

The logo for SWORA LEGAL, featuring the text "SWORA" in a large, white, serif font above "LEGAL" in a smaller, white, sans-serif font, both set against a dark grey rectangular background. A blue horizontal line is positioned below the word "LEGAL". The entire logo is centered within a white square frame.

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**COMPLIANCE PROGRAMS – LANDMARKS OF SUCCESSFUL CREATION AND IMPLEMENTATION**

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**ERRA Energy Market Surveillance Webinar: Regulators and Market Participants**

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## Creation

### ► Objectives

- ✓ relating to REMIT requirements
  - ❑ market abuse prohibitions (insider trading, not spreading inside information)
  - ❑ publication of inside information
  - ❑ market manipulation
  - ❑ registration
  - ❑ reporting of orders and transactions under REMIT
- ✓ concerning other regulations (AML, licensing, environmental rules)

## Creation

### ► Culture

- ✓ the creation of a corporate culture to comply with REMIT requirements and/or other regulations encourages a commitment to conform to these requirements
- ✓ particularly important elements
  - ❑ focus on compliance should be rooted in the management, with active support thereof
  - ❑ sufficient resources dedicated to implementation of compliance function/system
  - ❑ adequate policies and procedures ensuring compliance and allowing to detect non-compliance,
  - ❑ risk-based approach for efficient use of resources dedicated to compliance
  - ❑ compliance programme with priorities determined by a risk assessment
  - ❑ adequate communication of the legal framework and internal rules/guidelines, including training of employees and regularly and ad-hoc reporting to the management

# COMPLIANCE SYSTEM

## Creation

### ► Organization

- ✓ the definition of roles and responsibilities in the internal organisation: responsibilities for legal/other requirements (centralised vs. decentralised), internal vs. external reporting lines, provision of resources: human / technical (IT Systems)
- ✓ clear definition of roles and responsibilities
- ✓ sufficient people with sufficient business knowledge and competence
- ✓ independence
- ✓ authority/management support
- ✓ unlimited access to all necessary information, documents, IT systems
- ✓ direct reporting line to senior management at an appropriate level (responsible for overall business, to avoid competition on middle management level)
- ✓ taking part in significant changes of the organization involving business units subject to respective requirements
- ✓ awareness of significant market and regulatory developments
- ✓ all compliance activities are documented

## Creation

### ► Risks

- ✓ risk assessments allowing to prioritise the compliance efforts and ensuring risk based compliance approach
  - ❑ clear picture of compliance risks the market participant faces
  - ❑ adjusted to the market participant's needs
  - ❑ regular assessment of the market participant's compliance areas and/or risk exposure
  - ❑ interviews with key stakeholders within the company
  - ❑ based on the impact of a possible incident and the likelihood of this happening and may also include existing controls
  - ❑ approach to the risk assessment should take into consideration the market participant's size and complexity
  - ❑ results can be divided by descriptions (e.g. low, medium, high or very high), colours or numbers
  - ❑ acceptable level of risk is decided by the market participant
  - ❑ good starting point for the determination of the compliance program, including the compliance plan
  - ❑ different market participants have different risks, risks may also vary between different parts of the market participant

# COMPLIANCE SYSTEM

## Creation

### ▶ Program

- ✓ identification of specific actions to define compliant/non-compliant behaviour
  - ❑ description and implementation of actions to prevent, detect and mitigate risks
  - ❑ prioritization of the particular actions and ensuring a risk-based approach
  - ❑ tailored to fit each market participant's size and structure
  - ❑ embraces three main pillars: prevention, detection, response

### Prevention

- ❖ Training
- ❖ Guidelines and policies
- ❖ Internal communications
- ❖ Implementation and awareness
- ❖ Remuneration

### Detection

- ❖ Annual compliance plan
- ❖ Business controls
- ❖ Monitoring
- ❖ Routines for reporting incidents
- ❖ Low threshold for contacting compliance
- ❖ Incentives to report

### Response

- ❖ Continuous improvement
- ❖ External communication
- ❖ Internal communication
- ❖ Further actions suggested to management
- ❖ Taking necessary steps to stop certain behaviour
- ❖ Reacting towards involved employees

## Creation

### ► Plan

- ✓ for fixed period (usually coming year)
- ✓ based on the risk assessment, existing controls and previous findings and should cover all compliance areas
- ✓ prioritization of risks and actions
- ✓ compliance report to management describing execution of compliance plan

## Creation

### ► Communication

- ✓ internal communication including training
  - communication from the compliance function to the business (inc. training, lessons learned, new regulations)
  - communication from the business to the compliance function (concerns, possible breaches or other issues)
- ✓ reporting processes: internal reports on compliance, reporting of infringements, status of current processes
  - reports by the compliance unit to management (regular, ad-hoc, updates)
- ✓ external communication and contact with authorities
  - guidelines/routines on handling contact with the authorities (manual concerning „dawn raids”)



## Creation

### ▶ Monitoring improvements

- ✓ based on three lines of defence
  - business operations and units
  - compliance and risk control
  - internal audit
- ✓ monitoring of the business (trading activity) by the compliance function
- ✓ self-assessment of the compliance regime's effectiveness
- ✓ internal audit

## Implementation

- ▶ centralized compliance management system
  - ❑ dedicated compliance unit, that preserves control over whole spectrum of compliance functions of market participant (usually involves significant number of compliance officers)
- ▶ decentralized compliance management system
  - ❑ implanted in existing units or functions of market participant (financial control, audit, human resources); central supervision is limited
- ▶ fit-for-purpose hybrid governance structures
  - ❑ compliance programs that are tailored to fit organizational structures and unique needs of particular market participant

## Emerging trends

- ▶ Cybersecurity
  - ❑ key focus for regulators in the energy industry
  - ❑ data security and privacy
  - ❑ identity access management
- ▶ Smart grids and other disruptive grid technologies (micro grids, distributed energy resources)
  - ❑ Advanced Metering Infrastructure (AMI)
  - ❑ physical and cyber security regulations
  - ❑ Distribution Automation for Grid Reliability
- ▶ Robotic process automation and blockchain

## Sources

- ▶ [https://documents.acer-remit.eu/wp-content/uploads/ACER\\_Guidance\\_on\\_REMIT\\_application\\_6th\\_Edition\\_Final.pdf](https://documents.acer-remit.eu/wp-content/uploads/ACER_Guidance_on_REMIT_application_6th_Edition_Final.pdf)
- ▶ <https://www.nordpoolgroup.com/services/compliance/remit-best-practice/>
- ▶ <https://www2.deloitte.com/us/en/pages/regulatory/articles/energy-regulatory-compliance-survey-report.html>
- ▶ <https://www2.deloitte.com/us/en/pages/regulatory/articles/energy-regulatory-compliance-survey-report.html>

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**THANK YOU FOR YOUR ATTENTION!**

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