

COMPLIANCE AS A RELIABLE MANAGEMENT INSTRUMENT OF A COMPANY IN UNCERTAIN TIMES

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Purpose: Determining and discussing selected aspects of the functioning of Compliance management systems in Polish enterprises in perspective of challenges resulting from the current crises.

Design/methodology/approach: The research method used in the paper is the author's observation and interviews with companies with whom she cooperates in the implementation and operation of the compliance management system. The analysis of the results of research conducted on the basis of a standardized survey based on a questionnaire containing closed and open questions carried out in exemplary enterprises was involved as well.

Findings: Research results confirmed the dynamic development of Compliance management in Polish enterprises, which is accompanied by a preventive approach with a key role played by the management in building culture and awareness of compliance in the enterprise.

Research implications: Future research directions should focus on further, expanded research exploration in the area, taking into account international perspective.

Practical implications: The results of the research discussed in the paper have a number of practical implications mainly for the management staff in terms of implementation of compliance management and development of its areas.

Social implications: Building awareness of compliance management system and the advantages of implementing it.

Originality/value: The paper has cognitive value for the development of knowledge, science and further development of the compliance management system in enterprises in Poland.

Keywords: compliance, pandemic, trust, enterprise management in conditions of uncertainty.

Category of the paper: research paper.

1. Introduction

The reality in which modern enterprises have been operating for several years is marked in the first place by the pandemic that has increased the risk of doing business in an unprecedented way (Marinov, Marinova, 2021). The epidemic unpredictability was enforced by the armed conflict in Ukraine and the decision-making inertia of state organs (Aguinis, Burgi-Tian, 2021). The uncertainty that resulted in the inability to assess future conditions and the likelihood of their occurrence forced companies (in the way they organize and manage fundamental changes), mainly in the field of remote work to use modern technologies (Zhong, Yifan, Yameng Li, Jian Ding, Yiyi Liao, 2021). Moreover, this reality becomes more and more complicated month by month due to the growing legislative and regulatory activity of the state, characterized by an abnormally low level of legal regulations and standards for implementing new legal obligations, along with a range of tools supporting these processes. For years, there has been a legal inflation phenomenon in Poland which is currently at a record level. According to Grant Thornton's report "Legal Barometer", in 2021, twenty one thousand pages of the new law, which is 41 percent more than in 2020 was produced. However in the first half of 2022, 955 new legal acts were produced, numbering as much as 14.5 thousand A4 pages (Law Barometer, Grant Thornton, 2022).

The application of the law by enterprises has long ceased to be limited only to its interpretation through the analysis of difficult and complex legal provisions in search of their meaning and correct application. In the current uncertain times, also the design, implementation, execution and, above all, evaluation of organizational processes (which are shaped not only by the provisions of common law, but increasingly by standards and internal regulations as well as codes of good practice) play an increasingly important role (Drozdowski, Rogozińska-Mitrut, Stasiak, 2021).

Therefore, compliance management systems (in short: CMS) play, especially at present, an unprecedented role in the functioning of mature organizations (Gorgoń, Raczkowski, Kraft, 2019).

Compliance is still a relatively new ground of management science and an instrument of risk management in organizations. Due to its complex, multi-faceted nature, compliance cannot be attributed to one scientific discipline. It is naturally derived from and is related to legal sciences but from the methodological point of view it is embedded in the level of organizational management, taking into account aspects of communication, psychology and ethics at the same time (Barcik, 2019). The English term compliance in Polish is translated as "compatibility" (Cambridge Dictionary). However in Poland as in other European countries the term "compliance" is commonly used. Historically the term compliance derives from medical science and means adherence to therapeutic recommendations (Gaciong, Kuna, Adherence, 2008), while in trade it is equated with compliance in terms of compliance mainly with legal

rules with broadly understood legal risk (Barcik, 2016). In order to take into account the interdisciplinary nature and fully precisely and comprehensively define the functions that compliance should fulfill in the organization, the author advocates a broad approach, proposed by B. Jaruga, B. Makowicz, ISO 19600 and ISO 37301. It assumes that compliance is a way of internal organization which minimizes the risk of irregularities in the organization, resulting from non-compliance with legal standards but also any other internal obligations accepted on a voluntary basis (Jaruga, Makowicz, Norma ISO 19600, Norma ISO 37301). In this perspective compliance is a management instrument that enables compliance management with regard to ethical principles, standards, norms and expectations of stakeholders in all types of organizations. The main goal of compliance is to identify threats to the proper functioning of the organization, their monitoring and then taking appropriate supporting and remedial actions. Identification of threats and the related thorough analysis and assessment of the risks that occur allows for precise determination of the levels of compliance properties (Chang, McAleer, Wong, 2020).

The concept of the paper is to examine at what stage compliance is now, how the implementation is going and how the compliance management systems in Polish enterprises have been organized in the current economic situation determined by crises. To achieve this goal the method of observation and interviews with people who deal with compliance in companies (with whom the author cooperates as a legal advisor supporting CMS implementation processes) was used. In addition it was based on the results of the research on the state of Compliance in Poland, conducted in 2021 by the Compliance Institute in which the author has been actively involved for years (Report Compliance in Poland, 2021).

2. Theoretical background

On the basis of the literature it is assumed that compliance in formal terms means a compliance risk management system: Compliance Management System (CMS), which is understood as a system of standards and policies introduced by the organization, as well as activities undertaken in the organization, aimed at ensuring compliance with the principles of ethics and legal regulations, thus minimizing the risk of non-compliance.

A CMS tailored to the structures and needs of a given organization should fulfill the following basic functions (Table 1):

Table 1.
Basic functions of the Compliance Management System

CMS Function	Scope
Preventive function	<ul style="list-style-type: none"> • protection of the organization, its employees, management from the negative consequences of non-compliance, • elimination of damages and reputation risk.
Repressive function	<ul style="list-style-type: none"> • examination of the occurrence of irregularities, • taking appropriate corrective actions, • preparing the organization for cooperation with state authorities.
Advisory and information function	<ul style="list-style-type: none"> • building awareness of the validity and compliance with the law and other standards in force in the organization, • communication at all levels of the organization.
Control and evidence function	<ul style="list-style-type: none"> • monitoring and reporting on irregularities. • collection and analysis of documentation in terms of possible liability in proceedings before state authorities, as well as liability within the organization.
Marketing and quality assurance function	<ul style="list-style-type: none"> • building, protecting and strengthening the reputation of the organization, • strengthening the competitiveness of the organization. • strengthening the trust of stakeholders. • increased confidence in the quality of products and services provided.

