliance officers provided this quote to explain why organizations invest in compliance activities. Therefore corporations adopt CMS to oversee legal and regulatory requirements. Primarily the state or other regulatory bodies define these requirements. Accordingly, the CMS aims to manage and minimize the risks posed by non-compliance with legal and regulatory frameworks. Yet many of the compliance officers additionally highlighted the risk of reputational damage caused by public scandals (e.g. dieselgate).

For instance, one organization adopted a CMS in response to a large scale scandal primarily to rebuild trust among its customers. Accordingly, the compliance officer explained the 'CMS is part of our organization's anti-corruption program' (Int8) and pointed to the preventive, detective and reactive functions of their CMS.

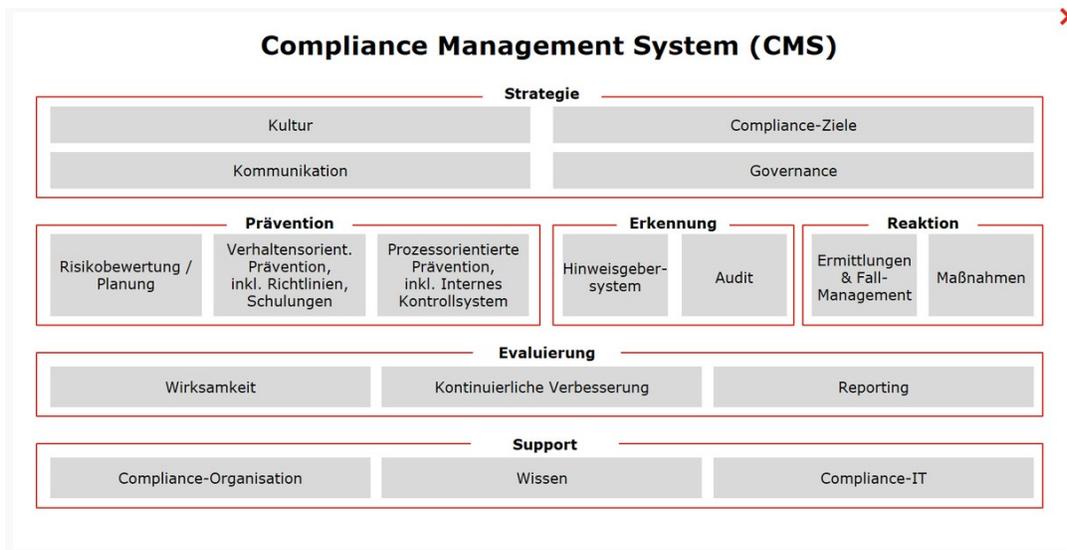


Fig. 1: CMS of Corporation 2

'The WBS forms part of the 'detection' segment within our CMS' (Int1)

Typically, WBS from part of the 'detection function' and complements traditional forms of auditing. Often, interview partners argued that where traditional measures of

auditing fail to detect wrongdoing, whistleblowers can provide valuable information. In this context, a compliance officer of a publicly listed corporation explained: 'We benefit from every case of misconduct that can be prevented. This means that every additional channel for the reporting of misconduct is a great benefit. Simply, take the informants the fear to report cases that can have corporationwide consequences (Int3)'. From the perspective of the interviewed compliance personnel, the practice of whistleblowing provides the organization with valuable information that if not reported or reported elsewhere poses a risk to organizations. In this sense, compliance benefits the organization, whether by avoiding penal or reputational consequences or risks in most cases will affect economic success.

'The compliance function should always be independent of the daily operations and business success of the organization to prevent conflicts of interest' (Int7)

At the same time, the compliance personnel stressed their intermediary and quasi-neutral role within the organization. Within this role, the compliance personnel aims to separate their function from business operations. According, to an interview partner there is a strict 'separation of duties' between management and compliance in organizations. Thus, the compliance department 'is not part of our business units, rather it is part of 'legal' or 'public affairs' and a manager or director cannot be responsible for compliance or the CMS' (Int7).

This separation aims to ensure that there is no conflict of interest when dealing with compliance issues. In this context, one interview partner provides the example of 'money laundering' to explain how their organization distinguishes compliance from other management activities. Accordingly 'from the perspective of the person in charge for the operative success of the organization and apart from legal regulations 'money laundering' is not relevant for the business success - in the sense that it does not matter where the money comes from for those in charge of business success' (Int7). While the interview partner explains that both - business and compliance function - feed into the success of the corporation, their interests differ substantially.

The compliance personnel 'reports only to the board and in this sense, it is independent of other (business) units (Int7)' when dealing with the WBS. Yet another compliance office put this theoretical separation into perspective by arguing that 'it is important to have a neutral compliance department - of course, this is not entirely true - but at least act independent and outside the traditional chain of commands when receiving a report. (Int2).

Overall, the interviewed compliance personnel reported that they seek to encourage employees to inform them about compliance relevant-issues. In so doing, many of the interview partners reported common challenges such as 'fear of reporting', 'lack of reporting channels', and 'lack of awareness'. For instance, one compliance officer explained 'Yet, in many cases, it is a problem for employees to reveal their identity' (Int2). Therefore WBSs with anonymous reporting options provide compliance personnel with a (technical) solution. Therefore specialized provider of compliance solutions not only consult organizations about compliance issues but also provide customized WBS to facilitate the reporting of wrongdoing.

