

Lessons for the compliance programme of a trader in Zug

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The three cases define the standard that a trader in Zug must meet to avoid liability under Article 102. Although the standard is not codified in detail, its elements can be derived from the decisions and from the international guidance on anti-corruption compliance.¹

The first element is a commitment of the board and the management to the prevention of bribery, expressed in a clear policy and supported by adequate resources for the compliance function. The second is a risk assessment that identifies the countries, counterparties and transactions with the highest risk and directs the compliance effort towards them. The third is the due diligence on intermediaries: the identification of their owners, the verification of their qualifications and of the services they provide, the justification of their remuneration, contractual undertakings on compliance and audit rights, and the monitoring of their activities and payments throughout the relationship. The fourth is the control of payments, including the requirement that payments be made only to accounts in the name of the intermediary, in the country where the services are provided, against documented services. The fifth is the training of the staff, above all the traders and the managers who deal with state-owned counterparties. The sixth is a system for reporting suspicions, protected against retaliation. The seventh is the consistent investigation of red flags and the sanctioning of violations.

The cases also show the importance of documentation. A company that must defend itself against a charge under Article 102 must demonstrate that it took the required measures at the time of the offence, which may lie a decade or more in the past. The documentation of the compliance programme, of the due diligence on intermediaries and of the reaction to red flags is therefore essential and must be retained for the period during which proceedings may be brought.

1 Notes

1. UK Ministry of Justice, "Bribery Act 2010: Guidance to help commercial organisations prevent bribery", published 11 February 2012, last updated 22 January 2025, gov.uk: guidance under section 9 on the adequate procedures defence to the section 7 offence, built on six principles (proportionality, top-level commitment, risk assessment, due diligence, communication, monitoring and review). US Department of Justice, Criminal Division, "Evaluation of Corporate Compliance Programs", updated September 2024, justice.gov. ↩

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