Source: Barcik, 2019, p. 95.

CMS is currently standardized based on two ISO standards. The first is the ISO19600 Compliance management systems - Guidelines standard, published in 2014 and it is the so-called B-type standard, i.e. containing recommendations which, however, cannot be the basis for certification. The second standard is ISO 37301 Compliance management systems - Requirements with guidance for use, which was published in 2021 and is a type A standard containing, unlike the previous version, requirements and subject to certification. Both standards have a CMS structure scheme. Below, in Figure 1, a diagram from the ISO 19600 standard is presented, while in Figure 2 - a diagram from the ISO37301 standard.

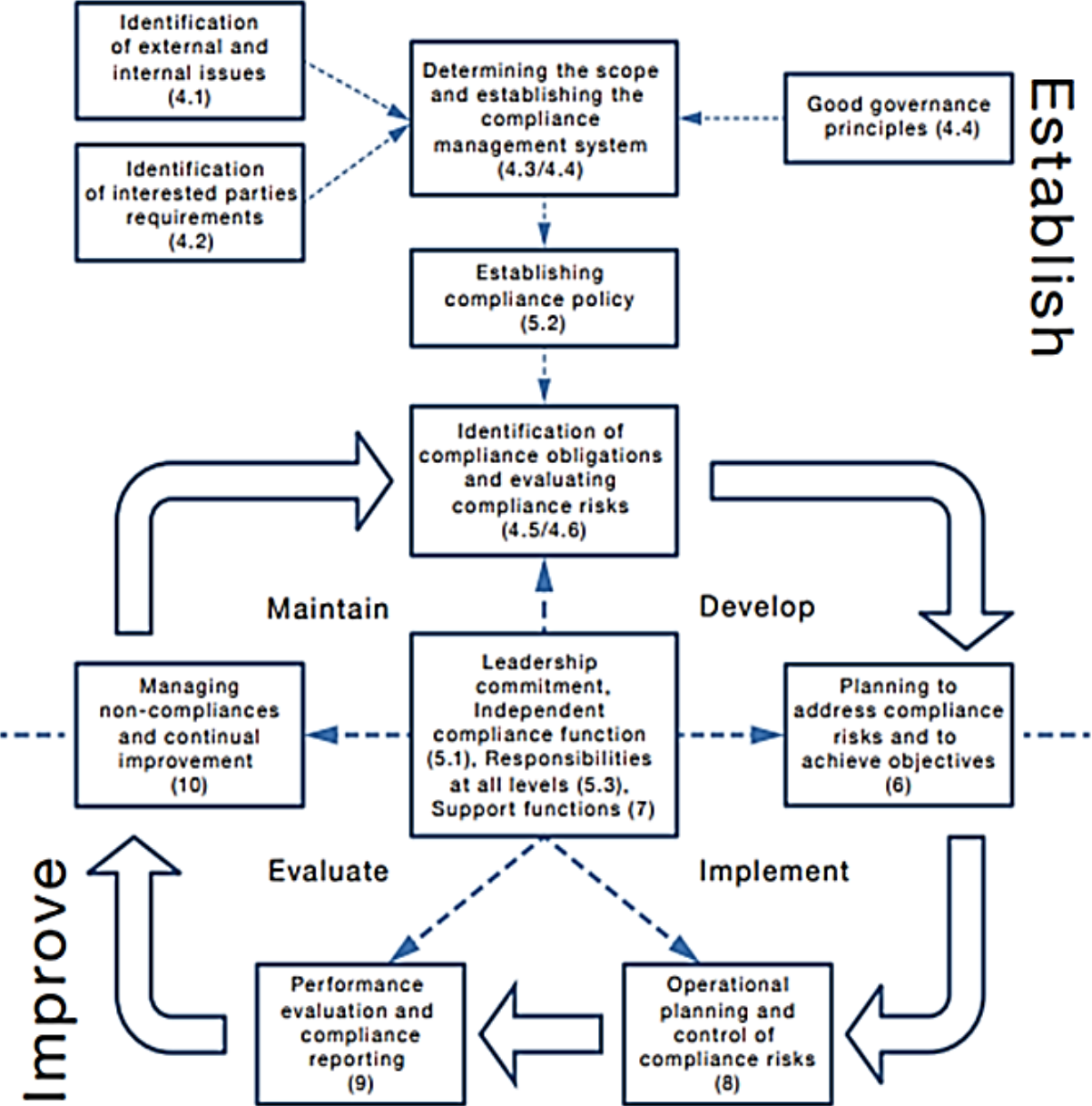


Figure 1. Schematic diagram of the CMS - ISO 19600.

Source: ISO 19600: 2014 (E) Compliance management systems – Guidelines, p.vi.