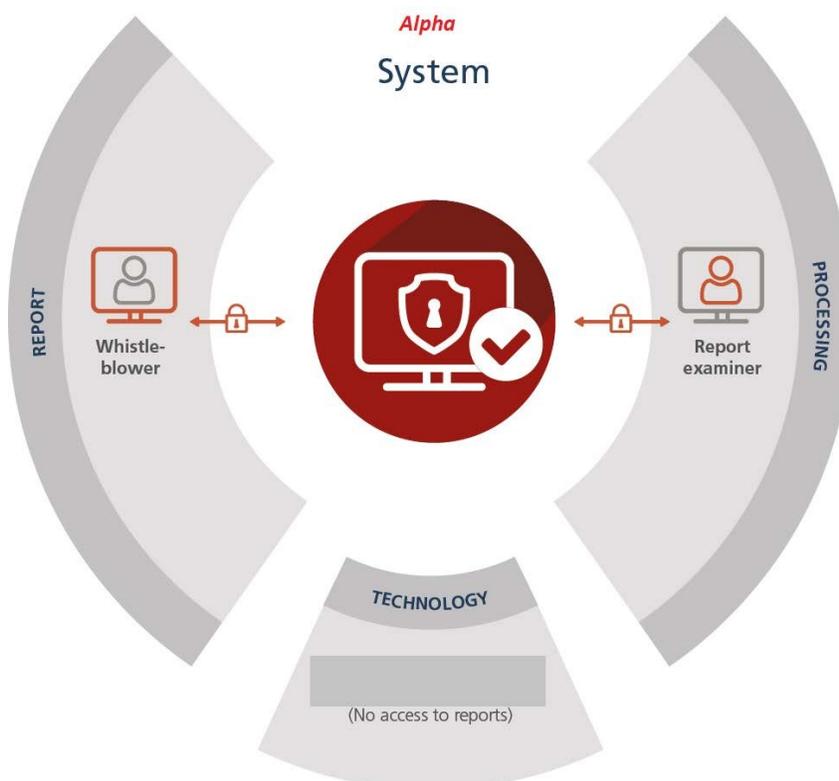


Fig.2: web-based WBS

For the corporations studied, the Beta AG provides 'standards and instruments of integrity and compliance management for stakeholders in business, government and society' and their core product is a web-based WBS called Alpha. In so doing their vision is to 'promote and support people and organisations who consider ethically responsible behaviour to be maxims of daily conduct, which cannot be compromised.' (Beta 2019). Accordingly, the WBS is a 'win-win solution for whistleblowers and institutions' (Beta 2019). The ISO 27001 and EU GDPR certified WBS allows employees to 'securely – and if they wish, completely anonymously – submit information on risks and grievances' (Beta 2019). Therefore the WBS enables a secure dialogue between the sender (whistleblowers) and receiver (compliance personnel).

Typically, the compliance personnel manages the WBS in the corporation. In this context, the compliance officers reported that it is their task to evaluate the incoming reports in terms of 'compliance relevant issues'. To a large extent, this relevance is defined within a corporation's code of conduct and in the corporations studied this makes up practices related to corruption and unethical conduct. One compliance officer provides the example of 'price-fixing' and explains 'if an employee in the procurement process matches prices with a supplier and a second employee notices - this would be a classical use (of the WBS) to prevent penal consequences' (Int6).

The majority of the interviewed compliance officers saw it as their function to inform employees about 'compliance relevant issues' within the code of conduct and occasionally within training courses on compliance. Therefore, the compliance department aims to ensure that employees know what constitutes 'compliance relevant' wrongdoing which can be reported via WBSs. Moreover, to a large extent, the compliance personnel conceptualizes wrongdoing as economically irrational and caused by single individuals rather than collectively. One compliance officer explained 'we should not forget that corporations are committed to legal conduct and thus avoid misconduct. Normally organizational grievances are caused by single persons and not an attitude of the organization'

After evaluating the incoming reports, the compliance personnel initiates investigations either by themselves or other units, supervisors, managers that are located at

the places where the wrongdoing occurred. This investigation not only aims to collect and document but also verify the reported information. As one compliance officer describes 'If the revealed information is relevant for investigations then it will be processed in the 'reaction' segment where investigations and case management are executed to document when, how and why' (Int8)

From the perspective of interviewed compliance personnel WBSs are one of the channels by which employees can provide information about 'compliance relevant' wrongdoing. One compliance officer explained, 'I believe that in an organization it must be possible (for employees) to raise concerns via a range of (internal) reporting channels. That's why we always communicate: talk to your supervisor, talk to the compliance department. (Int2).

5. Discussion and Conclusion

Questions to be discussed at Momentum 2019

- Can we organize dissent in organizations in a way that not only prevents organizations from (costly) scandals but also society at large?
- What if the sender and receiver do not agree upon the same (organizational, societal) values and thus do not share the same understanding of what constitutes wrongdoing?
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