

Mission Impossible?

Managing Global Regulatory Compliance
and Evolving Best Practice

Commissioned by:



SHEPHERD+ WEDDERBURN



Executive summary

Figure 1: make-up of participants

c.£340bn

in global revenues

850,000

employees globally

10

sectors

150+

countries

With an exponential growth of regulation across multiple jurisdictions forecast, how will global companies keep abreast of developments in regulation, let alone pre-empt change? Getting things wrong could spell disaster for an organisation, its reputation and for the officers deemed responsible for compliance.

However, there are clear benefits to putting solutions in place that flag change, drive regulatory monitoring compliance, and allocate compliance responsibilities to specific stakeholders.

OMC Partners interviewed a number of General Counsel and senior Compliance professionals to consider their views, the challenges they faced, how their organisations are responding, and identify their needs in terms of developing a truly global and effective regulatory monitoring capability.

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Key findings

- Operational challenges are still sizeable and there is little by way of best practice.
- Senior stakeholders buy into regulatory compliance but internal responsibilities are unclear.
- Who is 'on the hook' for tracking compliance obligations is often unclear and confusing.
- Regulation comes quickly and spreads widely.
- Some regulations and countries are more important than others.
- Regulators are flexing their muscle (but not always clearly or consistently).
- Information comes from a range of external suppliers...but rarely consistently or effectively.
- Receiving digestible information and identifying the right people to implement change is key.
- Data relevance is critical, as is ensuring outputs meet specific business needs.
- However, with information overload, it's all too easy to "bury your head in the sand".
- Some few organisations design systematic processes to collate data, then assign responsibilities.
- There is no clear "go to" provider at present but some nascent solutions are appearing.
- Implementing a consistent end-to-end, funded compliance solution remains an elusive goal but is the goal of most organisations.

Leading organisations are responding to new challenges by:

- Blending their internal resource with external supplier insights and technology.
- Placing proportionality front and centre.
- Developing clear governance with monitoring lying with an empowered GC or compliance head.
- Centralising shared services for regulations with global effect e.g. Data Protection, Bribery etc.
- Leveraging project management approaches to coordinate multiple stakeholders
- Benchmarking activities against an organisation's own objectives but also against peers.

Desired monitoring and horizon scanning solutions centre around:

- Data inputs that are bespoke to the business and managed by invested suppliers.
- Reporting and benchmarking, and demonstrating clear accountability internally.
- Easy reporting to CxO level for compliance officers.

Introduction

Since 1957, the EU has generated over 100,000 pieces of legislation, with 1,500 regulations produced each and every year, swelling further during periods of crisis. US Congress passes 350-650 federal laws annually (leaving aside state laws). With regulatory volume forecast to increase by 40% over the next five years, organisations risk becoming swamped by red tape driven by a growing number of influences including trade wars, national security, terrorism, climate change, growing scepticism of digital platforms, artificial intelligence, climate change and sustainability, social care and demographic change.

However, allied to growing volumes comes increased complexity, with regulatory requirements shifting from permissive regulation to detailed, prescriptive rules which often extend across multiple sectors with radically different customer bases, stakeholders and – even – regulators.

Getting things wrong can spell disaster...regulator, and investor scrutiny, heavy fines, hefty remediation costs, loss of sales and commercial opportunity, damage to reputation, even death or personal injury. The average cost of a non-compliance 'event' is approaching \$15m.

However, there are clear benefits to effective regulatory monitoring, including:

- building competitive advantage
- improved risk profile
- cost savings (always relevant; rarely trumpeted)
- generating goodwill with regulators
- forecasting certainty – resources, investment, effort
- staff getting on with the day job

How do teams tasked with ensuring global compliance keep track of the mass of regulation

“ The pace of change is phenomenal. ”
– Senior Vice President, Global Brand

developing daily without dropping the ball? With the widespread rise of populism, increasing political intervention, and public animosity to large tech companies, how can organisations keep abreast of developments in regulation, let alone pre-empt or influence change? As one General Counsel describes it, “Mission Impossible!”.