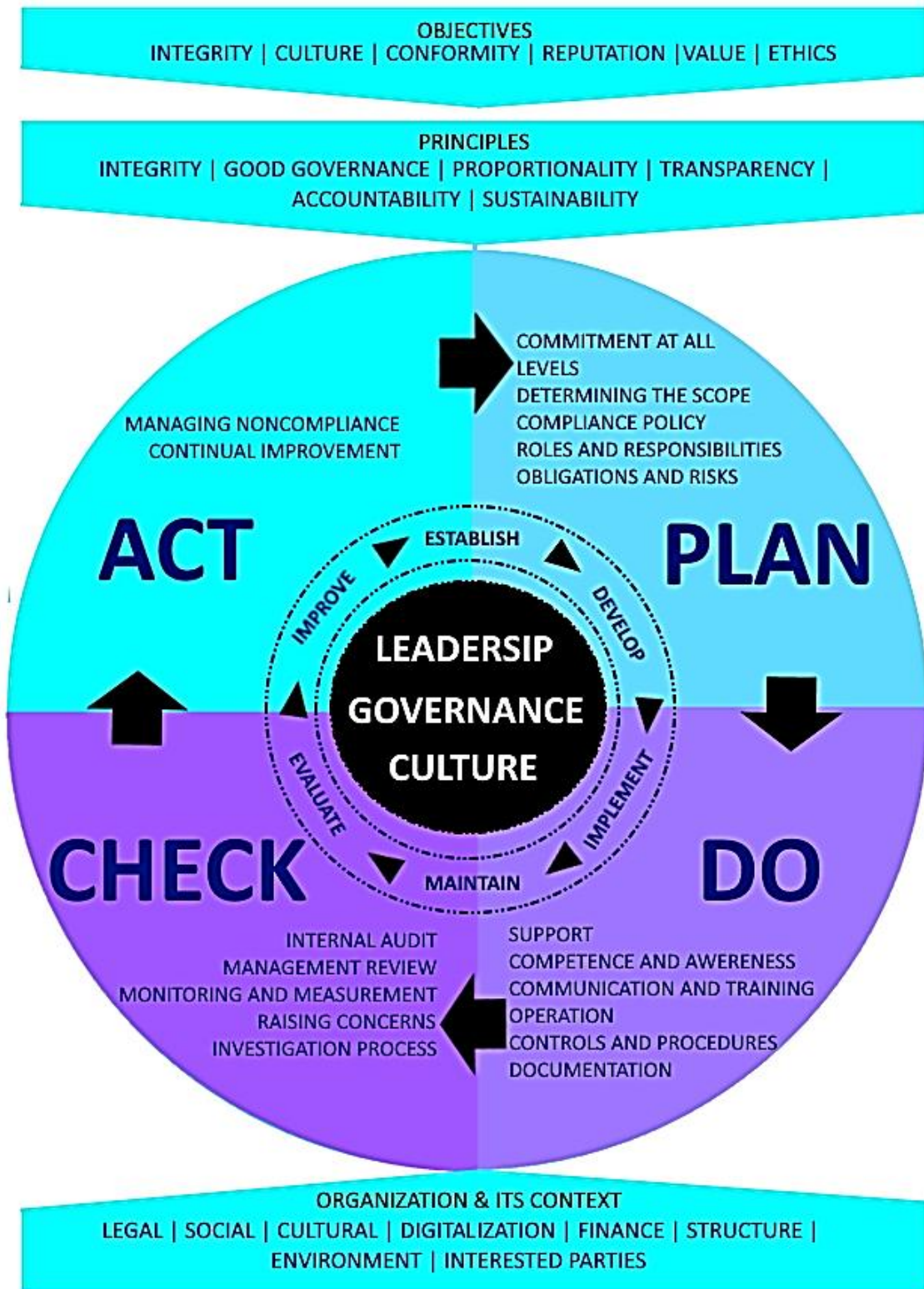


Figure 2. Schematic diagram of the CMS - ISO 19600.

Source: ISO 37301: 2021 (E), Compliance management systems-Requirements with guidance use, p.vii.

The organizational structure of compliance management proposed in both ISO standards was based on such fundamental foundations as: Good Governance rules, universality, long-term nature, transparency, flexibility, responsibility, proportionality and independence. For the purposes of creating a model CMS, three basic, general concepts have been consolidated in standards:

- Risk Management System: risk management model.
- High Level Structure: canon of management system structures.
- PDCA-Model: Plan-Do-Check-Act model of continual improvement.

In the author's opinion, however the CMS scheme presented in the ISO37301 standard is more transparent. This is probably due to the fact that individual elements of the system are included in the PDCA scheme which clearly indicates the stage of the process at which the organization and persons responsible for the system are located. Properly functioning compliance should first of all be rooted in the organizational culture of a company (Jedynak, Bąk, 2021). All employees should follow the system of values adopted in the organization, and this is possible when they are convinced that compliance with the law brings benefits not only to the company, but also to them. Therefore the attitude of the management team is of key importance, as it should set clear landmarks in conflict situations (Makowicz, Jagura, 2020). By placing ethical principles as the foundations of an efficient compliance system, the tone from the top and leading by doing rules become other elements inherently related to CMS. According to the ISO37301 standard, the company's management and top management should demonstrate leadership and commitment to the compliance system through (ISO37301):

- ensuring that the goals and policy of compliance are set and consistent with the strategic direction of the organization,
- ensuring the integration of the compliance system requirements with the organization's business processes,
- ensuring that resources necessary for the compliance system are available; informing about the importance of effective compliance and compliance with the requirements of the compliance system,
- ensuring that the compliance system achieves the assumed results,
- promoting continuous development,
- managing and supporting the staff in order to increase the effectiveness of the compliance system,
- supporting other relevant roles to demonstrate their leadership, which translate into their areas of responsibility.

In summary, it is the management who is ultimately responsible for the CMS in the organization and whether it will achieve its goals. Therefore, the better an example to be followed by top management and the more examples of its exemplary behavior and compliance with compliance rules, the easier it will be to convince the rest of the staff to follow them and enforce them (Wijaya, 2021).

On the other hand, the actions of management in the leading by doing should be as follows (ISO37301):

- ensuring and maintaining the values of the organization,
- ensuring that policies, processes and procedures are created and implemented in accordance with the compliance principles,
- ensuring that they are kept informed of compliance issues, including non-compliance, and that appropriate measures have been implemented,
- ensuring that compliance with compliance is maintained and non-compliance is properly addressed,
- ensuring that compliance responsibilities are assigned to the appropriate positions,
- hiring or appointing staff to positions related to compliance,
- ensuring that the reporting system is in use.

Managers should therefore, by their example, stimulate the organization to develop in the area of compliance and additionally using their position and authority, expand awareness and build an organizational culture based on the principles of compliance (Wolniak, 2019).

In this aspect, an extremely important role is played by the reporting of irregularities (SIN) occurring in the organization (the so-called whistleblowing), which are included in the area of compliance communication and not only fit into the compliance culture, but also determine the effectiveness of the entire CMS, constituting its central area. They are described as “pro-social, based on the principle of trust, activity of the unit informing that members of its organization violate the rules” (Waszak, 2018). Moreover, whistleblowing systems reflect the actual attitude of the organization towards its ethical obligations. They are not only tools of control, but should shape the organizational culture by building greater employees' awareness of their right to confidential reporting of abuse, and thus increasing their sensitivity to breaking ethical principles in the organization and limiting possible conflicts of values between ethics and loyalty and subordination. towards the superior. In order to strengthen the whistleblowing function in the organization, SINS are usually integrated with compliance audits, internal investigations and investigations.

