

Justitiële verkenningen

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Organisational crime

Summaries

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Corporate crime; toward tackling of the problem on the basis of insight

W. Huisman and E. Niemeijer

Corporate crime can be defined as the individual or collectively committing of crimes by participants in a respected and bona fide organisation within the scope of their organisational tasks. Starting point in this article is the idea that an effective tackling of corporate crime should be based on a systematic insight in the nature, causes and consequences of the phenomenon. It appears that the (empirical) knowledge of corporate crime in the Netherlands is highly unsatisfactory. In this article difference is made in various sorts of corporate crime, such as environmental crime, crimes concerning the safety and health of workers, crimes against consumers, diverse forms of fraud and crimes in the financial area. The explanation of corporate crime is sought on three levels: macro (market/branch), meso (corporations) and micro (individuals). Within each of these levels special attention should be paid to motives and opportunity structures. Corporate crime is fought against in various ways, reflecting the diverse forms in which corporate crime manifests itself. The three main types of instruments can be found in private law, administrative law and criminal law. Also various forms of selfregulation are in use. In most cases a combination of these possibilities is applied. Despite this variety, a clear pattern appears. To the degree that the aims of government in connection with a specific type of corporate crime are more consistent with the interests of the regulated subjects or when the victims of corporate crime are more able to look after their own interests, the enforcement of the rules concerned is more left to the own responsibility of the regulates subject (private law; selfregulation).

Stock market fraud

H.J. de Graaff

In october 1997 a large investigation of the stockmarket began. The reason for this investigation was, amongst others, the unsatisfactory ending of a number of civil procedures. These procedures derived from the dissatisfactions of clients concerning the manner in which the fundmanagers controlled the funds that had been transferred to coded accounts. Prior to the stockmarket investigation the Public Prosecutors Office in Amsterdam had initiated a number of investigations for 'classic' stockmarket fraud (misuse of information due to prescience of an organization or legal person). There was only one case in which a conviction was achieved. The stockmarket investigation revealed several fraud types which were previously hardly known: the use of code/numbered accounts; frontrunning; ABC-transactions; fraudulent trading with the issue of shares; offences not directly related to the stockmarket. These types of fraud are explained. Selfregulation is to be considered past perfect. The parties involved in the stockexchange have proven to be unable to manage and control the lawful or other conditions concerning the stockmarket for the public to have adequate trust in them. The proposed law 'Implication of penal sum and administrative fine' places the management of the financial rules into the hands of the regulators. With the breach of financial rules they may impose substantial capital sanctions. An important development in the process of the management of the integrity of the financial world is that the participants are convinced the the co-operation, maintenance, conveyance of knowledge and exchange of information are keworthywords in the management process. A good example for this is the establishment of the Financial Expertise Center Amsterdam.

Environmental care management systems in companies; their counterproductive effects

C. Waling

The intention of this article is to start a discussion on how to procure that selfregulation by means of (environmental) care management systems becomes an important, maybe the most important, instrument in the struggle against (environmental) crimes committed by members of companies. A well functioning (environmental) care management system has a strong preventive effect. It keeps the chance of (repetition of) crimes and the risk of damage and hazard to the environment to a minimum. However, if a (environmental) care management system wishes to have a really preventive effect, it is of great importance that the company and its employees are able to analyze, monitor and reform themselves, without running the risk of information leaking out of the company and being used against them by third parties (government, judicial authorities and citizens). Without this guarantee a counterproductive effect originates. At the moment these things are far from being guaranteed, it is indicated how this guarantee could be created: by means of legislation that ensures either secrecy of certain information from environmental care management systems or, under certain conditions, immunity of the parties involved.

Compliance versus integrity; where rules end and responsibility begins

G.J.A. Hummels and R.Ph. Wirtz

Socially responsible entrepreneurship and business ethics list high on the agenda of the business community. How does one organize ethics? In this article the authors describe three distinct strategies to organize ethics. The aim of the conformity strategy is to promote ethical behavior of employees through the enforcement of behavioral norms determined outside the company. The essence of the management of employee behavior following the morality strategy is not the enforcement of compliance to fixed rules, but the enhancement of the quality of the moral decision making process. In the recursive strategy the focus is shifted from a top down assessment of ethical norms and values to a recursive dialogue, involving the employees, about the ethical norms governing business conduct. Although the different strategies are distinct in application as well as in result, they are also, as we will conclude, mutually enforcing. Compliance and integrity are two sides of the same medal.

Tackling organisational crime: an appeal to the self-cleaning capacity?

B.W.M. van der Lugt

The prevention of employee and organisational crime requires an active management policy at the level of techno-prevention, the accounting system and related internal controls, as well as internal rules and description of procedures, and - a relatively new aspect - at the level of the corporate culture. Integrity is an organisation's quality mark and it is worth while to continue to invest in it. However, the significance of influencing corporate culture and promoting integrity goes beyond the prevention of undesirable or criminal behaviour; accountability and objective testing on the point of corporate integrity also answer the improper question posed by stakeholders as to what the organisation stands for, what kind of people work there, what aims they pursue and what rules they have imposed on themselves in so doing. An organisation's sustainability not only depends on economic factors, but also just as much on social and external factors. Socially correct entrepreneurship and ethical behaviour in particular are commercially interesting too. It's not too late yet for corporate self-regulation to prevent government interference through legislation.