Against this backdrop, OMC Partners interviewed a number of General Counsel and Compliance professionals drawn from a range of cross-sector, market-leading organisations to consider their views, the challenges they faced, identify emerging best practices, and consider their needs in terms of developing a truly global regulatory horizon scanning capability.

This white paper identifies a number of key findings, how organisations are responding to global horizon scanning and monitoring participants' views on what would help them most going forward, and provides two case studies of the benefits being captured by forward-thinking organisations.

Key findings

Operational challenges are sizeable: key challenges cited include...

- balancing budget to sufficiently resource monitoring teams to deal with the “legislative tsunami”
- there is little by way of best practice and organisations are having to find their own way and design solutions that meet their objectives
- growing and unworkable volumes of data, often of mixed quality and reliability, with limited technology to manage it

“ I get two filing cabinets worth of data each week from one territory alone! ”
 – Head of Risk, FTSE 100

- poor communications across teams and territories, resulting in silos (e.g. legal v compliance) and lack of regulatory awareness, and a growing risk that, with employee turnover, awareness of obligations is lost
- cultural differences, particularly with the US where participants cite challenges in winning hearts and minds

“ the trick is raising visibility and convincing the US that it’s worth listening to. ”
 – Head of Legal, FS

- obtaining budget for horizon scanning can be tough, although budget can be made available when backed by a compelling business case

Regulation comes quickly and spreads widely: the speed of change is a consistent theme. Particularly problematic are “out of the blue” regulations, often pushed through as part of populist measures (wealth taxes or abuses), powerful political sanctions (Iran, Huawei etc), or data breaches by large tech companies leading to public and political outburst – the so called “Techlash”.

Some regulations are more important than others: Legal and Compliance teams are focussing effort and resources on three key areas of regulation that impact most on their organisations (see figure 2).

Figure 2: prioritising horizon scanning effort

HIGHEST

At the Coal Face - sectorally relevant

Regulation that goes to the heart of what the business does – e.g. tobacco packaging, telecoms, online marketing, licensing etc.

HIGH

Global Concerns

Pervasive regulation where companies are under increasing global scrutiny...Data Protection, Cyber Security, Anti-Bribery and Corruption, Competition and Procurement, Trade Control, Governance, Investor Requirements

MODERATE

Operational Concerns

More localised day-to-day regulation...Health and Safety, Environment, Human Resources including equal pay, discrimination more generally, pensions, CSR etc.

Some countries are more important than others: participants focus effort on outliers – from territories of strategic importance to their organisation (key markets, stock exchange listings, significant employee footprints) to problem territories where, for instance, Anti-Bribery and Corruption compliance remains challenging (examples cited include Nigeria, China, Brazil and Russia). Countries in the middle of the spectrum tend to receive a lighter touch approach, the risk being assessed as lower and investment/effort better focussed elsewhere.

Regulators are flexing their muscle (but not always clearly or consistently): legislators are increasingly regulating activities that occur outside of their own jurisdictions e.g. Huawei sanctions or GDPR or taxation. However, regulations are not always clear, easily interpreted, or fit for purpose leading to uncertainty for organisations in terms of how they should be implemented. This causes a certain degree of “corporate procrastination” or wait and see.

Senior stakeholders buy into regulatory compliance: All participants receive support from the C-suite and whilst buy-in can be slow, change is gaining momentum due to the importance companies (and crucially their investors) attach to regulatory compliance and the risks of getting it wrong. However, organisations are often unsure who is ultimately responsible for obtaining the monitoring inputs and then ensuring actions are implemented. This often leads to an implementation gap between legal, compliance and risk teams.

“ there's so much reputational risk that compliance is baked into what we do. ”
– Director of Compliance, FTSE 250

Tricky budgeting: The question of who is responsible for the budget for monitoring is also critical. Compliance functions who implement changes recognise that GC and other stakeholders will not often have specific allocated budget to identify upcoming legal and regulatory change.

The most effective reported approach is when the budget for both sides of the equation is brought together and a single budget put in place with inputs from local legal and regulatory teams, and with Compliance then empowered to implement changes.

Ad hoc solutions are rarely enough: All participants receive a range of regulatory updates from their law firm suppliers – from advice notes and seminars, through to paid-for horizon scanning services. There is a general sentiment that you “get what you paid for” and free services tend not to be bespoke enough to deliver true value.