3. Selected research results

The survey research was carried out over a period of 3 months from May to July 2021 by the Compliance Institute under the substantive patronage of the Viadrina Compliance Center at the European University Viadrina in Frankfurt (Oder). A total of 99 respondents took part in the survey, who were only people dealing with CMS in the surveyed companies, usually Compliance Officers. Enterprises represented various industries, with the most numerous group being representatives of the energy, banking and financial sectors (31% in total), and in the remaining scope also the following sectors: food, IT, trade, automotive, transport, healthcare and medical, construction and others (69%). At the same time, the quantitative research was deepened by qualitative research, which was based mainly on interviews, study visits and in-depth "learning" workshops with accompanying discussions in selected enterprises participating in the survey, with which the author cooperates within the framework of professional practice as a legal advisor, supporting CMS implementation processes. It is worth emphasizing at this point that a model often practiced by Polish enterprises is the implementation of CMS with the support of external entities and as many as 70% of enterprises decide to choose a law firm in this respect, which is dictated by the real need for additional external specialist support in a given field of law.

Determining the reasons for implementing CMS in the enterprise became the starting point for the further research process.

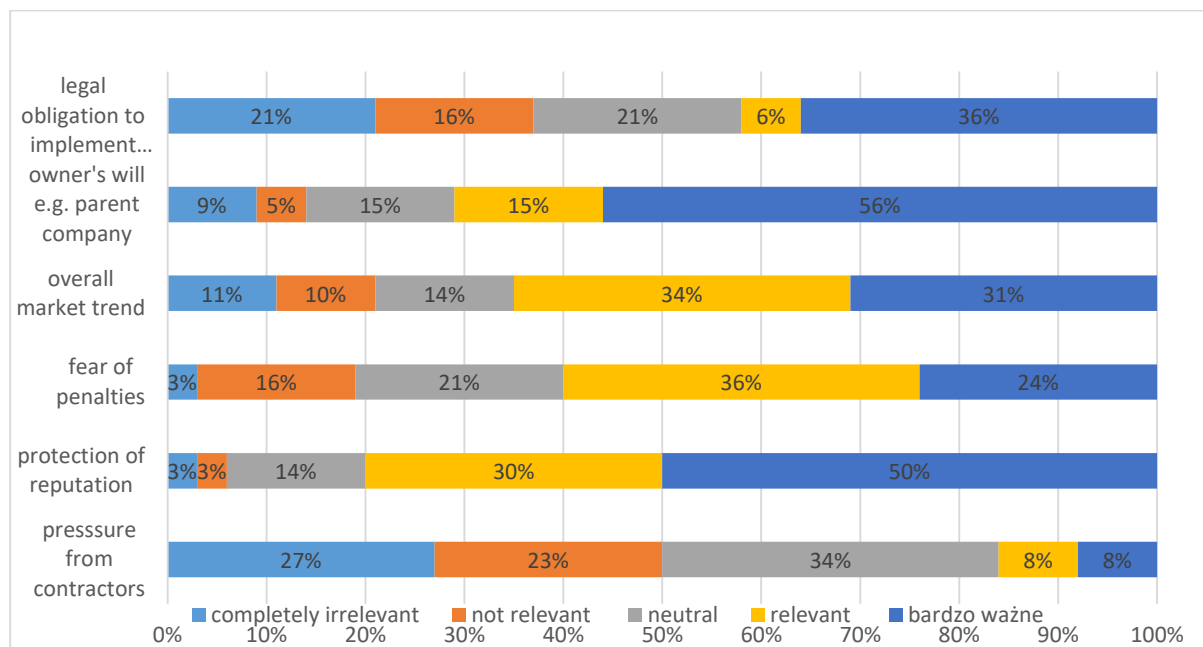


Figure 3. Prerequisites for implementing a CMS in an enterprise.

Source: own elaboration based on Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem. Edycja 2021, Viadrina Compliance Center, Instytut Compliance, Wolters Kluwer, Available online: <https://instytutcompliance.pl/wp-content/uploads/2021/10/Raport-Compliance-2021.pdf>.

The first question about the reasons for implementing CSR in the enterprise was presented in Figure 3. Due to the fact that the answers obtained in this question were not unambiguous, it became necessary to make them more precise during individual interviews. Entrepreneurs from the regulated market indicated the legal obligation to have a CMS as the main premise for its implementation. It is important to indicate the fear of sanctions (for over half of the respondents it is an important or very important reason) and the protection of reputation (for 80% it is an important/very important reason), which in the opinion of entrepreneurs is strongly correlated with the current economic situation, and primarily the risk resulting from operating in an unstable legal environment. In this respect, the respondents showed the greatest fear of being inspected by tax authorities, the National Labor Inspectorate, the Office for Personal Data Protection, the Central Anticorruption Bureau, the Office of Competition and Consumer Protection.

In this context it was important to examine one of the key factors determining the effectiveness of CMS is the company's management board's approach to the risk of non-compliance, taking into account the current conditions.

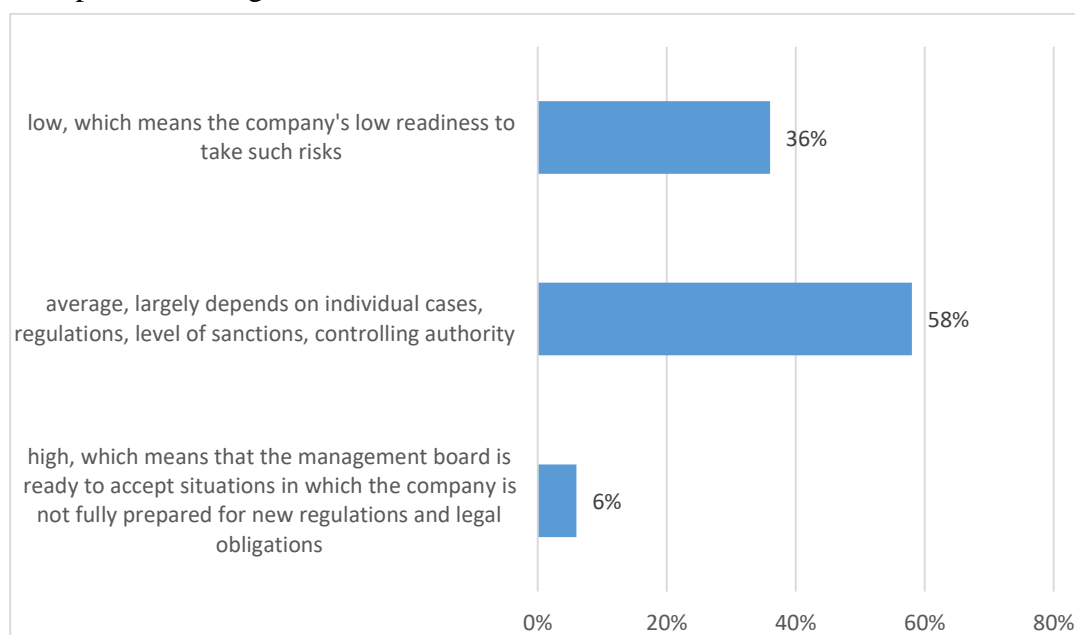


Figure 4. Readiness of the board/management to take risks resulting from new and changing legal regulations.

Source: own elaboration based on Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem. Edycja 2021, Viadrina Compliance Center, Instytut Compliance, Wolters Kluwer, Available online: <https://instytutcompliance.pl/wp-content/uploads/2021/10/Raport-Compliance-2021.pdf>.

According to the outcomes presented in Figure 4. the overwhelming majority of insurance coverage respondents has an approach to accepting legal risk. They are aware of numerous negative legal consequences, mainly in the form of financial sanctions, for possible non-compliance, and generally prefer not to risk their occurrence. Hence, another important issue was to establish the level of interest and openness in the management board's attitude to compliance and readiness for investments related to the implementation and improvement of the CMS. Figure 5 presents the respondents' assessment of the attitude of the management board to the compliance principles in the company - mainly in terms of the implementation of the following principles: ton from the top and leading by doing. On the other hand, Figure 6 shows the level of the management board's involvement in the CMS mainly through the prism of readiness to incur investments related to its implementation and improvement.

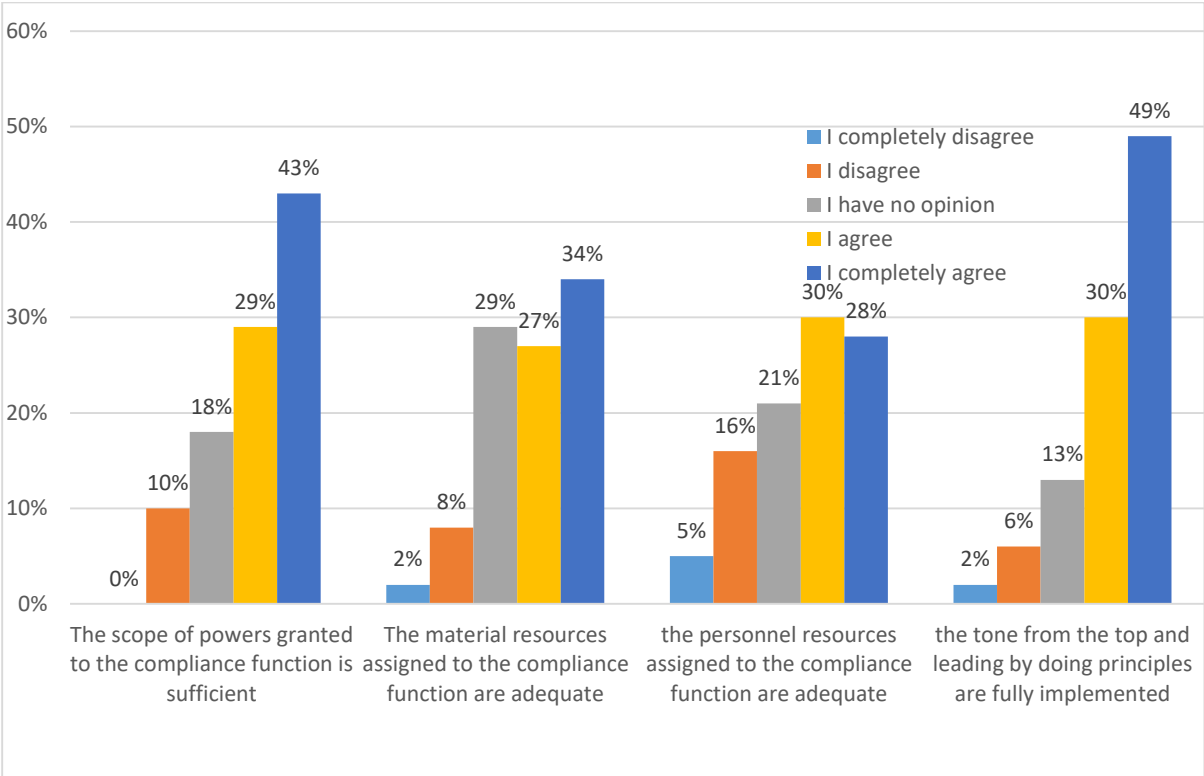


Figure 5. Management's attitude to compliance rules in the company: the principle of tone from the top and leading by doing.

Source: own elaboration based on Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem. Edycja 2021, Viadrina Compliance Center, Instytut Compliance, Wolters Kluwer, Available online: <https://instytutcompliance.pl/wp-content/uploads/2021/10/Raport-Compliance-2021.pdf>