Bigger law firms, often slow to respond and less nimble, suffer from a perception that it is in their interests to overstate complexity when asked to help organisations raise their global awareness of regulation. In the words of one Fortune 500 GC, “uncertainty sells services”.

75% of participants acknowledge a limited awareness of solutions, but many see increased activity from technology providers and the Big 4 who are “cannibalising law firm work”. There are however law firms and ancillary providers offering services in this space and this market will develop. There are also sector-specific solutions available but they are limited to very niche areas e.g. Telecoms so GC and Compliance leads have to supplement solutions with a range of supplier inputs to cover the full spectrum of operational obligations.

How organisations are responding

Approaches to monitoring regulations are surprisingly mixed with General Counsel and their Compliance colleagues adopting a range of techniques to meet organisational demands.

Approaches range in sophistication from highly bespoke solutions leveraging people and technology through to no real solutions at all.

Put bluntly by one FTSE 250 General Counsel, “most companies struggle to provide a systematic, risk assessed basis for compliance”.

Whilst there are few best practices to speak of, common approaches focus on:

- Solutions that blend the organisation’s compliance resource with external supplier insights and technology, spreading risk by using more than one solution.
- Placing proportionality front and centre to:
 - reflect key markets (considering the size, scale of operations, regulatory landscape)
 - consider quantum (the risk of getting it wrong) with one participant using a de minimis of €5m for each non-compliance event
 - leverage tools used elsewhere in the organisation - risk matrices, heat maps, legal risk registers - to promote consistency.
- Developing clear governance structures with overall responsibility for monitoring resting with an empowered C-suite level General Counsel, with agreed career objectives in place to drive compliance performance. If not the GC, then it must be clearly set out who is responsible.

“regulatory monitoring must be part of the GC’s job description.”
– Head of Risk, Financial Services

- Centralising shared services for world-wide regulations such as Anti-Bribery and Corruption, Data Protection, Trade Sanctions and Competition.
- Collaborating with peer organisations to raise awareness and focus lobbying effort through trade bodies and industry associations and – crucially – reporting into the GC before changes become hard and fast regulation.
- Using project management approaches to coordinate multiple stakeholders for significant regulatory changes e.g. GDPR, anti-money laundering, Payment Services Directive, tobacco packaging, and using an agreed communications plan to keep the comms drumbeat going to reinforce the implementation of regulatory change.
- Benchmarking activities against an organisation’s own objectives but also against peers from a range of sectors, using enforcement cases to “spot check” compliance.

Preferred solutions

Whilst budget is always an issue, the majority of participants stated that - with persistence and a compelling business case focussed on cost savings, reduced risk and efficiency improvements - budget for monitoring could be found even if not immediately available.

“ the squeaky wheel gets the grease. ”
– General Counsel, Fortune 500

Organisations in areas that are subject to heavy regulation in at least one part of the business, e.g. Pharma or Telecoms, tend to be better placed to recognise the need for effective solutions and are more sophisticated purchasers of solutions.

Whilst current solutions are “piecemeal and don't cover all angles” (General Counsel, FTSE 250) the preferred wish list of solutions fall into three categories:

Data Management

- AI/Big Data scrapes leveraged to automate collation of information but few such solutions exist
- Multiple sources - law firm updates, regulatory announcements, DOJ/SFO decisions - consolidated in one feed
- Minority alphabets and languages for 150 countries assimilated

Reporting & Benchmarking

- Reports customisable by sector, territory, regulation type
- Heatmapping capability
- RAG assessment with prioritised focus for compliance effort
- Standardised KPIs and Risk Scores
- Ability to benchmark operations against enforcement cases

Invested Suppliers

- Suppliers with “skin in the game”, sharing risk with outcomes based billing
- Indemnity insurance offered – for when suppliers get things wrong
- “think different; think strategically”

Conclusion

Due to the burgeoning and increasingly complex mass of regulation, global monitoring of obligations is presenting a serious challenge to General Counsel and their Risk and Compliance colleagues. In the absence of established best practices and a nascent market for solutions, organisations are still finding their way, sometimes having to learn by taking a “commercial hit” before implementing effective internal solutions.