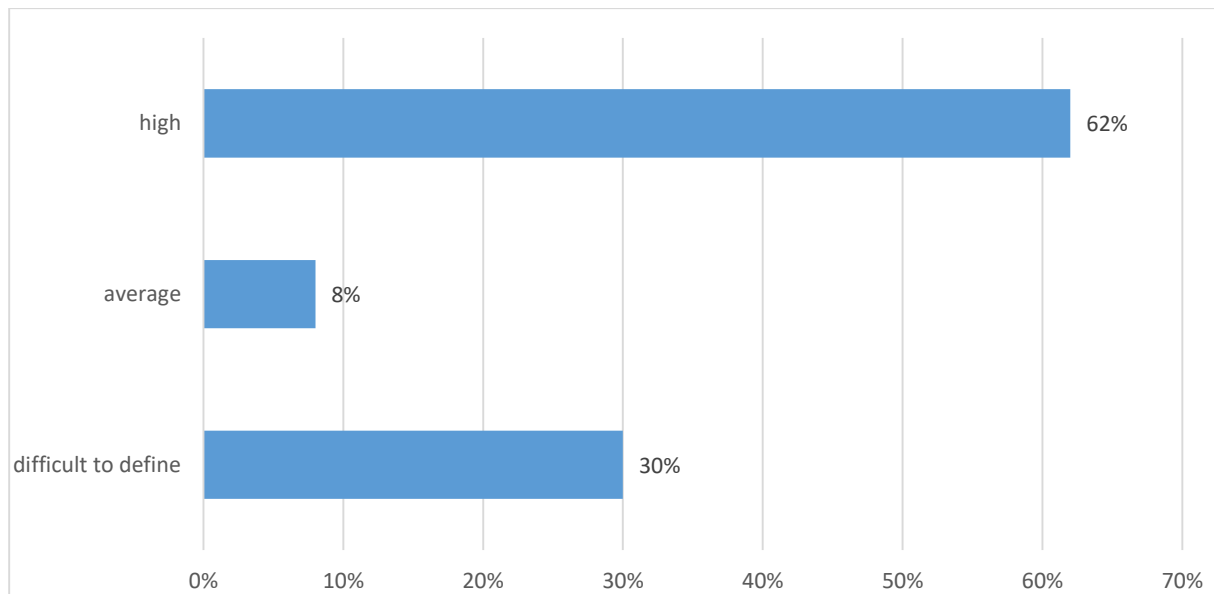


Figure 6. The level of commitment of the management board and readiness for investments related to the implementation and improvement of the CMS.

Source: own elaboration based on Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem. Edycja 2021, Viadrina Compliance Center, Instytut Compliance, Wolters Kluwer, Available online: <https://instytutcompliance.pl/wp-content/uploads/2021/10/Raport-Compliance-2021.pdf>.

Declarations in this regard are undoubtedly encouraging and testify to the maturity of enterprises, however, the in-depth interviews and observations of the author show that the above-mentioned readiness and openness in practice is largely dictated by the fear of sanctions and which have a considerable general and preventive significance and have a significant impact on business decisions and investments. The respondents equate the principles of *ton from the top and leading by doing* with good, ethical actions of company managers. In addition, the implementation of the above-mentioned principles is equated with active actions on the part of the management board supporting the culture of compliance, in this aspect the most frequently indicated activities include: regular contact and discussions with the Compliance Department, messages from the management board confirming the importance of compliance for the functioning of the company, commissioning regular CMS effectiveness studies, participation in compliance training.

The vast majority of the surveyed companies (over 90%) have Irregularity Information Systems and are treated as key elements of the CMS. For this reason, it was important to determine whether employees use them and whether and how investigations are conducted (Figure 7).

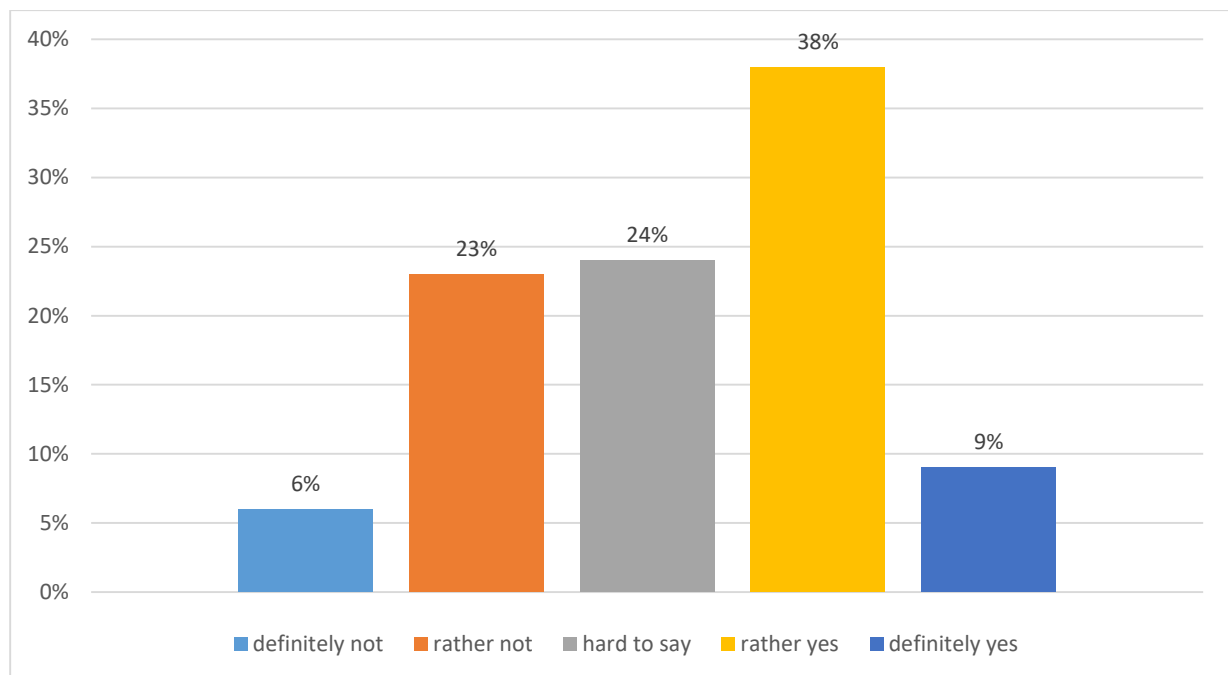


Figure 7. Use of Irregularity Information Systems by employees - Do employees use the possibility of reporting observed irregularities?

Source: own elaboration based on Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem. Edycja 2021, Viadrina Compliance Center, Instytut Compliance, Wolters Kluwer, Available online: <https://instytutcompliance.pl/wp-content/uploads/2021/10/Raport-Compliance-2021.pdf>.

In this context, some respondents pointed to certain psychological barriers resulting from the Polish cultural and social context and the treatment of the whistleblower as a person disloyal to his colleagues. Investigations after reporting irregularities are standard in companies where SIN operates, while the differences concern the authorities that conduct them. As a rule, these are Compliance Departments, independently or together with the Audit, HR departments or the so-called shop stewards, legal departments, ethics advocates. Unfortunately, in the author's opinion, entrusting the Compliance Departments with conducting explanatory proceedings is not a very good solution. Compliance officers are primarily to build a culture and awareness of compliance, enjoy trust and care for relations within the company. Acting as an investigator appears to interfere with these assumptions and consequently may result in a conflict of interest.

The pandemic and the war in Ukraine and the resulting economic crisis influenced the perception and functioning of CMS in enterprises. In 35%, the CMS has gained importance, and in 65% it has not lost its importance (Figure 8).

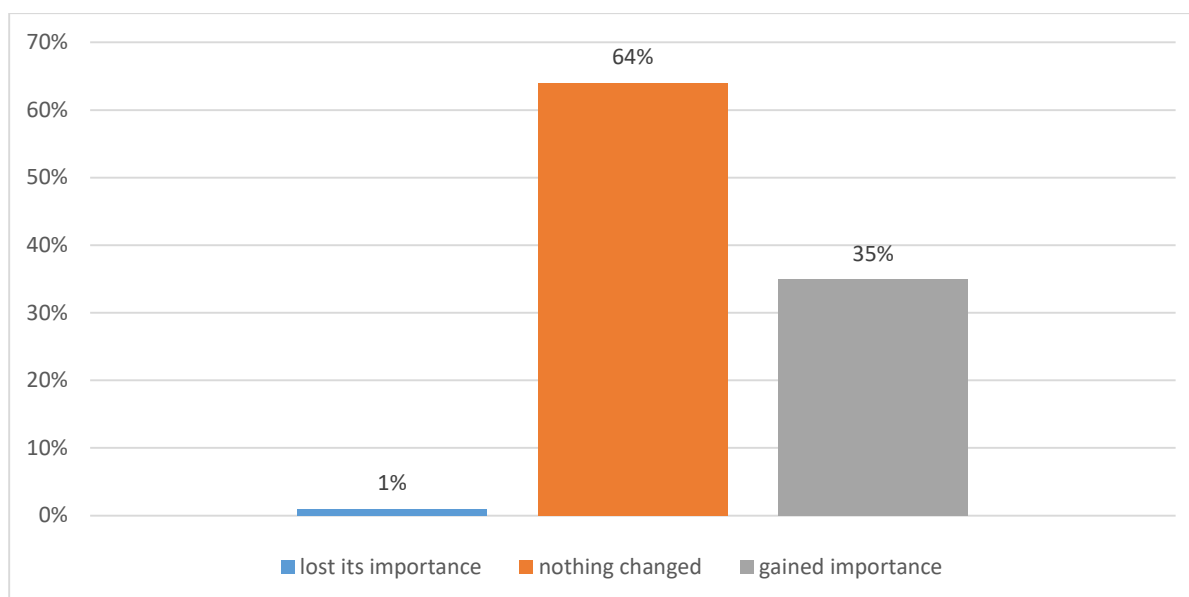


Figure 8. How the pandemic and current economic and political crises affected the CMS in the enterprise.

Source: own elaboration based on Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem. Edycja 2021, Viadrina Compliance Center, Instytut Compliance, Wolters Kluwer, Available online: <https://instytutcompliance.pl/wp-content/uploads/2021/10/Raport-Compliance-2021.pdf>.

It was also established in which areas of compliance risk have gained the most importance in the last two years (Figure 9).

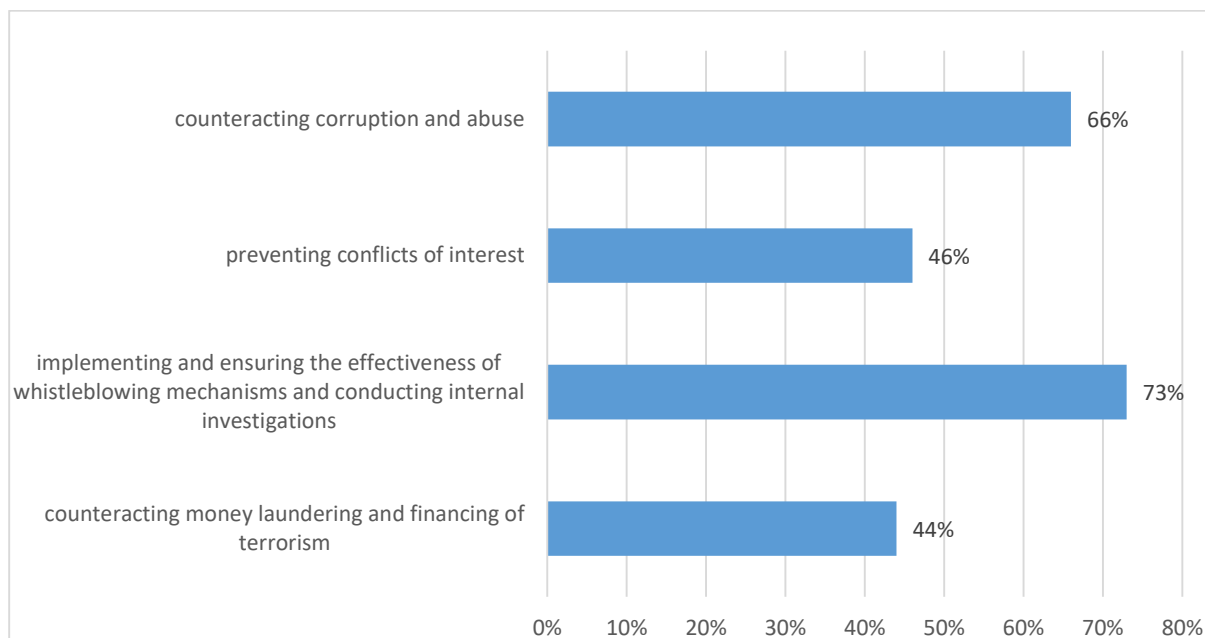


Figure 9. Areas in which compliance risk was of greatest importance for the functioning of the company in the last two years.

Source: own elaboration based on Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem. Edycja 2021, Viadrina Compliance Center, Instytut Compliance, Wolters Kluwer, Available online: <https://instytutcompliance.pl/wp-content/uploads/2021/10/Raport-Compliance-2021.pdf>.

The answers to this question were conditioned by the challenges posed by the necessity to comply with the EU Directive on whistleblower protection. Frequent indications of a conflict of interest are also significant.

As for the development of CMS in the near future, the vast majority of respondents are already convinced that the importance of CMS will increase (Figure 10).