However, collaborating with peers, suppliers and even competitors presents opportunities to shape solutions and capture the clear benefits of effective monitoring - not least of which is avoiding the heavy multi-million pound fines for non-compliance!

With effort and focus, the global monitoring Mission Impossible is giving way to Mission Possible!

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Case study 1: getting regulatory and compliance monitoring right – the Shepherd and Wedderburn solution

A major multinational organisation with 250,000+ employees suffered a lack of consistency in monitoring global regulations across multiple entities and sectors. This created information silos, limited compliance awareness between teams, varying standards of information monitored, inconsistent reporting cycles, and reduced regulatory visibility overall.

The absence of a standard global approach created accountability issues and reputational risks for the organisation. Consequently, the CEO sought a comprehensive regulatory monitoring tool to demonstrate and audit the organisation's global effectiveness and reliability.

The company worked with Shepherd and Wedderburn and supported by OPL and multiple global partner firms leading independent law firms - to develop a compliance monitoring tool covering 40+ countries to:

- centralise compliance monitoring
- implement a consistent company-wide approach
- collate standard information feeds from trusted legal counsel in each jurisdiction
- generate a fully tailored and risk-prioritised list of regulatory updates to meet business needs
- develop an action plan for the business to address each obligation
- identify obligation ownership and disseminate information to teams in their respective regions
- provide advance notification of consultations to allow input into policy and legislative changes
- provide a feedback loop on S+W's reporting to constantly refine relevancy
- offer indemnity protection for the client

The solution offered a highly relevant and filtered monthly input to the business on legislation they needed to be aware of with actions allocated to a named business stakeholder to implement. The Exec Committee took confidence that global monitoring was conducted systematically, was not dependent on multiple feeds of raw data, provided an auditable and transparent process, and mitigated the risks of unexpected legal actions against the business.

Case study 2: OPL's focussed collaboration solution

Businesses operating globally in highly regulated industries face heightened compliance challenges. When you add the exponential pace of change in industries such as those in the tech sector, you get the “perfect storm”, where all factors conspire to drive compliance costs (and risks) to a peak.

In such an environment you would expect fierce competition amongst peers to trump cooperation, but four tech-sector competitors took the opposite approach when their legal departments approached OPL for a joint compliance solution to their own perfect storm which included:

- the high sectoral compliance risk;
- fast-changing regulation in a fast-changing industry;
- operations in 65+ countries (whose authorities work in 40+ different languages); and
- a wide variety of regulatory approaches.

In one of the most highly regulated sectors, for each individual company to commission its own regular legal monitoring in all relevant jurisdictions, obtaining a high-quality product would come at a commensurately high cost. But by overcoming the tendency to see competitors as adversaries, four leading companies developed with OPL a high-quality Monitoring and Reporting System (MORS) at a fraction of the cost.

MORS' comprehensive coverage includes bi-weekly updates across all countries and is fully searchable by country, date, topic, and form of update (legislative, policy, regulatory, market news). Participants receive reports in a format tailored to each company's own internal needs to help each legal department efficiently assess points requiring further action. OPL then provides additional research and analysis where required on an individual business basis.

About the author



Matt Peacock is the Managing Partner of OMC Partners, a management consultancy founded in 2006 and working with major GC and the top UK and international law firms. Matt's work centres on improving legal operations and includes legal procurement, alternative sourcing, technology, and legal process redesign. Prior to OMC, Matt completed an MBA after 9 years with a Top 15 law firm practising as a regulatory litigator.

Research methodology

Shepherd and Wedderburn and OPL commissioned OMC Partners to examine the challenges and opportunities around global regulatory horizon scanning. OMC undertook 1:1 interviews with a number of General Counsel and Senior Compliance Professionals from a range of sectors and organisations. Special thanks to all participants including:

- Ascential
- Colt
- Japan Tobacco International
- Instant Group
- Lombard International
- Orange
- O2 Telefonica
- PayPal
- Serco
- Schlumberger
- TSB
- UBS
- Visa
- Vodafone