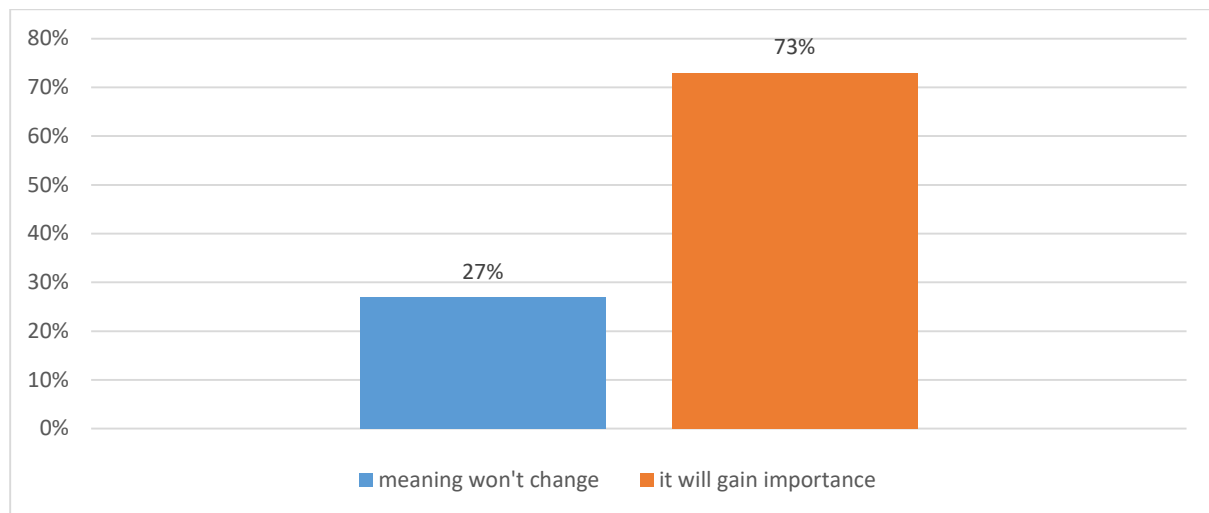


Figure 10. Will the CMS gain, lose or change meaning in your company in the near future?

Source: own elaboration based on Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem. Edycja 2021, Viadrina Compliance Center, Instytut Compliance, Wolters Kluwer, Available online: <https://instytutcompliance.pl/wp-content/uploads/2021/10/Raport-Compliance-2021.pdf>.

The above results are optimistic and confirm the global trend that compliance is also developing in Poland. The respondents, justifying their answers in this respect, emphasized that they were dictated by the belief that CMS to a greater or lesser extent but it works in crisis conditions that entrepreneurs have been struggling with for several years.

4. Discussion

The outcomes of the research correspond to the overall conclusions discussed in the literature. A systemic approach to compliance risk management entails the need to implement compliance in all processes of the organization (Blecker, Hortnesius, 2014; Jagura, 2017). The basic condition and determining the effectiveness of a CMS is the adaptation of the system to the needs of a specific organization. This is due to the fact that different types of organizations are exposed to non-uniform forms of risks typical of their activities (Polinkevych et al., 2021). Hence, there is a need to apply various, risk-neutralizing measures, adequate for a given organization and existing risk circumstances, in relation to their application and optimization (Crovini, Schaper, Simoni, 2022). The need to adapt the CMS to a specific organization is already visible in the first key decisions preceding the implementation of the CMS.

Namely, it is primarily about deciding whether the system should be internal or external and also whether it should be centralized or decentralized. The internal CMS is integrated with the structure of a given organization and its functioning is the responsibility of the members of the organization usually Compliance Officers who know the organization and the specificity of its activities. In practice such a solution has a positive effect on internal communication, reducing the risk of confidential and sensitive information flowing beyond the organization and CMS processes, conducts training and then, depending on the needs, constantly monitors and adjusts the system. The advantages of the above solution are the independence and specialist knowledge of external specialists. Centralized CMS includes a central compliance department, which from the headquarters position, uniformly manages the system in all departments of the organization, while having a global view of its functioning. This enables central control of the system while maintaining a uniform standard throughout the organization. The decentralized system on the other hand is integrated into individual operational units. Thanks to regular reporting to the CMS department it ensures its comprehensive integration. A decentralized solution results in the proximity of CMS tasks and better adaptation to the current functioning of the organization (Coglianese, Nash, 2020). Another element that is indicated as determining the effectiveness of CMS is integration with management systems functioning in the organization (Barcik, 2020). CMS is usually integrated with internal audit, operational risk management system, social responsibility system, internal functional control (managerial supervision) as well as with anti-corruption systems. Although in the case of the latter, due to the fact that the risk of corruption is considered one of the basic compliance risks, the CMS itself is often treated as an anti-corruption system. CMS integration with the mentioned management systems increases the transparency and efficiency of these systems, and also leads to process optimization.

5. Conclusion

The considerations and research results presented in the article allowed for the analysis and general assessment of CMS in Polish enterprises. The following conclusions can be reached:

- The first key conclusion is the undisputed development of compliance in Poland in particularly difficult, crisis conditions, accompanied by a high level of inflation and legal instability which demotivates entrepreneurs and discourages investors. The above challenges determine the nature of Polish CMS. While in the world the evolution of compliance draws more and more from the achievements and methods of conservative psychology (mainly aiming at focusing on the individual and trying to determine why and under what circumstances the rules are broken and above all how and what

conditions to create to prevent it) in Poland a preventive approach to compliance is more visible.

- The management of the vast majority of enterprises shows protective attitudes in terms of readiness to take legal risk. Is aware of the negative legal consequences of non-compliance, primarily in the form of financial sanctions, and prefers not to risk their occurrence. The sanctions provided for in the Polish legal system are clearly of general and preventive importance and have a key impact on making business decisions. This approach determines the expectations set for compliance systems.
- Management board members play a fundamental role in the organization and efficient functioning of the CMS in the surveyed companies. The adoption of the principles: ton from the top and leading by doing sets the direction for the development of the CMS in the company.
- A prospective area of development and simultaneous challenges determined by the conditions of the Polish cultural circle is the implementation of appropriate systems of informing about irregularities integrated with the CMS.

The obtained research results also outline research perspectives for the future related to a comparative analysis of the specifics, methods and principles of the implementation and functioning of the CMS in an international perspective.

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